MINING ACT 1992 No. 29

NEW SOUTH WALES



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DICTIONARY OF WORDS AND EXPRESSIONS

MINING ACT 1992 No. 29

NEW SOUTH WALES



Act No. 29, 1992

An Act to make provision with respect to prospecting for and mining minerals; to repeal the Mining Act 1973 and the Coal Mining Act 1973; and for other purposes. [Assented to 18 May 1992]

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Mining Act 1992.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Act binds Crown

3. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Definitions

4. (1) In this Act, the words and expressions referred to in the Table to this section have the meanings given to them in the Dictionary at the end of this Act.

(2) In this Act, words and expressions defined in the Interpretation Act 1987 (other than words or expressions referred to in the Table to this section) have the meanings given to them by that Act.

TABLE

access arrangement
allocated mineral
approved
Arbitration Panel
arbitrator
assessment area
assessment lease
authority
block
chief inspector of coal mines
chief warden
claim area
colliery holding
consent authority
consolidated mining lease
controlling body
council
Crown land
Crown Lands Acts
Crown lease for pastoral purposes
dam
Dams Safety Committee
Department
development consent
Director-General
environmental planning instrument

exempted area
exercise a function
exploration area
exploration licence
function
Government agency
group of minerals
inspector
irrigation area
land
local government area
mine
mineral
mineral allocation area
mineral claim
mineral claims district
mining area
mining division
mining improvement
mining lease
mining operations
mining purpose
mining registrar
notification area
occupier
opal prospecting area
opal prospecting block
opal prospecting licence
owner
party
pastoral lease
petroleum
prescribed dam
private land
privately owned mineral
prospect
prospecting operations
publicly owned mineral
reserve
special conditions
special lease for pastoral purposes
surveyor
unit
warden
warden's court
Western lands lease for pastoral purposes

PART 2—PROSPECTING AND MINING GENERALLY

Mining etc. for publicly owned minerals

5. A person must not prospect for or mine any publicly owned mineral on any land otherwise than in accordance with an authority, mineral claim or opal prospecting licence that is in force in respect of that mineral and that land.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

Mining etc. for privately owned minerals on land subject to authority etc.

6. (1) A person must not prospect for or mine any privately owned mineral on any land over which some other person is the holder of an authority or mineral claim.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(2) This section applies whether or not the mineral for which the person prospects or mines is a mineral to which the authority or mineral claim relates.

Mining etc. for privately owned minerals on land subject to pending application for authority etc.

7. (1) A person must not prospect for or mine any privately owned mineral on any land over which some other person is the applicant for an authority or mineral claim unless the person commenced to do so before the application was made.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(2) This section applies whether or not the mineral for which the person prospects or mines is a mineral to which the application relates.

Mining etc. for privately owned minerals without due notice etc. to Director-General

8. (1) A person must not, on any land, prospect for or mine any privately owned mineral unless:

(a) the person has caused notice of intention to do so to be given to the Director-General; and

(b) the person has caused security, in a form and an amount determined in accordance with the regulations, to be lodged with the Director-General; and

(c) the person prospects for or mines the mineral in accordance with the conditions (if any) prescribed by the regulations.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(2) The notice referred to in subsection (1) (a) must contain the following particulars:

(a) the date on which the person intends to commence prospecting or mining operations;

(b) the mineral in relation to which prospecting or mining operations are to be carried on;

(c) a description, prepared in the manner prescribed by the regulations, of the land on which the prospecting or mining operations are to be carried on;

(d) if the person is not the owner of the mineral—the name and address of the owner of the mineral and the date on which the person

obtained the consent of the owner of the mineral to the person's carrying on prospecting or mining operations.

(3) The regulations referred to in subsection (1) (c) may prescribe requirements relating to:

(a) the rehabilitation, levelling, regrassing, reforesting or contouring of any parts of the land on which prospecting or mining operations are carried on that are damaged or otherwise adversely affected by those operations; and

(b) the filling in, sealing or fencing off of excavations, shafts and tunnels,

and other requirements directed at the restoration of the land or the protection of the environment.

(4) This section does not apply to a person who is prospecting or mining under an authority, mineral claim or opal prospecting licence in force in respect of the land and mineral concerned.

Mining etc. for privately owned coal

9. A person must not prospect for or mine privately owned coal on any land otherwise than in accordance with an authority for coal in force in respect of the land.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

Defence to prosecutions under Part 2

10. It is a sufficient defence to a prosecution under this Part if the person who was prospecting for or mining a mineral establishes that the person was doing so:

(a) by virtue of an entitlement arising from a legal or equitable interest that is registered under section 161; or

(b) in the course of lawful fossicking.

Property in minerals lawfully mined

11. **(1)** For the purposes of this or any other Act or law, it is declared that any mineral that is lawfully mined becomes the property of the person by or on behalf of whom it is mined at the time the material from which it is recovered is severed from the land from which it is mined.

(2) For the purposes of this or any other Act or law, it is declared that any mineral contained in:

(a) a stockpile of material that has been lawfully mined for the purpose of enabling the mineral to be recovered; or

(b) a pile of tailings arising from the recovery of a mineral from material that has been so mined,

remains the property of the person by or on behalf of whom the material was mined and does not become part of the land on which it is situated.

(3) However, any mineral that has been mined pursuant to a mining lease or mineral claim but is still contained in such a stockpile or pile of tailings when the lease or claim ceases to have effect:

(a) ceases to be the property of the person by or on behalf of whom the material in the stockpile or pile of tailings was mined; and

(b) becomes part of the land on which the stockpile or pile of tailings is situated,

at the time the mining lease or mineral claim ceases to have effect.

(4) This section is subject to the provisions of any private agreement.

Fossicking

12. (1) For the purposes of this or any other Act or law, it is declared that fossicking is a lawful activity.

(2) Subsection (1):

(a) does not affect any other Act or law that prohibits, regulates or restricts fossicking or that has the effect of prohibiting, regulating or restricting fossicking; and

(b) does not confer on any person a right to fossick on private land that is not owned by that person.

(3) Any publicly owned mineral that is recovered in the course of lawful fossicking becomes the property of the person by whom it is found at the time it is severed from the land on which it is found.

PART 3—EXPLORATION LICENCES

Division 1—Applications and tenders

Applications

13. (1) Any person may apply for an exploration licence.

(2) An application for an exploration licence:

(a) must specify the group or groups of minerals in respect of which it is made; and

(b) must be lodged with a mining registrar; and

(c) must be accompanied by the required particulars; and

(d) must be accompanied by the fee prescribed by the regulations.

(3) The required particulars are as follows:

(a) a description, prepared in the manner prescribed by the regulations, of the land over which the exploration licence is sought;

(b) particulars of the financial resources available to the applicant;

(c) particulars of the technical advice available to the applicant;

(d) particulars of the program of work proposed to be carried out by the applicant on the land over which the exploration licence is sought;

(e) particulars of the estimated amount of money that the applicant proposes to expend on prospecting.

(4) An application that relates to land within a mineral allocation area may not be made, except with the consent of the Minister, in relation to any group of minerals that includes an allocated mineral.

Invitations for tenders

14. (1) This section applies only in relation to allocated minerals in land within a mineral allocation area.

(2) The Minister may, by notice published:

(a) in a newspaper circulating generally throughout the State; and

(b) in one or more newspapers circulating in the locality in which the land concerned is situated,

invite tenders for an exploration licence for an allocated mineral.

(3) An invitation:

(a) must describe the land to which it relates; and

(b) must identify the allocated mineral to which it relates; and

(c) must specify the place at which, and the date on or before which, tenders for the exploration licence should be lodged.

Tenders

15. (1) A tender for an exploration licence:

(a) must be lodged with the Director-General in accordance with the invitation for the tender; and

(b) must be accompanied by the required particulars; and

(c) must be accompanied by the fee prescribed by the regulations.

(2) The required particulars are as follows:

(a) particulars of the financial resources available to the tenderer;

(b) particulars of the technical advice available to the tenderer;

(c) particulars of the program of work proposed to be carried out by the tenderer on the land over which the exploration licence is sought;

(d) particulars of the estimated amount of money that the tenderer proposes to expend on prospecting.

(3) A tender may specify that, in the event that the tender is successful, the tenderer will pay a specified amount in addition to the cash reserve price (if any) specified in the invitation for the tender.

(4) A tender may be made in respect of the whole or any part of the land described in the invitation for the tender.

Minister may require further information

16. The Minister may require the applicant or tenderer to furnish further information in connection with the application or tender, including (if the applicant or tenderer is a corporation) information as to the extent to which the controlling power in the corporation's affairs is held by a foreign company or recognised company (within the meaning of the Corporations Law) or by an individual who is a resident of a foreign country.

Minister may exclude land from application or tender

17. (1) The Minister may, by order in writing, direct that any part of the land to which an application or tender relates be excluded from the application or tender.

(2) A direction takes effect on the date on which written notice of the direction is served on the applicant or tenderer.

(3) A tenderer affected by any such direction may amend the tender by written notice lodged with the Director-General on or before such date as may be specified in the direction.

Division 2—Restrictions on the grant of exploration licences

Land in reserve or opal prospecting area

18. An exploration licence may not be granted over any land within:

(a) an opal prospecting area; or

(b) a reserve in respect of which an order prohibiting the granting of exploration licences is in force under section 367.

Land subject to authority

19. (1) An exploration licence may not be granted over any land:

(a) the subject of some other exploration licence that includes a group of minerals in respect of which the firstmentioned exploration licence is sought; or

(b) the subject of a mining lease, assessment lease or mineral claim; or

(c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the firstmentioned exploration licence was lodged,

otherwise than to or with the written consent of the holder of, or the applicant for, that licence, lease or claim.

(2) A written consent given under this section is irrevocable.

(3) If, as a result of such a consent, an exploration licence is granted over any such land, that land:

(a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim concerned; or

(b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim concerned,

as the case requires.

Land on which private mining operations being carried on

20. (1) An exploration licence may not be granted over any land in relation to a privately owned mineral:

(a) if mining operations are being carried out on the land by or with the consent of the owner of the mineral; and

(b) if a notice has been lodged with the Director-General in respect of those mining operations in accordance with section 8,

except with the written consent of the owner of the mineral.

(2) A written consent given under this section is irrevocable.

(3) Any dispute as to whether or not this section applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Director-General on the basis of the warden's report.

Colliery holdings

21. An exploration licence may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that prospecting operations may be carried out under the licence without any

adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the exploration area.

Division 3—Granting of exploration licences

Power of Minister in relation to applications

22. (1) After considering an application for an exploration licence, the Minister:

(a) may grant an exploration licence to the applicant; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused on the ground that the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The Minister may grant a single exploration licence in respect of 2 or more applications or 2 or more exploration licences in respect of a single application.

Power of Minister in relation to tenders

23. (1) After considering a tender in respect of land in respect of which one tender only is lodged, the Minister:

(a) may grant an exploration licence to the tenderer; or

(b) may refuse the tender.

(2) After considering all tenders in respect of land in respect of which more than one tender is lodged, the Minister:

(a) may grant an exploration licence to any one of the tenderers and refuse the other tenders; or

(b) may refuse all of the tenders.

(3) Without limiting the generality of subsections (1) and (2), a tender may be refused on the ground that the tenderer has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(4) For the purposes of this section, only one tender is lodged in respect of land if no other tender is lodged in respect of the land or any part of the land.

Land over which exploration licence may be granted

24. (1) An exploration licence may be granted over private land, over Crown land or over land that is partly private land and partly Crown land.

(2) An exploration licence may be granted in respect of any group or groups of minerals, regardless of whether the minerals in any such group are publicly owned, privately owned or partly publicly and partly privately owned.

(3) An exploration licence may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil below or between any specified depth or depths below the surface of land.

Shape and dimensions of land over which exploration licence may be granted

25. (1) The land over which an exploration licence is granted must be at least 1, but not more than 100, units in area unless the Minister determines that it is appropriate, in the particular circumstances of the case, for the licence to be granted over a larger area of land.

(2) The land over which an exploration licence is granted may differ in size or shape from, but may not include land other than, the land over which the licence was sought.

(3) Land that, by operation of section 19, is excluded from the land over which an exploration licence is granted because, when the licence is granted, the land is the subject of an assessment lease, a mining lease or a mineral claim becomes subject to the exploration licence:

(a) if the assessment lease, mining lease or mineral claim ceases to have effect in respect of the land; and

(b) if, when it does so, the land is not then subject to a further assessment lease, mining lease or mineral claim.

(4) Land that, by operation of section 19, is excluded from the land over which an exploration licence is granted because, when the licence is granted, the land is subject to a pending application for an assessment lease, mining lease or mineral claim becomes subject to the exploration licence:

(a) if the application is subsequently refused or withdrawn; or

(b) if, when the assessment lease, mining lease or mineral claim is granted, the land does not become subject to the lease or claim.

Conditions of exploration licence

26. (1) An exploration licence is subject to such conditions as the Minister may, when granting the licence, impose.

(2) Without limiting the generality of subsection (1), conditions of the following kind may be imposed on an exploration licence:

(a) conditions requiring the holder of the licence to pay royalty to the Minister on any minerals recovered under the licence;

(b) conditions requiring the holder of the licence to give security (in such amount and form, and on or before such date, as the Minister may determine) for the fulfilment of the obligations arising under this Act in respect of the licence.

(3) Part 14 applies to royalty payable under a condition referred to in subsection (2) (a) in the same way as it applies to royalty payable on a mineral recovered under a mining lease.

Term of exploration licence

27. An exploration licence:

(a) takes effect on the date on which it is granted or on such later date as the Minister may determine; and

(b) ceases to have effect at the expiration of such period (not exceeding 5 years) as the Minister may determine.

Form of exploration licence

28. An exploration licence is to be in the approved form and is to include the following particulars:

(a) a description of the land over which it is granted;

(b) a list of the group or groups of minerals in respect of which it is granted;

(c) the conditions to which it is subject;

(d) the period for which it is to have effect.

Division 4—Rights and duties under an exploration licence

Rights under exploration licence

29. (1) The holder of an exploration licence may, in accordance with the conditions of the licence, prospect on the land specified in the licence for the group or groups of minerals so specified.

(2) If an application for an assessment lease, mining lease or mineral claim made by the holder of an exploration licence is not finally dealt with before the date on which the licence would otherwise cease to have effect, the licence continues to have effect, in relation only to the land to which the application relates, until the application is finally dealt with.

(3) Subsection (2) does not operate to extend an exploration licence for more than 2 years after the date on which it would otherwise expire.

Exempted areas

30. **(1)** The holder of an exploration licence may not, except with the consent of the Minister, exercise any of the rights conferred by the licence within land in an exempted area.

(2) Such consent may be given either unconditionally or subject to conditions.

Dwelling-houses, gardens and improvements

31. **(1)** The holder of an exploration licence may not exercise any of the rights conferred by the licence over land:

(a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of its occupier; or

(b) on which, or within the prescribed distance of which, is situated any garden; or

(c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes,

except with the written consent of the occupier (and, in the case of private land, the owner) of the land.

(2) The prescribed distance is:

(a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a); and

(b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b).

(3) A written consent given under this section is irrevocable.

(4) Any dispute as to whether or not subsection (1) applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

Exploration areas over which authority is subsequently granted

32. Land over which an exploration licence is granted and over which some other authority (other than an exploration licence for some other group or groups of minerals) is subsequently granted ceases to be part of the exploration area when the other authority takes effect.

PART 4—ASSESSMENT LEASES

Division 1—Applications

Applications

33. (1) Any person may apply for an assessment lease.

(2) An application for an assessment lease:

(a) must specify the mineral or minerals in respect of which it is made; and

(b) must be lodged with a mining registrar; and

(c) must be accompanied by the required particulars; and

(d) must be accompanied by the fee prescribed by the regulations.

(3) The required particulars are as follows:

(a) a description, prepared in the manner prescribed by the regulations, of the land over which the assessment lease is sought;

(b) an assessment of the mineral bearing capacity of that land and of the extent of any mineral deposits in that land;

(c) particulars of the financial resources available to the applicant;

(d) particulars of the technical advice available to the applicant;

(e) particulars of the program of work proposed to be carried out by the applicant on the land over which the assessment lease is sought;

(f) particulars of any program of marketing or environmental study proposed to be carried out by the applicant;

(g) particulars of the estimated amount of money that the applicant proposes to expend on prospecting.

(4) An application that relates to land within a mineral allocation area may not be made in relation to a mineral or group of minerals for which the mineral allocation area is constituted except:

(a) by the holder of an exploration licence or mining lease over that land in respect of that mineral or group of minerals; or

(b) with the consent of the Minister.

Minister may require further information

34. The Minister may require the applicant to furnish further information in connection with the application, including (if the applicant is a corporation) information as to the extent to which the controlling power in the corporation's affairs is held by a foreign company or recognised company (within the meaning of the Corporations Law) or by an individual who is a resident of a foreign country.

Minister may exclude land from application

35. (1) The Minister may, by order in writing, direct that any part of the land to which an application relates be excluded from the application.

(2) A direction takes effect on the date on which written notice of the direction is served on the applicant.

Division 2—Restrictions on the grant of assessment leases

Land in reserve or opal prospecting area

36. An assessment lease may not be granted over any land within:

(a) an opal prospecting area; or

(b) a reserve in respect of which an order prohibiting the granting of assessment leases is in force under section 367.

Land subject to authority

37. (1) An assessment lease may not be granted over any land:

(a) the subject of an exploration licence that includes any mineral or minerals in respect of which the assessment lease is sought; or

(b) the subject of an assessment lease, mining lease or mineral claim; or

(c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the firstmentioned assessment lease was lodged,

otherwise than to or with the written consent of the holder of, or the applicant for, that licence, lease or claim.

(2) A written consent given under this section is irrevocable.

(3) If, as a result of such a consent, an assessment lease is granted over any such land, that land:

(a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim concerned; or

(b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim concerned,

as the case requires.

Land subject to exploration licence

38. **(1)** If an application for an assessment lease is made in respect of land that is wholly or partly subject to one or more exploration licences (other than exploration licences that include any mineral or minerals in respect of which the assessment lease is sought), the Minister must cause notice of the application to be served on the holder of every such exploration licence.

(2) The holder of an exploration licence served with such a notice may object to the granting of the assessment lease by lodging with the Director-General, on or before the date specified in the notice, a written notice stating the grounds of the objection.

(3) If such an objection is made, the Minister must refer the application and the objection to an inspector for investigation and report and must determine the objection on the basis of the inspector's report.

(4) This section does not apply to an application that is made with the written consent of the holder of every exploration licence over the land concerned.

(5) A written consent given under this section is irrevocable.

Land on which private mining operations being carried on

39. **(1)** An assessment lease may not be granted over any land in relation to a privately owned mineral:

(a) if mining operations are being carried out on the land by or with the consent of the owner of the mineral; and

(b) if a notice has been lodged with the Director-General in respect of those mining operations in accordance with section 8,

except with the written consent of the owner of the mineral.

(2) A written consent given under this section is irrevocable.

(3) Any dispute as to whether or not this section applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

Colliery holdings

40. An assessment lease may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that

prospecting operations may be carried out under the lease without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the assessment area.

Division 3—Granting of assessment leases

Power of Minister in relation to applications

41. (1) After considering an application for an assessment lease, the Minister:

(a) may grant an assessment lease to the applicant; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused on the ground that the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The Minister may not grant an assessment lease under this section otherwise than in accordance with Part 1 of Schedule 1.

(4) Part 1 of Schedule 1 does not, however, apply to an application for an assessment lease made by the holder of a mining lease over the same land as that over which the assessment lease is sought.

Land over which assessment lease may be granted

42. (1) An assessment lease may be granted over private land, over Crown land or over land that is partly private land and partly Crown land.

(2) An assessment lease may be granted in respect of any mineral or minerals, regardless of whether the mineral or minerals are publicly owned, privately owned or partly publicly and partly privately owned.

(3) An assessment lease may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil below or between any specified depth or depths below the surface of land.

Shape and dimensions of land over which assessment lease may be granted

43. The land over which an assessment lease is granted may differ in size or shape from, but may not include land other than, the land over which the lease was sought.

Conditions of assessment lease

44. (1) An assessment lease is subject to such conditions as the Minister may, when granting the lease, impose.

(2) Without limiting the generality of subsection (1), conditions of the following kind may be imposed on an assessment lease:

(a) conditions requiring the holder of the lease to pay royalty to the Minister on any minerals recovered under the lease;

(b) conditions requiring the holder of the lease to give security (in such amount and form, and on or before such date, as the Minister may determine) for the fulfilment of the obligations arising under this Act in respect of the lease.

(3) Part 14 applies to royalty payable under a condition referred to in subsection (2) (a) in the same way as it applies to royalty payable on a mineral recovered under a mining lease.

Term of assessment lease

45. An assessment lease:

(a) takes effect on the date on which it is granted or on such later date as the Minister may determine; and

(b) ceases to have effect at the expiration of such period (not exceeding 5 years) as the Minister may determine.

Form of assessment lease

46. An assessment lease is to be in the approved form and is to include the following particulars:

(a) a description of the land over which it is granted;

(b) a list of the mineral or minerals in respect of which it is granted;

(c) the conditions to which it is subject;

(d) the period for which it is to have effect.

Division 4—Rights and duties under an assessment lease

Rights under assessment lease

47. (1) The holder of an assessment lease may, in accordance with the conditions of the lease, prospect on the land specified in the lease for the mineral or minerals so specified.

(2) If an application for a mining lease or mineral claim made by the holder of an assessment lease is not finally dealt with before the date on

which the assessment lease would otherwise cease to have effect, the lease continues to have effect, in relation only to the land to which the application relates, until the application is finally dealt with.

Exempted areas

48. (1) The holder of an assessment lease may not, except with the consent of the Minister, exercise any of the rights conferred by the lease on land in an exempted area.

(2) Such consent may be given either unconditionally or subject to conditions.

Dwelling-houses, gardens and improvements

49. (1) The holder of an assessment lease may not exercise any of the rights conferred by the lease over land:

(a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of its occupier; or

(b) on which, or within the prescribed distance of which, is situated any garden; or

(c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes,

except with the written consent of the occupier (and, in the case of private land, the owner) of the land.

(2) The prescribed distance is:

(a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a); and

(b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b).

(3) A written consent given under this section is irrevocable.

(4) Any dispute as to whether or not subsection (1) applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

Assessment areas over which authority is subsequently granted

50. Land over which an assessment lease is granted and over which some other authority is subsequently granted ceases to be part of the assessment area when the other authority takes effect.

PART 5—MINING LEASES

Division 1—Applications and tenders

Applications

51. (1) Any person may apply for a mining lease.

(2) An application for a mining lease:

(a) must specify the mineral or minerals in respect of which it is made; and

(b) must be lodged with a mining registrar; and

(c) must be accompanied by the required particulars; and

(d) must be accompanied by the fee prescribed by the regulations.

(3) The required particulars are as follows:

(a) a description, prepared in the manner prescribed by the regulations, of the land over which the mining lease is sought;

(b) an assessment of the mineral bearing capacity of the land and of the extent of any mineral deposits in that land;

(c) particulars of the financial resources available to the applicant;

(d) particulars of the technical advice available to the applicant;

(e) particulars of the program of work proposed to be carried out by the applicant on the area of land over which the mining lease is sought.

(4) An application that relates to land within a mineral allocation area may not be made in relation to an allocated mineral except:

(a) by the holder of an exploration licence or assessment lease over that land in respect of that mineral; or

(b) with the consent of the Minister.

Invitations for tenders

52. (1) This section applies only to allocated minerals in land within a mineral allocation area.

(2) The Minister may, by notice published:

(a) in a newspaper circulating generally throughout the State; and

(b) in one or more newspapers circulating in the locality in which the land concerned is situated,

invite tenders for a mining lease for an allocated mineral.

(3) An invitation:

(a) must describe the land to which it relates; and

(b) must identify the allocated mineral to which it relates; and

(c) must specify the place at which, and the date on or before which, tenders for the mining lease should be lodged.

(4) Tenders may not be invited under this section otherwise than in accordance with Part 2 of Schedule 1.

Tenders

53. (1) A tender for a mining lease:

(a) must be lodged with the Director-General in accordance with the invitation for the tender; and

(b) must be accompanied by the required particulars; and

(c) must be accompanied by the fee prescribed by the regulations.

(2) The required particulars are as follows:

(a) particulars of the financial resources available to the tenderer;

(b) particulars of the technical advice available to the tenderer;

(c) particulars of the program of work proposed to be carried out by the tenderer on the land over which the mining lease is sought.

(3) A tender may specify that, in the event that the tender is successful, the tenderer will pay:

(a) a specified amount; or

(b) royalty, at a specified rate, over and above the royalty payable under Part 14; or

(c) both such an amount and royalty at such a rate,

in addition to the cash reserve price (if any) specified in the invitation for the tender.

(4) A tender may also specify:

(a) whether or not an amount referred to in subsection (3) (a) will be paid by way of instalments; and

(b) if such an amount is to be paid by way of instalments—the period (not exceeding 5 years) within which the amount will be paid.

(5) A tenderer is entitled to a refund of the fee referred to in subsection (1) (c) if a mining lease is not granted to the tenderer as a consequence of the tenderer being refused development consent to the use of the land concerned, or any part of the land, for the purpose of obtaining minerals.

Minister may require further information

54. The Minister may require the applicant or tenderer to furnish further information in connection with the application or tender, including (if the applicant or tenderer is a corporation) information as to the extent to which the controlling power in the corporation's affairs is held by a foreign company or recognised company (within the meaning of the Corporations Law) or by an individual who is a resident of a foreign country.

Minister may exclude land from application or tender

55. (1) The Minister may, by order in writing, direct that any part of the land to which an application or tender relates be excluded from the application or tender.

(2) A direction takes effect on the date on which written notice of the direction is served on the applicant or tenderer.

(3) A tenderer affected by any such direction may amend the tender by written notice lodged with the Director-General on or before such date as may be specified in the direction.

Application for mining lease may be dealt with as application for exploration licence or assessment lease

56. The Minister may, at the request of the applicant, deal with an application as if it were an application for an exploration licence or assessment lease.

Division 2—Restrictions on the grant of mining leases

Land in reserve or opal prospecting area

57. A mining lease may not be granted over any land within:

(a) an opal prospecting area; or

(b) a reserve in respect of which an order prohibiting the granting of mining leases is in force under section 367.

Land subject to authority

58. (1) A mining lease may not be granted over any land:

(a) the subject of an exploration licence that includes any mineral or minerals in respect of which the mining lease is sought; or

(b) the subject of an assessment lease, mining lease or mineral claim; or

(c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the firstmentioned mining lease was lodged,

otherwise than to or with the written consent of the holder of, or the applicant for, that licence, lease or claim.

(2) A written consent given under this section is irrevocable.

(3) If, as a result of such a consent, a mining lease is granted over any such land, that land:

(a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim concerned; or

(b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim concerned,

as the case requires.

Land subject to exploration licence

59. **(1)** If an application for a mining lease is lodged in respect of land that is subject wholly or partly to one or more exploration licences (other than exploration licences that include any mineral or minerals in respect of which the mining lease is sought), the Minister must cause notice of the application to be served on the holder of every such exploration licence.

(2) The holder of an exploration licence served with such a notice may object to the granting of the mining lease by lodging with the Director-General, on or before the date specified in the notice, a written notice stating the grounds of the objection.

(3) If such an objection is made, the Director-General must refer the application and objection to an inspector for investigation and report and must determine the objection on the basis of the inspector's report.

(4) This section does not apply to an application that is made with the written consent of the holder of every exploration licence over the land concerned.

(5) A written consent given under this section is irrevocable.

Land on which private mining operations being carried on

60. **(1)** A mining lease may not be granted over any private land in relation to a privately owned mineral:

(a) if mining operations are being carried out on the land by or with the consent of the owner of the mineral; and

(b) if a notice has been lodged with the Director-General in respect of those mining operations in accordance with section 8,

except with the written consent of the owner of the mineral.

(2) A written consent given under this section is irrevocable.

(3) Any dispute as to whether or not this section applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

Colliery holdings

61. A mining lease may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that prospecting or mining operations may be carried out under the lease without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the mining area.

Dwelling-houses, gardens and improvements

62. **(1)** A mining lease may not be granted over any land:

(a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of its occupier; or

(b) on which, or within the prescribed distance of which, is situated any garden; or

(c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes,

except with the written consent of the occupier (and, in the case of private land, the owner) of the land.

(2) The prescribed distance is:

(a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a); and

(b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b).

(3) A written consent given under this section is irrevocable.

(4) Subsection (1) does not apply in respect of a dwelling-house, garden or improvement that was not in existence at the relevant date.

(5) The relevant date is:

(a) in the case of a mining lease the subject of a tender under section 53, the date on which notice of the invitation for tenders for the mining lease was published in the Gazette under section 136; or

(b) in the case of a mining lease the subject of an application made by the holder of an exploration licence granted as a result of a tender under section 15 in respect of the same land, or of an assessment lease granted over the same land to the holder of such an exploration licence, the date on which notice of the invitation for tenders for the exploration licence was published in the Gazette under section 136; or

(c) in the case of a mining lease for coal the subject of an application made by the holder of an exploration licence for coal in respect of the same land, or of an assessment lease for coal granted over the same land to the holder of such an exploration licence, the date on which the application for the exploration licence was lodged; or

(d) in the case of a mining lease the subject of an application made by the holder of an assessment lease or mineral claim over the same land, the date on which the lease or claim was granted; or

(e) in the case of a mining lease the subject of an application made otherwise than by a person referred to in paragraph (a), (b), (c) or (d), the date on which the application for the mining lease was lodged.

(6) Any dispute as to whether or not subsection (1) applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

(7) A mining lease must not be granted over land below the surface of land referred to in subsection (1) except at such depths, and subject to such conditions, as the Minister considers sufficient to minimise damage to that surface.

Division 3—Granting of mining leases

Power of Minister in relation to applications

63. (1) After considering an application for a mining lease, the Minister:

(a) may grant a mining lease to the applicant; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused on the ground that the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The Minister may grant a single mining lease in respect of more than one application.

(4) A mining lease may not be granted under this section otherwise than in accordance with Part 2 of Schedule 1.

Power of Minister in relation to tenders

64. (1) After considering a tender in respect of which one tender only is lodged, the Minister:

(a) may grant a mining lease to the tenderer; or

(b) may refuse the tender.

(2) After considering all tenders in respect of land in respect of which more than one tender is lodged, the Minister:

(a) may grant a mining lease to any one of the tenderers; or

(b) may refuse all of the tenders.

(3) Without limiting the generality of subsections (1) and (2), a tender may be refused on the ground that the tenderer has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(4) For the purposes of this section, only one tender is lodged in respect of land if no other tender is lodged in respect of the land or any part of the land.

(5) A mining lease may not be granted under this section otherwise than in accordance with Part 2 of Schedule 1.

Development consents under the Environmental Planning and Assessment Act 1979

65. (1) This section applies to land for which development consent is required before the land may be used for the purpose of obtaining minerals.

(2) The Minister must not grant a mining lease over land to which this section applies unless an appropriate development consent is in force in respect of the land.

(3) If a mining lease is granted over land for which an appropriate development consent has been given:

(a) any condition (being a special purpose condition within the meaning of Division 2 of Part 2 of Schedule 1) imposed on the development consent by a consent authority, or by a body hearing an appeal from a consent authority, is void; and

(b) the development consent (to the extent only to which it relates to the use of the land concerned for the purpose of obtaining minerals) is taken to have been given free of the condition.

Survey of land to be carried out

66. **(1)** Before a mining lease is granted, the Director-General must ensure that the land over which the mining lease is to be granted has been properly surveyed.

(2) For the purpose of doing so, the Director-General may direct the applicant for the mining lease to cause a survey to be prepared in accordance with such requirements as may be specified in the direction.

Recovery of public money expended on testing for minerals or research

67. **(1)** If public money has been expended:

(a) in the course of testing any land (by way of drilling or otherwise) for the mineral bearing capacity of the land; or

(b) in the course of conducting an environmental impact study or other research program in connection with the proper assessment of any application for a mining lease that has been or may be made in respect of any land,

the Minister may, by notice in writing, require any applicant for a mining lease over the land or any part of the land to reimburse the Government, within the time specified in the notice, for the money, or any part of the money, so expended.

(2) The applicant may elect to pay:

(a) a lump sum of the amount specified in the notice as being the proportion of the cost (at current market rates) of carrying out the testing, impact study or research program that the Minister determines should be paid by the applicant; or

(b) instalments (of such amounts and paid at such times as may be specified in the notice) totalling the amount referred to in paragraph (a).

(3) It is a condition of any mining lease granted to an applicant who has been required to reimburse the Government under this section that any amount that remains unpaid as at the time the lease takes effect is to be paid to the Minister in accordance with the election made by the applicant.

(4) If public money has been expended in connection with several parcels of land, the amount so expended is to be apportioned among them in such manner as the Minister thinks fit.

Land over which mining lease may be granted

68. (1) A mining lease may be granted over private land, over Crown land or over land that is partly private land and partly Crown land.

(2) A mining lease may be granted in respect of any mineral or minerals, regardless of whether the mineral or minerals are publicly owned, privately owned or partly publicly and partly privately owned.

(3) A mining lease may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil between or below any specified depth or depths below the surface of land.

Shape and dimensions of land over which mining lease may be granted

69. The land over which a mining lease is granted may differ in size or shape from, but may not include land other than, the land over which the lease was sought.

Conditions of mining lease

70. (1) A mining lease is subject to:

(a) a condition that the holder of the lease will not suspend mining operations in the mining area otherwise than in accordance with the written consent of the Minister; and

(b) such other conditions as the Minister may, when granting the lease, impose.

(2) Without limiting the generality of subsection (1), conditions of the following kind may be imposed on a mining lease:

(a) conditions requiring the holder of the mining lease to give security, in such amount and form as the Minister may determine, for the fulfilment of the obligations arising under this Act in respect of the lease;

(b) conditions relating to mining or mining operations;

(c) conditions relating to the transporting of any mineral or other thing for the purpose of mining;

(d) conditions relating to the treatment or preparation for sale of any mineral;

(e) conditions relating to the disposal or retention of material discarded from mining operations or from the treatment or preparation for sale of any mineral;

(f) conditions relating to the use to which any mineral may be put, whether or not the condition relates to a matter to be carried out on, or in the vicinity of, the mining area.

(3) If the Minister proposes to grant a mining lease to a person on the condition that the person gives security, the Minister may cause a written notice to be served on the person requiring the person to lodge the security with the Minister on or before the date specified in the notice.

(4) A mining lease granted on the basis of a tender lodged under section 53 is taken to include a condition in the terms specified in the tender for the purposes of subsection (3) of that section.

Term of mining lease

71. A mining lease:

(a) takes effect on the date on which it is granted or on such later date as the Minister may determine; and

(b) ceases to have effect at the expiration of such period (not exceeding 21 years or such longer period as the Minister, with the concurrence of the Premier, may determine) as the Minister may determine.

Form of mining lease

72. A mining lease is to be in the approved form and is to include the following particulars:

(a) a description of the land over which it is granted;

(b) a list of the mineral or minerals in respect of which it is granted;

(c) the conditions to which it is subject;

(d) the period for which it is to have effect.

Division 4—Rights and duties under a mining lease

Rights under mining lease

73. **(1)** The holder of a mining lease may, in accordance with the conditions of the lease:

(a) prospect on the land specified in the lease for, and mine on that land, the mineral or minerals so specified; and

(b) carry out on that land such primary treatment operations (such as crushing, sizing, grading, washing and leaching) as are necessary to separate the mineral or minerals from the material from which they are recovered; and

(c) carry out on that land any mining purpose.

(2) If an application for an assessment lease made by the holder of a mining lease is not finally dealt with before the date on which the mining lease would otherwise cease to have effect, the lease continues to have effect, in relation only to the land to which the application relates, until the application is finally dealt with.

Mining unaffected by Environmental Planning and Assessment Act 1979

74. (1) While a mining lease has effect:

(a) nothing in, or done under, the Environmental Planning and Assessment Act 1979 or an environmental planning instrument operates so as to prevent the holder of the mining lease from carrying on mining operations in the mining area; and

(b) to the extent to which anything in, or done under, that Act or any such instrument would so operate, it is of no effect in relation to the holder of the mining lease.

(2) Subsection (1) ceases to apply to a mining lease over land for which development consent to the use of land for the purpose of obtaining minerals is required if mining operations under the lease have not begun within 5 years after the date on which the development consent is given.

(3) This section does not exempt the holder of a mining lease from obtaining any consent under the Environmental Planning and Assessment Act 1979 that the person is required to obtain in connection with the erection of buildings, the opening of roads or the subdivision of land.

Mining purposes

75. (1) The Minister may, by order in writing, direct that:

(a) a specified mining purpose be carried out in accordance with any condition specified in the order; or

(b) the carrying out of a specified mining purpose be discontinued for such period as is specified in the order.

(2) An order takes effect on the date on which written notice of the order is served on the holder of the mining lease concerned or on such later date as may be specified in the notice.

(3) A person on whom an order is served must not contravene the order.

Maximum penalty: 50 penalty units.

Fencing of land subject to mining lease

76. (1) The holder of a mining lease may fence the whole or any part of the mining area.

(2) The holder of the mining lease must erect and maintain a fence around any unfenced shaft, machinery or other works on the surface of the mining area if required to do so by notice in writing:

(a) given by the owner or occupier of the land; or

(b) in the case of unoccupied Crown land, given by the Minister.

Addition of mineral to mining lease

77. (1) The holder of a mining lease may apply for the inclusion in the lease of a mineral additional to the mineral or minerals to which the lease relates.

(2) The application must be lodged with the Director-General.

(3) The holder of a mining lease over any private land or over any Crown land held under a pastoral lease must, within 21 days after lodging the application, serve on every owner and occupier of the private land, and on every occupier of the Crown land, a copy of the application.

(4) After considering the application, the Minister:

(a) may, by order in writing served on the applicant, direct that the mining lease apply to the additional mineral specified in the direction; or

(b) may refuse the application.

(5) A direction may be given unconditionally or subject to such conditions as are specified in the direction.

(6) While a direction is in force, the mining lease concerned is taken to extend to the mineral the subject of the direction.

Inclusion of petroleum in mining lease

78. (1) The holder of a mining lease for coal may apply for the inclusion in the lease of petroleum.

(2) The application must be lodged with the Director-General.

(3) After considering the application, the Minister:

(a) may, by order in writing served on the applicant, direct that the mining lease apply to petroleum; or

(b) may refuse the application.

(4) Without limiting the generality of subsection (3), the Minister must refuse an application if the land to which the application relates:

(a) is within the New South Wales adjacent area, within the meaning of the Petroleum (Submerged Lands) Act 1982; or

(b) is subject to a petroleum exploration licence or a petroleum mining lease granted under the Petroleum Act 1955.

(5) A direction may be given unconditionally or subject to such conditions as are specified in the direction.

(6) Without limiting the generality of subsection (5), the Minister may direct that a mining lease is to apply to petroleum subject to a condition relating to any one or more of the following matters:

(a) the limitation of the right to prospect or drill for petroleum to part only of the mining area;

(b) the limitation of that right to prospecting or drilling for some specified type or form of petroleum only;

(c) the working practices and methods of extraction to be used when prospecting or drilling for petroleum;

(d) the use to which any petroleum recovered may be put;

(e) the joint mining and development of petroleum with the holder of a mining lease, or with the holder of a petroleum mining lease under the Petroleum Act 1955, over land adjoining the mining area.

Amendment of mining lease in respect of certain conditions

79. **(1)** The Minister may amend a mining lease so as to allow the holder of the lease to comply with a condition relating to expenditure instead of a condition relating to labour.

(2) The Minister may amend a mining lease that does not contain a condition requiring the holder of the lease to give security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition.

(3) The Minister may amend a mining lease that contains such a condition so as to vary the amount and form of the security that is required to be given.

(4) The Minister may amend any 2 or more mining leases held by the same holder that contain such a condition so as to require a single security to be given.

(5) The amendment of a mining lease takes effect on the date on which written notice of the amendment is served on the holder of the mining lease or on such later date as may be specified in the notice.

Prevention of damage to prescribed dams

80. (1) The Dams Safety Committee may recommend to the Minister that a mining lease for coal (being a mining lease granted over land within a notification area) be amended, by the variation of the conditions of the lease or by the inclusion of additional conditions in the lease, so as to prevent or mitigate any damage to a prescribed dam.

(2) If the Minister does not accept the recommendations of the Dams Safety Committee, the matter must be dealt with in consultation with the Minister administering the Dams Safety Act 1978.

(3) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with the matter to which such a recommendation relates and if, as a result of the steps so taken, agreement is not reached as to the acceptance, modification or withdrawal of the recommendation, the matter is to be referred to the Premier.

(4) If any matter is so referred, the Premier may give such decision as the Premier considers appropriate.

(5) The amendment of a mining lease takes effect on the date on which written notice of the amendment is served on the holder of the mining lease or on such later date as may be specified in the notice.

Surface prospecting in relation to subsurface leases

81. The holder of a mining lease over any land (being a lease that does not include the surface of the land) may, with the consent of:

(a) the owner and (if the owner is not the occupier) the occupier of the land; and

(b) the holder of any authority or mineral claim in force over the surface of the land,

carry out prospecting operations on the surface of the land.

Resumption etc. not to affect mining lease

82. The conveyance, transfer or compulsory acquisition of land by or under any other Act or law (including the conveyance or transfer of the land under section 604 of the Local Government Act 1919) does not affect a mining lease, or any rights under a mining lease, and the mining lease and those rights continue to have effect as if the land had not been conveyed, transferred or acquired.

Mining areas over which an authority is subsequently granted

83. Land over which a mining lease is granted and over which some other authority is subsequently granted ceases to be part of the mining area when the subsequent authority takes effect.

PART 6—CONSOLIDATION OF MINING LEASES

Division 1—Preliminary

Definitions

84. (1) In this Part:

"existing lease" means a mining lease or a consolidated mining lease;

"holder", in relation to a proposed lease, means the holder of the existing leases specified in the proposed lease as the existing leases to be consolidated;

"proposed lease" means a proposed consolidated mining lease prepared under this Part or, if the lease is amended under this Part, the lease as so amended.

(2) A reference in this Part to the grant of a proposed lease is a reference to the grant of a consolidated mining lease in the same terms as those of the proposed lease.

Existing leases that may be consolidated

85. Any 2 or more existing leases may be consolidated if the leases are held by the same person and relate to contiguous parcels of land or to parcels of land that are separated only by a road, stream or railway.

Division 2—Preparation and amendment of consolidated mining leases

Preparation of proposed lease

86. (1) The Minister may (on the application of the holder of the leases concerned or otherwise) cause a proposed lease to be prepared for the purpose of consolidating 2 or more existing leases.

(2) A proposed lease must specify:

(a) the existing leases to be consolidated; and

(b) the mineral or minerals in respect of which the proposed lease is to be granted; and

(c) the period for which the proposed lease is to be granted; and

(d) the conditions on which the proposed lease is to be granted,

and must have attached to it a description, prepared in the manner prescribed by the regulations, of the land over which the lease is to be granted.

Amendment of proposed lease

87. (1) The Minister may, at any time after the preparation of a proposed lease, make such amendments to the lease as the Minister thinks fit.

(2) The Minister may, by such an amendment, specify existing leases to be added to, or excluded from, those to be consolidated by the proposed lease.

(3) The Minister may, at any time after the preparation of a proposed lease, determine that the consolidation should not proceed.

(4) Such a determination does not prevent the Minister:

(a) from proceeding with the consolidation at a later time; or

(b) from causing a further proposed lease to be prepared for the purpose of consolidating all or any of the existing leases concerned.

Division 3—Notification of Government agencies

Notification of Director of Planning

88. (1) Before granting a proposed lease, the Minister must cause notice of the proposal to be served on the Director of Planning.

(2) Such a notice:

(a) must include a copy of the proposed lease; and

(b) must state that objections to the granting of the proposed lease, or proposals for the inclusion in the proposed lease of any condition, may be made to the Minister on or before the date specified in the notice.

(3) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

Notification of Dams Safety Committee

89. (1) Before granting a proposed lease for coal in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the Dams Safety Committee.

(2) Such a notice:

(a) must include a copy of the proposed lease; and

(b) must state that objections to the granting of the proposed lease on grounds relating to the safety of a prescribed dam, or proposals for the inclusion in the proposed lease of any condition relating to the safety of a prescribed dam, may be made to the Minister on or before the date specified in the notice.

(3) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

Subsequent amendment of proposed lease

90. (1) If:

(a) the Minister amends a proposed lease (otherwise than as a consequence of an objection or proposal made by the agency) after a copy has been served on a Government agency; and

(b) the Minister is of the opinion that the agency's attitude to the proposed lease might be materially affected were the agency given a copy of the proposed lease as amended,

the Minister must cause to be served on the agency a notice setting out details of the amendment and stating that objections to the amendment may be made to the Minister on or before the date specified in the notice.

(2) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

Objections to granting of proposed lease

91. (1) The Director of Planning:

(a) may object to the granting of a mining lease; or

(b) may propose that specified conditions be included in a mining lease.

(2) The Dams Safety Committee, in respect of land within a notification area:

(a) may object (on grounds relating to the safety of a prescribed dam) to the granting of a mining lease for coal; or

(b) may propose that specified conditions relating to the safety of a prescribed dam be included in a mining lease for coal.

(3) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(4) If the Minister does not accept the objections or proposals of the Dams Safety Committee, or if the Dams Safety Committee fails to make any proposals or to inform the Minister that it does not propose to make

any proposals, the matter must be dealt with in consultation with the Minister administering the Dams Safety Act 1978.

Resolution of objections

92. (1) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with any objection or proposal made under this Division and, if agreement is not reached concerning the acceptance, modification or withdrawal of the objection or proposal, the matter is to be referred to the Premier.

(2) The Premier may give such decision as the Premier considers appropriate in relation to any matter that is so referred.

(3) If required by the Premier to do so, the Minister must refer such a matter to a warden for inquiry and report.

Granting of proposed lease if objection or proposal made

93. (1) If an objection to the granting of a proposed lease is duly made, the lease must not be granted unless the objection is withdrawn or otherwise resolved or is rejected by the Premier.

(2) A proposed lease must include:

(a) any condition proposed under this Division (unless the proposal for the inclusion of the condition is withdrawn or is rejected by the Premier) or, if such a condition is modified, the condition as so modified; and

(b) any condition directed by the Premier to be included in the lease.

(3) The failure to include a condition in a proposed lease does not affect the validity of the lease, but the Minister may, by instrument in writing, amend the lease so as to include the condition omitted.

(4) An amendment takes effect on the date on which written notice of the amendment is served on the holder of the consolidated mining lease or on such later date as may be specified in the notice.

Division 4—Notification of holder of existing leases

Notification of holder of existing leases

94. (1) Before granting a proposed lease, the Minister must cause notice of the proposal to be served on the holder of the existing leases.

(2) Such a notice:

(a) must include a copy of the proposed lease; and

(b) must state that representations with respect to the granting of the proposed lease, or the conditions on which the proposed lease is to be granted, may be made to the Minister on or before the date specified in the notice.

(3) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

Subsequent amendment of proposed lease

95. If:

(a) the Minister amends a proposed lease (otherwise than as a consequence of representations made by the holder of the existing leases) after a copy of the lease has been served on the holder; and

(b) the Minister is of the opinion that the holder's attitude to the proposed lease might be materially affected were the holder given a copy of the proposed lease as amended,

the Minister must cause to be served on the holder a notice setting out details of the amendment and stating that representations concerning the amendment may be made to the Minister on or before the date specified in the notice.

Objections to granting of proposed lease

96. The holder of the existing leases may, on or before the date specified in the relevant notice or within such further period as the Minister may allow, make such representations with respect to the matters referred to in the notice as the holder thinks fit.

Consideration of objections

97. The Minister is to take such steps (including the amendment of the proposed lease) as the Minister considers appropriate in connection with any representations made under this Division.

Division 5—Granting of consolidated mining leases

Minister may grant consolidated mining lease

98. **(1)** After having complied with the requirements of this Part in respect of a proposed lease, the Minister may grant to the holder of the existing leases a consolidated mining lease in the same terms as those of the proposed lease.

(2) When a consolidated mining lease takes effect, each existing lease is taken to have been cancelled.

Land over which consolidated mining lease may be granted

99. The land over which a consolidated mining lease may be granted is the aggregate of all of the land the subject of the existing leases.

Conditions of consolidated mining lease

100. A consolidated mining lease is subject to such conditions (being conditions of a kind that may be imposed on a mining lease under Part 5 or Part 11) as the Minister may, when granting the lease, impose.

Term of consolidated mining lease

101. A consolidated mining lease:

(a) takes effect on the date on which it is granted or on such later date as the Minister may determine; and

(b) ceases to have effect at the expiration of such period (not extending beyond the first day by which all the existing leases that have been consolidated would, but for the consolidation, have expired) as the Minister may determine.

Form of consolidated mining lease

102. A consolidated mining lease is to be in the approved form and is to include the following particulars:

(a) a description of the land over which it is granted;

(b) a list of the mineral or minerals in respect of which it is granted;

(c) the conditions to which it is subject;

(d) the period for which it is to have effect.

Validity of consolidated mining lease not affected by certain defects

103. **(1)** The validity of a consolidated mining lease is not affected:

(a) by the failure of any person to comply with this Act or the regulations in relation to the grant, renewal or transfer of an existing lease that has been consolidated; or

(b) by the inclusion in the area of land over which the consolidated mining lease has been granted of any land not subject to an existing lease.

(2) The Minister may amend a consolidated mining lease so as to exclude from the area of land the subject of the lease:

(a) any area of land the subject of an existing lease that appears to the Minister not to have been validly granted, renewed or transferred; and

(b) any area of land that appears to the Minister not to have been subject to an existing lease.

(3) An amendment takes effect on the date on which written notice of the amendment is served on the holder of the consolidated mining lease or on such later date as may be specified in the notice.

Application of this Act and other Acts to grant of consolidated mining leases

104. (1) Part 5 does not apply to or in respect of the grant of a consolidated mining lease.

(2) The provisions of any other Act prohibiting, regulating or restricting, or having the effect of prohibiting, regulating or restricting, the grant of a mining lease do not apply to the grant of a consolidated mining lease.

Division 6—Securities for performance of obligations

Requirement of security

105. (1) If the Minister proposes to grant a consolidated mining lease on the condition that the holder gives security for the fulfilment of the obligations arising under this Act in respect of the lease, the Minister may cause written notice to be served on the holder requiring the holder to lodge the security with the Minister on or before such date as may be specified in the notice.

(2) The security required by such a condition may be in addition to, or in substitution for, any security required by the conditions of any of the existing leases.

Credit for existing securities

106. Any security given in respect of an existing lease that has not been forfeited and that is not to be applied to a consolidated mining lease is to be refunded or otherwise returned to the holder of the consolidated mining lease.

Appropriation of existing securities

107. (1) If any security required to be lodged with the Minister in relation to a consolidated mining lease is not lodged, the Minister may, by notice in writing, direct that any security given in respect of the existing leases is to be regarded as having been given, in accordance with the terms of the direction, for the fulfilment of the obligations arising under this Act in respect of the consolidated mining lease.

(2) The direction, on being served on the holder and any other person liable to make any payment under the security, has effect according to its terms.

Division 7—Preservation of certain rights, liabilities etc. on consolidation

Liability generally preserved

108. Except as otherwise provided by this Act, the cancellation of an existing lease as a result of the granting of a consolidated mining lease does not affect any liability of the person who was the holder of the lease immediately before the consolidated mining lease was granted.

Saving of interest in existing leases

109. (1) Any interest (whether legal or equitable) in, or affecting, an existing lease continues to have the same effect in respect of the consolidated mining lease as it had in respect of the existing lease immediately before the existing lease was consolidated.

(2) This section is subject to any determination made by a warden's court.

Councils and development consents

110. (1) Any development consent granted with respect to development authorised by an existing lease is taken to have been granted with respect to development authorised by the consolidated mining lease, but in relation only to that part of the land that was subject to the existing lease.

(2) Section 74 continues to have effect in respect of a consolidated mining lease in the same way as it had effect in respect of any existing lease, but in relation only to that part of the land that was subject to the existing lease.

Directions affecting range of minerals

111. Any direction under section 77 in respect of an existing lease continues to have effect in respect of a consolidated mining lease in the same way as it had effect in respect of the existing lease, but in relation only to that part of the land that was subject to the existing lease.

Rights of way

112. Any right of way marked out under section 164 in respect of an existing lease continues to have effect in respect of a consolidated mining lease in the same way as it had effect in respect of the existing lease.

PART 7—RENEWAL, TRANSFER AND CANCELLATION OF AUTHORITIES

Division 1—Renewal of authorities

Applications

113. (1) The holder of an authority may, from time to time, apply for the renewal of the authority.

(2) An application for the renewal of an exploration licence or assessment lease must be lodged with the Director-General not earlier than 2 months and not later than 1 month before the licence or lease ceases to have effect.

(3) An application for the renewal of a mining lease must be lodged with the Director-General not earlier than 5 years and not later than 1 year (or, if the term of the mining lease is for 1 year or less, not earlier than 2 months and not later than 1 month) before the mining lease ceases to have effect.

(4) An application for the renewal of an authority must be accompanied by the fee prescribed by the regulations.

(5) If an application for the renewal of an authority is in respect of part only of the land subject to the authority, the application must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land over which renewal of the authority is sought.

(6) An application for the renewal of an exploration licence may be made in respect of one or more parts (but not more than such number of parts as may be prescribed by the regulations) of the exploration area.

(7) An application for the renewal of an assessment lease or a mining lease may be made in respect of the whole, or of any single part, of the assessment area or mining area.

Power of Minister in relation to applications

114. (1) After considering an application for the renewal of an authority, the Minister:

(a) may renew the authority; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The period for which an authority is renewed may not on any one occasion exceed:

(a) 5 years in the case of an exploration licence or assessment lease; or

(b) 21 years (or such longer period as the Minister may, with the concurrence of the Premier, determine) in the case of a mining lease.

(4) On renewing an authority, the Minister may amend any of the conditions of the authority and may include further conditions in the authority.

(5) The area of land over which an authority is renewed may differ from the area of land over which the renewal of the authority is sought, but not so as to include any land that was not subject to the authority immediately before the renewal.

(6) The number of units over which an exploration licence may be renewed is not to exceed half the number of units over which the licence was in force when the application for the renewal was made unless the Minister is satisfied that special circumstances exist that justify the renewal of the licence over a larger number of units.

Notice of renewal to be served on holder of authority

115. **(1)** The Minister must cause notice of renewal of an authority to be served on the holder of the authority.

(2) Such a notice:

(a) must set out any amendments to the conditions of the authority; and

(b) must state the period for which the authority is renewed; and

(c) if the area of land over which the authority is renewed differs from the area subject to the authority immediately before the renewal, must contain a description of the land over which the authority is renewed.

Application by some only of holders of authority

116. **(1)** The Minister may not renew an authority otherwise than in the names of each of the holders of the authority unless satisfied that any holder of the authority not applying for its renewal does not wish the authority to be renewed in that person's name.

(2) The Minister may cause to be served on any holder of an authority not applying for its renewal a written notice:

(a) stating that an application for renewal of the authority has been lodged; and

(b) requiring the person, in such manner and on or before such date as is specified in the notice, to state whether or not that person wishes the authority to be renewed in that person's name.

(3) If a person on whom such a notice is served fails to state whether or not the person wishes the authority to be renewed in that person's name, the failure to do so is conclusive evidence that the person does not wish the authority to be renewed in that person's name.

Authority to have effect until application dealt with

117. (1) If an application for the renewal of an authority is not finally dealt with before the date on which the authority would otherwise cease to have effect, the authority continues to have effect, in relation only to the land to which the application relates, until the application is finally disposed of.

(2) While an authority has effect under this section, the Minister may amend any of the conditions of the authority (other than a condition relating to royalty).

(3) An amendment takes effect on the date on which written notice of the amendment is served on the holder of the authority or on such later date as may be specified in the notice.

Date from which renewal of authority has effect etc.

118. (1) The renewal of an authority takes effect on the date on which it is renewed or on such later date as may be specified in the renewal.

(2) Any amendment of the conditions of an authority takes effect on the date on which the renewal of the authority takes effect.

Partial renewals

119. If an authority is renewed as to part only of the land to which the application for renewal relates, the authority ceases to have effect in relation to the remainder of the land on the date on which the renewal takes effect.

Division 2—Transfer of authorities

Applications

120. (1) The holder of an authority may apply for approval of the transfer of the authority to some other person.

(2) An application for approval of the transfer of an authority:

(a) must be accompanied by the fee prescribed by the regulations; and

(b) must be accompanied by the consent of the proposed transferee; and

(c) must be accompanied by the particulars prescribed by the regulations; and

(d) must be lodged with the Director-General.

Power of Minister in relation to applications

121. (1) After considering an application for approval of the transfer of an authority, the Minister:

(a) may approve the transfer in accordance with the application; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused if the proposed transferee has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) In approving the transfer of an authority, the Minister may, subject to this Act, direct that any of the conditions of the authority be amended or that further conditions be included in the authority.

Registration of transfers

122. (1) The transferor or transferee of an authority for the transfer of which the Minister has given approval may apply for registration of the transfer.

(2) An application for registration of a transfer:

(a) must be lodged with the Director-General; and

(b) must be accompanied by the fee prescribed by the regulations.

(3) On receipt of such an application, the Director-General must register the transferee as the holder of the authority, unless registration of the transfer is prohibited by section 124.

(4) On registration of a transfer, the transferee becomes the holder of the authority and the authority becomes subject to the amended conditions or further conditions referred to in any relevant direction under section 121.

Partial transfers

123. (1) If part of an assessment lease or mining lease is transferred under this Division:

(a) the lease (in this section referred to as **"the original lease"**) is taken to have been cancelled as to the area of the part transferred; and

(b) an assessment lease or mining lease over the part transferred (in this section referred to as **"the new lease"**) is taken to have been granted to the transferee for the period ending on the date of expiry of the original lease and to include the conditions determined by the Minister in granting approval of the transfer; and

(c) if the Minister considers that it is necessary to do so as a result of the transfer, the conditions to which the original lease is subject may be amended in the manner determined by the Minister in granting approval of the transfer.

(2) Before part of an assessment lease or mining lease is transferred:

(a) the Minister and the proposed transferor must sign a document setting out the terms of any proposed amendments of the original lease; and

(b) the Minister and the proposed transferee must sign a document setting out the terms of the proposed new lease.

Caveats

124. (1) A person claiming a legal or equitable interest in an authority may lodge with the Director-General a caveat, accompanied by the fee prescribed by the regulations, directing the Director-General not to register any transfer of the authority otherwise than in accordance with the provisions of the caveat.

(2) Unless sooner withdrawn, a caveat remains in force for the period of 3 months from the date on which it is lodged.

(3) While a caveat remains in force, a transfer of the authority to which it relates may not be registered in contravention of the provisions of the caveat otherwise than pursuant to an order of the Supreme Court directing the Director-General to register the transfer.

(4) At the expiration of the period for which a caveat is in force, a transfer of the authority to which it relates is to be registered unless, before the expiration of that period, the Director-General is served with an order of the Supreme Court prohibiting the Director-General from registering the transfer.

Division 3—Cancellation of authorities

Grounds of cancellation

125. (1) The Minister may cancel an authority as to the whole or any part of the land to which it relates:

(a) if the holder of the authority requests the Minister to cancel the authority; or

(b) if the holder of the authority contravenes any condition of the authority or any provision of this Act or the regulations, whether or not the holder is prosecuted or convicted of any offence arising from the contravention; or

(c) if the holder of the authority fails to comply with the requirements of any agreement or assessment under Part 13 in relation to the payment of compensation; or

(d) if the holder of the authority is convicted of any offence relating to mining or minerals; or

(e) if the land is required for a public purpose.

(2) A request referred to in subsection (1) (a):

(a) must be lodged with the Director-General; and

(b) if the application is for the cancellation of the authority as to part only of the land to which it relates—must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land in respect of which the authority is to be cancelled.

Cancellations

126. (1) Before cancelling an authority on a ground referred to in section 125 (1) (b), (c) or (d), the Minister:

(a) must cause written notice of the proposed cancellation, and of the grounds of the proposed cancellation, to be served on the holder of the authority; and

(b) must give the holder of the authority a reasonable opportunity to make representations with respect to the proposed cancellation; and

(c) must take any such representations into consideration.

(2) Cancellation of an authority takes effect on the date on which written notice of the cancellation is served on the holder of the authority or on such later date as is specified in the notice.

(3) Cancellation of an authority does not affect any liability incurred by the holder of the authority before the cancellation took effect.

Compensation for cancellation

127. (1) The holder of an authority is not entitled to compensation merely because the authority is cancelled.

(2) However, if an authority is cancelled on the ground that the whole or any part of the land concerned is required for a public purpose, the holder of the authority is entitled to compensation, of an amount to be determined by the Minister, for any mining improvements made to the land.

Appeals against cancellation

128. (1) Any person who is aggrieved by the decision of the Minister to cancel an authority held by the person, or of the decision of the Minister as to the amount of compensation payable as a consequence of the cancellation, may appeal to the District Court against the decision.

(2) An appeal is to be heard by way of a new hearing, and fresh evidence, or evidence additional to the evidence available to the Minister when the decision was made, may be admitted in the hearing.

(3) Subject to any order made by the District Court, the lodging of an appeal does not operate to stay the decision appealed against.

(4) The decision of the District Court on an appeal is final and is to be given effect to as if it were the decision of the Minister.

PART 8—AUTHORITIES GENERALLY

Division 1—General procedures

Holder of authority must be at least 18

129. An authority may not be granted to an individual who has not attained the age of 18 years.

Withdrawal of application

130. (1) An application or objection in relation to the grant, renewal, transfer or cancellation of an authority may be withdrawn by means of a

notice of withdrawal signed by the applicant or objector and lodged with the Director-General and ceases to have effect when the notice is lodged.

(2) The withdrawal of an application or objection under this section is irrevocable.

Pending applications

131. For the purposes of this Act, an application for an authority is pending from the time it is lodged until the time it is finally disposed of.

Disputes as to priority of applications

132. Any dispute as to the priority of competing applications for authorities over the same land is to be determined by the Minister.

Nomination by applicant etc.

133. **(1)** An applicant or tenderer for an authority may, by notice in writing lodged with the Director-General, nominate a person to whom the authority is to be granted.

(2) The person nominated in an application or tender as the person to whom an authority is to be granted is, for the purposes of this Act, taken to be the applicant or tenderer for the authority.

Death etc. of applicant

134. An application for an authority made by a person who subsequently dies, becomes bankrupt or becomes a mentally incapacitated person:

(a) subsists for the benefit of the applicant's estate; and

(b) may continue to be dealt with,

if the applicant's legal representative or the manager of the applicant's estate so requests.

Waiver of minor procedural matters

135. **(1)** The Minister may grant or renew an authority even though the applicant has failed to comply with a requirement of this Act or the regulations:

(a) as to the time within which anything is required to be done; or

(b) as to the details to be contained in any notice served, lodged or caused to be published by the applicant; or

(c) as to the particulars to accompany any application; or

(d) as to the furnishing of declarations and other information by the applicant.

(2) This section does not authorise the Minister to grant or renew an authority in the case of an applicant who has failed to comply with such a requirement unless the Minister is satisfied that the failure is unlikely:

(a) to adversely affect any person's rights under this Act or the regulations; or

(b) to result in any person being deprived of information necessary for the effective exercise of those rights.

Gazettal of certain matters

136. As soon as practicable after:

(a) an invitation for tenders for an authority is made or withdrawn; or

(b) an application for an authority or for the renewal of an authority is made, withdrawn or refused; or

(c) an authority is granted, renewed, transferred or cancelled,

the Director-General is to cause notice of that fact to be published in the Gazette.

Limitation of right to challenge technical defects in authorities

137. (1) The grant, renewal or transfer of an authority may not be challenged in any legal proceedings commenced later than 3 months after the date on which notice of the grant, renewal or transfer of the authority is published in the Gazette.

(2) This section has effect regardless of the provisions of any other Act, but does not apply so as to affect any appeal from proceedings commenced within the 3 months referred to in subsection (1).

Division 2—Access arrangements for prospecting titles

Application of Division

138. This Division applies to the carrying out of prospecting operations under exploration licences and assessment leases (referred to in this Division as **"prospecting titles"**) on private land or on land held under a pastoral lease.

Arbitration Panel

139. (1) There is to be an Arbitration Panel.

(2) The Arbitration Panel is to consist of one or more members appointed by the Minister after consultation with the Minister for Agriculture and Rural Affairs.

(3) The conditions on which a member of the Arbitration Panel holds office (including conditions relating to remuneration and travelling and subsistence allowances) are to be as determined by the Minister.

Prospecting to be carried out in accordance with access arrangement

140. The holder of a prospecting title may not carry out prospecting operations on any land otherwise than in accordance with an access arrangement:

(a) agreed (whether orally or in writing and whether before or after the prospecting title was granted) between the holder of the title and each owner and occupier of the land; or

(b) determined by an arbitrator in accordance with this Division.

Matters for which access arrangement to provide

141. **(1)** An access arrangement may make provision for or with respect to the following matters:

(a) the periods during which the holder of the prospecting title is to be permitted access to the land;

(b) the parts of the land in or on which the holder of the prospecting title may prospect and the means by which the holder may gain access to those parts of the land;

(c) the kinds of prospecting operations that may be carried out in or on the land;

(d) the conditions to be observed by the holder of the prospecting title when prospecting in or on the land;

(e) the things which the holder of the prospecting title needs to do in order to protect the environment while having access to the land and carrying out prospecting operations in or on the land;

(f) the compensation to be paid to any owner or occupier of the land as a consequence of the holder of the prospecting title carrying out prospecting operations in or on the land;

(g) the manner of resolving any dispute arising in connection with the arrangement;

(h) the manner of varying the arrangement;

(i) such other matters as the parties to the arrangement may agree to include in the arrangement.

(2) An access arrangement that is determined by an arbitrator must specify the compensation, as assessed by the arbitrator, to which each owner or occupier of the land concerned is entitled under Division 1 of Part 13.

(3) In the event of an inconsistency between:

(a) a provision of an access arrangement; and

(b) a provision of this Act, of the regulations or of a condition of a prospecting title,

the provision referred to in paragraph (b) prevails.

(4) If the holder of a prospecting title contravenes an access arrangement, the owner or occupier of the land may deny the holder access to the land until:

(a) the holder ceases the contravention; or

(b) the contravention is remedied to the reasonable satisfaction of the owner or occupier.

(5) Subsection (4) does not affect any proceedings that may be brought against the holder of the prospecting title in respect of the contravention of the access arrangement.

Holder of prospecting title to seek access arrangement

142. (1) The holder of a prospecting title may, by written notice served on each owner and occupier of the land concerned, give notice of the holder's intention to obtain an access arrangement in respect of the land.

(2) The notice of the holder's intention to obtain an access arrangement must, in addition to stating the holder's intention, contain:

(a) a plan and description of the area of land over which the access is sought sufficient to enable the ready identification of that area; and

(b) a description of the prospecting methods intended to be used in that area.

(3) The holder of a prospecting title, and each owner and occupier of the land concerned, may agree (either orally or in writing and either before or after the prospecting title is granted) on an access arrangement.

Appointment of arbitrator by agreement

143. (1) If, by the end of 28 days after the holder of a prospecting title serves notice in writing on each owner and occupier of the land of the holder's intention to obtain an access arrangement, the holder and each owner and occupier of the land have been unable to agree on such

an arrangement, the holder may, by further notice in writing served on each such owner and occupier, request them to agree to the appointment of an arbitrator.

(2) The holder of a prospecting title, and each owner and occupier of the land concerned, may agree to the appointment of any person as an arbitrator.

Appointment of arbitrator in default of agreement

144. **(1)** If, by the end of 28 days after the holder of a prospecting title serves notice in accordance with section 143, the holder and each owner and occupier of the land concerned have been unable to agree on the appointment of an arbitrator, then any one of them may apply to the Director-General for the appointment of a member of the Arbitration Panel as an arbitrator.

(2) An application must be accompanied by the fee prescribed by the regulations.

(3) The Director-General, after consultation with the Director-General of the Department of Agriculture, is to appoint a member of the Arbitration Panel as an arbitrator.

Arbitration

145. **(1)** As soon as practicable after having been appointed, an arbitrator:

(a) must fix a time and place for conducting a hearing into the question of access to the land concerned; and

(b) must cause notice of his or her appointment, and of the time and place fixed for conducting the hearing, to be given to the holder of the prospecting title and to each owner and occupier of that land.

(2) The arbitrator may, by a further notice served on the holder of the prospecting title and on each owner and occupier of the land concerned, vary the time or place fixed for conducting the hearing.

(3) The arbitrator must, at the time and place fixed under this section, conduct a hearing into the question of access to the land concerned.

Right of appearance

146. **(1)** At any hearing into the question of access to any land by the holder of a prospecting title, the holder and each owner and occupier of the land are entitled to appear and be heard.

(2) A party to a hearing may be represented:

(a) by an agent who is not a barrister or a solicitor; or

(b) with the agreement of the parties and the leave of the arbitrator, by a barrister or a solicitor.

Conciliation

147. (1) An arbitrator is not to make a determination until the arbitrator has used his or her best endeavours to bring the parties to a settlement acceptable to all of them.

(2) If the parties come to such a settlement, the arbitrator must make a determination that gives effect to the terms of the settlement.

Procedure

148. (1) Except as otherwise provided by this Act or the regulations, the procedure at a hearing is to be as determined by the arbitrator.

(2) An arbitrator must act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

(3) An arbitrator may conduct a hearing even though one or more of the parties to the hearing fails to attend the hearing.

Interim determination by arbitrator

149. (1) As soon as practicable after concluding a hearing, an arbitrator:

(a) must make an interim determination as to whether or not the holder of the prospecting title should have a right of access to the land concerned; and

(b) if the arbitrator determines that the holder of the prospecting title should have such a right of access, must prepare a draft access arrangement in respect of that land.

(2) As soon as practicable after making an interim determination, the arbitrator:

(a) must reduce the determination to writing; and

(b) must cause a copy of the determination, together with a copy of any draft access arrangement, to be served on each of the parties to the hearing.

Further arbitration

150. **(1)** A party to a hearing may, within 14 days after being served with a copy of the arbitrator's interim determination, apply to the arbitrator:

(a) for reconsideration of the question of access to the land concerned; or

(b) for variation of any draft access arrangement prepared by the arbitrator in respect of that land.

(2) As soon as practicable after receiving such an application, the arbitrator:

(a) must fix a time and place for continuing the hearing into the question of access to the land concerned; and

(b) must cause notice of the time and place fixed for continuing the hearing to be given to the holder of the prospecting title and to each owner and occupier of that land.

(3) The arbitrator may, by a further notice served on the holder of the prospecting title and on each owner and occupier of the land concerned, vary the time or place fixed for continuing the hearing.

(4) The arbitrator must, at the time and place fixed under this section, continue the hearing into the question of access to the land concerned.

Final determination by arbitrator

151. **(1)** If an application is not made to the arbitrator within the period of 14 days referred to in section 150 (1):

(a) the interim determination is taken to be the arbitrator's final determination; and

(b) any draft access arrangement is taken to be a final access arrangement.

(2) If an application is made to the arbitrator within the period of 14 days referred to in section 150 (1), the arbitrator, as soon as practicable after concluding the continued hearing:

(a) must make a final determination as to whether or not the holder of the prospecting title should have a right of access to the land concerned; and

(b) if the arbitrator determines that the holder of the prospecting title should have such a right of access, must determine a final access arrangement in respect of that land.

(3) As soon as practicable after making a final determination, the arbitrator:

(a) must reduce the determination to writing; and

(b) must cause a copy of the determination, together with a copy of any final access arrangement forming part of the determination, to be served on each of the parties to the hearing.

Costs

152. (1) Each party to the hearing is to bear his or her own costs in relation to the hearing.

(2) The arbitrator's costs in relation to the hearing are to be borne by the holder of the prospecting title.

(3) Payment of the arbitrator's costs in relation to a hearing is, for the purpose of any security given by the holder of a prospecting title, taken to be an obligation under the title.

Withdrawal from arbitration

153. (1) The parties to a hearing may, at any time before the conclusion of the hearing, terminate the hearing by notice in writing, signed by all of the parties, served on the arbitrator.

(2) This section does not limit the liability of the holder of a prospecting title to bear the arbitrator's costs in relation to the hearing.

Liability

154. No proceedings lie against an arbitrator for or with respect to:

(a) any determination made by the arbitrator; or

(b) any publication made by the arbitrator; or

(c) any other act, matter or thing done by the arbitrator,

for the purposes of a hearing, as long as the determination, publication, act, matter or thing was made or done in good faith.

Review of determination

155. (1) A party to a hearing who is aggrieved by an arbitrator's final determination (other than a determination referred to in section 147 (2)) may apply to a warden's court for a review of the determination.

(2) An application:

(a) must be accompanied by a copy of the determination to which it relates, together with a copy of any access arrangement forming part of the determination; and

(b) must be filed in a warden's court:

(i) in the case of an interim determination that has become a final determination—within 28 days after a copy of the interim determination was served on the applicant; or

(ii) in the case of a final determination—within 14 days after a copy of the final determination was served on the applicant.

(3) An application for review may not be made:

(a) during the period of 14 days within which an application may be made to an arbitrator; or

(b) if such an application is made, until the arbitrator has made a final determination with respect to the application.

(4) The applicant must cause a copy of the application to be served on each of the other parties to the determination to which the application relates.

(5) Subject to any order of a warden's court to the contrary, an application for review of a determination operates to stay the effect of any related access arrangement in relation to a party to the arrangement from the time when a copy of the arrangement has been served on the party until the decision of a warden's court on the review.

(6) In reviewing a determination under this section, a warden's court has the functions of an arbitrator under this Division in addition to its other functions.

(7) The decision of a warden's court on a review of a determination is final and is to be given effect to as if it were the determination of an arbitrator.

Effect of access arrangement etc.

156. An access arrangement determined by an arbitrator:

(a) takes effect:

(i) in the case of a draft access arrangement that is taken to be a final access arrangement—at the end of the period of 14 days after a copy of the draft access arrangement has been served on each of the parties; or

(ii) in the case of a final access arrangement prepared under section 151—when a copy of the arrangement has been served on each of the parties,

or on such later date as may be specified in the arrangement; and

(b) subject to section 141 (3), has effect as if its terms were embodied in a deed that had been duly executed by each of the parties.

Variation of access arrangements

157. An access arrangement determined by an arbitrator may, subject to the terms of the arrangement, be varied by the arbitrator with the consent of all of the parties to the arrangement.

Duration of access arrangements

158. An access arrangement does not run with the land and, unless sooner terminated, terminates:

(a) if an owner or occupier of the land with whom the arrangement is made ceases to be an owner or occupier of the land; or

(b) on the death of an owner or occupier of the land with whom the arrangement is made.

Division 3—Records and registration

Records

159. (1) The Director-General is to cause to be kept a record of every authority granted, renewed, transferred or cancelled.

(2) Such a record must be kept in the form, and must contain the particulars, prescribed by the regulations.

(3) The record must be kept available at the head office of the Department for inspection, free of charge, by members of the public.

Interest in authority to be created by instrument in writing

160. (1) A legal or equitable interest in an authority may not be created or disposed of except by instrument in writing.

(2) The creation of a legal or equitable interest in an authority does not affect the liability of the holder of the authority for any breach of the conditions of the authority or of any of the provisions of this Act or the regulations.

Registration of certain interests

161. (1) The Director-General is to keep a register of legal and equitable interests in authorities.

(2) Any person claiming a legal or equitable interest in an authority may apply for registration of the interest.

(3) An application must be lodged with the Director-General and must be accompanied by the fee prescribed by the regulations and by documentary evidence of the legal or equitable interest concerned.

(4) The Director-General may, if satisfied that the applicant holds the interest concerned, register the document by which the legal or equitable interest is evidenced.

(5) The Director-General may, on application by the holder of an interest or otherwise, make such amendments to the register kept under this section as are appropriate to reflect dealings in the interest.

(6) Without limiting the generality of subsection (5), the Director-General may cancel the registration of an interest if of the opinion that the interest has ceased to exist.

(7) The registration of an interest under this section is not to be taken to be evidence of the existence of the interest.

(8) For the purposes of any legal proceedings concerning an authority:

(a) a registered interest has priority over an interest that is not registered; and

(b) an earlier registered interest has priority over a later registered interest.

(9) The register must be kept available at the head office of the Department for inspection, free of charge, by members of the public.

Devolution of rights of holder of authority

162. A person on whom the rights of the holder of an authority have devolved by operation of law may apply to the Director-General to have that person's name recorded as the holder of the authority and, if the Minister is satisfied that those rights have so devolved, the Director-General must so record the name of the applicant.

Colliery holdings

163. **(1)** The Director-General is to cause to be kept a register of colliery holdings (referred to in this section as **"the register"**) in such form as may be prescribed by the regulations.

(2) The Director-General is to cause to be recorded in the register:

(a) such particulars as are necessary to give effect to a direction given under this section; and

(b) such other particulars as may be prescribed by the regulations.

(3) A person who has a right (whether under a mining lease or otherwise) to mine for coal or to carry out coal mining purposes on any land may apply to have the land registered as a colliery holding or recorded on the register as part of an existing colliery holding.

(4) A person who has an interest in a colliery holding may apply to have the registration of the colliery holding cancelled or amended so as to exclude land from the colliery holding.

(5) An application under this section:

(a) must be lodged with the Director-General; and

(b) must be accompanied by the particulars prescribed by the regulations.

(6) The Minister may, by order in writing, direct that specified land (being land in which a person has, in the Minister's opinion, a right to mine for coal or to carry out mining purposes in connection with mining for coal) be registered as a colliery holding or recorded on the register as part of an existing colliery holding.

(7) The Minister may, by order in writing, direct that the registration of a colliery holding be cancelled or amended so as to exclude specified land from the colliery holding.

(8) A direction may be given under subsection (6) or (7) whether or not an application has been made under subsection (3) or (4) in respect of the same land.

(9) The Director-General is to cause copies of any direction under subsection (6) or (7) to be served on such persons as, in the Director-General's opinion, have a right to mine coal or to carry out mining purposes in connection with mining for coal in the land or colliery holding to which the instrument relates.

Division 4—Miscellaneous

Rights of way

164. **(1)** The holder of an authority is entitled to a right of way (to be marked out in the manner prescribed by the regulations) between the land subject to the authority and the nearest practicable point of a public road.

(2) The holder of the authority:

(a) must place substantial gates or grids (or, if the owner or occupier of the land so requires, gates and grids) at all fences intersected by the right of way; or

(b) if those fences are rabbit-proof, marsupial-proof or dog-proof fences—must place rabbit-proof, marsupial-proof or dog-proof gates at all such fences, as the case requires.

(3) Any such gate or grid must be of a design and construction that is adequate to prevent stock from straying.

(4) The costs of marking out a right of way and of installing and maintaining any gates or grids required by this section are to be borne by the holder of the authority.

(5) A right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised, as may be prescribed by the regulations or as may be imposed by a warden in any particular case.

(6) A warden may hold an inquiry into any matter arising under, or in connection with, a right of way conferred by this section.

(7) Such an inquiry may be held on the application of the owner or occupier of any land affected by the right of way, on the application of the holder of any authority entitled to the right of way or on the warden's own motion.

Right of access to water

165. (1) If land subject to an authority includes the surface of any private land or Crown land held under a pastoral lease, the owner or occupier of the surface is entitled to free and uninterrupted access, for stock watering and water drainage purposes, to the water in any stream (whether perennial or intermittent) or any lagoon or swamp (whether permanent or temporary) on or adjacent to that land.

(2) If any dispute arises between the holder of an authority and any such owner or occupier concerning the right of access, either the holder or the owner or occupier, or all of them, may, by written notice lodged with the Director-General, request the Minister to determine the dispute.

(3) Any such dispute is to be referred to a warden for inquiry and report and is to be determined by the Minister on the basis of the warden's report.

(4) A determination of the Minister under subsection (3) is final.

Use of water, timber and pasturage etc.

166. (1) If land subject to an authority includes the surface of any private land or Crown land held under a pastoral lease, the holder of the authority must not:

(a) use water artificially conserved on that land; or

(b) fell trees, strip bark or cut timber on that land,

otherwise than in accordance with the consent of the owner or occupier of the surface of the land or, if the owner or occupier refuses consent or attaches unreasonable conditions to the consent, with the approval of a warden.

(2) If land subject to a mining lease includes the surface of any private land or Crown land held under a pastoral lease, the holder of the lease must not:

(a) depasture horses on the land, or keep on the land any dog that is not kept under effective control, unless the land is securely fenced; or

(b) remove rock or earth from the land, except in connection with mining operations, otherwise than with the consent of the owner or occupier of the surface of the land.

Joint holders of authorities

167. If there is more than one holder of an authority, each of the holders is jointly and severally liable for the fulfilment of the obligations arising under this Act in relation to the authority.

Suspension of conditions

168. **(1)** The Minister may (whether on the application of the holder of the authority or otherwise) suspend any of the conditions of an authority for such period, or until the happening of such event, as the Minister may determine.

(2) The suspension of conditions of an authority may be granted unconditionally or subject to such alternative conditions as the Minister may consider appropriate.

(3) The suspension of the conditions of an authority takes effect on the date on which written notice of the suspension is served on the holder of the authority or on such later date as may be specified in the notice.

(4) A condition of an authority that is suspended on the application of the holder of an authority may not be suspended for more than:

(a) 3 months at a time, in the case of an exploration licence; or

(b) 6 months at a time, in the case of an assessment lease or a mining lease.

Forfeiture of security deposit

169. **(1)** Such part of any security in relation to an authority as the Minister may determine is to be forfeited to the Crown if the holder of

the authority fails to fulfil the obligations arising under this Act in relation to the authority.

(2) Money realised from the forfeiture of any such security is to be applied for the purpose of fulfilling the obligations arising under this Act in relation to the authority.

Settlement of certain disputes

170. (1) If any dispute arises between the holders of 2 or more authorities concerning their respective rights in relation to any land or minerals, any one or more of them may refer the dispute to the Minister, who must in turn refer the dispute to a warden for inquiry and report.

(2) On receipt of the warden's report, the Minister may, by order, give such directions to all or any of the persons in dispute as (having regard to the public interest and the circumstances of the case) seem to the Minister to be just and equitable, and may, by the same or a subsequent order, direct the payment by all or any of the persons in dispute of any costs and expenses incidental to the conduct of the inquiry.

(3) A person to whom such a direction relates must not contravene the direction.

Maximum penalty: 20 penalty units.

Minister and certain other persons indemnified in certain circumstances

171. The holder of an authority holds the Crown, the Minister and any person employed in the administration of this Act indemnified against all claims against the Crown, the Minister or any such person arising out of:

(a) anything done or omitted to be done pursuant to, or as a consequence of, the authority; or

(b) anything done or omitted to be done by the holder of the authority, or by any agent or employee of the holder, on or in respect of any land subject to the authority.

Evidentiary provision

172. A certificate that is signed by the Director-General and that states that on a date, or during a period, specified in the certificate:

(a) an authority so specified was or was not granted, renewed, transferred or cancelled; or

(b) a condition so specified was or was not a condition of an authority so specified; or

(c) a person so specified was or was not the holder of an authority so specified; or

(d) land so specified was or was not subject to an authority or to an authority so specified; or

(e) an authority so specified was or was not transferred or was or was not transferred to a person so specified; or

(f) a legal or equitable interest so specified (being a legal or equitable interest of a kind referred to in section 161) was or was not registered under that section,

is admissible in evidence in all courts and is evidence of the fact or facts so stated.

PART 9—MINERAL CLAIMS

Division 1—Mineral claims districts

Constitution of mineral claims districts

173. (1) The Governor may, by order published in the Gazette, constitute any land within a single mining division as a mineral claims district and may, by the same or a subsequent order so published, name the district and fix its boundaries.

(2) Such an order:

(a) may not be made except on the recommendation of the Minister; and

(b) may not be made over land within a reserve if an order under section 367 directs that mineral claims are not to be granted over land in the reserve; and

(c) may not be made over land within an exempted area except in accordance with the consent of the controlling body for that area.

Notice of proposal to constitute mineral claims district

174. (1) The Minister must cause notice of any proposed recommendation to be served on:

(a) each Government agency that, in the opinion of the Minister, would be materially affected by the recommendation; and

(b) each council within whose area is situated the land to which the proposed recommendation relates.

(2) Such a notice:

(a) must identify the proposed boundaries of the mineral claims district; and

(b) must specify proposed conditions for inclusion in the order to be made under section 175 with respect to the mineral claims district.

Special conditions

175. (1) The Minister may, by order published in the Gazette, specify the conditions that are to apply to mineral claims granted over land within any specified mineral claims district.

(2) Without limiting the generality of subsection (1), the conditions that may be specified in an order under this section include conditions as to the following matters:

(a) the shape and size of mineral claims that may be granted;

(b) the minerals in respect of which mineral claims may be granted;

(c) the maximum number of mineral claims that may be held by any one person;

(d) the nature and extent of prospecting and mining operations that may be carried out in respect of mineral claims;

(e) the period for which a mineral claim is to have effect;

(f) the security deposits to be lodged in respect of the granting of mineral claims;

(g) the compensation payable in respect of the carrying out of prospecting and mining operations;

(h) the royalties payable in respect of minerals recovered under mineral claims;

(i) the depth below the surface of the land to which prospecting or mining operations may be carried out;

(j) the obligations of the holders of mineral claims as to the rehabilitation of land on which prospecting or mining operations have been carried out.

(3) The Minister must have regard to, but (except as provided by subsection (4)) is not bound by, any representations made by a person or body to whom notice has been given under section 174.

(4) To the extent to which an order under this section applies to land within an exempted area, the order must include any conditions required by the controlling body for that area to be included in the order.

(5) This section does not authorise the making of conditions that permit a mineral claim to be granted over land having an area of more than 2 hectares or that permit a mineral claim to have a term of more than 5 years.

(6) A condition limiting the maximum number of mineral claims that may be held by any one person does not prevent a person from becoming the holder of further mineral claims that devolve on the person by operation of law.

Division 2—Applications

Marking out of proposed claim area

176. **(1)** Before applying for a mineral claim, a person must, in the manner prescribed by the regulations, mark out the area of land over which the person wishes the mineral claim to be granted.

(2) The area marked out must be situated wholly within a single mining division and must comply with the regulations in relation to shape and size.

Notice of intention to apply for mineral claim

177. **(1)** A person may not apply for a mineral claim over Crown land until after the person has caused notice of the proposed application to be served on the occupier of the land to which the proposed application relates.

(2) Such a notice must identify, in the manner prescribed by the regulations, the land to which the application relates.

Application for granting of mineral claim

178. **(1)** Any person may apply for a mineral claim.

(2) An application:

(a) must identify, in the manner prescribed by the regulations, the land to which it relates; and

(b) must specify the mineral or minerals in respect of which the mineral claim is sought; and

(c) must be accompanied by the fee prescribed by the regulations; and

(d) must be lodged with the mining registrar for the mining division within which the land to which it relates is situated; and

(e) in the case of an application that relates to private land—must be accompanied by the written consent of both the owner and the occupier of the land to the granting of the mineral claim; and

(f) in the case of an application that relates to Crown land—must be accompanied by a copy of the notice served on the occupier of that land under section 177 and a statutory declaration to the effect that the notice was so served.

Objection as to agricultural land

179. (1) The occupier of any Crown land the subject of a notice under section 177 may object to the granting of a mineral claim over the land on the basis that the land is agricultural land.

(2) Such an objection must be in writing and must be lodged with the mining registrar for the mining division within which the land is situated within 28 days after the notice is served.

(3) On receipt of an objection, the mining registrar is to refer the objection to the Director-General of the Department of Agriculture who is to determine the objection in accordance with Schedule 2.

Division 3—Restrictions on the grant of mineral claims

General restrictions

180. (1) A mineral claim may not be granted over land having an area of more than 2 hectares.

(2) A mineral claim over land that is not situated within a mineral claims district may not be granted in the name of a person who holds more than one other mineral claim over any such land within the same mining division.

(3) Subsection (2) does not prevent a person from becoming the holder of a mineral claim that has devolved on the person by operation of law.

(4) A mineral claim may not be granted in respect of coal.

Exempted areas

181. (1) A mineral claim may not be granted over land within an exempted area (other than land within a mineral claims district) except with the written consent of the controlling body of that area.

(2) A written consent given under this section is irrevocable.

Land in reserve or opal prospecting area

182. A mineral claim may not be granted over any land within:

(a) an opal prospecting block that is the subject of an opal prospecting licence held by a person other than the applicant for the mineral claim; or

(b) a reserve in respect of which an order prohibiting the granting of mineral claims is in force under section 367; or

(c) a mineral allocation area constituted in respect of any mineral or minerals to which the application for the mineral claim relates.

Land subject to authority

183. (1) A mineral claim may not be granted over any land:

(a) the subject of an exploration licence that includes any mineral or minerals in respect of which the claim is sought; or

(b) the subject of an assessment lease, a mining lease or a mineral claim; or

(c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the firstmentioned mineral claim was lodged,

otherwise than to or with the written consent of the holder of, or the applicant for, that licence, lease or claim.

(2) A written consent given under this section is irrevocable.

(3) If, as a result of such a consent, a mineral claim is granted in respect of land referred to in subsection (1), that land:

(a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim referred to in that subsection; or

(b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim so referred to,

as the case requires.

Land subject to exploration licence over different minerals etc.

184. (1) If an application for a mineral claim is lodged in respect of land that is subject wholly or partly to one or more exploration licences (other than exploration licences that include any mineral or minerals in respect of which the claim is sought), the mining registrar must cause notice of the application to be served on the holder of every such exploration licence.

(2) A person served with such a notice may object to the granting of the mineral claim by lodging with the mining registrar, on or before the date specified in the notice, a written notice stating the grounds of the objection.

(3) If such an objection is made, the mining registrar must refer the objection to an inspector for investigation and report and must determine the objection on the basis of the inspector's report.

(4) This section does not apply to an application that is made with the written consent of the holder of every exploration licence over the land concerned.

(5) A written consent given under this section is irrevocable.

(6) If a mineral claim is granted over land that is subject to an exploration licence, that land ceases to be subject to the exploration licence when the mineral claim is granted.

Land on which private mining operations being carried on

185. **(1)** A mineral claim may not be granted over any land in relation to a privately owned mineral:

(a) if mining operations are being carried out on the land by or with the consent of the owner of the mineral; and

(b) if a notice has been lodged with the Director-General in respect of those mining operations in accordance with section 8,

except with the written consent of the owner of the mineral.

(2) A written consent given under this section is irrevocable.

(3) Any dispute as to whether or not this section applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Director-General on the basis of the warden's report.

Colliery holdings

186. A mineral claim may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that prospecting or mining operations may be carried out under the claim without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the claim area.

Agricultural land

187. **(1)** A mineral claim may not be granted over any land that, as a consequence of an objection to the granting of the claim, has been determined to be agricultural land in accordance with Schedule 2.

(2) This section does not prevent a mineral claim from being granted over land that is within a mineral claims district merely because an objection to the granting of the claim has been made on the basis that the land is agricultural land.

Dwelling-houses, gardens and improvements

188. **(1)** A mineral claim may not be granted over any land:

(a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of its occupier or a woolshed or shearing shed which is in use as such; or

(b) on which, or within the prescribed distance of which, is situated any garden; or

(c) on which, or within the prescribed distance of which, is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes,

except with the written consent of the occupier (and, in the case of private land, the owner) of the land.

(2) The prescribed distance is:

(a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a); and

(b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b) and (c).

(3) A written consent given under this section is irrevocable.

(4) Subsection (1) does not apply in respect of a dwelling-house, woolshed, shearing shed, garden or improvement that was not in existence when the application for the mineral claim was lodged.

(5) Any dispute as to whether or not subsection (1) applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Director-General on the basis of the warden's report.

(6) A mineral claim may not be granted over land below the surface of land referred to in subsection (1) except at such depths, and subject to such conditions, as the mining registrar considers sufficient to minimise damage to that surface.

Mineral claim not to be re-granted to former holder

189. **(1)** A person who has been the holder of a mineral claim that has been cancelled pursuant to an order of a warden's court may not be granted a further mineral claim over any part of the land over which the earlier mineral claim was held until the expiration of the period of 12 months following the making of the order.

(2) This section is subject to any further order made by the warden's court by which the original order was made.

Division 4—Granting of mineral claims

Power of mining registrar in relation to applications

190. (1) After considering an application for a mineral claim, the mining registrar:

(a) may grant a mineral claim to the applicant; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) If an objection to the granting of the mineral claim on the basis that the land concerned is agricultural land has been lodged with the mining registrar before the application is determined, the mining registrar may (in the case of land that is situated within a mineral claims district) and must (in any other case) defer consideration of the application until the objection has been determined.

(4) Before granting a mineral claim, the mining registrar may require the applicant to give security for the fulfilment of the obligations arising under this Act in relation to the mineral claim:

(a) in the case of a mineral claim over land that is situated within a mineral claims district—in such amount and form as the mining registrar may (in accordance with the special conditions) require; or

(b) in any other case—in such amount and form as the mining registrar may (in accordance with the regulations) require.

(5) If the mining registrar refuses to grant a mineral claim, the mining registrar is to cause notice of the decision, and of the reasons for the decision, to be served on the applicant.

(6) If more than one application is made for a mineral claim over the same area of land, the applications are to be dealt with in the order in which they are lodged or, if they are lodged simultaneously, in such order as may be prescribed by the regulations.

Land over which mineral claim may be granted

191. (1) A mineral claim may be granted in respect of any mineral or minerals, regardless of whether the mineral or minerals are publicly owned, privately owned or partly publicly and partly privately owned.

(2) A mineral claim may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil between or below any specified depth or depths below the surface of land.

Conditions of mineral claim

192. (1) A mineral claim is subject to:

(a) in the case of a claim that is granted over land within a mineral claims district—such conditions as the mining registrar may (in accordance with the special conditions) impose; and

(b) in any other case—such conditions as the mining registrar may (in accordance with the regulations) impose.

(2) Without limiting the generality of subsection (1), a condition may be imposed on a mineral claim requiring the holder of the claim to pay royalty to the Minister on any minerals recovered under the claim.

(3) Part 14 applies to royalty payable under such a condition in the same way as it applies to royalty payable on a mineral recovered under a mining lease.

Term of mineral claim

193. A mineral claim:

(a) takes effect on the date on which it is granted or on such later date as the mining registrar may determine; and

(b) ceases to have effect at the expiration of such period (not exceeding 5 years or, in the case of a mineral claim over land that is situated within a mineral claims district, not exceeding such shorter period as the special conditions may specify) as the mining registrar may determine.

Certificate of mineral claim

194. (1) On granting a mineral claim, the mining registrar is to cause a certificate to be given to the holder of the claim of the fact that the claim has been granted.

(2) A certificate is to be in the approved form and is to include the following particulars:

(a) a description of the land over which the mineral claim is granted;

(b) a list of the mineral or minerals in respect of which the mineral claim is granted;

(c) the conditions to which the mineral claim is subject;

(d) the period for which the mineral claim is to have effect.

Division 5—Rights and duties under a mineral claim

Rights under mineral claim

195. (1) The holder of a mineral claim may, in accordance with the conditions of the claim, prospect for and mine the mineral or minerals in respect of which the claim is granted and may, in connection with any such prospecting or mining:

(a) erect buildings and structures; and

(b) exercise any rights in the nature of easements; and

(c) carry out works; and

(d) remove from the claim area any timber, stone or gravel.

(2) If an application for an assessment lease or mining lease is made by the holder of a mineral claim, the claim continues in force until the application is finally disposed of.

Claim areas over which authority is subsequently granted

196. Land over which a mineral claim is granted and over which an authority or further mineral claim is subsequently granted ceases to be part of the claim area when the authority or further claim takes effect.

Division 6—Renewal, transfer and cancellation of mineral claims

Application for renewal

197. (1) The holder of a mineral claim may apply for renewal of the claim.

(2) An application for renewal of a mineral claim:

(a) must be accompanied by the fee prescribed by the regulations; and

(b) must be lodged, within 28 days before the day on which the claim would otherwise expire, with the mining registrar for the mining division within which the claim area is situated.

(3) A mineral claim the subject of such an application remains in force until the application is finally disposed of.

Determination of application for renewal

198. (1) After considering an application for renewal of a mineral claim, the mining registrar:

(a) may renew the mineral claim; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The mining registrar may, on renewing a mineral claim, vary the conditions of the claim:

(a) in the case of a mineral claim that is granted over land within a mineral claims district—in such manner as the mining registrar may (in accordance with the special conditions) determine; and

(b) in any other case—in such manner as the mining registrar may (in accordance with the regulations) determine.

Partial renewal

199. A mineral claim may be renewed as to the whole or any part of the claim area and, if it is renewed as to part only of the claim area, the remainder ceases to be part of the claim area when the renewal takes effect.

Application for transfer

200. (1) The holder of a mineral claim may apply for the transfer of the claim to some other person.

(2) An application for the transfer of a mineral claim:

(a) must be accompanied by the fee prescribed by the regulations; and

(b) must be lodged with the mining registrar for the mining division within which the claim area is situated; and

(c) must be accompanied by the written consent of the proposed transferee; and

(d) in the case of an application that relates to private land—must be accompanied by the written consent of the owner and the occupier of the land.

(3) The mining registrar may defer consideration of an application that is the subject of legal proceedings, or of an inquiry under this Act, pending the outcome of those proceedings or that inquiry.

Determination of application for transfer

201. (1) After considering an application for transfer of a mineral claim, the mining registrar:

(a) may transfer the mineral claim; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The mining registrar may, on transferring a mineral claim, vary the conditions of the claim:

(a) in the case of a claim that is granted over land within a mineral claims district—in such manner as the mining registrar may (in accordance with the special conditions) determine; and

(b) in any other case—in such manner as the mining registrar may (in accordance with the regulations) determine.

(4) A mineral claim may not be transferred to a person if the person would consequently become the holder of more mineral claims than the maximum number allowed by this Act.

Devolution by operation of law

202. **(1)** The mining registrar may, on the application of a person on whom a mineral claim has devolved by operation of law, transfer the claim to that person.

(2) An application under this section:

(a) must be accompanied by the fee prescribed by the regulations; and

(b) must be lodged with the mining registrar for the mining division within which the claim area is situated.

(3) The mining registrar may defer consideration of an application that is the subject of legal proceedings, or of an inquiry under this Act, pending the outcome of those proceedings or that inquiry.

Grounds of cancellation

203. **(1)** A mining registrar may cancel a mineral claim, as to the whole or any part of the land to which it relates:

(a) if the holder of the claim requests the mining registrar to cancel the claim; or

(b) if, as a result of an objection made under section 179, it is determined in accordance with Schedule 2 that the land is agricultural land; or

(c) if the holder of the claim contravenes any condition of the claim or any provision of this Act or the regulations, whether or not the holder is prosecuted or convicted of any offence arising from the contravention; or

(d) if the holder of the claim fails to comply with the requirements of any agreement or assessment under Part 13 in relation to the payment of compensation; or

(e) if the holder of the claim is convicted of any offence relating to mining or minerals; or

(f) if the land is required for a public purpose; or

(g) if the mining registrar is ordered by a warden's court to cancel the claim.

(2) A request referred to in subsection (1) (a):

(a) must be lodged with the mining registrar for the mining division within which the claim area is situated; and

(b) if the application is for the cancellation of the claim as to part only of the land to which it relates—must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land in respect of which the claim is to be cancelled.

(3) The mining registrar may defer cancellation of a mineral claim that is the subject of legal proceedings, or of an inquiry under this Act, pending the outcome of those proceedings or that inquiry.

Cancellations

204. (1) Before cancelling a mineral claim on a ground referred to in section 203 (1) (c), (d) or (e), the mining registrar:

(a) must cause written notice of the proposed cancellation, and of the grounds of the proposed cancellation, to be served on the holder of the claim; and

(b) must give the holder of the claim a reasonable opportunity to make representations with respect to the proposed cancellation; and

(c) must take any such representations into consideration.

(2) Cancellation of a mineral claim takes effect on the date on which written notice of the cancellation is served on the holder of the claim or on such later date as is specified in the notice.

(3) Cancellation of a mineral claim does not affect any liability incurred by the holder of the claim before the cancellation took effect.

Compensation for cancellation

205. (1) The holder of a mineral claim is not entitled to compensation merely because the claim is cancelled.

(2) However, if a mineral claim is cancelled on the ground that the whole or any part of the land concerned is required for a public purpose,

the holder of the claim is entitled to compensation, of an amount to be determined by the Minister, for any mining improvements made to the land.

Appeals against cancellation

206. (1) Any person who is aggrieved by the decision of a mining registrar to cancel a mineral claim held by the person, or of the decision of the Minister as to the amount of compensation payable as a consequence of the cancellation, may appeal to the District Court against the decision.

(2) An appeal is to be heard by way of a new hearing, and fresh evidence, or evidence additional to the evidence available to the mining registrar or Minister when the decision was made, may be admitted in the hearing.

(3) Subject to any order made by the District Court, the lodging of an appeal does not operate to stay the decision appealed against.

(4) The decision of the District Court on an appeal is final and is to be given effect to as if it were the decision of the mining registrar or Minister, as the case may be.

Division 7—Miscellaneous

Holder of mineral claim must be at least 18

207. A mineral claim may not be granted to an individual who has not attained the age of 18 years.

Withdrawal of application

208. (1) An application or objection in relation to the grant, renewal, transfer or cancellation of a mineral claim may be withdrawn by means of a notice of withdrawal lodged by the applicant or objector with the mining registrar with whom the application or objection was lodged and ceases to have effect when the notice is lodged.

(2) The withdrawal of an application or objection under this section is irrevocable.

Pending applications

209. For the purposes of this Act, an application for a mineral claim is pending from the time it is lodged under this Act until the time it is finally disposed of.

Death etc. of applicant for granting of mineral claim

210. An application for a mineral claim made by a person who subsequently dies, becomes bankrupt or becomes a mentally incapacitated person:

(a) subsists for the benefit of the applicant's estate; and

(b) may continue to be dealt with,

if the applicant's legal representative or the manager of the applicant's estate so requests.

Rights of way

211. **(1)** The holder of a mineral claim is entitled to a right of way (to be marked out in the manner prescribed by the regulations) between the claim area and the nearest practicable point of a public road.

(2) The holder of the mineral claim:

(a) must place substantial gates or grids (or, if the owner or occupier of the land so requires, gates and grids) at all fences intersected by the right of way; or

(b) if those fences are rabbit-proof, marsupial-proof or dog-proof fences—must place rabbit-proof, marsupial-proof or dog-proof gates at all such fences, as the case requires.

(3) Any such gate or grid must be of a design and construction that is adequate to prevent stock from straying.

(4) The costs of marking out a right of way and of installing and maintaining any gates or grids required by this section are to be borne by the holder of the mineral claim.

(5) A right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised, as may be prescribed by the regulations or as may be imposed by a warden in any particular case.

(6) A warden may hold an inquiry into any matter arising under, or in connection with, a right of way conferred by this section.

(7) Such an inquiry may be held on the application of the owner or occupier of any land affected by the right of way, on the application of the holder of any mineral claim entitled to the right of way or on the warden's own motion.

Right of access to water

212. **(1)** If land subject to a mineral claim includes the surface of any private land or Crown land held under a pastoral lease, the owner or

occupier of the surface is entitled to free and uninterrupted access, for stock watering and water drainage purposes, to the water in any stream (whether perennial or intermittent) or any lagoon or swamp (whether permanent or temporary) on or adjacent to that land.

(2) If any dispute arises between the holder of a mineral claim and any such owner or occupier concerning the right of access, either the holder or the owner or occupier, or all of them, may, by written notice lodged with the Minister, request the Minister to determine the dispute.

(3) Any such dispute is to be referred to a warden for inquiry and report and is to be determined by the Minister on the basis of the warden's report.

(4) A determination by the Minister under subsection (3) is final.

Use of water, timber and pasturage etc.

213. **(1)** If land subject to a mineral claim includes the surface of any private land or Crown land held under a pastoral lease, the holder of the mineral claim must not:

(a) use water artificially conserved on that land; or

(b) fell trees, strip bark or cut timber on that land,

otherwise than in accordance with the consent of the owner or occupier of the surface of the land or, if the owner or occupier refuses consent or attaches unreasonable conditions to the consent, with the approval of a warden.

(2) If land subject to a mineral claim includes the surface of any private land or Crown land held under a pastoral lease, the holder of the claim must not:

(a) depasture horses on the land, or keep on the land any dog that is not under effective control, unless the land is securely fenced; or

(b) remove rock or earth from the land, except in connection with mining operations, otherwise than with the consent of the owner or occupier of the surface of the land.

Joint holders of mineral claims

214. If there is more than one holder of a mineral claim, each of the holders is jointly and severally liable for the fulfilment of the obligations arising under this Act in relation to the claim.

Suspension of conditions

215. **(1)** The mining registrar may (whether on the application of the holder of the claim or otherwise) suspend any of the conditions of a

mineral claim (other than conditions of the kind referred to in section 175 (4)) for such period, or until the happening of such event, as the mining registrar may determine.

(2) The suspension of conditions of a mineral claim may be granted unconditionally or subject to such alternative conditions as the mining registrar may consider appropriate.

(3) The suspension of conditions of a mineral claim takes effect on the date on which written notice of the suspension is served on the holder of the mineral claim or on such later date as may be specified in the notice.

(4) A condition of a mineral claim that is suspended on the application of the holder of the claim may not be suspended for more than 3 months at a time.

Forfeiture of security deposit

216. (1) Such part of any security in relation to a mineral claim as the Director-General may determine is to be forfeited to the Crown if the holder of the claim fails to fulfil the obligations arising under this Act in relation to the claim.

(2) Money realised from the forfeiture of any such security may be applied for the purpose of rehabilitating any land in the State affected by prospecting or mining operations.

Settlement of certain disputes

217. (1) If any dispute arises between the holders of 2 or more mineral claims concerning their respective rights in relation to any land or minerals, any one or more of them may refer the dispute to the Minister, who must in turn refer the dispute to a warden for inquiry and report.

(2) On receipt of the warden's report, the Minister may, by order, give such directions to all or any of the persons in dispute as (having regard to the public interest and the circumstances of the case) seem to the Minister to be just and equitable, and may, by the same or a subsequent order, direct the payment by all or any of the persons in dispute of any costs and expenses incidental to the conduct of the inquiry.

(3) A person to whom such a direction relates must not contravene the direction.

Maximum penalty: 20 penalty units.

Minister and certain other persons indemnified in certain circumstances

218. The holder of a mineral claim holds the Crown, the Minister and any person employed in the administration of this Act indemnified against all claims against the Crown, the Minister or any such person arising out of:

(a) anything done or omitted to be done pursuant to, or as a consequence of, the claim; or

(b) anything done or omitted to be done by the holder of the claim, or by any agent or employee of the holder, on or in respect of any land subject to the claim.

Evidentiary provision

219. A certificate that is signed by a mining registrar and that states that on a date, or during a period, specified in the certificate:

(a) a mineral claim so specified was or was not granted, renewed, transferred or cancelled; or

(b) a condition so specified was or was not a condition of a mineral claim so specified; or

(c) a person so specified was or was not the holder of a mineral claim so specified; or

(d) land so specified was or was not subject to a mineral claim or to a mineral claim so specified,

is admissible in evidence in all courts and is evidence of the fact or facts so stated.

PART 10—OPAL PROSPECTING LICENCES

Division 1—Opal prospecting areas

Opal prospecting areas

220. The Minister may, by order published in the Gazette, constitute any Crown land as an opal prospecting area and may, by the same or a subsequent order so published, name the area and fix its boundaries.

Notification of occupiers of land

221. Before constituting any occupied Crown land as an opal prospecting area or adding any occupied Crown land to an existing opal prospecting area, the Minister must cause written notice to be served on any occupier of the land:

(a) of the proposal to constitute the land as an opal prospecting area; and

(b) of the grounds on which the occupier may make an objection to the constitution of the land as an opal prospecting area; and

(c) of the manner and form in which the occupier may make such an objection.

Objections

222. (1) An occupier of Crown land who has been served with a notice of the Minister's proposal to constitute the land as an opal prospecting area, or to add the land to an existing opal prospecting area, may, within 28 days after being so served, make an objection to the proposal on any of the following grounds:

(a) on the ground that the land the subject of the proposal is agricultural land;

(b) on one or more grounds of the kind prescribed by the regulations.

(2) Such an objection:

(a) must be lodged with the Director-General; and

(b) must be in the approved form.

(3) The Minister:

(a) must refer such part of an objection as has been made on the ground referred to in subsection (1) (a) to the Director-General of the Department of Agriculture for determination of the question of whether the land concerned is agricultural land; and

(b) must refer such part of an objection as has been made on a ground referred to in subsection (1) (b) to a warden for inquiry and report.

(4) An objection referred to the Director-General of the Department of Agriculture is to be determined in accordance with Schedule 2.

(5) An objection referred to a warden is to be determined by the Minister on the basis of the warden's report.

Certain land not to be included in opal prospecting area

223. (1) Land may not be constituted as an opal prospecting area or added to an existing opal prospecting area:

(a) if an application for an authority is pending in respect of the land; or

(b) if an authority is in force in respect of the land; or

(c) if the land forms part of a reserve, an exempted area, a mineral allocation area for opal or a colliery holding; or

(d) if it has been determined in accordance with Schedule 2 that the land is agricultural land.

(2) Land that is within a national park, state recreation area, historic site, nature reserve, state game reserve, Aboriginal area, protected archaeological area, wildlife district, wildlife refuge, wildlife assessment area or Aboriginal place within the meaning of the National Parks and Wildlife Act 1974 may not be constituted as an opal prospecting area, or added to an existing opal prospecting area, except with the consent of the Minister administering that Act.

Opal prospecting blocks

224. **(1)** The Minister may, by order published in the Gazette, constitute any land within an opal prospecting area as an opal prospecting block.

(2) Such an order:

(a) may give the opal prospecting block a designation and fix its boundaries; and

(b) may specify any periods during which an opal prospecting licence may not be granted in respect of the opal prospecting block.

(3) An opal prospecting block may not exceed such dimensions as may be prescribed by the regulations.

Map of opal prospecting area to be prepared

225. **(1)** As soon as practicable after land within an opal prospecting area has been constituted as an opal prospecting block, the Minister:

(a) must cause a map to be prepared, on which the following particulars are to be depicted:

(i) the boundary of the opal prospecting area;

(ii) the boundary of each opal prospecting block within the opal prospecting area;

(iii) the name of the opal prospecting area;

(iv) the designation of each opal prospecting block within the opal prospecting area;

(v) the period for which an opal prospecting licence over an opal prospecting block within the opal prospecting area may be granted;

(vi) any special conditions that are to apply to an opal prospecting licence in relation to the program of work to be carried out in an opal prospecting block, the amount of money to be expended on prospecting and any other matters

that the Minister considers should be depicted on the map as special conditions; and

(b) must cause a copy of the map to be furnished to the mining registrar for each mining division within which the opal prospecting area, or any part of the opal prospecting area, is situated.

(2) The Minister may from time to time cause such a map to be amended:

(a) by varying the boundary of the opal prospecting area; or

(b) by varying the boundary of one or more opal prospecting blocks within the opal prospecting area; or

(c) by varying the period for which an opal prospecting licence over an opal prospecting block within the opal prospecting area may be granted; or

(d) by varying the special conditions which are to apply to an opal prospecting licence.

(3) As soon as practicable after a map is amended, the Minister must cause a copy of the amended map to be furnished to the mining registrar for each mining division within which the relevant opal prospecting area, or any part of the area, is situated.

(4) A mining registrar to whom a copy of a map is furnished must, during ordinary office hours, keep the copy of the map available, free of charge, for public inspection.

Division 2—Opal prospecting licences

Applications

226. **(1)** Any person may apply for an opal prospecting licence.

(2) An application for an opal prospecting licence must be lodged with the mining registrar for the mining division in which the opal prospecting block is situated.

(3) If more than one application is lodged with a mining registrar in respect of the same opal prospecting block, the applications are to be dealt with in the order in which they are lodged or, if they are lodged simultaneously, in such order as may be prescribed by the regulations.

Restrictions on grant of licence

227. An opal prospecting licence may not be granted over an opal prospecting block:

(a) to an individual who has not attained the age of 18 years;

(b) over which any other opal prospecting licence is in force or has (at any time within the 10 days preceding the day on which the application for the licence was lodged) been in force; or

(c) over which a mineral claim is in force; or

(d) to a person who is the holder of an opal prospecting licence over any other opal prospecting block in the same mining division; or

(e) during a period specified in the order by which the opal prospecting block is constituted as a period during which such a licence may not be granted.

Granting of licence

228. (1) On payment of the fee prescribed by the regulations, a mining registrar with whom an application is lodged must, subject to this Division, grant to the applicant an opal prospecting licence over the opal prospecting block to which the application relates.

(2) A mining registrar must, in the manner prescribed by the regulations, cause a record to be kept of each opal prospecting licence granted by the mining registrar.

Conditions of licence

229. An opal prospecting licence is subject to:

(a) any special conditions that apply to the opal prospecting block over which the licence is granted; and

(b) any other conditions that the mining registrar considers appropriate to impose.

Term of licence

230. An opal prospecting licence has effect for the period specified on the map in respect of the opal prospecting block concerned.

Form of licence

231. An opal prospecting licence is to be in the approved form and is to include the following particulars:

(a) the designation of the opal prospecting block over which the licence is granted;

(b) the period for which the licence is to have effect.

Rights under licence

232. (1) The holder of an opal prospecting licence may, in accordance with the licence, prospect for opals in the opal prospecting block over which the licence is granted.

(2) While an opal prospecting licence is in force, no person, other than the holder of the licence, may prospect for opals in any part of the opal prospecting block to which the licence relates.

(3) Nothing in this section prevents the holder of a mineral claim from exercising, in relation to any land within an opal prospecting block, any right conferred by the claim.

(4) An application for a mineral claim is a nullity to the extent to which it relates to any part of an opal prospecting block in respect of which any person other than the applicant holds an opal prospecting licence.

Grounds of cancellation

233. (1) A mining registrar may cancel an opal prospecting licence:

(a) if the holder of the licence requests the mining registrar to cancel the licence; or

(b) if the holder of the licence contravenes any condition of the licence or any provision of this Act or the regulations, whether or not the holder is prosecuted or convicted of any offence arising from the contravention; or

(c) if the holder of the licence fails to comply with the requirements of any agreement or assessment under Part 13 in relation to the payment of compensation; or

(d) if the holder of the licence is convicted of any offence relating to mining or minerals; or

(e) if the mining registrar is ordered by a warden's court to cancel the licence.

(2) A request referred to in subsection (1) (a) must be lodged with the mining registrar for the mining division within which the opal prospecting block is situated.

Cancellations

234. (1) Before cancelling an opal prospecting licence on a ground referred to in section 233 (1) (b), (c) or (d), the mining registrar:

(a) must cause written notice of the proposed cancellation, and of the grounds of the proposed cancellation, to be served on the holder of the licence; and

(b) must give the holder of the licence a reasonable opportunity to make representations with respect to the proposed cancellation; and

(c) must take any such representations into consideration.

(2) Cancellation of an opal prospecting licence takes effect on the date on which written notice of the cancellation is served on the holder of the licence or on such later date as is specified in the notice.

(3) Cancellation of an opal prospecting licence does not affect any liability incurred by the holder of the licence before the cancellation took effect.

Division 3—Miscellaneous

Certain claims for damages prohibited

235. No action lies against the Crown, the Minister or any person administering this Act in respect of any injury or loss suffered or incurred in relation to the exercise of any right conferred by an opal prospecting licence.

Evidentiary provision

236. A certificate that is signed by a mining registrar and that states that on a date, or during a period, specified in the certificate:

(a) an opal prospecting licence so specified was or was not granted; or

(b) a condition so specified was or was not a condition the subject of an opal prospecting licence so specified; or

(c) a person so specified was or was not the holder of an opal prospecting licence so specified; or

(d) an opal prospecting block was or was not subject to an opal prospecting licence or to an opal prospecting licence so specified,

is admissible in evidence in all courts and is evidence of the fact or facts so stated.

PART 11—PROTECTION OF THE ENVIRONMENT

Division 1—Environment to be considered before grant of authorities or mineral claims

Need to protect natural resources etc. to be taken into account

237. **(1)** In deciding whether or not to grant an authority or mineral claim, the Minister is to take into account the need to conserve and protect:

(a) the flora, fauna, fish, fisheries and scenic attractions; and

(b) the features of Aboriginal, architectural, archaeological, historical or geological interest,

in or on the land over which the authority or claim is sought.

(2) The Minister may cause such studies (including environmental impact studies) to be carried out as the Minister considers necessary to enable such a decision to be made.

Division 2—Conditions for protecting the environment

Inclusion of conditions for protecting the environment

238. The conditions subject to which an authority or mineral claim is granted or renewed must, if the Minister considers it appropriate, include conditions relating to the conservation and protection of:

(a) the flora, fauna, fish, fisheries and scenic attractions; and

(b) the features of Aboriginal, architectural, archaeological, historical or geological interest,

in or on the land subject to the authority or claim.

Rehabilitation etc. of area damaged by mining

239. **(1)** The conditions subject to which an authority or mineral claim is granted or renewed may include such conditions relating to:

(a) the rehabilitation, levelling, regrassing, reforesting or contouring of such part of the land over which the authority or claim has effect as may have been damaged or adversely affected by prospecting operations or mining operations; and

(b) the filling in, sealing or fencing off of excavations, shafts and tunnels,

as may be prescribed by the regulations or as the Minister may, in any particular case, determine.

(2) The Minister may amend an authority or mineral claim:

(a) that does not contain conditions of the kind that may be imposed under this Division; or

(b) that does contain such conditions, being conditions that the Minister considers are inadequate,

so as to include conditions or further conditions of that kind or so as to alter any such conditions.

(3) Any conditions of the kind referred to in subsection (1) (a) are to be in a form approved by the Commissioner of the Soil Conservation

Service and after consultation with the Director of National Parks and Wildlife.

(4) An amendment takes effect on the date on which notice of the amendment is served on the holder of the authority or mineral claim or on such later date as may be specified in the notice.

Division 3—Directions to rehabilitate land

Direction to comply with conditions of authority or mineral claim

240. **(1)** The Minister may cause to be served on a person who is or has been the holder of an authority or mineral claim a written notice directing the person to take specified steps, within a specified time, to give effect to any conditions included in the authority or claim under Division 2.

(2) A person on whom such a direction has been served must not fail to comply with the direction.

Maximum penalty: 20 penalty units.

Rehabilitation by Minister at holder's expense

241. **(1)** If a person on whom a direction is served under this Division does not comply with the direction, the Minister may cause to be taken any of the steps specified in the notice in which the direction was given.

(2) Any costs or expenses incurred by the Crown under this section are a debt due to the Crown by the person on whom the direction was served and are recoverable in a court of competent jurisdiction.

Recovery of costs of rehabilitation

242. **(1)** In any proceedings for the recovery of a debt due to the Crown under this Division, a certificate that is signed by the Minister and that states that a specified amount is the amount of the debt so due is admissible in evidence in all courts and is evidence of that fact.

(2) A debt due to the Crown under this Division is recoverable whether or not the person by whom it is due is prosecuted or convicted of an offence under this Division.

Division 4—Directions to remove mining plant

Application of Division

243. This Division applies to land that ceases to be subject to an authority or mineral claim.

Definitions

244. In this Division:

"mining plant" means any building, plant, machinery, equipment, tools or other property that has been used for mining or mining purposes, whether or not affixed to land, but does not include any timber or other material used or applied in the construction or support of any shaft, drive, gallery, adit, terrace, race, dam or other mining work;

"prescribed period", in relation to land that has ceased to be subject to an authority or mineral claim, means the period of 6 months from the date on which the land ceased to be subject to the authority or claim or such longer period as the Minister may, in any particular case, allow.

Clearing away of mining plant

245. (1) The holder of an authority or mineral claim over land that ceases to be subject to the authority or claim:

(a) may, within the prescribed period; and

(b) must, if directed to do so by the Minister by notice in writing, within the period specified in the notice,

cause to be removed from the land any mining plant brought onto, or erected on, that land in the course of mining operations carried out under the authority or claim.

(2) The Minister may give a direction under this section even though the prescribed period has not expired.

Sale of mining plant

246. (1) If mining plant is not duly removed under this Division, the Minister may direct that the mining plant be sold by public auction.

(2) Any mining plant remaining unsold after the public auction held may be sold by private treaty.

(3) The following amounts are to be deducted from the proceeds of any such sale:

(a) the costs of the sale and of any matter incidental to or connected with the sale;

(b) the costs of removing from the land concerned any mining plant remaining unsold after the public auction;

(c) any amount owing in respect of compensation for compensable loss within the meaning of Division 1 of Part 13;

(d) any other amount that the Director-General certifies to be a deductible amount.

(4) Any balance remaining is to be paid to the Treasurer as unclaimed money, and sections 6 (2) and 10 of the Unclaimed Money Act 1982 apply to the balance so paid in the same way as they would have applied had the balance been paid to the Treasurer under section 6 of that Act.

(5) If the proceeds of sale are less than the amounts to be deducted, the proceeds are to be applied in meeting those amounts in such manner as the Minister directs.

PART 12—POWERS OF ENTRY

Division 1—Entry by inspectors

Powers of inspectors

247. **(1)** For the purposes of this Act, an inspector:

(a) may enter any land the subject of an authority or a mineral claim, or an application for an authority or a mineral claim, and any land in an opal prospecting area; and

(b) may inspect that land and any mine, works, operations, buildings or structure on that land; and

(c) may remove samples of ore or other mineral deposits from that land.

(2) An inspector may direct the person in charge of any mine, works, operations, buildings or structure on any such land to provide the inspector with all reasonable facilities and assistance.

(3) A person to whom such a direction is given must not fail to comply with the direction.

Maximum penalty: 20 penalty units.

Certificates of authority

248. **(1)** For the purpose of enabling an inspector to exercise a power conferred by this Division, the Minister may issue the inspector with a certificate of authority.

(2) A certificate of authority must be in the form prescribed by the regulations, must be signed by the person by whom it is issued and must include the following particulars:

(a) a statement to the effect that it has been issued under this Act;

(b) the name of the person to whom it has been granted;

(c) the nature of the powers it confers.

Division 2—Entry by other persons

Entry on land for rehabilitation purposes etc.

249. (1) The Minister may grant a permit to any person to enter any land so as to enable the person:

(a) to carry out any rehabilitation work in accordance with a direction in force under section 240; or

(b) to remove any mining plant from any land in accordance with a direction under section 245 or as a result of a sale conducted under section 246.

(2) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:

(a) enter the land to which the permit relates; and

(b) do on that land all such things as are reasonably necessary to achieve the purpose for which the permit is granted.

Surveys

250. (1) The Minister may grant a permit to a mining surveyor or any other officer of the Department to enter any land so as to enable the person to carry out a survey for the purpose of defining any road or for any other purpose authorised by this Act.

(2) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:

(a) enter the land to which the permit relates; and

(b) do on that land all such things as are reasonably necessary to achieve the purpose for which the permit is granted.

Ore sampling

251. (1) The Minister may grant a permit to a geologist, geophysicist or geochemist employed in the Department to enter any land so as to enable the person to take samples of ores and mineral deposits.

(2) The holder of a permit under this section, and any assistant of the holder, may, in accordance with the permit:

(a) enter the land to which the permit relates; and

(b) remove samples of ores or other mineral deposits from the land.

Environmental assessment

252. **(1)** A warden may, on the application of a person who proposes to undertake an assessment (for the purposes of this Act or the Environmental Planning and Assessment Act 1979) of the likely effect on the environment of the activities to be carried out under an authority or a mineral claim, grant a permit to the applicant to enter any land so as to enable the person to undertake the assessment.

(2) For the purpose of determining an application for a permit, a warden may hold an inquiry into any matter arising under, or in connection with, the application.

(3) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:

(a) enter the land to which the permit relates; and

(b) do on that land all such things as are reasonably necessary to carry out the assessment to which the permit relates.

(4) The rights conferred by the permit may not be exercised within land in an exempted area except with the consent of the Minister.

(5) Such consent may be given unconditionally or subject to conditions.

(6) In the case of land within a national park, state recreation area, historic site, nature reserve, state game reserve, Aboriginal area, protected archaeological area, wildlife district, wildlife refuge, wildlife management area or Aboriginal place within the meaning of the National Parks and Wildlife Act 1974, such consent may not be given except with the concurrence of the Minister administering that Act.

Encroachments by mining works etc.

253. **(1)** A warden may, on the application of a person having the care and management of a public road or railway, grant a permit to a surveyor or other person to enter and inspect any land the subject of an authority or a mineral claim so as to enable the person to ascertain whether any work carried out on that land:

(a) is encroaching on that road or railway; or

(b) is likely to cause injury or damage to that road or railway or to any building or structure adjacent to that road or railway.

(2) A warden may, on the application of an owner or occupier of land adjoining land the subject of an authority or a mineral claim, grant a permit to a surveyor or other person to enter and inspect that land so as to enable the person to ascertain whether any work carried out on that land is encroaching on the adjoining land.

(3) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:

(a) enter and inspect the land to which the permit relates; and

(b) survey that land or any part of that land; and

(c) make plans and sections of that land or any part of that land and of any buildings, structures or works situated on that land.

Permit to enter Crown land

254. **(1)** A mining registrar may grant a permit to any person to enter Crown land held under a pastoral lease so as to enable the person to mark out a proposed mineral claim or to comply with the conditions of a mineral claim.

(2) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:

(a) enter the land to which the permit relates; and

(b) do all such things as are reasonably necessary for the purpose of marking out a proposed mineral claim or of complying with the conditions of any mineral claim.

Division 3—Exercise of power of entry

Restriction of power of entry

255. **(1)** A power conferred by this Act to enter any land, or to do anything on any land, may not be exercised unless the inspector or other person proposing to exercise the power:

(a) is in possession of the relevant certificate of authority or permit; and

(b) gives reasonable notice to the occupier of the land of intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power; and

(c) exercises the power at a reasonable time, unless the power is being exercised in an emergency; and

(d) produces the certificate of authority or permit if required to do so by the occupier of the land; and

(e) uses no more force than is reasonably necessary to effect the entry or to do the thing authorised by the certificate of authority or permit.

(2) If damage is caused by an inspector or other person exercising a power of entry under this Part, the owner of the land (in the case of

private land) or the occupier of the land (in the case of Crown land) is entitled to payment from the Crown of a reasonable amount of compensation unless the occupier of the land obstructed, hindered or restricted the inspector or other person in the exercise of the power.

Premises used for dwelling purposes

256. Nothing in this Part enables an inspector or other person to enter any premises or part of premises that are being used as a dwelling otherwise than with the consent of the occupier of the premises or part.

Obstruction

257. A person must not, without reasonable excuse, obstruct, hinder or restrict an inspector or other person in the exercise of the powers conferred on the inspector or other person by this Part.

Maximum penalty: 20 penalty units.

Division 4—Miscellaneous

Conditions of permit

258. A permit is subject to such conditions as are specified in the permit.

Term of permit

259. Unless sooner cancelled, a permit remains in force for such period not exceeding:

(a) except as provided by paragraph (b), 12 months from the date it is granted; or

(b) in the case of a permit to mark out a proposed mineral claim, 14 days from the date it is granted,

as is specified in the permit.

Form of permit

260. A permit must be in the form prescribed by the regulations, must be signed by the person by whom it is granted and must include the following particulars:

(a) a statement to the effect that it has been granted under this Act;

(b) the name of the person to whom it has been granted;

(c) the nature of the powers it confers;

(d) a description of the land over which it is granted;

(e) the conditions to which it is subject;

(f) the period for which it is to have effect.

Cancellation of permit

261. (1) The Minister may, for such reason as the Minister thinks fit, cancel a permit that has been granted by the Minister.

(2) A warden may, for such reason as the warden thinks fit, cancel a permit that has been granted by the warden.

(3) A mining registrar may, for such reason as the mining registrar thinks fit, cancel a permit that has been granted by the mining registrar.

PART 13—COMPENSATION

Division 1—Prospecting and mining

Definition

262. In this Division:

"compensable loss" means loss caused, or likely to be caused, by:

(a) damage to the surface of land, to crops, trees, grasses or other vegetation (including fruit and vegetables) or to buildings, structures or works, being damage which has been caused by or which may arise from prospecting or mining operations; or

(b) deprivation of the possession or of the use of the surface of land or any part of the surface; or

(c) severance of land from other land of the owner or occupier of that land; or

(d) surface rights of way and easements; or

(e) destruction or loss of, or injury to, disturbance of or interference with, stock; or

(f) damage consequential on any matter referred to in paragraph (a)–(e),

but does not include loss that is compensable under the Mine Subsidence Compensation Act 1961.

Compensation arising under exploration licence

263. (1) On the granting of an exploration licence:

(a) the occupier of any Crown land, and the owner and any occupier of any private land, subject to the licence; and

(b) the occupier of any Crown land, and the owner and any occupier of any private land, not subject to the licence,

become entitled to compensation for any compensable loss suffered, or likely to be suffered, by them as a result of the exercise of the rights conferred by the licence or by an access arrangement in respect of the licence.

(2) The holder of an exploration licence may agree with an owner or occupier as to the amount of compensation payable, but an agreement reached is not valid unless it is in writing, signed by or on behalf of the parties to the agreement, and lodged with the Director-General.

(3) Such of the provisions of an access arrangement (whether or not in writing) as relate to compensation have effect as an agreement for the purposes of this section.

(4) Payment of compensation under this section (other than compensation payable under an access arrangement agreed on as referred to in section 140 (a)) is taken, for the purposes of any security given by the licensee, to be an obligation under the licence.

Compensation arising under assessment lease

264. (1) On the granting of an assessment lease:

(a) the occupier of any Crown land, and the owner and any occupier of any private land, subject to the lease; and

(b) the occupier of any Crown land, and the owner and any occupier of any private land, not subject to the lease,

become entitled to compensation for any compensable loss suffered, or likely to be suffered, by them as a result of the exercise of the rights conferred by the lease or by an access arrangement in respect of the lease.

(2) The holder of an assessment lease may agree with an owner or occupier as to the amount of compensation payable, but an agreement reached is not valid unless it is in writing, signed by or on behalf of the parties to the agreement, and lodged with the Director-General.

(3) Such of the provisions of an access arrangement (whether or not in writing) as relate to compensation have effect as an agreement for the purposes of this section.

(4) Payment of compensation under this section (other than compensation payable under an access arrangement agreed on as referred to in section 140 (a)) is taken, for the purposes of any security given by the lessee, to be an obligation under the lease.

Compensation arising under mining lease

265. (1) On the granting of a mining lease:

(a) the occupier of any Crown land, and the owner and any occupier of any private land, subject to the lease; and

(b) the owner and occupier of any private land, and any occupier of any Crown land, not subject to the lease,

become entitled to compensation for any compensable loss suffered, or likely to be suffered, by them as a result of the exercise of the rights conferred by the lease.

(2) The holder of a mining lease may agree with an owner or occupier as to the amount of compensation payable, but an agreement reached is not valid unless it is in writing, signed by or on behalf of the parties to the agreement, and lodged with the Director-General.

(3) If a valid agreement is not entered into under this section within such period as may be prescribed by the regulations, the holder of a mining lease, or an owner or occupier of land, may apply to a warden to assess the amount of compensation payable, and a warden is to assess the compensation payable.

(4) The holder of a mining lease is not authorised to exercise any rights under the lease on the surface of any part of the mining area unless the amount of any compensation payable to an owner or occupier under subsection (1) (a) in respect of that part of the mining area is the subject of a valid agreement or of an assessment made by a warden.

Compensation arising under mineral claim

266. (1) On the granting of a mineral claim:

(a) the owner and occupier of any land over which the claim is registered; and

(b) the owner and any occupier of any other land,

become entitled to compensation for any compensable loss suffered, or likely to be suffered, by them as a result of the exercise of the rights conferred by the claim.

(2) The amount of the compensation payable under this section is such amount:

(a) as may be determined by agreement between the holder of the mineral claim and the owner or occupier, or owner and occupier, concerned; or

(b) if no such agreement is made, as may be assessed by a warden.

(3) The holder of a mineral claim must, before exercising any right conferred by the claim:

(a) serve notice of the holder's intention to exercise the right on any person entitled to compensation under this section; and

(b) pay the amount of compensation payable under this section into a warden's court or to any person so entitled.

Compensation arising under opal prospecting licence

267. (1) On the issue of an opal prospecting licence:

(a) the occupier of any Crown land within the opal prospecting block to which the licence relates; and

(b) the owner and any occupier of any private land, and the occupier of any other Crown land,

become entitled to compensation from the holder of the licence for any compensable loss that they suffer, or are likely to suffer, as a result of the exercise of the rights conferred by the licence.

(2) The amount of the compensation payable under this section is such amount:

(a) as may be determined by agreement between the holder of the opal prospecting licence and the owner or occupier, or owner and occupier, concerned; or

(b) if no such agreement is made, as may be assessed by a warden.

(3) The holder of an opal prospecting licence must, before exercising any right conferred by the licence:

(a) serve notice of the holder's intention to exercise the right on any person entitled to compensation under this section; and

(b) pay the amount of compensation payable under this section into a warden's court or to any person so entitled.

Compensation payable on transfer of certain authorities etc.

268. If an authority or mineral claim over private land is transferred from a person who is an owner or occupier of the land to a person who is not an owner or occupier of the land, the provisions of this Act relating to compensation apply to the person to whom the authority or claim is transferred.

Division 2—Environmental assessment

Definitions

269. In this Division:

"compensable loss" means loss caused, or likely to be caused, by:

(a) interference with the use of land; or

(b) damage to land, to any crops, trees, grasses or other vegetation on the land or to any buildings, structures and works on the land; or

(c) damage consequential on any matter referred to in paragraph (a) or (b),

but does not include loss that is compensable under the Mine Subsidence Compensation Act 1961;

"environmental assessment permit" means a permit granted under section 252.

Compensation arising under environmental assessment permit

270. (1) If the holder of an environmental assessment permit enters any land under the authority of the permit:

(a) in the case of Crown land—the Crown and any occupier of the land; and

(b) in the case of private land—the owner and occupier of the land,

become entitled to compensation from the holder of the permit for any compensable loss they suffer as a result of the exercise of the rights conferred by the permit.

(2) The amount of compensation payable under this section is such amount as may be assessed by a warden on the application of the holder of the environmental assessment permit, the Crown or the owner or occupier concerned.

(3) Nothing in this section affects any remedy available to any person whose lands are entered pursuant to a power conferred by or under Part 12.

Division 3—Procedure for assessing compensation

Definitions

271. In this Division:

"authorisation" means an exploration licence, assessment lease, mining lease, mineral claim, opal prospecting licence or environmental assessment permit;

"compensable loss", in relation to the assessment of compensation payable under Division 1 or 2, has the same meaning as it has in that Division.

Assessment of compensation

272. The assessment of compensation payable under this Part:

(a) must be made in the manner prescribed by the regulations; and

(b) must not be made until notice in the approved form:

(i) has been published in a newspaper circulating generally in the State and in one or more newspapers circulating in the locality in which the land concerned is situated; or

(ii) has been served on each person who appears to a warden to be interested in the assessment; and

(c) must not exceed in amount the market value (for other than mining purposes) of the land and the buildings, structures and works situated on the land.

Payment into court

273. The total amount of compensation assessed under this Division is to be paid into a warden's court at such times, and in respect of such periods, as is specified in the order of assessment.

Payment out of court

274. (1) As compensable loss occurs, money held in a warden's court by way of compensation is to be paid out of a warden's court, on the application of any person entitled to the compensation, in accordance with the agreement or order under which it is payable.

(2) If, after the expiration of 6 months, and before the expiration of 12 months, from the date on which the authorisation concerned ceases to have effect, the whole or any part of an amount paid into court under this section has neither been paid out nor ordered to be paid out, the person who paid the amount into court may apply to a warden for payment out to that person of the whole or any part of that amount, and a warden may order the payment to be made.

(3) If, after the expiration of 12 months from the date on which the authorisation concerned ceases to have effect, the whole or any part of an amount paid into court under this section has neither been paid out nor ordered to be paid out, a warden may cause the whole or any part of that amount to be paid into the Treasury for payment into the Consolidated Fund.

Procedure of court in making assessment

275. In making an assessment of compensation under this Division, a warden:

(a) may make the assessment at any time and at any place; and

(b) may make the assessment in the absence of any person who appears to be interested in the assessment, if the warden is satisfied that the person has been served with a notice in accordance with this Part; and

(c) may adjourn the hearing of the matter to any time and any place, subject to such terms as to costs or otherwise as the warden thinks fit; and

(d) has and may exercise the powers of a warden's court.

Additional assessment

276. (1) If, after an assessment of compensation has been made, it is proved to the satisfaction of a warden:

(a) that the whole of the amount paid into court under this Part has been duly paid out; and

(b) that further compensable loss has been caused, or is likely to be caused, in respect of the land to which the assessment relates, or to other land,

the warden must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.

(2) If it is proved to the satisfaction of a warden:

(a) that an access arrangement does not make provision for or with respect to compensation; and

(b) that compensable loss has been caused, or is likely to be caused, in respect of the land to which the arrangement relates,

the warden must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.

(3) If it is proved to the satisfaction of a warden:

(a) that the whole of the amount assessed by or in accordance with an access arrangement determined by an arbitrator as referred to in section 140 (b) has been paid in accordance with the arrangement; and

(b) that further compensable loss has been caused, or is likely to be caused, in respect of the land to which the assessment relates or to other land,

the warden must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.

(4) A warden's decision on such an application has effect as an assessment of compensation under this Division.

(5) In making an assessment of compensation, a warden must have regard to any agreement between the parties concerned as to the compensation payable.

Directions to furnish names and addresses

277. (1) If a warden considers that the owner or occupier of any land may be entitled to compensation under this Part, the warden may, by instrument in writing served on the holder of the authorisation concerned, direct the holder to notify the warden of the name and address of the owner or occupier of the land.

(2) An instrument served under this section must specify a date on or before which compliance with the direction contained in the instrument is required.

Appeals

278. The provisions of Divisions 3 and 4 of Part 15 apply to and in respect of an assessment made by a warden under this Part, and to and in respect of a person dissatisfied with such an assessment, as if the assessment were a decision of a warden's court and the person were a party to a complaint or proceeding dissatisfied with the decision.

Division 4—Consolidated mining leases

Compensation not payable on consolidation

279. (1) Compensation is not payable under this Part in respect of the grant of a consolidated mining lease.

(2) Any compensation to which a person is entitled under this Part in respect of the grant of an existing lease that is consolidated under Part 6 is to be assessed or agreed on and paid as if the existing lease had not been consolidated.

Compensation already due not affected by consolidation

280. **(1)** Except as provided by this Division, any compensation assessed, agreed on or paid under this Part in respect of an existing lease that is consolidated under Part 6 is not affected by the consolidation of the existing lease and is to be dealt with as if the existing lease had not been consolidated.

(2) If any compensation is paid into court under this Part in respect of an existing lease that is consolidated under Part 6, the date on which the existing lease ceases to have effect is taken, for the purposes of this Part, to be the date on which the consolidated mining lease ceases to have effect.

Compensation for further loss

281. **(1)** If:

(a) compensation has been assessed or agreed on under this Part in respect of an existing lease that is consolidated under Part 6; and

(b) the date of expiry of the consolidated mining lease is later than the date on which the existing lease would have expired if it had not been consolidated; and

(c) it is proved to the satisfaction of a warden that:

(i) further loss has been caused in respect of the land to which the assessment or agreement related, or in respect of other land, after the date on which the existing lease would have so expired, being compensable loss within the meaning of Division 1; and

(ii) in the case of an assessment, the whole of the amount paid into court pursuant to this Part has been duly paid out,

a warden is to assess the loss in accordance with Division 3 and order that the amount so assessed be paid by the holder of the consolidated mining lease to which the assessment relates, within the time and to the persons specified in the order.

(2) The provisions of section 276 have effect with respect to a consolidated mining lease even though the assessment referred to in that section relates to an existing lease that has been consolidated under Part 6.

PART 14—ROYALTY

Division 1—Publicly owned minerals

Liability to pay royalty

282. (1) The holder of a mining lease is liable to pay royalty to the Minister on publicly owned minerals recovered under the lease.

(2) Royalty that is payable to the Minister under a condition of a mining lease (being a condition of the kind referred to in section 70 (4)) is payable in addition to, and not instead of, royalty payable under this Division.

Rate of royalty

283. (1) Royalty on a publicly owned mineral is payable under this Division:

(a) at the base rate prescribed by the regulations in respect of that mineral; and

(b) if the regulations so provide—at the additional rate prescribed by the regulations in respect of that mineral.

(2) Royalty under this Division is payable on a publicly owned mineral at the rate or rates applicable as at the time the material from which it is recovered is extracted from the land.

(3) A rate of royalty prescribed for the purposes of this Division may be prescribed:

(a) as a percentage of the value of minerals recovered from the land; or

(b) as an amount payable on the basis of any specified measurement of minerals recovered from the land; or

(c) by reference to such other matters as the Minister determines.

(4) The quantity of minerals recovered is to be calculated (whether by volume or by weight) in the manner prescribed by the regulations.

(5) The value of minerals recovered is to be calculated (whether by volume or by weight) in the manner determined by the Minister.

Division 2—Privately owned minerals

Liability to pay royalty

284. (1) The holder of a mining lease is liable to pay royalty to the Minister on privately owned minerals recovered from the land as if those minerals were publicly owned minerals.

(2) If royalty (including any interest on royalty) is paid to or recovered by the Minister in respect of a privately owned mineral, the Minister is to pay:

(a) seven-eighths of the amount so paid or recovered to the owner of the mineral; and

(b) one-eighth of the amount so paid or recovered to the Treasurer for payment into the Consolidated Fund.

Rate of royalty

285. Royalty is payable under this Division:

(a) except as provided by paragraph (b)—at the base rate prescribed under section 283 (1) (a) in respect of the mineral concerned; or

(b) in the case of a mineral other than coal—at such other rate as may be agreed on between the holder of the mineral claim or authority concerned and the owner of the mineral.

Division 3—Petroleum

Royalty payable on petroleum recovered under mining lease for coal

286. (1) The holder of a mining lease for coal who recovers petroleum from a mining area by virtue of the fact that, under section 78, petroleum is included in the lease is liable to pay royalty to the Minister on the petroleum recovered.

(2) The amount payable as royalty under this Division in respect of petroleum is the rate prescribed for the purposes of this Division by or under the Petroleum Act 1955.

(3) Royalty under this Division is payable on petroleum at the rate or rates applicable as at the time the petroleum is recovered from the land.

Division 4—Miscellaneous

Exemption from royalty

287. (1) If the Minister, on application by the holder of a mining lease, is satisfied that the value of publicly owned minerals recovered as a result of mining operations carried on during a royalty period was less than the appropriate amount, no royalty is payable to the Minister under this Act in respect of those minerals.

(2) In this section:

"appropriate amount", in relation to a royalty period, means:

(a) if the royalty period is 12 months—$2,000; and

(b) if the royalty period is less than 12 months—such amount as bears to $2,000 the same proportion as the number of days in the royalty period bears to 365;

"mining operations" means mining operations carried on:

(a) on a parcel of land subject to a mining lease held by a person who is not the holder of any other mining lease; or

(b) on 2 or more parcels of land subject to 2 or more mining leases, if the holder of each parcel is the same person and if each parcel adjoins the other or another of those parcels;

"royalty period", in relation to a mineral recovered by a person under a mining lease, means:

(a) the period commencing on the day on which the person first became entitled, under the mining lease, to mine the mineral, and ending on the last day of the first period in respect of which the person is required by this Act to pay royalty in respect of the mineral; or

(b) the period commencing on the day after the last day of any period in respect of which the person is required by this Act to pay royalty in respect of the mineral and ending on the last day of the next such period; or

(c) if, during a period referred to in paragraph (b), the person ceases to be entitled to mine the mineral on the land the subject of the mining lease—the period commencing on the day after the last day of the previous royalty period and ending on the day on which the person ceases to be so entitled.

Trust fund etc.

288. The Minister may, by written notice served on the holder of a mining lease, require that person:

(a) to establish a trust fund, in the manner specified in the notice, and to pay into the trust fund (at the time or times so specified) a specified proportion of the money accruing from the sale of minerals (being a proportion that will, in the opinion of the Minister, be sufficient to meet the royalty payable to the Minister under this Act in respect of those minerals); or

(b) to lodge with the Director-General (within such time as is specified in the notice) security, in such amount and in such form as is so specified, for the performance of that person's obligations in respect of the payment of royalty,

and the holder of the mining lease must comply with any such requirement.

Returns

289. (1) The holder of a mining lease is to furnish to the Minister returns in such form, at such intervals, in respect of such periods and containing such information, as may be prescribed by the regulations.

(2) The Minister may authorise the holder of a mining lease to furnish to the Minister returns in a different form, at different intervals or in respect of different periods from the form, intervals or periods so prescribed.

(3) A person must not:

(a) refuse or fail to comply with a requirement under this section to the extent to which the person is capable of complying with it; or

(b) in purported compliance with such a requirement, furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 50 penalty units.

Minister may require information to be furnished etc.

290. (1) The Minister may cause to be served on any person (being a person whom the Minister has reason to believe is capable of giving information or producing or making available books or documents relating to minerals recovered or the value of minerals recovered) written notice requiring the person:

(a) to furnish to the Minister in writing, within the period and in the manner specified in the notice, any such information; or

(b) to attend before the Minister, or before a person specified in the notice, at a time and place so specified, in order to answer questions relating to minerals recovered or the value of minerals recovered; or

(c) to produce to a person specified in the notice, at a time and place so specified, books or documents in that person's custody or control relating to minerals recovered or the value of minerals recovered.

(2) A person is not excused from furnishing information, answering a question or producing books or documents when required to do so merely because the information so furnished, the answer to the question or the production of the books or documents, might tend to incriminate the person.

(3) However, the information, answer, books or documents are not admissible in evidence against the person in proceedings other than proceedings for an offence against this section.

(4) A person to whom books or documents are produced pursuant to a requirement under this section may make copies of, or take extracts from, the books or documents.

(5) A person must not:

(a) refuse or fail to comply with a requirement under this section to the extent to which the person is capable of complying with it; or

(b) in purported compliance with such a requirement, furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 50 penalty units.

Payment of royalty

291. (1) Royalty payable to the Minister under this Act is payable:

(a) except in so far as a determination under paragraph (b) has effect—at such times, and in respect of such periods, as may be specified in or determined in accordance with the regulations; or

(b) on demand by the Minister in respect of such periods as the Minister determines.

(2) If an amount of royalty payable to the Minister is not paid:

(a) by the time that it becomes payable in accordance with the regulations; or

(b) within 28 days of the demand for its payment,

interest is, if the Minister so directs, to be added to the amount due at such rate as the Minister determines.

(3) The regulations may make provision for or with respect to the manner in which royalty payable to the Minister under this Act is to be paid and, in particular, may require that payment of any royalty referred to in the regulations is to accompany a return made under this Part.

Recovery of royalty

292. (1) Royalty, and any interest on the royalty, payable to the Minister under this Act are debts due to the Crown and are recoverable in a court of competent jurisdiction.

(2) A certificate that is signed by the Minister and that states that on a date, or during a period, specified in the certificate, an amount of royalty or interest so specified was payable to the Minister under this Act by a person so specified is admissible in evidence in all courts and is evidence of the fact or facts so certified.

PART 15—WARDENS AND WARDENS' COURTS

Division 1—Appointment of wardens and establishment of wardens' courts

Appointment of chief warden and wardens

293. (1) The Governor may appoint a chief warden and such other wardens as may be necessary for the administration of this Act.

(2) A person may not be appointed as chief warden or warden unless the person is a Magistrate.

(3) Each warden is a warden for the whole State.

Establishment of wardens' courts

294. (1) The Governor may, by order published in the Gazette, establish wardens' courts which may be held at such places as the Governor may from time to time appoint.

(2) A warden's court is a court of record.

(3) A warden's court is constituted by a warden sitting alone.

Mining registrars to be registrars of wardens' courts

295. The mining registrar for a mining division is to be the registrar of any warden's court established within the division.

Jurisdiction of wardens' courts

296. A warden's court has jurisdiction to hear and determine proceedings relating to any of the following matters:

(a) the area, dimensions or boundaries of land subject to an authority or mineral claim;

(b) the right to the possession or occupation of any land by virtue of an authority or mineral claim;

(c) the right to the use and enjoyment of water for prospecting or mining and any dispute or question relating to such a right;

(d) trespass or encroachment on, or injury to, land subject to an authority or mineral claim, or interference with, or injury to, any mining improvement;

(e) any demand for debt or damages arising out of prospecting or mining; or

(f) any demand for specific performance of any contract relating to any authority or mineral claim;

(g) the right to any mineral in, or to be recovered from, any land subject to an authority or mineral claim, and the rights under, or arising out of, any contract relating to any such mineral;

(h) any transfer or disposition of, or charge on, land subject to an authority or mineral claim;

(i) matters concerning:

(i) any partnership relating to an authority or mineral claim, or to prospecting or mining; or

(ii) the existence, formation and dissolution of any such partnership; or

(iii) the taking of accounts in connection with any such partnership; or

(iv) the contributions of the partners as between themselves; or

(v) the determination of questions arising between the partners;

(j) contributions by or between persons holding joint or several interests in an authority or mineral claim towards rent or other expenses in relation to the authority or claim;

(k) trespass or encroachment on, or injury to, land as a result of prospecting or mining;

(l) trespass or encroachment on, injury to or any matter affecting, roads, railways or other property of whatever kind constructed, held or occupied under this Act;

(m) the partition, sale, disposal or division of any mining improvements, or the proceeds of the sale of any mining improvements, held by 2 or more persons;

(n) any question or dispute arising as to the working or management of land subject to an authority or mineral claim;

(o) all rights claimed in, under or in relation to an authority or mineral claim or purported authority or mineral claim;

(p) any question or dispute as to the validity of the granting of an authority or mineral claim;

(q) any question or dispute in connection with a consolidated mining lease arising under section 109, including any question or dispute concerning the rights and obligations conferred or imposed by an interest referred to in that section or the priority of any such interest;

(r) any question or dispute in connection with an interest (whether legal or equitable) in, or affecting, an authority or mineral claim;

(s) any question or dispute in connection with an assessment or agreement in respect of compensation under Part 13, arising because of the transfer of an authority or mineral claim or of part of such an authority or claim;

(t) the review of an arbitrator's determination under Division 2 of Part 8;

(u) any question or dispute as to the provisions of an access arrangement or as to any matter arising as a consequence of such an arrangement.

Decisions etc. of wardens' courts bind parties

297. A decision or order of a warden's court is, subject to this Act, binding on the parties.

Division 2—Practice and procedure in wardens' courts

Signing of process etc.

298. **(1)** Any summons, subpoena, order, warrant or other process issued out of a warden's court must be signed by a warden or by the registrar of the warden's court.

(2) A warden or registrar may issue a summons, subpoena, order, warrant or other process returnable before any warden's court.

(3) Any such summons, subpoena, order, warrant or other process has effect throughout the State.

Time for holding warden's court

299. A warden's court may be held before a warden at such times as the warden may, from time to time, appoint.

Register to be kept

300. **(1)** The registrar of a warden's court must cause to be kept in respect of the court a register, in the form prescribed by the rules:

(a) of the particulars of each complaint and application made to the court under this Act; and

(b) of each decision and order made by the court in relation to each such complaint and application; and

(c) of such further particulars as may be prescribed by the rules.

(2) A copy of an entry in the register of a warden's court of any decision or order of the court must, on demand, be furnished to any party to the complaint or application to which the entry relates.

(3) A document purporting to be a copy of an entry in the register of a warden's court, and certified by a warden or registrar to be a true copy of that entry, is admissible in all courts and is conclusive evidence that the decision or order to which the document relates was made.

Commencement of proceedings by summons

301. (1) Proceedings on the hearing of a complaint must be commenced by a summons which, on payment of the fee prescribed by the rules, is to be issued by a warden or by the registrar of a warden's court to the complainant on the complainant's application.

(2) A summons:

(a) must state concisely the facts constituting the complaint to which it relates and, if money is claimed, the amount of the claim; and

(b) must state a day for the appearance of the defendant before the warden's court; and

(c) must be in the form and contain the particulars prescribed by the rules.

(3) A summons must be served on the defendant either personally or by leaving the summons at that person's last known address with any person apparently of or above the age of 16 years.

(4) If it appears to a warden sitting in chambers that any defendant cannot after diligent inquiry be found, or cannot for any cause after reasonable effort be served with the summons in accordance with subsection (3), the warden:

(a) may order that service of the summons, in such manner as the warden may direct, be taken to be good service on the defendant; and

(b) may, if necessary, postpone the hearing to allow service to be effected in the manner specified in the order.

(5) Service of the summons in the manner specified in such an order is taken to be good service for all purposes.

Complaint may be heard without summons

302. (1) If all of the parties to a complaint consent in writing, a warden may hear and determine the complaint summarily in the presence of the parties and without requiring formal proceedings to be taken in a warden's court.

(2) A determination made by a warden under subsection (1) is final.

(3) If one or more, but not all, of the parties to a complaint consent in writing and the warden is satisfied that the other parties to the complaint are aware:

(a) of the nature of the complaint; and

(b) of the time and place at which the complaint is to be heard,

the warden may hear and determine the complaint summarily in the presence of the consenting parties and without requiring formal proceedings to be taken in a warden's court.

(4) A determination made by a warden under subsection (3) is taken to be a determination of a warden's court.

(5) A written consent referred to in subsection (1) or (3) must be signed by the party or parties consenting.

(6) For the purpose of hearing and determining a complaint under this section, a warden has and may exercise all the functions of a warden's court.

Warden to hear and determine complaint

303. **(1)** On the day stated in the summons, or on the day to which hearing of the complaint may have been adjourned, the warden's court hearing the complaint may require proof of the service of the summons on such of the parties to the complaint as have not appeared.

(2) In the absence of any of the parties to the complaint who, having been duly served with a summons, do not appear, but in the presence of all of the other parties (or of such of them as appear to the court sufficiently to represent all of the other parties) the warden's court hearing the complaint is to hear and determine the complaint in a summary manner.

Right of appearance

304. A party to proceedings before a warden's court is entitled to appear and be heard personally, or by a solicitor or barrister, or, if the court permits, by an agent.

Complaint not to be dismissed for informality

305. **(1)** A complaint may not be dismissed:

(a) for informality in the summons or in the entry of the summons; or

(b) for a defect or misnomer or inaccurate description of a person or place; or

(c) on the ground that the complainant appears to be entitled to relief differing from that claimed in the summons; or

(d) on the ground that there is any variance between the summons and the evidence adduced at the hearing on the part of the complainant.

(2) If it appears to a warden's court that, because of any circumstances referred to in subsection (1), a complaint should be amended, the court may make the amendment subject to such terms as to costs, adjournment or otherwise as to the court seems just.

Amendment of proceedings

306. (1) A warden's court may adjourn the hearing of a complaint to any other time or place, and may make any amendments to the proceedings necessary to determine the real issues between the parties, even though the summons to which the complaint relates does not show the substance of the facts constituting the complaint.

(2) If it appears that a person who should have been joined as a defendant has not been so joined, a warden's court may, on the application of the complainant, amend the proceedings so as to include that person as a defendant, and may adjourn the hearing of the complaint so as to enable that person to be served with the summons.

(3) If it appears that a person who should have been joined as a complainant has not been so joined, a warden's court may, with the consent of that person and on the application of any party to the proceedings, amend the proceedings so as to include that person as a complainant.

(4) An amendment under this section may be made subject to such terms as to costs, adjournment or otherwise as to the warden's court seems just.

Registrar of warden's court may adjourn court in absence of warden

307. If, on a day appointed for the holding of a warden's court, or on a day to which the holding of a warden's court has been adjourned, the warden by whom the court is constituted does not attend the court, the registrar of the court may adjourn the court for such time or until such day as the registrar may determine.

Defendant may pay money into court

308. (1) A defendant in proceedings before a warden's court in which money is claimed may, at any time not later than 2 days before the hearing, pay into the court:

(a) the amount claimed, together with the complainant's costs up to the time of the payment; or

(b) such lesser amount as the defendant considers a full satisfaction in respect of the matter complained of.

(2) If such an amount is paid into court, the registrar of the court must give notice to the complainant of the payment and must, on demand, pay the amount so paid to the complainant or to the complainant's legal representative.

(3) In the event that:

(a) the full amount claimed by the complainant, together with costs, is paid into court; or

(b) the lesser amount is accepted by the complainant in full satisfaction of the complainant's claim,

no proceedings may subsequently be brought in any court in respect of that claim.

(4) In the event that:

(a) a lesser amount is paid into court; and

(b) the complainant elects to proceed and not to accept the lesser amount; and

(c) the complainant fails to recover any amount in respect of the complainant's claim additional to the lesser amount,

the warden may order the complainant to pay such of the defendant's costs as are incurred after the date of the payment into court.

Instalments may be ordered

309. If a warden's court makes an order for the payment of money, the court may order that the amount be paid at such times and in such instalments as the court may specify in the order.

Complaints for injury to property etc.

310. **(1)** On the hearing of a complaint for the recovery of possession of, or for an encroachment or trespass on, or for an unlawful interference with or injury to, any land, mining improvement or water, or any share or interest in any land, mining improvement or water, a warden's court may determine the boundaries of that land or the quantity of water to be taken by any party to the complaint.

(2) If the decision of the warden's court is in favour of the complainant, the court must determine whether any sum in the nature of mesne profits or damages should be paid to the complainant by the defendant (and, if so, what sum) and may also order that:

(a) possession of anything sued for be delivered to the complainant; or

(b) the complainant be put into possession of the land or mining improvement; or

(c) any defendant or servant of the defendant, or any building, fixture, implement, matter or thing, be removed from the land or mining improvement; or

(d) any defendant be restrained from using the water.

(3) If the warden's court finds that the complainant has wrongfully encroached or trespassed on, or interfered with, any land, mining improvement or water in respect of which the proceedings were brought, the court may grant to the defendant against the complainant the same relief as the court is empowered to grant to a successful complainant.

(4) If, in any proceedings before a warden's court in respect of the right to divert any water or to remove a mining improvement, the decision of the court is in favour of the complainant, the court:

(a) may declare the complainant to be entitled to divert the water or remove the mining improvement; and

(b) may make an order restraining the defendant from interfering with or preventing the diversion or removal.

Warden may order deposit of mineral etc.

311. **(1)** On application by summons by any party to proceedings in a warden's court, the court may order any other party to the proceedings to deposit, pending its decision, any earth, mineral, money or chattels:

(a) the right to which will, in the opinion of the court, be put in issue in the course of those proceedings; and

(b) which may then be in, or at any time before the termination of the proceedings may come into, the possession or control of that other party.

(2) Such an order must specify the thing to be so deposited and must direct the deposit to be made, at or before a time specified in the order, with a person or at a place so specified, either in the name of the warden or in the name of some other person so specified.

(3) Except where such an order is claimed in the summons referred to in subsection (1), an order under this section must not be made except after 12 hours' notice served by the applicant for the order on the other parties to the proceedings, or on such of them as appear to the warden sufficiently to represent those other parties.

(4) A person against whom an order under this section has been made must not fail to comply with the order.

Maximum penalty: 20 penalty units.

Warden may grant injunction

312. **(1)** If an application is made to a warden's court by a person claiming to hold a legal or equitable interest in any land subject to an authority or mineral claim, or in any property, the court may, on such terms as to costs or otherwise as it may consider just, grant an injunction restraining any specified person:

(a) from encroaching on, occupying, using or working the land or property; or

(b) from seeking, washing out, extracting or removing any earth or minerals from the land; or

(c) from selling or disposing of or otherwise interfering with the property; or

(d) from doing any act that may affect the interest concerned in the whole, or any part, of the land or property.

(2) An injunction remains in force for the period specified in the injunction, unless it is sooner discharged.

(3) An injunction may be applied for:

(a) on summons claiming an injunction, with or without other relief; or

(b) on application for an injunction.

(4) Notice of an application for an injunction must be served on the persons, and within the period, prescribed by the rules.

(5) The rules of procedure governing the hearing of a summons also govern the hearing of an application for an injunction.

Granting of injunctions in cases of urgency

313. **(1)** If an applicant for an injunction satisfies a warden's court that there are urgent reasons for granting the injunction, the warden may, in any case in which the warden might otherwise grant an injunction, grant an injunction to have effect for a period of not more than one month (including the day on which the injunction is made) without the requirement of a summons or service of notice of the application.

(2) The warden may not grant a continuance of an injunction granted under this section, and may not grant a further injunction under this

section, but application for a further injunction may be made under section 312, either during or after the period of the injunction granted under this section.

(3) An application for an injunction under this section may be heard by a warden at any warden's court.

Orders protecting adjacent authorities and mineral claims

314. **(1)** The holder of an authority or mineral claim over land which is adjacent to:

(a) land that is the subject of an injunction; or

(b) land on which is located property that is the subject of an injunction,

may apply to the warden by whom the injunction was granted for an order permitting the land or property under injunction to be worked so as to prevent or minimise damage to or depreciation of the land over which the authority or mineral claim is held.

(2) A warden to whom such an application is made:

(a) may order, on such terms as the warden thinks fit, such working of that land or property as in the warden's opinion will be sufficient to prevent that damage or depreciation; and

(b) may make such further order as to the cost of that working as the warden considers just.

(3) An order may not be made under this section unless the applicant shows to the satisfaction of the warden that the authority or mineral claim concerned will sustain damage or be materially depreciated in value by reason of the non-working of the land or property under injunction.

Contravention of injunction

315. A person against whom an injunction has been granted must not contravene the injunction.

Maximum penalty: 50 penalty units.

Court may order payment of money or delivery of mineral

316. **(1)** If any money or mineral is claimed in a warden's court, the court may order the payment of such money or the delivery of such mineral as it may find to be due or deliverable by one party to another.

(2) If such a claim arises out of a mining partnership, adventure or interest, the warden's court may take accounts in respect of that partnership, adventure or interest, to the extent to which it may be

necessary to ascertain what money or mineral (if any) is so due by one party to the other, and may make such further order as it considers just.

(3) If a warden's court orders payment of money in respect of any debt, damages, costs or otherwise, the court may make a further order:

(a) that any mineral in the possession, and being the property, of the party directed to make the payment must (to the extent in value of the payment as estimated by the court) be delivered up to the party entitled to the payment; and

(b) that the mineral to that extent be seized and delivered accordingly.

(4) If such a further order is made, the order for payment of money may only be enforced in respect of any balance remaining due after deducting the value of the mineral so delivered to the party entitled to payment.

Costs may be allowed

317. (1) The costs of all proceedings under this Act before a warden (whether in a warden's court or otherwise) are in the discretion of the warden and the amount of such costs may be determined by the warden or taxed, as the warden may direct.

(2) The reference in subsection (1) to costs includes a reference to an arbitrator's costs in relation to a hearing under Division 2 of Part 8.

Form and service of orders

318. (1) An order made by a warden's court must be in the form prescribed by the rules.

(2) An order must, unless the warden's court otherwise directs, be served by delivering a copy to the person to be bound by the order, and by showing to that person at the same time the original order if that person requires to see it.

(3) If a warden's court so directs, it is sufficient service of any order if a copy of the order is published in such newspaper, and within such time, as the court may direct and a copy of the order is affixed in such conspicuous place at or near the property to which the order relates as the court appoints.

Certain orders may be entered as judgments

319. An order for the payment of money made by a warden's court may be entered as a judgment in any court of competent jurisdiction.

Warden may authorise person or officer to perform any prescribed act

320. If a warden's court is empowered or required by this Act to cause any act to be performed, and the mode of performing that act is not expressly provided for, it is lawful for:

(a) any person verbally authorised by the warden constituting the court and in the presence of the warden; or

(b) any police officer or special constable authorised in writing under the hand of the warden,

to perform that act, and all police officers must, if required by the warden, assist the warden, or a person so authorised, to perform that act.

Division 3—Appeals to the District Court

Right to appeal from warden's court to District Court

321. (1) Any person who is aggrieved by a decision of a warden's court may, in accordance with the rules of the District Court, appeal to the District Court against the decision.

(2) An appeal is to be heard by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence available to the warden's court when the original decision was made, may be admitted in proceedings on the appeal.

(3) In hearing an appeal under this section, the District Court has, in addition to its other functions, the functions of a warden's court.

(4) The District Court may, pending its determination of an appeal, make such interlocutory orders (including orders as to costs) as it considers appropriate.

(5) On hearing an appeal the District Court:

(a) may make an order reversing or varying the decision appealed from; or

(b) may make an order dismissing the appeal; or

(c) may make such other order as it considers just,

and may make such further order with respect to the costs of the appeal, and of the proceedings appealed from, as it may think fit.

Appeal stays decision appealed against

322. The making of an appeal operates to stay the effect of the decision against which the appeal is made except to the extent to which the District Court may otherwise order.

Mode of enforcing decision after appeal

323. The decision of the District Court on an appeal is taken to be the decision of the warden's court and may be enforced accordingly.

Right of appeal under Division 4 abandoned

324. A person who appeals to the District Court under this Division in relation to any proceedings is taken to have abandoned the person's right of appeal to the Supreme Court under Division 4 in relation to those proceedings.

Division 4—Appeals to the Supreme Court

Case stated for opinion of Supreme Court

325. (1) A party to any proceedings in a warden's court who is dissatisfied with the determination or direction of the court in point of law may, in accordance with the rules of the Supreme Court, apply in writing to the warden constituting the warden's court to state and sign a case, setting out the facts and grounds of the determination, for the opinion of the Supreme Court.

(2) Before the warden states a case in accordance with subsection (1), the appellant must lodge with the registrar of the warden's court the fees prescribed by the rules, and must give security to the satisfaction of the warden for the due performance of any order which the Supreme Court may make.

(3) If the warden is of the opinion that an application made under this section is merely frivolous, the warden may then, but not otherwise, refuse to state a case.

(4) If the warden refuses to state a case, the warden must, on the request of the appellant, sign and deliver to the appellant a certificate of refusal.

(5) If the warden refuses to state a case, the Supreme Court may, on application by the appellant, order the warden to state the case subject to the appellant's lodging the fees and giving the security referred to in subsection (2).

(6) Within 7 days after receiving the stated case, the appellant:

(a) must serve notice in writing of the application, and a copy of the case (signed by the warden), on the other parties to the proceedings to which the case relates; and

(b) must transmit the case to the Prothonotary of the Supreme Court or to such other officer of the Supreme Court as may be designated by rules of the Supreme Court.

(7) In this section, a reference to an appellant is a reference to a party who makes an application under subsection (1).

Powers of Supreme Court on hearing a stated case

326. (1) On hearing proceedings on a stated case, the Supreme Court:

(a) may reverse, affirm or amend the determination or direction in respect of which the case was stated; or

(b) may remit the matter to the warden with its opinion on the case; or

(c) may make such other order in relation to the matter as it considers just.

(2) The Supreme Court may cause the case to be sent back to the warden for amendment and, in that event, the order of the Court may be made after the case has been so amended.

(3) The Supreme Court may make such order as to costs as it thinks fit.

(4) A warden who has stated a case under this Division is not liable to any costs in respect of the proceedings on the case.

(5) An order made by the Supreme Court under this section is final and binding on the parties.

(6) The practice and procedure in relation to the stating of cases is to be as prescribed by rules of the Supreme Court.

Mode of enforcing decision after appeal

327. The decision of the Supreme Court on a stated case is taken to be the decision of the warden's court and may be enforced accordingly.

Right of appeal under Division 3 abandoned

328. A person who appeals to the Supreme Court under this Division in relation to any proceedings is taken to have abandoned the person's right of appeal to the District Court under Division 3 in relation to those proceedings.

Division 5—Administrative matters

Documents and affidavits may be in writing or print

329. (1) Documents used in proceedings under this Act, or in relation to those proceedings, may be in writing or in print or partly in writing and partly in print.

(2) An affidavit to be used in proceedings under this Act may be sworn before a Judge of the Supreme Court or a commissioner for that Court for taking affidavits, before a Judge of the District Court, before a warden or before a justice.

Contempt of court and penalties

330. (1) If any person:

(a) is guilty of contempt in the face of a warden's court or of a warden exercising the functions of a warden's court; or

(b) on being summoned, or examined as a witness, in a suit or proceeding in a warden's court, refuses to be sworn or to answer any lawful question or is guilty of wilful prevarication,

the warden's court or warden may, by order, commit that person to prison for any time not exceeding 10 days or impose on that person a penalty not exceeding 5 penalty units.

(2) If the person is in default of payment of the fine, the warden's court or warden may commit the person to prison for any time not exceeding 10 days unless the fine is sooner paid.

(3) For the purpose of enforcing any such order of commitment, the warden's court or warden may issue a warrant in the form prescribed by the rules.

(4) Such a warrant is good and valid in law without any other order, summons or adjudication whatever, and the bailiff or gaoler to whom the warrant is addressed must obey that warrant.

Interpleader

331. (1) If a claim is made:

(a) in respect of goods taken in execution under process issued out of the District Court or a warden's court; or

(b) in respect of the proceeds or value of such goods,

by a person who is not the party against whom the process has issued, the Registrar of the District Court or a warden may, on application of the person charged with the execution of the process, issue a summons calling the person issuing the process and the person making the claim to appear before the District Court or the warden's court.

(2) If a summons has been so issued, any action which may have been brought in the Supreme Court or in the District Court in respect of the claim is stayed, and the court in which the action has been brought:

(a) on proof of the issue of the summons; and

(b) on proof that the goods were so taken in execution,

may order the person bringing the action to pay the costs of all proceedings had on the action after the service on that person of the summons.

(3) On the return of the summons, the District Court or warden's court must determine the claim and make such order between the parties, in respect of the claim and the costs of the proceedings, as it considers just.

(4) Any order so made may be enforced in the same way as any other order made in proceedings before the District Court or a warden's court and the determination and order are final.

Division 6—Rules and practice directions

Practice and procedure etc. of wardens' courts

332. The Governor may make rules in relation to the following matters:

(a) the practice and procedure of wardens' courts;

(b) the execution of the process of wardens' courts;

(c) the fees to be allowed for barristers and solicitors practising in wardens' courts;

(d) the expenses to be paid to witnesses in proceedings before wardens' courts;

(e) the forms to be used for matters or proceedings in wardens' courts;

(f) the forms to be used for the keeping of books, entries and accounts by the registrars of wardens' courts.

Chief warden may issue practice directions

333. The chief warden may issue practice directions, not inconsistent with this Act or the rules made under this Division, for or with respect to the practice and procedure of wardens' courts.

Division 7—Other functions of wardens

Inquiries generally

334. **(1)** The Minister may direct a warden to hold an inquiry into any matter arising under, or connected with, this Act.

(2) If, by or under this Act, a warden is authorised or required to inquire into any matter, the warden may for that purpose hold an inquiry into that matter and into all reasonably incidental matters.

Mining registrar may request inquiry by warden

335. (1) A mining registrar may refer to a warden for inquiry the question of whether Division 3 of Part 9 has been contravened by the granting of a mineral claim.

(2) After the conclusion of the inquiry, the warden is to furnish the mining registrar with a report on the warden's finding.

Procedure on inquiry

336. Any inquiry held by a warden is to be conducted in public and, in holding the inquiry, the warden has and may exercise the functions of a warden's court.

No appeals against a warden's administrative functions

337. No appeal lies from any decision or determination of a warden on an inquiry or in respect of any other function exercised by the warden acting otherwise than as a warden's court.

Division 8—Miscellaneous

Witness neglecting to appear

338. A person must not, without reasonable cause, fail to comply with a summons or subpoena requiring the person to attend as a witness:

(a) at proceedings before a warden's court; or

(b) at any inquiry before a warden,

if the summons or subpoena has been duly served on the person and if the costs of attendance, as fixed by the rules, have been tendered to the person.

Maximum penalty: 5 penalty units.

Disobedience of order

339. A person against whom an order (other than an order for the payment of money) has been made by a warden's court must not fail to comply with the order.

Maximum penalty: 10 penalty units.

Person removed from land not to retake possession etc.

340. A person must not:

(a) after being removed from any land pursuant to an order of a warden's court—attempt to retain or retake possession of that land; or

(b) after a decision by a warden's court that some other person is entitled to use for mining purposes, or to divert, any water—resist that other person or his or her agents in that use or diversion.

Maximum penalty: 10 penalty units.

PART 16—THE GEOLOGICAL AND MINING MUSEUM

Division 1—Preliminary

Definitions

341. In this Part:

"Director" means the Director of the Museum;

"mineral" includes uranium and petroleum;

"Museum" means the Geological and Mining Museum originally established under the Mining Act 1906;

"Trust" means the Geological and Mining Museum Trust constituted under this Part;

"trustee" means a trustee appointed to the Trust.

Division 2—The Geological and Mining Museum Trust

Constitution of the Trust

342. (1) There is constituted by this Act a corporation under the corporate name of the Geological and Mining Museum Trust.

(2) The Trust is to consist of 9 trustees appointed by the Governor on the recommendation of the Minister, at least 4 of whom are to be persons who are, in the opinion of the Minister, knowledgeable and experienced in geology or mineral resource development.

(3) The Director is eligible (if otherwise qualified) to be appointed as a trustee.

(4) Part 1 of Schedule 3 has effect with respect to the trustees.

(5) Part 2 of Schedule 3 has effect with respect to the procedure of the Trust.

Objects of the Trust

343. The objects of the Trust are to control and manage the Museum in a manner which:

(a) stimulates interest in the sciences and technologies related to the development and use of mineral and energy resources; and

(b) increases and disseminates knowledge of the importance of mining, and of mineral and energy resources, to the socio-economic development of Australia; and

(c) promotes the responsible development and use of mineral and energy resources.

Functions of the Trust

344. **(1)** The Trust has the functions conferred or imposed on it by or under this or any other Act.

(2) The Trust may:

(a) manage and maintain all Trust property and property in the custody of the Trust; and

(b) construct premises to be used for the Museum; and

(c) acquire specimens, equipment, photographic items, historical publications and other items and scientific data relating to the sciences and technologies associated with the mineral and energy industries; and

(d) provide to any person scientific information concerning those sciences and technologies; and

(e) undertake scientific research in those sciences and technologies; and

(f) promote and provide exhibitions, lectures, films, publications and other educational instruction or materials; and

(g) subject to any conditions the Trust imposes, permit the use of any premises used for the Museum in relation to:

(i) activities of an educational or cultural nature; or

(ii) social functions; or

(iii) State occasions; or

(iv) charitable, commercial or other promotional activities; or

(v) the holding of conferences or meetings; and

(h) subject to any conditions the Trust imposes, permit the use of any premises used for the Museum for the taking of photographs, the making of films or sound recordings and the production of television or radio programs or material; and

(i) provide, or allow the provision of, food or other refreshments on any premises used for the Museum and apply for, hold or dispose of any relevant licence, permit or other authority for that purpose; and

(j) engage, or enter into contracts or arrangements with, artists, entertainers, lecturers and performers:

(i) to appear on any premises used for the Museum; or

(ii) in connection with any service provided in pursuance of the objects of the Trust; and

(k) charge and receive fees or other amounts for, or in connection with, entry into any premises used for the Museum or any advice or service provided, any article sold or any permission given by the Trust.

(3) Subject to this Part and the regulations, the Trust has the control and management of the Museum and of all property vested in the Trust.

(4) The fees and other amounts received by the Trust (as referred to in subsection (2) (k)) and any income earned from them are its property.

(5) The Trust has such functions, in addition to those specified in this section, as are reasonably necessary for the achievement of its objects.

(6) In the exercise of its functions the Trust is subject to the control and direction of the Minister.

Division 3—Trust property

Acquisition of property

345. **(1)** The Trust may agree to any condition that is not inconsistent with its objects being imposed on its acquisition of any property.

(2) The Trust may acquire, by gift or by devise or bequest, any property for the purposes of this Part and the Trust may agree to and carry out the conditions of the gift, devise or bequest.

(3) The rule of law against remoteness of vesting does not apply to any condition to which the Trust has agreed under this section.

(4) If the Trust acquires any property by gift or by devise or bequest, it may retain the property in the form in which it was acquired, subject to any condition to which the Trust has agreed in relation to the property.

(5) The Stamp Duties Act 1920 does not apply to or in respect of any such acquisition of property by the Trust.

Disposal of property

346. (1) In this section:

"condition" means a condition to which the Trust has agreed under section 345.

(2) The Trust may not sell, mortgage or otherwise dispose of any real property, or any property acquired by gift or by devise or bequest, except:

(a) if the property was acquired without any condition—with the approval of the Governor; or

(b) if the property was acquired subject to a condition—in accordance with the condition or subsection (3).

(3) If the Trust determines that any property acquired by the Trust subject to a condition is not required for the purposes of the Trust, the Trust may, with the approval of the Governor and regardless of the condition:

(a) sell the property and retain the proceeds of the sale; or

(b) exchange the property for other property; or

(c) give the property to any recreational, scientific or educational institution or to a Government Department, Administrative Office or public or local authority; or

(d) if the Trust is of the opinion that the property is of no commercial value—dispose of the property without valuable consideration.

Vesting of certain property

347. (1) The Minister may direct, by notice published in the Gazette, that any property that:

(a) is vested in the Crown and subject to the control and direction of the Minister; and

(b) in the opinion of the Minister:

(i) relates to the sciences and technologies associated with the mineral and energy industries; or

(ii) is necessary for the Trust's achievement of its objects,

is to cease to be vested in the Crown and is to vest in the Trust.

(2) If the Minister gives such a direction, the property described in the direction ceases to vest in the Crown and, without any further conveyance or transfer, vests in the Trust.

Division 4—Administration

Staff of the Trust etc.

348. (1) For the purposes of this Part:

(a) a Director of the Museum; and

(b) such other persons as may be necessary to enable the Trust to exercise its functions,

may be employed under Part 2 of the Public Sector Management Act 1988.

(2) The Trust may, with the approval of the Minister, arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a Government Department, an Administrative Office or a public or local authority.

(3) The Trust may engage such consultants as the Trust requires to exercise its functions.

The Director

349. (1) The Director is the chief executive officer of the Trust.

(2) The Director is responsible for the administration and management of the Museum, and of any services provided in connection with it, subject to and in accordance with any directions of the Trust.

(3) The Director has such other functions as are conferred or imposed on the Director by or under this or any other Act.

Committees

350. (1) The Trust may establish committees to assist it in connection with the exercise of any of its functions.

(2) A person may be appointed to be a member of such a committee whether or not the person is a trustee.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is, subject to the regulations, to be as determined by the Trust or (subject to any determination of the Trust) by the committee.

Division 5—Financial provisions

Financial year

351. (1) The financial year of the Trust is the year commencing on 1 July.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

Funds of the Trust

352. (1) The Trust is to establish at a bank in New South Wales an account to be known as the Geological and Mining Museum Trust Account (in this section referred to as **"the Trust Account"**).

(2) The funds of the Trust are to be paid to the credit of the Trust Account and are to consist of:

(a) any money appropriated by Parliament for the purposes of the Trust; and

(b) all money derived by the Trust from admission fees and from fees and other charges imposed for the hire of the Trust's property or any part of it; and

(c) all money derived by the Trust from the sale, leasing, letting or hire or other disposal by the Trust of any property which the Trust has power to sell, lease, let or hire or otherwise dispose of; and

(d) all money received by the Trust as profit arising out of any investment made by it in the exercise of its powers; and

(e) all money borrowed by the Trust; and

(f) all other money received from any source by the Trust.

(3) A payment of money must not be made to the credit of the Trust Account if the payment would be a breach of a condition affecting the money.

(4) The funds of the Trust are to be applied only:

(a) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the Trust in the exercise of its functions; and

(b) in the payment of any remuneration payable under this Part.

Investment powers

353. (1) The Trust has, in respect of the funds held by the Trust, the investment powers conferred on the Trust by Part 3 of the Public Authorities (Financial Arrangements) Act 1987.

(2) If Part 3 of that Act does not confer investment powers on the Trust in respect of any such funds, the Trust may invest those funds:

(a) in any manner authorised for the investment of trust funds; or

(b) in any other manner approved by the Minister with the concurrence of the Treasurer.

Investment common funds

354. (1) The Trust may establish one or more investment common funds.

(2) The Trust may from time to time, without liability for breach of trust, bring into or withdraw from any such investment common fund the whole or any part of trust funds or other funds held by the Trust.

(3) Subject to subsection (4), the Trust must periodically distribute the income of each investment common fund among the funds participating in the common fund, having regard to the extent of the participation of each fund in the common fund during the relevant accounting period.

(4) The Trust may, if it considers it expedient to do so, from time to time add some portion of the income of an investment common fund to the capital of the common fund or use some portion of the income to establish or augment a fund or funds as a provision against capital depreciation or reduction of income.

(5) If an investment is brought into an investment common fund:

(a) the Trust is taken to hold the investment on behalf of and for the benefit of the common fund instead of the participating trust fund or other fund; and

(b) the participating fund is taken to have contributed to the common fund an amount of money equivalent to the value attributed to the investment by the Trust at the time it is brought into the common fund; and

(c) on the withdrawal of the participating fund from the common fund, the amount of money to be withdrawn is to be the amount equivalent to the value attributed by the Trust to the equity in the common fund of the participating fund at the time of withdrawal.

(6) The inclusion in an investment common fund of trust funds does not affect any trust to which those trust funds (or money attributed to them) are subject.

(7) On the withdrawal of trust funds from an investment common fund, the funds (or money attributed to them) continue to be subject to the trust.

Terms of trust to prevail

355. In respect of the trust funds of the Trust:

(a) the investment powers of the Trust; and

(b) the power of the Trust to bring the trust funds into an investment common fund,

are subject to any express direction in or express condition of the trust.

Division 6—Miscellaneous

Reports to Minister

356. The Trust is required, in addition to any other report required by the Annual Reports (Statutory Bodies) Act 1984, to provide the Minister with such reports on the activities of the Trust as the Minister may from time to time direct.

Delegation by Trust and Director

357. (1) The Trust may delegate any function under this Act (other than this power of delegation) to any person.

(2) The Director may sub-delegate to a person any function delegated to the Director by the Trust, if the Director is authorised in writing to do so by the Trust.

Recovery of charges etc. by Trust

358. Any charge, fee or money due to the Trust may be recovered by the Trust as a debt in a court of competent jurisdiction.

PART 17—ADMINISTRATION

Division 1—Administration

Boards of management

359. (1) The Minister may constitute a board of management for the whole or any part of New South Wales.

(2) A board of management may exercise, in respect of the area for which it is constituted, such of the functions of the Minister or of the Director-General as are delegated to it under this Act.

(3) The regulations may provide for the constitution of a board of management and may regulate, or provide for the regulation of, its procedure.

Mining registrars and other staff

360. Mining registrars and such other staff as may be necessary for the purposes of this Act may be employed under Part 2 of the Public Sector Management Act 1988.

Inspectors

361. The Minister may, by instrument in writing, appoint a person to be an inspector for the purposes of this Act.

Exclusion of personal liability

362. No matter or thing done by a body constituted by or under this Act, by a member of any such body or by any person acting under the direction of any such body subjects any such member or person personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of this or any other Act.

Delegation of functions by Minister or Director-General

363. (1) The Minister may delegate any function under this Act (except this power of delegation) to the holder of any office.

(2) The Director-General may delegate any function under this Act (except this power of delegation or any function delegated to the Director-General by the Minister) to the holder of any office.

(3) A reference in this section to a function under this Act includes a reference to a function under a condition of an authority, a mineral claim or an opal prospecting licence.

Minister etc. not to be holder of an authority, mineral claim or opal prospecting licence

364. (1) Neither the Minister nor any person employed in the Department may be the holder of an authority, a mineral claim or an opal prospecting licence.

(2) This section does not prevent the Director-General from being the holder, on behalf of the Crown, of an exploration licence for an allocated mineral in respect of land within a mineral allocation area.

Disclosure of information etc.

365. (1) A person must not disclose any information obtained in connection with the administration or execution of this Act, unless the disclosure is made:

(a) with the consent of the person from whom the information was obtained; or

(b) in connection with the administration or execution of this Act; or

(c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or

(d) for the purposes of any investigation or inquiry conducted by a warden under this Act; or

(e) with the concurrence of the Minister.

(2) A person employed in the Department must not use for the purposes of personal gain any information obtained in connection with the administration or execution of this Act.

Maximum penalty: 50 penalty units.

Division 2—Classification of lands

Mining divisions

366. **(1)** The Governor may, by order published in the Gazette, constitute any land as a mining division and may, by the same or a subsequent order so published, name the division and fix its boundaries.

(2) A mining registrar is to be appointed for each mining division constituted under this section.

Reserves

367. **(1)** The Governor may, by order published in the Gazette, constitute any land as a reserve and may, by the same or a subsequent order so published, name the reserve and fix its boundaries.

(2) The Governor may, by an order under this section, give any one or more of the following directions:

(a) that no exploration licence is to be granted over land in the reserve;

(b) that no assessment lease is to be granted over land in the reserve;

(c) that no mining lease is to be granted over land in the reserve;

(d) that no mineral claim is to be granted over land in the reserve.

(3) In an order constituting land as a reserve, the Governor may stipulate that the reserve is to extend only to the surface of the land, to the surface of the land and the subsoil below the surface, to the surface of the land and the subsoil to a specified depth below the surface, or to the subsoil below or between any specified depth or depths below the surface of the land.

(4) If:

(a) an application for an exploration licence is made or pending in respect of land that is the subject of a direction under subsection (2) (a); or

(b) an application for an assessment lease is made or pending in respect of land that is the subject of a direction under subsection (2) (b); or

(c) an application for a mining lease is made or pending in respect of land that is the subject of a direction under subsection (2) (c); or

(d) an application for a mineral claim is made or pending in respect of land that is the subject of a direction under subsection (2) (d),

the application is a nullity to the extent to which it is made in respect of the land the subject of the direction, but, if the application is also made in respect of other land, the application is taken to have been made in respect of that other land.

Mineral allocation areas

368. **(1)** The Governor may, by order published in the Gazette, constitute any land as a mineral allocation area and may, by the same or a subsequent order so published, name the area and fix its boundaries.

(2) A mineral allocation area may be constituted for all minerals, for specified minerals or groups of minerals or for all minerals other than specified minerals or groups of minerals.

(3) More than one mineral allocation area may be constituted in respect of any land.

Notification areas

369. **(1)** The Dams Safety Committee may, by order published in the Gazette in relation to a prescribed dam, declare that the land described in the order, excluding land under the dam, is the notification area for the dam.

(2) A notification area is an area which surrounds a prescribed dam and in relation to which the Dams Safety Committee is required by this Act to be notified of certain proposals to grant assessment leases or mining leases.

Graticulation of the Earth's surface

370. **(1)** For the purposes of this Act, the surface of the Earth is taken to be divided into graticular sections:

(a) by the meridian of Greenwich and by the meridians that are at a distance from that meridian of 5 minutes, or a multiple of 5 minutes, of longitude; and

(b) by the equator and by parallels of latitude that are at a distance from the equator of 5 minutes, or a multiple of 5 minutes, of latitude,

each graticular section being bounded:

(c) by portions of 2 of those meridians that are at a distance from each other of 5 minutes of longitude; and

(d) by portions of 2 of those parallels of latitude that are at a distance from each other of 5 minutes of latitude.

(2) For the purposes of this Act, each graticular section is taken to be divided into 25 units, each unit being bounded:

(a) by portions of 2 meridians (being the meridian of Greenwich or the meridians that are at a distance from that meridian of 1 minute, or a multiple of 1 minute, of longitude) that are at a distance from each other of 1 minute of longitude; and

(b) by portions of 2 parallels of latitude (being the equator or parallels of latitude that are at a distance from the equator of 1 minute, or a multiple of 1 minute, of latitude) that are at a distance from each other of 1 minute of latitude.

Points etc. to be ascertained by reference to Australian Geodetic Datum

371. (1) If, for the purposes of this Act or for the purposes of an order, instrument or notification under 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 a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6,378,160 metres and a flattening of 100/29825 and by reference to the position of the Johnston Geodetic Station in the Northern Territory.

(2) The Johnston Geodetic Station is taken to be situated at 133 degrees, 12 minutes and 30.0771 seconds of East Longitude and at 25 degrees, 56 minutes and 54.5515 seconds of South Latitude and to have ground level of 571.2 metres above the spheroid referred to in subsection (1).

Division 3—Offences

Obstruction of wardens etc.

372. A person must not, without reasonable excuse, obstruct, hinder or resist a warden, a mining registrar, an inspector or any other person in the exercise of a function under this Act.

Maximum penalty: 20 penalty units.

Obstruction etc. of holder of authority etc.

373. A person must not, without reasonable excuse, obstruct or hinder the holder of an authority, a mineral claim or an opal prospecting licence from doing any act which that holder is authorised by this Act to do.

Maximum penalty: 20 penalty units.

False or misleading information etc.

374. A person must not:

(a) in or in connection with an application under this Act; or

(b) in purported compliance with any requirement under this Act,

furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 10 penalty units.

Proceedings for offences

375. (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a warden's court or before a Local Court constituted by a Magistrate sitting alone.

(2) For the purpose of dealing with such an offence, a warden's court has the functions of, and is taken to be, a Local Court.

Offences by corporations

376. (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under subsection (1) whether or not the corporation has been proceeded against or convicted under the provision concerned.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Division 4—Miscellaneous

Museums and laboratories

377. The Minister may establish and maintain in connection with the Department:

(a) museums for the purpose of providing instruction, by means of displays, classes, lectures or other methods, in geology, mineralogy, chemistry and engineering in their scientific and practical application to mining pursuits; and

(b) laboratories for the assaying and testing of mineral products or for other analytical determination.

Purchase of coal bearing land

378. The Minister may, from funds appropriated by Parliament, purchase on behalf of the Crown land containing seams of coal.

PART 18—SUPPLEMENTARY

Saving of royal prerogative

379. Except as expressly provided by this Act, this Act does not affect any prerogative of the Crown in respect of gold mines and silver mines.

Saving of other Acts etc.

380. Except as expressly provided by this Act, this Act does not affect any other Act or law that prohibits, regulates or restricts, or that has the effect of prohibiting, regulating or restricting:

(a) the grant, renewal or transfer of an authority, a mineral claim or an opal prospecting licence; or

(b) the exercise of any right conferred by or under this Act in respect of an authority, a mineral claim or an opal prospecting licence.

Prospecting unaffected by Environmental Planning and Assessment Act 1979

381. If a person is authorised under this Act to prospect on any land:

(a) nothing in, or done under, the Environmental Planning and Assessment Act 1979 or an environmental planning instrument operates so as to prevent the person from carrying on prospecting operations on that land; and

(b) to the extent to which anything in, or done under, that Act or any such instrument would so operate, it is of no effect in relation to the person.

Applications generally

382. **(1)** An application under this Act must be in or to the effect of the approved form.

(2) An application that is required to be lodged with a person must be so lodged in such manner, and during such times, as may be prescribed by the regulations but may, if the regulations so provide, be lodged with some other person.

Service of documents

383. (1) A document that is authorised or required under this Act to be served on any person may be served:

(a) personally or by post; or

(b) by leaving it with a person apparently of or above the age of 16 years at, or by posting it to, the person's place of business or, in the case of a corporation, the registered office of the corporation.

(2) If an owner or occupier of land on whom a document is authorised or required under this Act to be served is absent from the State or cannot, after diligent inquiry, be found, and that person's place of residence or business cannot, after diligent inquiry, be ascertained, the document may be served by affixing it on some conspicuous part of the land.

(3) If under this Act a document is authorised or required to be served on the holder of an authority or a mineral claim and there is more than one such holder, service on any one such holder of the document, together with copies of the document addressed to the other holders, is taken to be service on all of the holders.

(4) If a person has more than one place of business, service may be effected under this section at any of those places.

(5) Nothing in this section prevents service of a document from being effected by facsimile transmission or other electronic means, or by the use of the facilities of a document exchange, but the burden of establishing that service has been so effected lies on the person asserting that fact.

Defence in proceedings for defamation

384. (1) A person has qualified privilege in any proceedings for defamation arising out of an objection lodged under this Act.

(2) This section does not limit any other right, privilege or immunity that a person has as a defendant in any such proceedings.

Payment of compensation

385. Any amount payable under this Act by way of compensation is to be paid out of money appropriated by Parliament.

Recovery of unpaid fees etc.

386. Any fee or charge imposed by or under this Act may be recovered, as a debt, in any court of competent jurisdiction.

Government agencies

387. The Minister may, by order published in the Gazette, designate a corporation established by an Act as a Government agency for the purposes of the definition of "Government agency" in the Dictionary of words and expressions at the end of this Act.

Regulations

388. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to any matter referred to in Schedule 4.

(2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

Repeals

389. (1) The Mining Act 1973 and the Coal Mining Act 1973 are repealed.

(2) The Mining Regulations 1974 and the Coal Mining Regulations 1974 are repealed.

Amendment of other Acts

390. Each Act mentioned in Schedule 5 is amended in the manner set out in that Schedule.

Savings, transitional and other provisions

391. Schedule 6 has effect.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES

(Secs. 41, 52, 63 and 64)

PART 1—ASSESSMENT LEASES

Notification of Government agencies and councils

1. (1) Before granting an assessment lease, the Minister must cause notice of the proposal to be served on:

(a) each Government agency that, in the opinion of the Minister, would be materially affected by the granting of the lease; and

(b) the Director of Planning; and

(c) each council within whose local government area the land the subject of the proposed lease is situated.

(2) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease (on the grounds that the authority concerned has major proposals for some other use of that land) may be made to the Minister on or before the date specified in the notice.

(3) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

Objections to granting of assessment lease

2. (1) A public authority on which a notice under this Division is served may object to the granting of an assessment lease on the grounds that the person or body has major proposals for some other use of the land.

(2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(3) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the applicant for the assessment lease concerned.

Resolution of objections

3. (1) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with any objection under this Part and, if agreement is not reached concerning the acceptance, modification or withdrawal of the objection, the matter is to be referred to the Premier.

(2) If any matter is so referred, the Premier may give such decision as the Premier considers appropriate.

(3) If required by the Premier to do so, the Minister must refer such a matter to a warden for inquiry and report.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

Granting of assessment lease if objection made

4. An assessment lease in respect of which an objection has been duly made may not be granted unless the objection is withdrawn or otherwise resolved or is rejected by the Premier.

PART 2—MINING LEASES

Division 1—Notification of Government agencies

Notification of Government agencies

5. (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be served on each Government agency that, in the opinion of the Minister, would be materially affected by the granting of the lease.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be served on each Government agency that, in the opinion of the Minister, would be materially affected by the granting of the lease.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

Notification of Director of Planning

6. (1) Before granting a mining lease (whether by way of tender or otherwise), the Minister must cause notice of the proposal to be served on the Director of Planning.

(2) Such a notice:

(a) must state that a tender for the lease or an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

(c) must contain a detailed description of the works to be undertaken if the lease is granted, including works and activities relating to:

(i) the preparation of the land for mining; and

(ii) the rehabilitation of the land either during the carrying on of mining operations or after they have ceased; and

(d) must contain a copy of any environmental impact statement that is required by Part 5 of the Environmental Planning and Assessment Act 1979 to be prepared in relation to the tender or application; and

(e) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(3) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

(4) If, before granting a mining lease, the Minister becomes aware that the detailed description contained in a notice served under this clause requires alteration for any reason, the Minister must, before granting the lease, cause notice of the alteration to be served on the Director of Planning.

Notification of Dams Safety Committee

7. (1) Before inviting tenders for a mining lease for coal in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the Dams Safety Committee.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of the lease on grounds relating to the safety of a prescribed dam, or proposals for the inclusion in the lease of any condition relating to the safety of the prescribed dam, may be made to the Minister on or before the date specified in the notice.

(3) Before granting a mining lease for coal (otherwise than by way of tender) in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the Dams Safety Committee.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease on grounds relating to the safety of a prescribed dam, or proposals for the inclusion in the lease of any condition relating to the safety of the prescribed dam, may be made to the Minister on or before the date specified in the notice.

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

Notification of controlling bodies of exempted areas

8. (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be served on the controlling body of each exempted area to which the invitation will relate.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be served on the controlling body of each exempted area over which the lease is sought.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

Objections to granting of mining lease

9. (1) An authority (other than the Dams Safety Committee) on which a notice under this Division is served:

(a) may object to the granting of a mining lease; or

(b) may propose that specified conditions be included in the lease.

(2) The Dams Safety Committee, in respect of land within a notification area:

(a) may object (on grounds relating to the safety of the prescribed dam) to the granting of a mining lease for coal; or

(b) may propose that specified conditions relating to the safety of the prescribed dam be included in the lease.

(3) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(4) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the tenderer or applicant for the mining lease concerned.

(5) If the Minister does not accept the objections or proposals of the Dams Safety Committee, or if the Dams Safety Committee fails to make any proposals or to inform the Minister that it does not propose to make any proposals, the matter must be dealt with in consultation with the Minister administering the Dams Safety Act 1978.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

Resolution of objections

10. (1) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with any objection or proposal made under this Division and, if agreement is not reached concerning the acceptance, modification or withdrawal of the objection or proposal, the matter is to be referred to the Premier.

(2) If any matter is so referred, the Premier may give such decision as the Premier considers appropriate.

(3) If required by the Premier to do so, the Minister must refer such a matter to a warden for inquiry and report.

Granting of mining lease if objection or proposal made

11. (1) If an objection to the granting of a mining lease is duly made:

(a) in the case of an objection to the invitation of tenders—the invitation must not be made; or

(b) in the case of an objection to the granting of a mining lease—the lease must not be granted,

unless the objection is withdrawn or otherwise resolved or is rejected by the Premier.

(2) A mining lease must include:

(a) any condition proposed under this Division (unless the proposal for the inclusion of the condition is withdrawn or is rejected by the Premier) or, if such a condition is modified, the condition as so modified; and

(b) any condition directed by the Premier to be included in the lease.

(3) The failure to include a condition in a mining lease does not affect the validity of the lease, but the Minister may, by instrument in writing, amend the lease so as to include the condition omitted.

(4) The Minister must cause to be served on the holder of a mining lease amended under this clause a written notice setting out details of the amendment.

(5) Such an amendment takes effect on the date on which the notice is served or on such later date as may be specified in the notice.

Division 2—Notification of councils etc. where development consent required for mining

Application of Division

12. This Division applies to land for which development consent is required before the land may be used for the purpose of obtaining minerals.

Notification of applicant and council

13. (1) Before granting a mining lease (whether by tender or otherwise) over land to which this Division applies, the Minister:

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

(a) must cause a written notice to be served on the applicant or tenderer requiring the applicant or tenderer, on or before the date specified in the notice, to apply to the appropriate consent authority for development consent to the use of the land for the purpose of obtaining minerals; and

(b) must cause a written notice to be served on the consent authority concerned informing the authority:

(i) that the applicant or tenderer has been required to apply for development consent; and

(ii) that proposals for the inclusion in the mining lease of conditions (including special purpose conditions) which the authority wishes to have included in the lease should be lodged with the Director-General on or before such date as is specified in the notice.

(2) This clause does not apply to the granting of a mining lease over land in respect of which a development consent to the use of the land for the purpose of obtaining minerals is in force.

Consent of landowner not necessary in application required by this Division

14. Any requirement of the Environmental Planning and Assessment Act 1979 that an application for development consent be accompanied by the consent of the owner of the land concerned does not apply to an application under this Division.

Definition

15. In this Division:

"special purpose condition" means a condition concerning:

(a) the preparation of land for mining; or

(b) the mining methods to be employed while mining operations are being carried on; or

(c) the rehabilitation of land, either while mining operations are being carried on or after they have ceased; or

(d) the safety measures to be adopted, either before mining operations are commenced, while they are being carried on or after they have ceased; or

(e) the security to be given with regard to the performance of any matter referred to in paragraph (a), (b), (c) or (d).

Division 3—Notification of councils etc. where development consent not required for mining

Application of Division

16. This Division applies to land for which no development consent is required before the land may be used for the purpose of obtaining minerals.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

Notification of councils

17. (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be served on each council within whose local government area is situated the land to which the invitation relates.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be served on each council within whose local government area is situated the land over which the mining lease is proposed to be granted.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

Objections to granting of mining lease

18. (1) A council on which a notice is served under this Division:

(a) may object to the granting of a mining lease; or

(b) may propose that specified conditions be included in the mining lease.

(2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(3) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the tenderer or applicant for the mining lease concerned.

Consideration of objections

19. In deciding whether or not to grant a mining lease, the Minister must take into account any objection or proposal made under this Division.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

Division 4—Notification of owners of private land

Application of Division

20. This Division applies to a mining lease that is proposed to extend to the surface of private land or to the surface of Crown land held under a pastoral lease.

Notification of owners and occupiers of certain land

21. (1) Before inviting tenders for a mining lease to which this Division applies, the Minister must cause notice of the proposal to be served on any owner or occupier of the land concerned.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of the lease on the grounds that the land is agricultural land may be made to the Minister within 28 days after the date on which the notice is served.

(3) An applicant for a mining lease to which this Division applies must (within 21 days after lodging the application) cause notice of the application to be served on any owner or occupier of the land concerned.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description, prepared in the manner prescribed by the regulations, of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease on the grounds that the land is agricultural land may be made to the Minister within 28 days after the date on which the notice is served.

(5) A copy of every notice served in accordance with subclause (3) must be lodged with the Director-General within 21 days after the date on which the notice was served, together with a statutory declaration to the effect that each such notice was served and setting out the name and address of each owner or occupier on whom it was served.

Objections to granting of mining lease

22. (1) An owner or occupier of private land, or of Crown land held under a pastoral lease, may object to the granting of the mining lease concerned on the ground that the land, or any part of the land, over which the lease is sought is agricultural land.

(2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

(3) Subclause (1) does not apply if:

(a) in the case of private land—every owner and occupier of the land; or

(b) in the case of Crown land held under a pastoral lease—every occupier of the land,

consents in writing to the granting of the mining lease over the land or if the applicant for the mining lease consents in writing to the surface of the land being excluded from the application.

(4) A written consent given under this clause is irrevocable.

(5) On receipt of an objection under this clause, the Director-General is to refer the objection to the Director-General of the Department of Agriculture who is to determine the objection in accordance with Schedule 2.

Agricultural land

23. (1) If land is determined to be agricultural land as a consequence of an objection under this Division:

(a) in the case of an objection to the invitation of tenders—the invitation must not be made; or

(b) in the case of an objection to the granting of a mining lease—the lease must not be granted,

except with the written consent of the occupier (and, in the case of private land, the owner) of the land.

(2) A written consent given under this clause is irrevocable.

(3) A mining lease may not be granted beneath the surface of any agricultural land except at such depths, and subject to such conditions, as the Minister considers sufficient to minimise damage to the surface.

(4) A mining lease may nevertheless be granted over any part of land that has been determined to be agricultural land, including the surface of any such land, if the Minister considers that the granting of the lease over that part of the land is necessary to give access to any other part of the land to which the lease applies.

Division 5—Notification of other persons

Notification of the general public

24. (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be published in the Gazette, in a newspaper circulating generally in the State and in one or more newspapers circulating in the locality in which the land is situated.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

(c) must state that objections to the granting of the lease may be made to the Minister by any person (other than a person referred to in clause 28); and

(d) must state that such objections should be made on or before the date specified in the notice.

(3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be published in a newspaper circulating generally in the State and in one or more newspapers circulating in the locality concerned.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease may be made to the Minister by any person (other than a person referred to in clause 28); and

(d) must state that such objections should be made on or before the date specified in the notice.

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of publication of the notice.

Notification of owners of prescribed dams

25. (1) Before inviting tenders for a mining lease for coal in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the owner of the relevant prescribed dam.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of a mining lease may be made to the Minister on or before the date specified in the notice by any owner of the prescribed dam (other than a person referred to in clause 28) and may also be made under Division 1 (on grounds relating to the safety of the prescribed dam) by the Dams Safety Committee.

(3) Before granting a mining lease for coal in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the owner of the relevant prescribed dam.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease may be made to the Minister on or before the date specified in the notice by any owner of the prescribed dam (other than a person referred to in clause 28) and may also be made under Division 1 (on grounds relating to the safety of the prescribed dam) by the Dams Safety Committee.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

Objections to granting of mining lease

26. (1) Any person (other than a person referred to in clause 28) may object to the granting of a mining lease.

(2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(3) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the tenderer or applicant for the mining lease concerned.

Warden's inquiry and report

27. (1) The Minister may not invite tenders for a mining lease, or grant a mining lease, until a warden has inquired into and reported on any objection under this Division.

(2) At the conclusion of the inquiry, the warden must announce in open court the warden's finding and the purport of the warden's report and must transmit the finding and report to the Minister.

Certain persons not entitled to object

28. An objection may not be made under this Division:

(a) by any public authority that is entitled to object under Division 1 or 3 to the granting of a mining lease; or

(b) by any person who is entitled, under the Environmental Planning and Assessment Act 1979, to make submissions in relation to the granting of any development consent that is required before the land concerned may be used for the purpose of obtaining minerals.

SCHEDULE 2—AGRICULTURAL LAND

(Secs. 179 and 222 and cl. 22, Sch. 1)

Definitions

1. (1) In this Schedule:

"agricultural land" means:

(a) land that has been sown with not less than 2 crops of an annual species during the period of 10 years immediately preceding the relevant date; or

(b) land that has been sown with 1 crop of an annual species during the period of 10 years immediately preceding the relevant date if the relevant authority is satisfied that:

SCHEDULE 2—AGRICULTURAL LAND—*continued*

(i) having regard to the date on which the land was brought under cultivation, it would not be reasonable to expect more than one such crop to have been sown; and

(ii) there was a sufficient reason for not having brought the land under cultivation at an earlier date; or

(c) land on which:

(i) at the relevant date, shade, shelter or windbreak trees are growing; or

(ii) at any time during the period of 10 years immediately preceding the relevant date, edible fruit or nut bearing trees, vines or any other perennial crop approved by the relevant authority have or has been growing; or

(d) pastures:

(i) that are sown with seed of a species and at a rate of application, or treated with fertiliser of a composition and at a rate of application, satisfactory to the relevant authority; and

(ii) that have, as a result of that sowing or treatment, maintained a level of pasture production that is substantially above that which might be expected of natural pastures; or

(e) land that is used, to an extent acceptable to the relevant authority, for the production of grass seed, pasture legume seed, hay or silage; or

(f) land that has a preponderance of improved species of pasture grasses;

"the relevant authority" means the Director-General of the Department of Agriculture or any officer of that Department authorised by the Director-General of that Department to exercise functions under this Schedule;

"the relevant date" means the date or dates with reference to which the relevant authority is required under clause 2 to decide whether or not any land is agricultural land.

(2) For the purposes of paragraphs (a) and (b) of the definition of "agricultural land" in subclause (1), land is not to be treated as having been sown with a crop of an annual species unless, in the opinion of the relevant authority, the crop sown was carried through to a successful use.

Decision by the relevant authority as to whether or not land is agricultural land

2. (1) When the relevant authority is required to decide whether or not any land is agricultural land, the relevant authority must do so:

(a) in the case of a reference under section 179, by deciding whether or not the land was agricultural land on the date on which the application for the mineral claim concerned was lodged; and

SCHEDULE 2—AGRICULTURAL LAND—*continued*

(b) in the case of a reference under section 222, by deciding whether or not the land was agricultural land on the date on which the notice, pursuant to which the objection referred to in that section was made, was served in accordance with section 221; and

(c) in the case of a reference under clause 22 of Schedule 1, by deciding whether or not the land was agricultural land on the date on which the application for the mining lease concerned was lodged.

(2) If the Director-General, when referring a question for decision under clause 22 of Schedule 1, certifies a date pursuant to clause 3 of this Schedule, the relevant authority may not decide, pursuant to subclause (1) (c), that the land concerned is agricultural land unless satisfied that it was agricultural land on the date so certified.

Date to be certified by Director-General

3. When referring a question for decision under clause 22 of Schedule 1, the Director-General, if the applicant for a mining lease over any land was, when the application was lodged, the holder of an exploration licence or mineral claim over that land, must issue to the relevant authority a certificate to that effect and as to the date on which the application for that licence or claim was lodged.

Relevant authority may decide that part only of land is agricultural land

4. If the relevant authority is required to decide whether or not any land is agricultural land, nothing in this Act operates so as to prevent the relevant authority from deciding that a part only of the land is agricultural land.

SCHEDULE 3—THE GEOLOGICAL AND MINING MUSEUM

(Sec. 342)

PART 1—THE TRUSTEES

Chairperson of the Trust

1. (1) Of the trustees, one is to be appointed as Chairperson of the Trust (in and by the trustee's instrument of appointment or by another instrument executed by the Governor).

(2) The Governor may remove a trustee from the office of Chairperson at any time.

(3) A trustee who is Chairperson vacates the office of Chairperson if the trustee:

(a) is removed from that office by the Governor; or

(b) resigns that office by instrument in writing addressed to the Minister; or

(c) ceases to be a trustee.

SCHEDULE 3—THE GEOLOGICAL AND MINING MUSEUM—*continued*

Deputies

2. (1) The Minister may, from time to time, appoint a person to be the deputy of a trustee, and the Minister may revoke any such appointment.

(2) In the absence of a trustee, the trustee's deputy:

(a) is, if available, to act in the place of the trustee; and

(b) while so acting, has all the functions of the trustee and is taken to be the trustee.

(3) The deputy of a trustee who is Chairperson of the Trust does not have the trustee's functions as Chairperson.

(4) A person while acting in the place of a trustee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Term of office

3. (1) Subject to this Schedule, a trustee holds office for such period (not exceeding 3 years) as may be specified in the trustee's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(2) A person may be re-appointed as a trustee but no trustee is to hold office for more than 3 consecutive terms.

Remuneration

4. A trustee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the trustee.

Vacancy in office of a trustee

5. (1) The office of a trustee becomes vacant if the trustee:

(a) dies; or

(b) completes a term of office and is not re-appointed; or

(c) resigns the office by instrument in writing addressed to the Minister; or

(d) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or

(e) is absent from 4 consecutive meetings of the Trust of which reasonable notice has been given to the trustee personally or in the ordinary course of post (unless the trustee is granted leave by the Trust or unless, before the expiration of 6 weeks after the last of those meetings, the trustee is excused by the Trust for being absent from those meetings); or

(f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

(g) becomes a mentally incapacitated person; or

(h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Governor may remove a trustee from office at any time.

(3) Without limiting the generality of subclause (2), the Governor may remove from office a trustee who contravenes the provisions of clause 7.

Filling of vacancy in office of trustee

6. If the office of any trustee becomes vacant, a person is, subject to this Schedule, to be appointed to fill the vacancy.

Disclosure of pecuniary interests

7. (1) If:

(a) a trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Trust; and

(b) the interest appears to raise a conflict with the proper performance of the trustee's duties in relation to the consideration of the matter,

the trustee is required, as soon as possible after the relevant facts have come to the trustee's knowledge, to disclose the nature of the interest at a meeting of the Trust.

(2) A disclosure by a trustee at a meeting of the Trust that the trustee:

(a) is a member, or is in the employment, of a specified company or other body; or

(b) is a partner, or is in the employment, of a specified person; or

(c) has some other specified interest relating to a specified company or other body or a specified person,

is sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded in a book kept for the purpose and that book is required to be open at all reasonable hours to the inspection of any person on payment of the fee determined by the trustees.

(4) After a trustee has disclosed the nature of an interest in any matter or thing, the trustee may not, unless the Minister or the other trustees otherwise determine:

(a) be present during any deliberation of the Trust, or take part in any decision of the Trust, with respect to that matter; or

(b) exercise any function under this Act with respect to that thing.

(5) For the purposes of the making of a determination of the trustees under subclause (4), a trustee who has a direct or indirect pecuniary interest in a matter to which the disclosure relates may not:

(a) be present during any deliberation of the other trustees for the purposes of making the determination; or

(b) take part in the making by the other trustees of the determination.

(6) A contravention of this clause does not invalidate any decision of the trustees or the exercise of any function under this Act.

(7) This clause does not apply to or in respect of an interest of a trustee (being the provision of goods or services to the trustee by the Trust) if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

(8) In this clause:

(a) a reference to a meeting of the Trust includes a reference to a meeting of a committee of the Trust; and

(b) a reference to a trustee includes a reference to a member of such a committee.

Effect of certain other Acts

8. (1) The Public Sector Management Act 1988 does not apply to or in respect of the appointment of a trustee and a trustee is not, as a trustee, subject to that Act (except Part 8).

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a trustee or from accepting and retaining any remuneration payable to the person under this Act as a trustee.

(3) The office of a trustee is not, for the purposes of any Act, an office or place of profit under the Crown.

PART 2—THE PROCEDURE OF THE GEOLOGICAL AND MINING MUSEUM TRUST

General procedure

9. The procedure for the calling of meetings of the Trust and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Trust.

SCHEDULE 3—THE GEOLOGICAL AND MINING MUSEUM—*continued*

Quorum

10. The quorum for a meeting of the Trust is 5 trustees.

Presiding trustee

11. (1) The Chairperson of the Trust or, in the absence of the Chairperson, another trustee elected to chair the meeting by the trustees present is to preside at a meeting of the Trust.

(2) The person presiding at any meeting of the Trust has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

12. A decision supported by a majority of the votes cast at a meeting of the Trust at which a quorum is present is the decision of the Trust.

Minutes

13. The Trust must cause full and accurate minutes to be kept of the proceedings of each meeting of the Trust.

The Director

14. The Director, if not a trustee:

(a) is entitled to be heard by the Trust on any matter considered by the Trust and, unless the Trust otherwise directs, is entitled to be present at each meeting of the Trust; and

(b) is an ex officio member of each committee of the Trust.

SCHEDULE 4—REGULATION MAKING POWERS

(Sec. 388)

Prospecting

1. Regulating prospecting and the carrying on of operations for that purpose, the methods which may or may not be used for that purpose and the duties of specified persons in relation to prospecting operations.

Mining

2. Regulating mining and the carrying on of operations for that purpose, the methods which may or may not be used for that purpose and the duties of specified persons in relation to mining operations.

SCHEDULE 4—REGULATION MAKING POWERS—*continued*

Fossicking

3. Regulating fossicking and the carrying on of operations for that purpose and the methods which may or may not be used for that purpose.

Administrative matters

4. Prescribing the qualifications for, and the functions of, wardens, mining registrars, mining inspectors, mining surveyors and other persons acting in the administration of this Act.

Mining improvements

5. Regulating the construction, use and maintenance of mining improvements on Crown lands in cases where a mining lease has not been granted.

Tourist activities

6. Regulating the conduct of tourist activities in mining areas.

Wardens' inquiries

7. Prescribing the procedure to be followed in connection with any inquiry held by a warden under this Act.

Fees, charges and refunds

8. Regulating the imposition of fees and charges and authorising the refund or waiver of fees and charges.

Statistics, records and accounts

9. Providing for:

(a) the compilation of mining statistics; and

(b) the furnishing of information for the purpose of enabling mining statistics to be compiled; and

(c) the keeping of records and books of account; and

(d) the inspection of, and the taking of extracts from, records and books so kept; and

(e) the furnishing of returns and records.

Arbitrators' costs

10. Regulating arbitrators' costs under this Act.

SCHEDULE 4—REGULATION MAKING POWERS—*continued*

The Geological and Mining Museum Trust

11. Providing, in relation to the Geological and Mining Museum Trust, for:

(a) the meetings of the Trust; and

(b) the committees of the Trust; and

(c) the use and custody of the seal of the Trust; and

(d) the use of property or services provided by the Trust; and

(e) the methods to be used in the care of property of the Trust; and

(f) the determination and payment of fees to the Trust; and

(g) the election of a person by the Trust who has rendered any service to the Geological and Mining Museum or who has furthered the objects of the Trust as an honorary associate of the Museum.

Savings and transitional provisions

12. Prescribing provisions of a savings or transitional nature consequent on the consolidation of any existing leases under Part 6 or the transfer of parts of assessment leases or mining leases under Part 7.

SCHEDULE 5—AMENDMENT OF OTHER ACTS

(Sec. 390)

Aboriginal Land Rights Act 1983 No. 42

Section 45 (**Mineral rights and mining on Aboriginal land**):

(a) Omit section 45 (12) (b), insert instead:

(b) in respect of any other mineral, pursuant to any right conferred by or under the Mining Act 1992, or any other law, being a right in force at the time the lands were vested in that Council or a mineral claim or authority referred to in subsection (13) (b), or a renewal or extension of any such right, mineral claim or authority.

(b) From section 45 (13) (a), omit "authority, claim, licence, permit or right", insert instead "right, mineral claim or authority".

(c) From section 45 (13) (b), omit "claim or the granting of an authority pursuant to any rights conferred by section 26E or 50 of the Mining Act 1973", insert instead "mineral claim or the granting of an authority pursuant to an exclusive right conferred by the Mining Act 1992".

Coal Acquisition Act 1981 No. 109

Section 3 (**Definitions**):

From the definition of "coal", omit "Coal Mining Act, 1973,", insert instead "Mining Act 1992".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Coal Mines Regulation Act 1982 No. 67

(1) Section 5 (**Definitions**):

From the definition of "colliery holding" in section 5 (1), omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 124 (**Owners of land on which abandoned mines are situated may be required to close shafts and outlets**):

Omit section 124 (8) (b), insert instead:

(b) a mine the subject of a mining lease granted under the Mining Act 1992 in respect of coal.

(3) Section 139 (**Barriers and protective pillars**):

From section 139 (5) (b), omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

(4) Section 142 (**Definitions**):

(a) From the definition of "prospecting area", omit "authorisation or a concession granted under the Coal Mining Act 1973", insert instead "authority granted under the Mining Act 1992".

(b) From the definition of "registered holder", omit "authorisation or concession granted under the Coal Mining Act 1973", insert instead "authority granted under the Mining Act 1992".

(5) Section 146 (**Definitions**):

From paragraph (a) of the definition of "mine", omit "coal lease under the Coal Mining Act 1973", insert instead "mining lease in respect of coal under the Mining Act 1992".

Coal Ownership (Restitution) Act 1990 No. 19

Section 3 (**Definitions**):

From the definition of "colliery holding", omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

Conveyancing Act 1919 No. 6

(1) Section 6 (**Application of Act to Real Property Act 1900 and other Acts**):

From section 6 (2), omit ", the Mining Act 1973, the Coal Mining Act 1973", insert instead "or the Mining Act 1992".

(2) Schedule 3 (**Conditions of sale**):

From clause 3 (a), omit "Mining Act 1973, or the Coal Mining Act 1973", insert instead "Mining Act 1992".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Crown Lands Act 1989 No. 6

(1) Section 3 (**Definitions**):

From paragraph (b) of the definition of "mineral" in section 3 (1), omit "Mining Act 1973 or the Coal Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 49 (**Licences for removal of certain minerals**):

Omit "Mining Act 1973" wherever occurring, insert instead "Mining Act 1992".

Crown Lands (Continued Tenures) Act 1989 No. 7

Schedule 6 (**Conditions etc.**):

From the definition of "material" in clause 2 (6), omit "Mining Act 1973", insert instead "Mining Act 1992".

Dams Safety Act 1978 No. 96

From sections 8, 16, 18, omit "Mining Act 1973" wherever occurring, insert instead "Mining Act 1992".

Energy Administration Act 1987 No. 103

Section 37 (**Operation of certain other Acts**):

From section 37 (2), omit "Mining Act 1973 or the Coal Mining Act 1973, and the Corporation is bound by each of those Acts", insert instead "Mining Act 1992, and the Corporation is bound by that Act".

Forestry Act 1916 No. 55

(1) Section 21 (**Land subject to mining law**):

From section 21, omit "Mining Act 1973, the Coal Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 27 (**Penalty for unlawfully taking timber, products or forest materials**):

From section 27 (3) (a) (ii), omit "Mining Act 1973 or the Coal Mining Act 1973 or any tenure granted under either of those Acts", insert instead "Mining Act 1992 or any mineral claim or mining lease under that Act".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Irrigation Act 1912 No. 73

From section 25, omit "Mining Act, 1973, or the Coal Mining Act, 1973", insert instead "Mining Act 1992".

Local Government Act 1919 No. 41

(1) Section 4 (**Definitions**):

(a) From the definition of "Lease", omit "claim registered under Part 4 of the Mining Act 1973,", insert instead "mineral claim under the Mining Act 1992".

(b) From the definition of "Lessee", omit "claim under the Mining Act 1973", insert instead "mineral claim under the Mining Act 1992".

(2) Section 531 (**Application and interpretation**):

From section 531 (3), omit "Mining Act, 1973, and the Coal Mining Act, 1973", insert instead "Mining Act 1992".

Maritime Services Act 1935 No. 47

(1) Section 13A, section 13H, section 13JA, section 13JB:

Omit "coal or shale or any substance prescribed as a mineral under the Mining Act, 1973" wherever occurring, insert instead "any mineral within the meaning of the Mining Act 1992".

(2) Section 13C, section 13J, section 13JD, section 13JF, section 13YB, section 13YC, section 13Z:

From sections 13C (2), 13J (3), 13JD (2), 13JF (7), 13YB, 13YC and 13Z, omit "Mining Act 1973 or the Coal Mining Act 1973" wherever occurring, insert instead "Mining Act 1992".

Mine Subsidence Compensation Act 1961 No. 22

(1) Section 4 (**Definitions**):

From the definition of "Colliery holding", omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 14A (**Recovery by Board in the case of unlawful mining operations**):

Omit section 14A (1), insert instead:

(1) In this section, **"unlawful mining operations"** means mining operations, in relation to coal or shale, carried out by a person in contravention of:

(a) Part 2 of the Mining Act 1992; or

(b) any enactment, covenant or stipulation by which the person is bound relating to the method or extent of the extraction of coal or shale.

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Mines Inspection Act 1901 No. 75

From sections 4, 48A, 50 and 54, omit "Mining Act 1973" wherever occurring, insert instead "Mining Act 1992".

Mines Rescue Act 1925 No. 3

Section 6 (Contribution to rescue stations by proprietor of colliery holding):

From the definition of "colliery holding" in section 6 (1), omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

National Parks and Wildlife Act 1974 No. 80

(1) **Section 39 (Existing interests):**

From section 39 (4), omit "authorisation, lease or licence under the Mining Act 1973, the Coal Mining Act 1973", insert instead "lease or licence under the Mining Act 1992".

(2) **Section 41 (Mining):**

From section 41 (2), omit "Mining Act 1973, the Coal Mining Act 1973", insert instead "Mining Act 1992".

(3) **Section 47C (Limitations on power to reserve under s. 47B):**

From section 47C (c), omit "or Ministers administering the Mining Act 1973 and the Coal Mining Act 1973", insert instead "or the Minister administering the Mining Act 1992".

(4) **Section 47H (Existing interests):**

From section 47H (4), omit "authorisation, lease or licence under the Mining Act 1973, the Coal Mining Act 1973,", insert instead "lease or licence under the Mining Act 1992".

(5) **Section 47J (Provisions relating to mining):**

(a) Omit section 47J (1) (a) and (b), insert instead:

(a) any mining lease under the Mining Act 1992; or

(b) From section 47J (2) and (4), omit "Mining Act 1973, the Coal Mining Act 1973" wherever occurring, insert instead "Mining Act 1992".

(c) From section 47J (6), omit "claim shall not be registered under Part 4 of the Mining Act 1973,", insert instead "mineral claim must not be registered under the Mining Act 1992".

(d) From section 47J (7), omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Petroleum (Onshore) Act 1991

(1) Section 3 (**Definitions**):

From the definition of "petroleum" in section 3 (1), omit "Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 7 (**Offence of prospecting or mining without authority**):

Omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

(3) Sections 73, 103, 104, 105:

Omit "Mining Act 1973", wherever occurring, insert instead "Mining Act 1992".

(4) Section 73 (**Disputes between holders of petroleum titles and other persons carrying on operations on the land**):

Omit section 73 (1) (b).

(5) Section 105 (**Wardens' courts**):

Omit "Part 9", insert instead "Part 15".

Radiation Control Act 1990 No. 13

Section 38 (**Consultation and co-operation between Ministers**):

From section 38 (a), omit "Mining Act 1973", insert instead "Mining Act 1992".

Stamp Duties Act 1920 No. 47

Section 3 (**Definitions**):

From paragraph (a) of the definition of "Mining company" in section 3 (1), omit "Mining Act 1973", insert instead "Mining Act 1992".

State Coal Mines Act 1912 No. 70

(1) Section 1 (**Short title and definitions**):

From the definition of "Crown lands" in section 1 (2), omit "Crown lands within the meaning of section 6 of the Mining Act, 1973", insert instead "Crown land within the meaning of the Mining Act 1992".

(2) Section 2 (**Crown lands may be set apart**):

From section 2 (2), omit "claim shall not be registered over any such lands under Part IV of the Mining Act, 1973", insert instead "mineral claim must not be registered under Part 9 of the Mining Act 1992 over any such lands".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

(3) Section 7 (**Appeal against valuation**):

From section 7 (3), omit "claim shall not be registered over the land so described under Part IV of the Mining Act, 1973", insert instead "mineral claim must not be registered under Part 9 of the Mining Act 1992 over the land so described".

(4) Section 10 (**Private lands may be set apart**):

(a) From section 10 (1), omit "Parts IV and V of the Mining Act, 1973,", insert instead "Parts 3–9 of the Mining Act 1992".

(b) From section 10 (2), omit "Part VIII of the Coal Mining Act 1973", insert instead "Part 13 of the Mining Act 1992".

(5) Section 15 (**Mine to be vested in authority**):

(a) From section 15 (5), omit "Mining Act, 1973" where firstly and secondly occurring, insert instead "Mining Act 1992".

(b) From section 15 (5), omit "Coal Mining Act, 1973, or the Mining Act, 1973, as the case may be", insert instead "Mining Act 1992".

(6) Section 21A (**Authority may prospect for coal**):

Omit "Coal Mining Act, 1973,", insert instead "Mining Act 1992".

Trustee Act 1925 No. 14

(1) Section 9 (**Vesting**):

From section 9 (3A), omit "Mining Act 1973 or the Coal Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 78 (**Effect of vesting order**):

From section 78 (4), omit "Mining Act 1973", insert instead "Mining Act 1992".

Very Fast Train (Route Investigation) Act 1989 No. 44

(1) Section 19 (**Determination of claim for compensation**):

(a) From section 19 (3), omit "Part 9 of the Mining Act 1973", insert instead "Part 15 of the Mining Act 1992".

(b) From section 19 (6), omit "Section 146 (Costs may be allowed) of the Mining Act 1973", insert instead "Section 317 (Costs may be allowed) of the Mining Act 1992".

(2) Section 20 (**Delegation**):

From section 20 (b), omit "Mining Act 1973", insert instead "Mining Act 1992".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Western Lands Act 1901 No. 70

(1) Section 3 (**Definitions**):

From section 3 (1), omit the definition of "Minerals", insert instead:

"Mineral" means any mineral within the meaning of the Mining Act 1992.

(2) Section 18E (**Subsisting leases: extension**):

Omit section 18E (2) (c) (iii), insert instead:

(iii) within an area over which, by virtue of the provisions of the Mining Act 1992 or any instrument under that Act, an authority or claim, or a particular authority or claim, under that Act cannot be granted or registered—unless the Director-General of the Department of Mineral Resources so approves;

Wills, Probate and Administration Act 1898 No. 13

Section 75A (**Delegation**):

From section 75A (2), omit "Mining Act 1973", insert instead "Mining Act 1992".

Workers Compensation Act 1987 No. 70

Schedule 1 (**Deemed employment of workers**):

From clause 6, omit "Mining Act 1973 or the Coal Mining Act 1973", insert instead "Mining Act 1992".

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 391)

PART 1—REGULATIONS

Regulations

1.(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Mining Act 1992

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate so as:

(a) to 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 its date of publication; or

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted before the date of its publication.

PART 2—PROVISIONS CONSEQUENT ON THE ENACTMENT OF THE MINING ACT 1992

Definitions

2. (1) In this Part:

"entitlement" means:

(a) an authority, claim or opal prospecting licence granted or deemed to be granted under the Mining Act 1973; or

(b) an authorisation or concession granted or deemed to be granted under the Coal Mining Act 1973;

"the relevant commencement" means:

(a) in relation to a provision of the Mining Act 1973 or the Coal Mining Act 1973—the date on which the provision is repealed; and

(b) in relation to a provision of this Act—the date on which the provision commences.

(2) A reference in this Part to the granting of an entitlement includes, in the case of a claim under the Mining Act 1973, a reference to the registration of the claim.

Mining Act 1973 or the Coal Mining Act 1973 to continue to apply to certain applications

3. (1) This clause applies to an application for, or for the renewal or transfer of:

(a) any authority, claim or opal prospecting licence under the Mining Act 1973; or

(b) any authorisation or concession under the Coal Mining Act 1973.

(2) The provisions of the Mining Act 1973 or the Coal Mining Act 1973 continue to apply to applications and tenders duly lodged before the relevant commencement as if this Act had not been enacted.

(3) Clause 4 applies to:

(a) an authority, claim or opal prospecting licence granted under the Mining Act 1973 by virtue of this clause; and

(b) an authorisation or concession granted under the Coal Mining Act 1973 by virtue of this clause,

as if it had been granted immediately before the relevant commencement.

(4) A reference in this clause to an application or tender that has been duly lodged includes a reference to an application or tender that, although not duly lodged, is an application or tender that could lawfully be dealt with under the Mining Act 1973 or the Coal Mining Act 1973.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Existing mining entitlements

4. (1) An exploration licence granted under the Mining Act 1973 or an exploration permit or authorisation granted under the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to be an exploration licence granted under this Act.

(2) A mining lease or mining purposes lease granted under the Mining Act 1973 or a coal lease granted under the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to be a mining lease granted under this Act.

(3) A claim registered under the Mining Act 1973 and in force immediately before the relevant commencement is taken to be a mineral claim granted under this Act.

(4) An opal prospecting licence granted under the Mining Act 1973 and in force immediately before the relevant commencement is taken to be an opal prospecting licence granted under this Act.

(5) In this clause, a reference to any form of entitlement granted under the Mining Act 1973 or the Coal Mining Act 1973 includes a reference to an entitlement that is deemed to have been granted under either of those Acts.

Directions concerning certain mining leases

5. A direction in force under section 92 of the Mining Act 1973 immediately before the relevant commencement is taken to be a direction under section 77 of this Act.

Directions concerning certain coal leases

6. (1) Any coal lease that is the subject of a direction given under section 72 of the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to have been amended so as to include that mineral as a mineral to which the corresponding mining lease under this Act applies.

(2) Any direction given under section 72A of the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to be a direction in force under section 78 of this Act.

Directions to protect the environment

7. (1) Any condition imposed on an authority, authorisation or concession in accordance with section 118, 119 or 119A of the Mining Act 1973 or section 94, 95 or 95A of the Coal Mining Act 1973 is taken to have been imposed under Division 2 of Part 11 of this Act.

(2) Any direction given under section 120 of the Mining Act 1973 or section 96 of the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to be a direction in force under section 240 of this Act.

(3) Any direction given under section 172 of the Mining Act 1973 or section 115 of the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to be a direction in force under section 245 of this Act.

Environmental planning and assessment matters

8. Sections 65 and 74 of this Act apply to and in respect of a mining lease granted in accordance with section 116 of the Mining Act 1973 or section 91 of the Coal Mining Act 1973 before the relevant commencement in the same way as they apply to and in respect of a mining lease granted in accordance with this Act.

Consolidation of leases

9. (1) Part 5A of the Mining Act 1973 continues to apply to a draft consolidated mining lease prepared under section 111C of that Act before the relevant commencement as if this Act had not been enacted.

(2) Any consolidated mining lease granted under Part 5A of the Mining Act 1973 as a consequence of the operation of subclause (1) is taken to have been granted under Part 6 of this Act.

(3) Part 4A of the Coal Mining Act 1973 continues to apply to a draft consolidated coal lease prepared under section 82C of that Act before the relevant commencement as if this Act had not been enacted.

(4) Any consolidated coal lease granted under Part 4A of the Coal Mining Act 1973 as a consequence of the operation of subclause (3) is taken to have been granted under Part 6 of this Act.

Register of colliery holdings

10. The register of colliery holdings kept under section 115A of the Coal Mining Act 1973 is taken to be the register of colliery holdings kept under section 163 of this Act.

Rights of way

11. Any right of way in force under section 175 of the Mining Act 1973 or 117 of the Coal Mining Act 1973 immediately before the relevant commencement is taken to be a right of way in force under section 164 of this Act.

Suspension of authorities

12. Any suspension of the conditions of an authority made under Part 5 of the Mining Act 1973 and in force immediately before the relevant commencement is taken to be a suspension of the conditions of the corresponding authority under section 168 of this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Caveats

13. Any caveat duly lodged under section 109 of the Mining Act 1973 or section 106 of the Coal Mining Act 1973 before the relevant commencement is taken to be a caveat duly lodged under section 124 of this Act and is to have effect as if this Act had been in force when it was lodged.

Claims

14. (1) Any obligation under the Mining Act 1973 in connection with a claim registered under Part 4 of that Act (being an obligation in existence in force immediately before the relevant commencement) is taken to be an obligation under this Act in connection with the corresponding mineral claim.

(2) Any security given in respect of a claim under Part 4 of the Mining Act 1973 before the relevant commencement is taken to be security given in respect of the corresponding mineral claim under this Act.

(3) Any claim whose registration had been renewed under Part 4 of the Mining Act 1973 before the relevant commencement is taken to be a mineral claim renewed under Part 9 of this Act.

(4) A certificate of registration of a claim or of renewal of registration of a claim issued before the relevant commencement is taken to have been duly issued under this Act.

(5) Any application for the registration of a person on whom the rights of a registered holder of a claim have devolved as the holder of the claim (being an application that had not been finally dealt with before the relevant commencement) is to continue to be dealt with as if this Act had not been enacted.

(6) Any such registration is taken to be a transfer duly effected under this Act.

(7) Any suspension of the conditions of a registered claim under Part 4 of the Mining Act 1973 and in force immediately before the relevant commencement is taken to be a suspension of the conditions of the corresponding mineral claim under section 215 of this Act.

Permits

15. (1) Any permit granted under section 36A of the Mining Act 1973 and in force immediately before the relevant commencement continues to have effect for the purposes for which it was granted.

(2) A permit may be issued under section 254 of this Act in relation to the obligations of the holder of a registered claim under Part 4 of the Mining Act 1973.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Licence to process tailings

16. Any licence in force under section 173 of the Mining Act 1973 immediately before the relevant commencement continues in force for the term for which it was granted as if this Act had not been enacted.

Licence to construct tunnels etc.

17. Any licence in force under section 174 of the Mining Act 1973 immediately before the relevant commencement continues in force for the duration of the mining lease (including any mining purposes lease that is taken to be a mining lease) in relation to which it was granted.

Access arrangements

18. (1) An access arrangement in force under Division 4A of Part 5 of the Mining Act 1973 immediately before the relevant commencement is taken to be an access arrangement in force under Division 2 of Part 8 of this Act.

(2) A person who held office as an arbitrator under section 84E of the Mining Act 1973 immediately before the relevant commencement is taken to have been appointed under section 143 of this Act.

(3) The Arbitration Panel established by section 84B of the Mining Act 1973 is taken to be the Arbitration Panel established under section 139 of this Act.

(4) Any person who was a member of the Arbitration Panel established under section 84B of the Mining Act 1973 immediately before the relevant commencement is taken to be a member of the Arbitration Panel established by section 139 of this Act.

(5) The conditions under which a member of the Arbitration Panel held office under the Mining Act 1973 immediately before the relevant commencement are, until they are duly changed under this Act, to be the conditions under which the member holds office as a member of the Arbitration Panel under this Act.

(6) Any notice served under section 84E or 84F of the Mining Act 1973 before the relevant commencement is taken to have been duly served under section 142 or 143 of this Act.

(7) Any matter done by an arbitrator before the relevant commencement for the purposes of a hearing under Division 4A of Part 5 of the Mining Act 1973 is taken to have been done for the purposes of Division 2 of Part 8 of this Act.

(8) An interim determination in force under section 84K of the Mining Act 1973 immediately before the relevant commencement is taken to be an interim determination under section 149 of this Act.

(9) A final determination in force under section 84M of the Mining Act 1973 immediately before the relevant commencement is taken to be a final determination under section 151 of this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(10) Section 154 of this Act applies to a hearing conducted under Division 4A of Part 5 of the Mining Act 1973 in the same way as it applies to a hearing conducted under Division 2 of Part 8 of this Act.

Compensation

19. Any compensation payable under Part 8 of the Mining Act 1973 or Part 8 of the Coal Mining Act 1973 in respect of the granting of an entitlement under either of those Acts, or the exercise of rights under either of those Acts, before the relevant commencement is taken to be compensation payable under Part 13 of this Act.

Royalty

20. Part 14 of this Act applies to royalty on coal and other minerals recovered pursuant to an instrument in force under the Mining Act 1973 or the Coal Mining Act 1973 before the relevant commencement in the same way as it applies to coal and other minerals recovered after that commencement.

Trust funds

21. Any trust fund duly established under section 99 of the Mining Act 1973 or section 77B of the Coal Mining Act 1973 and in existence immediately before the relevant commencement is taken to have been duly established under section 288 of this Act.

Inspectors

22. Any person who was an inspector under section 183 of the Mining Act 1973 immediately before the relevant commencement is taken to be an inspector under this Act.

Wardens and other officers

23. Any person who held office as chief warden, warden or mining registrar under the Mining Act 1973 immediately before the relevant commencement is taken to have been appointed as chief warden, warden or mining registrar under this Act.

Wardens' courts

24. Any warden's court established under the Mining Act 1973 and in existence immediately before the relevant commencement is taken to have been established under this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Proceedings

25. (1) Any proceedings that had been commenced under the Mining Act 1973 in a warden's court but had not been finally dealt with before the relevant commencement are to continue to be dealt with in accordance with this Act.

(2) Any decision of a warden's court under the Mining Act 1973 and in force immediately before the relevant commencement is taken to be a decision of a warden's court under this Act.

(3) Any order or injunction made or granted by a warden's court, or by a warden, under the Mining Act 1973 and in force immediately before the relevant commencement is taken to be an order or injunction made or granted under this Act.

(4) Any writ of execution issued by a warden's court under the Mining Act 1973 and in force immediately before the relevant commencement is to be enforced as if this Act had not been enacted.

(5) Any authorisation granted by a warden's court, or by a warden, under the Mining Act 1973 or the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to have been granted under this Act.

(6) Any summons or subpoena issued by a warden's court, or by a warden, under the Mining Act 1973 and in force immediately before the relevant commencement is taken to have been issued under this Act.

Appeals

26. The Mining Act 1973 continues to apply to an appeal, or an application for determination of a stated case, made under that Act before the relevant commencement as if this Act had not been enacted.

Wardens' inquiries

27. Any inquiry conducted by a warden under section 178 or 178A of the Mining Act 1973 before the relevant commencement is taken to be a warden's inquiry under this Act.

Evidentiary certificates

28. A certificate issued under section 26F, 37A or 111 of the Mining Act 1973 or under section 108 of the Coal Mining Act 1973 before the relevant commencement continues to have effect in relation to proceedings under that Act as if this Act had not been enacted.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Certain decisions by the Minister

29. Any decision given by the Minister in respect of a dispute referred to in section 179 of the Mining Act 1973 or section 121 of the Coal Mining Act 1973 before the relevant commencement is taken to be a decision given under the corresponding section of this Act.

Agreements concerning payment by instalments

30. Any agreement in force under section 127 of the Coal Mining Act 1973 immediately before the relevant commencement continues in force as if it were a condition of a mining lease under section 70 (4) of this Act.

Delegations

31. Any delegation in force immediately before the relevant commencement under the Mining Act 1973 or the Coal Mining Act 1973 is taken to have been given under this Act and continues to have effect as if it had been given under this Act.

Disclosure of information

32. Any information obtained by a person in connection with the administration or execution of the Mining Act 1973 or the Coal Mining Act 1973 is taken to have been obtained by the person in connection with the administration or execution of this Act.

Mining divisions

33. Any division of a mining district constituted under the Mining Act 1973 and in existence immediately before the relevant commencement is taken to be a mining division constituted under this Act, with the same name and boundaries as it had immediately before the relevant commencement.

Reserves

34. (1) Any reserve constituted under the Mining Act 1973 (including any reserve that is deemed to have been constituted under that Act) and in existence immediately before the relevant commencement is taken to be a reserve constituted under this Act, with the same name and boundaries as it had immediately before the relevant commencement.

(2) Any order in force under section 24 of the Mining Act 1973 immediately before the relevant commencement, being an order containing a direction prohibiting the granting or registration of a particular entitlement over land in a reserve is taken to be an order prohibiting the granting of the entitlement that, by virtue of clause 4, is the corresponding entitlement over land in the reserve.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Opal prospecting areas

35. (1) Any opal prospecting area constituted under the Mining Act 1973 and in existence immediately before the relevant commencement is taken to be an opal prospecting area constituted under this Act, with the same name and boundaries as it had immediately before the relevant commencement.

(2) Any notice served in accordance with section 25A (2) of the Mining Act 1973 before the relevant commencement is taken to be a notice duly served under section 221 of this Act.

(3) Any objection duly made under section 25B (1) of the Mining Act 1973 before the relevant commencement is taken to be an objection duly lodged under section 222 of this Act.

(4) Any opal prospecting block constituted under the Mining Act 1973 and in existence immediately before the relevant commencement is taken to be an opal prospecting block constituted under this Act, with the same designation and boundaries as it had immediately before the relevant commencement.

(5) Any map prepared under section 25C of the Mining Act 1973 before the relevant commencement is taken to have been duly prepared under section 225 of this Act.

(6) The particulars depicted on any such map are taken to be the corresponding particulars for the purposes of this Act.

Claims for damages

36. Section 26H of the Mining Act 1973 continues to apply in relation to any injury or loss referred to in that section (being an injury or loss sustained before the relevant commencement) as if this Act had not been enacted.

Notices and instruments

37. Any notice or instrument published or served in accordance with any provision of the Mining Act 1973 or the Coal Mining Act 1973 before the relevant commencement is taken to have been duly served under the corresponding provision of this Act.

Records

38. Any records kept before the relevant commencement under section 105 of the Mining Act 1973 or section 102 of the Coal Mining Act 1973 are to form part of the records kept under section 159 of this Act.

Museums and laboratories

39. Any museum or laboratory established under the Mining Act 1973 and in existence immediately before the relevant commencement is taken to have been established under this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

The Geological and Mining Museum

40. (1) The Geological and Mining Museum constituted by this Act is a continuation of, and the same legal entity as, the Geological and Mining Museum constituted by section 169B of the Mining Act 1973.

(2) The persons holding office as trustees of the Museum immediately before the relevant commencement continue as trustees under this Act as if they had been appointed under this Act.

(3) The person holding office as Director of the Museum immediately before the relevant commencement continues to hold office under this Act as if appointed under this Act.

(4) Any person who was a member of staff of the Museum immediately before the relevant commencement continues to be a member of staff of the Museum.

(5) Any committee established under section 169J of the Mining Act 1973 and in existence immediately before the relevant commencement is taken to have been established under section 350 of this Act.

(6) The Geological and Mining Museum Trust Account established under the Mining Act 1973 is taken to be the account of that name established under this Act.

Geological and Mining Museum Regulation 1990

41. (1) The Geological and Mining Museum Regulation 1990 continues in force as if it had been made under this Act.

(2) Any reference in that regulation to a provision of the Mining Act 1973 is taken to be a reference to the corresponding provision of this Act.

Directions concerning graticular sections

42. A direction in force immediately before the relevant commencement for the purposes of the definition of "block" or "unit" in section 6 (1) of the Mining Act 1973 or section 6 (1) of the Coal Mining Act 1973 is taken to be a direction for the purposes of the corresponding definition in the Dictionary at the end of this Act.

Instruments under sec. 77 of the Mining Act 1973

43. An instrument lodged with the Director-General in accordance with section 77 (1) (c) of the Mining Act 1973 before the relevant commencement is taken to be a notice of intention duly given in accordance with section 8 (1) of this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

References to provisions of repealed Acts

44. (1) In determining a relevant date in accordance with section 62 (4) of this Act:

(a) a reference to the date on which a notice was published in the Gazette under section 136 of this Act includes a reference to the date on which a notice was published in the Gazette under section 31 of the Coal Mining Act 1973; and

(b) a reference to the date on which an application for an exploration licence was lodged under this Act includes, in the case of an application relating to coal, a reference to the date on which an application for an authorisation or exploration permit was lodged under the Coal Mining Act 1973; and

(c) a reference to the date on which a mineral claim was granted under this Act includes a reference to the date on which a claim was registered under the Mining Act 1973.

(2) A reference in clause 3 of Schedule 2 to the date on which an application for an exploration licence or mineral claim was lodged includes, in the case of an exploration licence, claim, authorisation or concession granted under the Mining Act 1973 or the Coal Mining Act 1973 that is taken to be an exploration licence or mineral claim granted under this Act, a reference to the date on which the application for the exploration licence, claim, authorisation or concession was lodged under the Mining Act 1973 or the Coal Mining Act 1973.

Miscellaneous applications

45. Any application (other than an application referred to in clause 3) that had been made but not dealt with under a provision of the Mining Act 1973 or the Coal Mining Act 1973 before the relevant commencement is taken to be an application under the corresponding provision of this Act and may continue to be dealt with accordingly.

Construction of certain references

46. In any other Act or instrument:

(a) a reference to the Mining Act 1973 or the Coal Mining Act 1973 includes a reference to this Act; and

(b) a reference to a provision of the Mining Act 1973 or the Coal Mining Act 1973 includes a reference to the corresponding provision of this Act; and

(c) a reference to an entitlement granted under the Mining Act 1973 or the Coal Mining Act 1973 includes a reference to the corresponding entitlement granted under this Act.

DICTIONARY OF WORDS AND EXPRESSIONS

(Sec. 4)

"access arrangement" means an access arrangement under Division 2 of Part 8;

"allocated mineral", in relation to a mineral allocation area, means a mineral or group of minerals in respect of which the mineral allocation area is constituted;

"approved" means approved by the Minister;

"Arbitration Panel" means the Arbitration Panel established by section 139;

"arbitrator" means an arbitrator appointed under Division 2 of Part 8;

"assessment area" means land the subject of an assessment lease;

"assessment lease" means an assessment lease granted under Part 4;

"authority" means an exploration licence, an assessment lease or a mining lease;

"block" means a graticular section referred to in section 370 or, if the Minister so directs in a particular case, part of such a graticular section;

"chief inspector of coal mines" means the chief inspector of coal mines appointed under the Coal Mines Regulation Act 1982;

"chief warden" means the chief warden appointed under section 293;

"claim area" means land the subject of a mineral claim;

"colliery holding" means a colliery holding registered in accordance with section 163;

"consent authority" has the same meaning as it has in the Environmental Planning and Assessment Act 1979;

"consolidated mining lease" means a lease granted under Part 6;

"controlling body", in relation to an exempted area, means:

(a) in the case of land referred to in paragraph (a) or (c) of the definition of "exempted area"—the person having the control and management of the land; or

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

(b) in the case of land referred to in paragraph (b) of that definition—the holder of the lease referred to in that paragraph; or

(c) in the case of land referred to in paragraph (d) of that definition—the person prescribed by the regulations as the controlling body for that land for the purposes of this definition;

"council" has the same meaning as it has in the Local Government Act 1919;

"Crown land" means all land within the State that is not private land, and includes the seabed and subsoil beneath the coastal waters of the State;

"Crown Lands Acts" has the same meaning as it has in the Crown Lands Act 1989;

"Crown lease for pastoral purposes" means:

(a) a Crown lease, under the Crown Lands Acts, of land which contains a condition restricting the use of the land to grazing or to grazing and the giving of access to water; or

(b) a Crown lease, under the Crown Lands Acts, of land set apart for grazing, whether or not the whole or any part of the land may, under the lease, be used for agricultural purposes;

"dam" includes the water or other material impounded by the dam;

"Dams Safety Committee" means the Dams Safety Committee constituted by section 7 of the Dams Safety Act 1978;

"Department" means the Department of Mineral Resources;

"development consent" has the same meaning as it has in the Environmental Planning and Assessment Act 1979;

"Director-General" means the Director-General of the Department;

"environmental planning instrument" has the same meaning as it has in the Environmental Planning and Assessment Act 1979;

"exempted area" means an area constituted by land:

(a) reserved, dedicated, appropriated, resumed or acquired for public purposes (except land reserved for a temporary common or a commonage), whether vested in the Crown or in any person as trustee for public purposes; or

(b) held under a lease for water supply by virtue of a special lease or otherwise; or

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

(c) transferred, granted or vested in trust by the Crown for the purpose of a race-course, cricket-ground, recreation reserve, park or permanent common or for any other public purpose; or

(d) prescribed by the regulations for the purposes of this definition;

"exercise a function" includes perform a duty;

"exploration area" means land the subject of an exploration licence;

"exploration licence" means an exploration licence granted under Part 3;

"function" includes power, authority and duty;

"Government agency" means:

(a) a Government Department; or

(b) an Administrative Office; or

(c) a corporation designated by the Minister under section 387;

"group of minerals" means any minerals prescribed by the regulations as a group of minerals for the purposes of this definition;

"inspector" means an inspector appointed under section 361;

"irrigation area" means an irrigation area constituted under the Irrigation Act 1912, the Wentworth Irrigation Act 1890, the Hay Irrigation Act 1902 or the Balranald Irrigation Act 1902;

"land", in relation to the coastal waters of the State, includes the seabed and subsoil beneath those waters;

"local government area" has the same meaning as it has in the Local Government Act 1919;

"mine" means:

(a) when used as a noun—any place, pit, shaft, drive, level or other excavation, drift, gutter, lead, vein, lode, reef or salt-pan (whether occurring naturally or artificially created) in, on or by means of which, any mining operation is carried on; and

(b) when used as a verb—to extract material from land for the purpose of recovering minerals from the material so extracted or to rehabilitate land from which material has been so extracted;

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

"mineral" means any substance prescribed by the regulations as a mineral for the purposes of this definition, and includes coal and oil shale, but does not include uranium or petroleum;

"mineral allocation area" means a mineral allocation area constituted under section 368;

"mineral claim" means a mineral claim granted under Part 9;

"mineral claims district" means a mineral claims district constituted under Division 1 of Part 9;

"mining area" means land the subject of a mining lease;

"mining division" means a mining division constituted under section 366;

"mining improvement" includes:

(a) any machinery used for or in connection with prospecting or mining; and

(b) any race, drain, dam or reservoir so used;

"mining lease" means a mining lease granted under Part 5, and includes a consolidated mining lease;

"mining operations" means operations carried out in the course of mining;

"mining purpose" means any purpose prescribed by the regulations as a mining purpose for the purposes of this definition;

"mining registrar" means:

(a) a mining registrar appointed under section 360; or

(b) in relation to a mining division, a mining registrar exercising and performing in that division the functions of a mining registrar under this Act;

"notification area", in relation to a prescribed dam, means the land for the time being declared under section 369 to be the notification area for the dam;

"occupier" means, in relation to any land, a person entitled to lawful occupation of that land, being a person of a class prescribed by the regulations for the purposes of this definition;

"opal prospecting area" means an opal prospecting area constituted under Division 1 of Part 10;

"opal prospecting block" means an opal prospecting block constituted under Division 1 of Part 10;

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

"opal prospecting licence" means an opal prospecting licence granted under Division 2 of Part 10;

"owner", in relation to private land, includes:

(a) any person to whom the Crown has lawfully contracted to sell that land under the Crown Lands Acts, or to whom the Crown has granted any lease of that land under those Acts; and

(b) the trustee for an owner, the legal representative of a deceased or bankrupt owner, the manager, appointed under the Protected Estates Act 1983, of the estate of an owner who is a protected person within the meaning of that Act, and a mortgagee in possession,

and, in relation to Crown land held under a pastoral lease, includes a holder of the pastoral lease;

"party" means:

(a) in relation to a hearing before an arbitrator—a person who is entitled to appear and be heard at the hearing pursuant to section 146; or

(b) in relation to an access arrangement—the holder of a prospecting title to whom, or an owner or occupier of land to which, the arrangement relates;

"pastoral lease" means:

(a) a Crown lease for pastoral purposes; or

(b) a special lease for pastoral purposes; or

(c) a Western Lands lease for pastoral purposes;

"petroleum" has the same meaning as it has in the Petroleum Act 1955;

"prescribed dam" has the same meaning as it has in the Dams Safety Act 1978;

"private land" means:

(a) land held in fee simple by any person, other than land vested in the Crown or in any person holding the land for or on behalf of the Crown or as trustee for public purposes; or

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

(b) land (other than land held under a pastoral lease) held under any of the tenures continued in force under the Crown Lands (Continued Tenures) Act 1989 or comprised in a folio of the Register kept under the Real Property Act 1900, being a folio created in respect of any such tenure; or

(c) land in the process of alienation from the Crown,

and includes any other land declared by the regulations to be private land, but does not include any land declared by the regulations to be Crown land;

"privately owned mineral" means a mineral that is not owned by, or reserved to, the Crown;

"prospect" means to carry out works on, or to remove samples from, land for the purpose of testing the mineral bearing qualities of the land;

"prospecting operations" means operations carried out in the course of prospecting;

"publicly owned mineral" means a mineral that is owned by, or reserved to, the Crown;

"reserve" means a reserve constituted under section 367;

"special conditions" means:

(a) in relation to a mineral claims district—the conditions specified under section 175 as the conditions to which mineral claims registered over land within the district are to be subject; or

(b) in relation to an opal prospecting block—the conditions specified in respect of the block on the map prepared under section 225;

"special lease for pastoral purposes" means a special lease, under the Crown Lands Acts, which contains a condition restricting the use of the land to grazing or to grazing and the giving of access to water;

"surveyor" means a surveyor registered under the Surveyors Act 1929;

"unit" means a unit into which a block is divided as referred to in section 370 or, if the Minister so directs in a particular case, part of such a unit;

"warden" means any warden appointed under section 293, and includes the chief warden;

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

"warden's court" means a warden's court established under section 294;

"Western lands lease for pastoral purposes" means:

(a) a lease, under the Western Lands Act 1901, of land which contains a condition restricting the use of the land to grazing or to grazing and the giving of access to water; or

(b) a lease, under the Western Lands Act 1901, of land set apart for grazing, whether or not the whole or any part of the land may, under the lease, be used for agricultural purposes.

[*Minister's second reading speech made in—*
Legislative Assembly on 9 April 1992
Legislative Council on 7 May 1992]

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SECOND PRINT

MINING BILL 1992

NEW SOUTH WALES



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DICTIONARY OF WORDS AND EXPRESSIONS

This PUBLIC BILL, *originated in the* LEGISLATIVE ASSEMBLY *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

Clerk of the Legislative Assembly.

Legislative Assembly

NEW SOUTH WALES

Act No. , 1992

An Act to make provision with respect to prospecting for and mining minerals; to repeal the Mining Act 1973 and the Coal Mining Act 1973; and for other purposes.

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Mining Act 1992.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Act binds Crown

3. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Definitions

4. (1) In this Act, the words and expressions referred to in the Table to this section have the meanings given to them in the Dictionary at the end of this Act.

(2) In this Act, words and expressions defined in the Interpretation Act 1987 (other than words or expressions referred to in the Table to this section) have the meanings given to them by that Act.

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chief warden
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colliery holding
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development consent
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exempted area
exercise a function
exploration area
exploration licence
function
Government agency
group of minerals
inspector
irrigation area
land
local government area
mine
mineral
mineral allocation area
mineral claim
mineral claims district
mining area
mining division
mining improvement
mining lease
mining operations
mining purpose
mining registrar
notification area
occupier
opal prospecting area
opal prospecting block
opal prospecting licence
owner
party
pastoral lease
petroleum
prescribed dam
private land
privately owned mineral
prospect
prospecting operations
publicly owned mineral
reserve
special conditions
special lease for pastoral purposes
surveyor
unit
warden
warden's court
Western lands lease for pastoral purposes

PART 2—PROSPECTING AND MINING GENERALLY

Mining etc. for publicly owned minerals

5. A person must not prospect for or mine any publicly owned mineral on any land otherwise than in accordance with an authority, mineral claim or opal prospecting licence that is in force in respect of that mineral and that land.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

Mining etc. for privately owned minerals on land subject to authority etc.

6. **(1)** A person must not prospect for or mine any privately owned mineral on any land over which some other person is the holder of an authority or mineral claim.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(2) This section applies whether or not the mineral for which the person prospects or mines is a mineral to which the authority or mineral claim relates.

Mining etc. for privately owned minerals on land subject to pending application for authority etc.

7. (1) A person must not prospect for or mine any privately owned mineral on any land over which some other person is the applicant for an authority or mineral claim unless the person commenced to do so before the application was made.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(2) This section applies whether or not the mineral for which the person prospects or mines is a mineral to which the application relates.

Mining etc. for privately owned minerals without due notice etc. to Director-General

8. (1) A person must not, on any land, prospect for or mine any privately owned mineral unless:

(a) the person has caused notice of intention to do so to be given to the Director-General; and

(b) the person has caused security, in a form and an amount determined in accordance with the regulations, to be lodged with the Director-General; and

(c) the person prospects for or mines the mineral in accordance with the conditions (if any) prescribed by the regulations.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(2) The notice referred to in subsection (1) (a) must contain the following particulars:

(a) the date on which the person intends to commence prospecting or mining operations;

(b) the mineral in relation to which prospecting or mining operations are to be carried on;

(c) a description, prepared in the manner prescribed by the regulations, of the land on which the prospecting or mining operations are to be carried on;

(d) if the person is not the owner of the mineral—the name and address of the owner of the mineral and the date on which the person

obtained the consent of the owner of the mineral to the person's carrying on prospecting or mining operations.

(3) The regulations referred to in subsection (1) (c) may prescribe requirements relating to:

(a) the rehabilitation, levelling, regrassing, reforesting or contouring of any parts of the land on which prospecting or mining operations are carried on that are damaged or otherwise adversely affected by those operations; and

(b) the filling in, sealing or fencing off of excavations, shafts and tunnels,

and other requirements directed at the restoration of the land or the protection of the environment.

(4) This section does not apply to a person who is prospecting or mining under an authority, mineral claim or opal prospecting licence in force in respect of the land and mineral concerned.

Mining etc. for privately owned coal

9. A person must not prospect for or mine privately owned coal on any land otherwise than in accordance with an authority for coal in force in respect of the land.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

Defence to prosecutions under Part 2

10. It is a sufficient defence to a prosecution under this Part if the person who was prospecting for or mining a mineral establishes that the person was doing so:

(a) by virtue of an entitlement arising from a legal or equitable interest that is registered under section 161; or

(b) in the course of lawful fossicking.

Property in minerals lawfully mined

11. **(1)** For the purposes of this or any other Act or law, it is declared that any mineral that is lawfully mined becomes the property of the person by or on behalf of whom it is mined at the time the material from which it is recovered is severed from the land from which it is mined.

(2) For the purposes of this or any other Act or law, it is declared that any mineral contained in:

(a) a stockpile of material that has been lawfully mined for the purpose of enabling the mineral to be recovered; or

(b) a pile of tailings arising from the recovery of a mineral from material that has been so mined,

remains the property of the person by or on behalf of whom the material was mined and does not become part of the land on which it is situated.

(3) However, any mineral that has been mined pursuant to a mining lease or mineral claim but is still contained in such a stockpile or pile of tailings when the lease or claim ceases to have effect:

(a) ceases to be the property of the person by or on behalf of whom the material in the stockpile or pile of tailings was mined; and

(b) becomes part of the land on which the stockpile or pile of tailings is situated,

at the time the mining lease or mineral claim ceases to have effect.

(4) This section is subject to the provisions of any private agreement.

Fossicking

12. (1) For the purposes of this or any other Act or law, it is declared that fossicking is a lawful activity.

(2) Subsection (1):

(a) does not affect any other Act or law that prohibits, regulates or restricts fossicking or that has the effect of prohibiting, regulating or restricting fossicking; and

(b) does not confer on any person a right to fossick on private land that is not owned by that person.

(3) Any publicly owned mineral that is recovered in the course of lawful fossicking becomes the property of the person by whom it is found at the time it is severed from the land on which it is found.

PART 3—EXPLORATION LICENCES

Division 1—Applications and tenders

Applications

13. (1) Any person may apply for an exploration licence.

(2) An application for an exploration licence:

(a) must specify the group or groups of minerals in respect of which it is made; and

(b) must be lodged with a mining registrar; and

(c) must be accompanied by the required particulars; and

(d) must be accompanied by the fee prescribed by the regulations.

(3) The required particulars are as follows:

(a) a description, prepared in the manner prescribed by the regulations, of the land over which the exploration licence is sought;

(b) particulars of the financial resources available to the applicant;

(c) particulars of the technical advice available to the applicant;

(d) particulars of the program of work proposed to be carried out by the applicant on the land over which the exploration licence is sought;

(e) particulars of the estimated amount of money that the applicant proposes to expend on prospecting.

(4) An application that relates to land within a mineral allocation area may not be made, except with the consent of the Minister, in relation to any group of minerals that includes an allocated mineral.

Invitations for tenders

14. **(1)** This section applies only in relation to allocated minerals in land within a mineral allocation area.

(2) The Minister may, by notice published:

(a) in a newspaper circulating generally throughout the State; and

(b) in one or more newspapers circulating in the locality in which the land concerned is situated,

invite tenders for an exploration licence for an allocated mineral.

(3) An invitation:

(a) must describe the land to which it relates; and

(b) must identify the allocated mineral to which it relates; and

(c) must specify the place at which, and the date on or before which, tenders for the exploration licence should be lodged.

Tenders

15. **(1)** A tender for an exploration licence:

(a) must be lodged with the Director-General in accordance with the invitation for the tender; and

(b) must be accompanied by the required particulars; and

(c) must be accompanied by the fee prescribed by the regulations.

(2) The required particulars are as follows:

(a) particulars of the financial resources available to the tenderer;

(b) particulars of the technical advice available to the tenderer;

(c) particulars of the program of work proposed to be carried out by the tenderer on the land over which the exploration licence is sought;

(d) particulars of the estimated amount of money that the tenderer proposes to expend on prospecting.

(3) A tender may specify that, in the event that the tender is successful, the tenderer will pay a specified amount in addition to the cash reserve price (if any) specified in the invitation for the tender.

(4) A tender may be made in respect of the whole or any part of the land described in the invitation for the tender.

Minister may require further information

16. The Minister may require the applicant or tenderer to furnish further information in connection with the application or tender, including (if the applicant or tenderer is a corporation) information as to the extent to which the controlling power in the corporation's affairs is held by a foreign company or recognised company (within the meaning of the Corporations Law) or by an individual who is a resident of a foreign country.

Minister may exclude land from application or tender

17. **(1)** The Minister may, by order in writing, direct that any part of the land to which an application or tender relates be excluded from the application or tender.

(2) A direction takes effect on the date on which written notice of the direction is served on the applicant or tenderer.

(3) A tenderer affected by any such direction may amend the tender by written notice lodged with the Director-General on or before such date as may be specified in the direction.

Division 2—Restrictions on the grant of exploration licences

Land in reserve or opal prospecting area

18. An exploration licence may not be granted over any land within:

(a) an opal prospecting area; or

(b) a reserve in respect of which an order prohibiting the granting of exploration licences is in force under section 367.

Land subject to authority

19. (1) An exploration licence may not be granted over any land:

(a) the subject of some other exploration licence that includes a group of minerals in respect of which the firstmentioned exploration licence is sought; or

(b) the subject of a mining lease, assessment lease or mineral claim; or

(c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the firstmentioned exploration licence was lodged,

otherwise than to or with the written consent of the holder of, or the applicant for, that licence, lease or claim.

(2) A written consent given under this section is irrevocable.

(3) If, as a result of such a consent, an exploration licence is granted over any such land, that land:

(a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim concerned; or

(b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim concerned,

as the case requires.

Land on which private mining operations being carried on

20. (1) An exploration licence may not be granted over any land in relation to a privately owned mineral:

(a) if mining operations are being carried out on the land by or with the consent of the owner of the mineral; and

(b) if a notice has been lodged with the Director-General in respect of those mining operations in accordance with section 8,

except with the written consent of the owner of the mineral.

(2) A written consent given under this section is irrevocable.

(3) Any dispute as to whether or not this section applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Director-General on the basis of the warden's report.

Colliery holdings

21. An exploration licence may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that prospecting operations may be carried out under the licence without any

adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the exploration area.

Division 3—Granting of exploration licences

Power of Minister in relation to applications

22. (1) After considering an application for an exploration licence, the Minister:

(a) may grant an exploration licence to the applicant; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused on the ground that the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The Minister may grant a single exploration licence in respect of 2 or more applications or 2 or more exploration licences in respect of a single application.

Power of Minister in relation to tenders

23. (1) After considering a tender in respect of land in respect of which one tender only is lodged, the Minister:

(a) may grant an exploration licence to the tenderer; or

(b) may refuse the tender.

(2) After considering all tenders in respect of land in respect of which more than one tender is lodged, the Minister:

(a) may grant an exploration licence to any one of the tenderers and refuse the other tenders; or

(b) may refuse all of the tenders.

(3) Without limiting the generality of subsections (1) and (2), a tender may be refused on the ground that the tenderer has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(4) For the purposes of this section, only one tender is lodged in respect of land if no other tender is lodged in respect of the land or any part of the land.

Land over which exploration licence may be granted

24. (1) An exploration licence may be granted over private land, over Crown land or over land that is partly private land and partly Crown land.

(2) An exploration licence may be granted in respect of any group or groups of minerals, regardless of whether the minerals in any such group are publicly owned, privately owned or partly publicly and partly privately owned.

(3) An exploration licence may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil below or between any specified depth or depths below the surface of land.

Shape and dimensions of land over which exploration licence may be granted

25. (1) The land over which an exploration licence is granted must be at least 1, but not more than 100, units in area unless the Minister determines that it is appropriate, in the particular circumstances of the case, for the licence to be granted over a larger area of land.

(2) The land over which an exploration licence is granted may differ in size or shape from, but may not include land other than, the land over which the licence was sought.

(3) Land that, by operation of section 19, is excluded from the land over which an exploration licence is granted because, when the licence is granted, the land is the subject of an assessment lease, a mining lease or a mineral claim becomes subject to the exploration licence:

(a) if the assessment lease, mining lease or mineral claim ceases to have effect in respect of the land; and

(b) if, when it does so, the land is not then subject to a further assessment lease, mining lease or mineral claim.

(4) Land that, by operation of section 19, is excluded from the land over which an exploration licence is granted because, when the licence is granted, the land is subject to a pending application for an assessment lease, mining lease or mineral claim becomes subject to the exploration licence:

(a) if the application is subsequently refused or withdrawn; or

(b) if, when the assessment lease, mining lease or mineral claim is granted, the land does not become subject to the lease or claim.

Conditions of exploration licence

26. **(1)** An exploration licence is subject to such conditions as the Minister may, when granting the licence, impose.

(2) Without limiting the generality of subsection (1), conditions of the following kind may be imposed on an exploration licence:

(a) conditions requiring the holder of the licence to pay royalty to the Minister on any minerals recovered under the licence;

(b) conditions requiring the holder of the licence to give security (in such amount and form, and on or before such date, as the Minister may determine) for the fulfilment of the obligations arising under this Act in respect of the licence.

(3) Part 14 applies to royalty payable under a condition referred to in subsection (2) (a) in the same way as it applies to royalty payable on a mineral recovered under a mining lease.

Term of exploration licence

27. An exploration licence:

(a) takes effect on the date on which it is granted or on such later date as the Minister may determine; and

(b) ceases to have effect at the expiration of such period (not exceeding 5 years) as the Minister may determine.

Form of exploration licence

28. An exploration licence is to be in the approved form and is to include the following particulars:

(a) a description of the land over which it is granted;

(b) a list of the group or groups of minerals in respect of which it is granted;

(c) the conditions to which it is subject;

(d) the period for which it is to have effect.

Division 4—Rights and duties under an exploration licence

Rights under exploration licence

29. **(1)** The holder of an exploration licence may, in accordance with the conditions of the licence, prospect on the land specified in the licence for the group or groups of minerals so specified.

(2) If an application for an assessment lease, mining lease or mineral claim made by the holder of an exploration licence is not finally dealt with before the date on which the licence would otherwise cease to have effect, the licence continues to have effect, in relation only to the land to which the application relates, until the application is finally dealt with.

(3) Subsection (2) does not operate to extend an exploration licence for more than 2 years after the date on which it would otherwise expire.

Exempted areas

30. (1) The holder of an exploration licence may not, except with the consent of the Minister, exercise any of the rights conferred by the licence within land in an exempted area.

(2) Such consent may be given either unconditionally or subject to conditions.

Dwelling-houses, gardens and improvements

31. (1) The holder of an exploration licence may not exercise any of the rights conferred by the licence over land:

(a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of its occupier; or

(b) on which, or within the prescribed distance of which, is situated any garden; or

(c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes,

except with the written consent of the occupier (and, in the case of private land, the owner) of the land.

(2) The prescribed distance is:

(a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a); and

(b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b).

(3) A written consent given under this section is irrevocable.

(4) Any dispute as to whether or not subsection (1) applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

Exploration areas over which authority is subsequently granted

32. Land over which an exploration licence is granted and over which some other authority (other than an exploration licence for some other group or groups of minerals) is subsequently granted ceases to be part of the exploration area when the other authority takes effect.

PART 4—ASSESSMENT LEASES

Division 1—Applications

Applications

33. **(1)** Any person may apply for an assessment lease.

(2) An application for an assessment lease:

(a) must specify the mineral or minerals in respect of which it is made; and

(b) must be lodged with a mining registrar; and

(c) must be accompanied by the required particulars; and

(d) must be accompanied by the fee prescribed by the regulations.

(3) The required particulars are as follows:

(a) a description, prepared in the manner prescribed by the regulations, of the land over which the assessment lease is sought;

(b) an assessment of the mineral bearing capacity of that land and of the extent of any mineral deposits in that land;

(c) particulars of the financial resources available to the applicant;

(d) particulars of the technical advice available to the applicant;

(e) particulars of the program of work proposed to be carried out by the applicant on the land over which the assessment lease is sought;

(f) particulars of any program of marketing or environmental study proposed to be carried out by the applicant;

(g) particulars of the estimated amount of money that the applicant proposes to expend on prospecting.

(4) An application that relates to land within a mineral allocation area may not be made in relation to a mineral or group of minerals for which the mineral allocation area is constituted except:

(a) by the holder of an exploration licence or mining lease over that land in respect of that mineral or group of minerals; or

(b) with the consent of the Minister.

Minister may require further information

34. The Minister may require the applicant to furnish further information in connection with the application, including (if the applicant is a corporation) information as to the extent to which the controlling power in the corporation's affairs is held by a foreign company or recognised company (within the meaning of the Corporations Law) or by an individual who is a resident of a foreign country.

Minister may exclude land from application

35. (1) The Minister may, by order in writing, direct that any part of the land to which an application relates be excluded from the application.

(2) A direction takes effect on the date on which written notice of the direction is served on the applicant.

Division 2—Restrictions on the grant of assessment leases

Land in reserve or opal prospecting area

36. An assessment lease may not be granted over any land within:

(a) an opal prospecting area; or

(b) a reserve in respect of which an order prohibiting the granting of assessment leases is in force under section 367.

Land subject to authority

37. (1) An assessment lease may not be granted over any land:

(a) the subject of an exploration licence that includes any mineral or minerals in respect of which the assessment lease is sought; or

(b) the subject of an assessment lease, mining lease or mineral claim; or

(c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the firstmentioned assessment lease was lodged,

otherwise than to or with the written consent of the holder of, or the applicant for, that licence, lease or claim.

(2) A written consent given under this section is irrevocable.

(3) If, as a result of such a consent, an assessment lease is granted over any such land, that land:

(a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim concerned; or

(b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim concerned,

as the case requires.

Land subject to exploration licence

38. (1) If an application for an assessment lease is made in respect of land that is wholly or partly subject to one or more exploration licences (other than exploration licences that include any mineral or minerals in respect of which the assessment lease is sought), the Minister must cause notice of the application to be served on the holder of every such exploration licence.

(2) The holder of an exploration licence served with such a notice may object to the granting of the assessment lease by lodging with the Director-General, on or before the date specified in the notice, a written notice stating the grounds of the objection.

(3) If such an objection is made, the Minister must refer the application and the objection to an inspector for investigation and report and must determine the objection on the basis of the inspector's report.

(4) This section does not apply to an application that is made with the written consent of the holder of every exploration licence over the land concerned.

(5) A written consent given under this section is irrevocable.

Land on which private mining operations being carried on

39. (1) An assessment lease may not be granted over any land in relation to a privately owned mineral:

(a) if mining operations are being carried out on the land by or with the consent of the owner of the mineral; and

(b) if a notice has been lodged with the Director-General in respect of those mining operations in accordance with section 8,

except with the written consent of the owner of the mineral.

(2) A written consent given under this section is irrevocable.

(3) Any dispute as to whether or not this section applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

Colliery holdings

40. An assessment lease may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that

prospecting operations may be carried out under the lease without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the assessment area.

Division 3—Granting of assessment leases

Power of Minister in relation to applications

41. (1) After considering an application for an assessment lease, the Minister:

(a) may grant an assessment lease to the applicant; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused on the ground that the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The Minister may not grant an assessment lease under this section otherwise than in accordance with Part 1 of Schedule 1.

(4) Part 1 of Schedule 1 does not, however, apply to an application for an assessment lease made by the holder of a mining lease over the same land as that over which the assessment lease is sought.

Land over which assessment lease may be granted

42. (1) An assessment lease may be granted over private land, over Crown land or over land that is partly private land and partly Crown land.

(2) An assessment lease may be granted in respect of any mineral or minerals, regardless of whether the mineral or minerals are publicly owned, privately owned or partly publicly and partly privately owned.

(3) An assessment lease may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil below or between any specified depth or depths below the surface of land.

Shape and dimensions of land over which assessment lease may be granted

43. The land over which an assessment lease is granted may differ in size or shape from, but may not include land other than, the land over which the lease was sought.

Conditions of assessment lease

44. **(1)** An assessment lease is subject to such conditions as the Minister may, when granting the lease, impose.

(2) Without limiting the generality of subsection (1), conditions of the following kind may be imposed on an assessment lease:

(a) conditions requiring the holder of the lease to pay royalty to the Minister on any minerals recovered under the lease;

(b) conditions requiring the holder of the lease to give security (in such amount and form, and on or before such date, as the Minister may determine) for the fulfilment of the obligations arising under this Act in respect of the lease.

(3) Part 14 applies to royalty payable under a condition referred to in subsection (2) (a) in the same way as it applies to royalty payable on a mineral recovered under a mining lease.

Term of assessment lease

45. An assessment lease:

(a) takes effect on the date on which it is granted or on such later date as the Minister may determine; and

(b) ceases to have effect at the expiration of such period (not exceeding 5 years) as the Minister may determine.

Form of assessment lease

46. An assessment lease is to be in the approved form and is to include the following particulars:

(a) a description of the land over which it is granted;

(b) a list of the mineral or minerals in respect of which it is granted;

(c) the conditions to which it is subject;

(d) the period for which it is to have effect.

Division 4—Rights and duties under an assessment lease

Rights under assessment lease

47. **(1)** The holder of an assessment lease may, in accordance with the conditions of the lease, prospect on the land specified in the lease for the mineral or minerals so specified.

(2) If an application for a mining lease or mineral claim made by the holder of an assessment lease is not finally dealt with before the date on

which the assessment lease would otherwise cease to have effect, the lease continues to have effect, in relation only to the land to which the application relates, until the application is finally dealt with.

Exempted areas

48. (1) The holder of an assessment lease may not, except with the consent of the Minister, exercise any of the rights conferred by the lease on land in an exempted area.

(2) Such consent may be given either unconditionally or subject to conditions.

Dwelling-houses, gardens and improvements

49. (1) The holder of an assessment lease may not exercise any of the rights conferred by the lease over land:

(a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of its occupier; or

(b) on which, or within the prescribed distance of which, is situated any garden; or

(c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes,

except with the written consent of the occupier (and, in the case of private land, the owner) of the land.

(2) The prescribed distance is:

(a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a); and

(b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b).

(3) A written consent given under this section is irrevocable.

(4) Any dispute as to whether or not subsection (1) applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

Assessment areas over which authority is subsequently granted

50. Land over which an assessment lease is granted and over which some other authority is subsequently granted ceases to be part of the assessment area when the other authority takes effect.

PART 5—MINING LEASES

Division 1—Applications and tenders

Applications

51. (1) Any person may apply for a mining lease.

(2) An application for a mining lease:

(a) must specify the mineral or minerals in respect of which it is made; and

(b) must be lodged with a mining registrar; and

(c) must be accompanied by the required particulars; and

(d) must be accompanied by the fee prescribed by the regulations.

(3) The required particulars are as follows:

(a) a description, prepared in the manner prescribed by the regulations, of the land over which the mining lease is sought;

(b) an assessment of the mineral bearing capacity of the land and of the extent of any mineral deposits in that land;

(c) particulars of the financial resources available to the applicant;

(d) particulars of the technical advice available to the applicant;

(e) particulars of the program of work proposed to be carried out by the applicant on the area of land over which the mining lease is sought.

(4) An application that relates to land within a mineral allocation area may not be made in relation to an allocated mineral except:

(a) by the holder of an exploration licence or assessment lease over that land in respect of that mineral; or

(b) with the consent of the Minister.

Invitations for tenders

52. (1) This section applies only to allocated minerals in land within a mineral allocation area.

(2) The Minister may, by notice published:

(a) in a newspaper circulating generally throughout the State; and

(b) in one or more newspapers circulating in the locality in which the land concerned is situated,

invite tenders for a mining lease for an allocated mineral.

(3) An invitation:

(a) must describe the land to which it relates; and

(b) must identify the allocated mineral to which it relates; and

(c) must specify the place at which, and the date on or before which, tenders for the mining lease should be lodged.

(4) Tenders may not be invited under this section otherwise than in accordance with Part 2 of Schedule 1.

Tenders

53. (1) A tender for a mining lease:

(a) must be lodged with the Director-General in accordance with the invitation for the tender; and

(b) must be accompanied by the required particulars; and

(c) must be accompanied by the fee prescribed by the regulations.

(2) The required particulars are as follows:

(a) particulars of the financial resources available to the tenderer;

(b) particulars of the technical advice available to the tenderer;

(c) particulars of the program of work proposed to be carried out by the tenderer on the land over which the mining lease is sought.

(3) A tender may specify that, in the event that the tender is successful, the tenderer will pay:

(a) a specified amount; or

(b) royalty, at a specified rate, over and above the royalty payable under Part 14; or

(c) both such an amount and royalty at such a rate,

in addition to the cash reserve price (if any) specified in the invitation for the tender.

(4) A tender may also specify:

(a) whether or not an amount referred to in subsection (3) (a) will be paid by way of instalments; and

(b) if such an amount is to be paid by way of instalments—the period (not exceeding 5 years) within which the amount will be paid.

(5) A tenderer is entitled to a refund of the fee referred to in subsection (1) (c) if a mining lease is not granted to the tenderer as a consequence of the tenderer being refused development consent to the use of the land concerned, or any part of the land, for the purpose of obtaining minerals.

Minister may require further information

54. The Minister may require the applicant or tenderer to furnish further information in connection with the application or tender, including (if the applicant or tenderer is a corporation) information as to the extent to which the controlling power in the corporation's affairs is held by a foreign company or recognised company (within the meaning of the Corporations Law) or by an individual who is a resident of a foreign country.

Minister may exclude land from application or tender

55. (1) The Minister may, by order in writing, direct that any part of the land to which an application or tender relates be excluded from the application or tender.

(2) A direction takes effect on the date on which written notice of the direction is served on the applicant or tenderer.

(3) A tenderer affected by any such direction may amend the tender by written notice lodged with the Director-General on or before such date as may be specified in the direction.

Application for mining lease may be dealt with as application for exploration licence or assessment lease

56. The Minister may, at the request of the applicant, deal with an application as if it were an application for an exploration licence or assessment lease.

Division 2—Restrictions on the grant of mining leases

Land in reserve or opal prospecting area

57. A mining lease may not be granted over any land within:

(a) an opal prospecting area; or

(b) a reserve in respect of which an order prohibiting the granting of mining leases is in force under section 367.

Land subject to authority

58. (1) A mining lease may not be granted over any land:

(a) the subject of an exploration licence that includes any mineral or minerals in respect of which the mining lease is sought; or

(b) the subject of an assessment lease, mining lease or mineral claim; or

(c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the firstmentioned mining lease was lodged,

otherwise than to or with the written consent of the holder of, or the applicant for, that licence, lease or claim.

(2) A written consent given under this section is irrevocable.

(3) If, as a result of such a consent, a mining lease is granted over any such land, that land:

(a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim concerned; or

(b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim concerned,

as the case requires.

Land subject to exploration licence

59. **(1)** If an application for a mining lease is lodged in respect of land that is subject wholly or partly to one or more exploration licences (other than exploration licences that include any mineral or minerals in respect of which the mining lease is sought), the Minister must cause notice of the application to be served on the holder of every such exploration licence.

(2) The holder of an exploration licence served with such a notice may object to the granting of the mining lease by lodging with the Director-General, on or before the date specified in the notice, a written notice stating the grounds of the objection.

(3) If such an objection is made, the Director-General must refer the application and objection to an inspector for investigation and report and must determine the objection on the basis of the inspector's report.

(4) This section does not apply to an application that is made with the written consent of the holder of every exploration licence over the land concerned.

(5) A written consent given under this section is irrevocable.

Land on which private mining operations being carried on

60. **(1)** A mining lease may not be granted over any private land in relation to a privately owned mineral:

(a) if mining operations are being carried out on the land by or with the consent of the owner of the mineral; and

(b) if a notice has been lodged with the Director-General in respect of those mining operations in accordance with section 8,

except with the written consent of the owner of the mineral.

(2) A written consent given under this section is irrevocable.

(3) Any dispute as to whether or not this section applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

Colliery holdings

61. A mining lease may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that prospecting or mining operations may be carried out under the lease without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the mining area.

Dwelling-houses, gardens and improvements

62. **(1)** A mining lease may not be granted over any land:

(a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of its occupier; or

(b) on which, or within the prescribed distance of which, is situated any garden; or

(c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes,

except with the written consent of the occupier (and, in the case of private land, the owner) of the land.

(2) The prescribed distance is:

(a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a); and

(b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b).

(3) A written consent given under this section is irrevocable.

(4) Subsection (1) does not apply in respect of a dwelling-house, garden or improvement that was not in existence at the relevant date.

(5) The relevant date is:

(a) in the case of a mining lease the subject of a tender under section 53, the date on which notice of the invitation for tenders for the mining lease was published in the Gazette under section 136; or

(b) in the case of a mining lease the subject of an application made by the holder of an exploration licence granted as a result of a tender under section 15 in respect of the same land, or of an assessment lease granted over the same land to the holder of such an exploration licence, the date on which notice of the invitation for tenders for the exploration licence was published in the Gazette under section 136; or

(c) in the case of a mining lease for coal the subject of an application made by the holder of an exploration licence for coal in respect of the same land, or of an assessment lease for coal granted over the same land to the holder of such an exploration licence, the date on which the application for the exploration licence was lodged; or

(d) in the case of a mining lease the subject of an application made by the holder of an assessment lease or mineral claim over the same land, the date on which the lease or claim was granted; or

(e) in the case of a mining lease the subject of an application made otherwise than by a person referred to in paragraph (a), (b), (c) or (d), the date on which the application for the mining lease was lodged.

(6) Any dispute as to whether or not subsection (1) applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

(7) A mining lease must not be granted over land below the surface of land referred to in subsection (1) except at such depths, and subject to such conditions, as the Minister considers sufficient to minimise damage to that surface.

Division 3—Granting of mining leases

Power of Minister in relation to applications

63. (1) After considering an application for a mining lease, the Minister:

(a) may grant a mining lease to the applicant; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused on the ground that the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The Minister may grant a single mining lease in respect of more than one application.

(4) A mining lease may not be granted under this section otherwise than in accordance with Part 2 of Schedule 1.

Power of Minister in relation to tenders

64. (1) After considering a tender in respect of which one tender only is lodged, the Minister:

(a) may grant a mining lease to the tenderer; or

(b) may refuse the tender.

(2) After considering all tenders in respect of land in respect of which more than one tender is lodged, the Minister:

(a) may grant a mining lease to any one of the tenderers; or

(b) may refuse all of the tenders.

(3) Without limiting the generality of subsections (1) and (2), a tender may be refused on the ground that the tenderer has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(4) For the purposes of this section, only one tender is lodged in respect of land if no other tender is lodged in respect of the land or any part of the land.

(5) A mining lease may not be granted under this section otherwise than in accordance with Part 2 of Schedule 1.

Development consents under the Environmental Planning and Assessment Act 1979

65. (1) This section applies to land for which development consent is required before the land may be used for the purpose of obtaining minerals.

(2) The Minister must not grant a mining lease over land to which this section applies unless an appropriate development consent is in force in respect of the land.

(3) If a mining lease is granted over land for which an appropriate development consent has been given:

(a) any condition (being a special purpose condition within the meaning of Division 2 of Part 2 of Schedule 1) imposed on the development consent by a consent authority, or by a body hearing an appeal from a consent authority, is void; and

(b) the development consent (to the extent only to which it relates to the use of the land concerned for the purpose of obtaining minerals) is taken to have been given free of the condition.

Survey of land to be carried out

66. (1) Before a mining lease is granted, the Director-General must ensure that the land over which the mining lease is to be granted has been properly surveyed.

(2) For the purpose of doing so, the Director-General may direct the applicant for the mining lease to cause a survey to be prepared in accordance with such requirements as may be specified in the direction.

Recovery of public money expended on testing for minerals or research

67. (1) If public money has been expended:

(a) in the course of testing any land (by way of drilling or otherwise) for the mineral bearing capacity of the land; or

(b) in the course of conducting an environmental impact study or other research program in connection with the proper assessment of any application for a mining lease that has been or may be made in respect of any land,

the Minister may, by notice in writing, require any applicant for a mining lease over the land or any part of the land to reimburse the Government, within the time specified in the notice, for the money, or any part of the money, so expended.

(2) The applicant may elect to pay:

(a) a lump sum of the amount specified in the notice as being the proportion of the cost (at current market rates) of carrying out the testing, impact study or research program that the Minister determines should be paid by the applicant; or

(b) instalments (of such amounts and paid at such times as may be specified in the notice) totalling the amount referred to in paragraph (a).

(3) It is a condition of any mining lease granted to an applicant who has been required to reimburse the Government under this section that any amount that remains unpaid as at the time the lease takes effect is to be paid to the Minister in accordance with the election made by the applicant.

(4) If public money has been expended in connection with several parcels of land, the amount so expended is to be apportioned among them in such manner as the Minister thinks fit.

Land over which mining lease may be granted

68. **(1)** A mining lease may be granted over private land, over Crown land or over land that is partly private land and partly Crown land.

(2) A mining lease may be granted in respect of any mineral or minerals, regardless of whether the mineral or minerals are publicly owned, privately owned or partly publicly and partly privately owned.

(3) A mining lease may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil between or below any specified depth or depths below the surface of land.

Shape and dimensions of land over which mining lease may be granted

69. The land over which a mining lease is granted may differ in size or shape from, but may not include land other than, the land over which the lease was sought.

Conditions of mining lease

70. **(1)** A mining lease is subject to:

(a) a condition that the holder of the lease will not suspend mining operations in the mining area otherwise than in accordance with the written consent of the Minister; and

(b) such other conditions as the Minister may, when granting the lease, impose.

(2) Without limiting the generality of subsection (1), conditions of the following kind may be imposed on a mining lease:

(a) conditions requiring the holder of the mining lease to give security, in such amount and form as the Minister may determine, for the fulfilment of the obligations arising under this Act in respect of the lease;

(b) conditions relating to mining or mining operations;

(c) conditions relating to the transporting of any mineral or other thing for the purpose of mining;

(d) conditions relating to the treatment or preparation for sale of any mineral;

(e) conditions relating to the disposal or retention of material discarded from mining operations or from the treatment or preparation for sale of any mineral;

(f) conditions relating to the use to which any mineral may be put, whether or not the condition relates to a matter to be carried out on, or in the vicinity of, the mining area.

(3) If the Minister proposes to grant a mining lease to a person on the condition that the person gives security, the Minister may cause a written notice to be served on the person requiring the person to lodge the security with the Minister on or before the date specified in the notice.

(4) A mining lease granted on the basis of a tender lodged under section 53 is taken to include a condition in the terms specified in the tender for the purposes of subsection (3) of that section.

Term of mining lease

71. A mining lease:

(a) takes effect on the date on which it is granted or on such later date as the Minister may determine; and

(b) ceases to have effect at the expiration of such period (not exceeding 21 years or such longer period as the Minister, with the concurrence of the Premier, may determine) as the Minister may determine.

Form of mining lease

72. A mining lease is to be in the approved form and is to include the following particulars:

(a) a description of the land over which it is granted;

(b) a list of the mineral or minerals in respect of which it is granted;

(c) the conditions to which it is subject;

(d) the period for which it is to have effect.

Division 4—Rights and duties under a mining lease

Rights under mining lease

73. (1) The holder of a mining lease may, in accordance with the conditions of the lease:

(a) prospect on the land specified in the lease for, and mine on that land, the mineral or minerals so specified; and

(b) carry out on that land such primary treatment operations (such as crushing, sizing, grading, washing and leaching) as are necessary to separate the mineral or minerals from the material from which they are recovered; and

(c) carry out on that land any mining purpose.

(2) If an application for an assessment lease made by the holder of a mining lease is not finally dealt with before the date on which the mining lease would otherwise cease to have effect, the lease continues to have effect, in relation only to the land to which the application relates, until the application is finally dealt with.

Mining unaffected by Environmental Planning and Assessment Act 1979

74. (1) While a mining lease has effect:

(a) nothing in, or done under, the Environmental Planning and Assessment Act 1979 or an environmental planning instrument operates so as to prevent the holder of the mining lease from carrying on mining operations in the mining area; and

(b) to the extent to which anything in, or done under, that Act or any such instrument would so operate, it is of no effect in relation to the holder of the mining lease.

(2) Subsection (1) ceases to apply to a mining lease over land for which development consent to the use of land for the purpose of obtaining minerals is required if mining operations under the lease have not begun within 5 years after the date on which the development consent is given.

(3) This section does not exempt the holder of a mining lease from obtaining any consent under the Environmental Planning and Assessment Act 1979 that the person is required to obtain in connection with the erection of buildings, the opening of roads or the subdivision of land.

Mining purposes

75. (1) The Minister may, by order in writing, direct that:

(a) a specified mining purpose be carried out in accordance with any condition specified in the order; or

(b) the carrying out of a specified mining purpose be discontinued for such period as is specified in the order.

(2) An order takes effect on the date on which written notice of the order is served on the holder of the mining lease concerned or on such later date as may be specified in the notice.

(3) A person on whom an order is served must not contravene the order.

Maximum penalty: 50 penalty units.

Fencing of land subject to mining lease

76. (1) The holder of a mining lease may fence the whole or any part of the mining area.

(2) The holder of the mining lease must erect and maintain a fence around any unfenced shaft, machinery or other works on the surface of the mining area if required to do so by notice in writing:

(a) given by the owner or occupier of the land; or

(b) in the case of unoccupied Crown land, given by the Minister.

Addition of mineral to mining lease

77. (1) The holder of a mining lease may apply for the inclusion in the lease of a mineral additional to the mineral or minerals to which the lease relates.

(2) The application must be lodged with the Director-General.

(3) The holder of a mining lease over any private land or over any Crown land held under a pastoral lease must, within 21 days after lodging the application, serve on every owner and occupier of the private land, and on every occupier of the Crown land, a copy of the application.

(4) After considering the application, the Minister:

(a) may, by order in writing served on the applicant, direct that the mining lease apply to the additional mineral specified in the direction; or

(b) may refuse the application.

(5) A direction may be given unconditionally or subject to such conditions as are specified in the direction.

(6) While a direction is in force, the mining lease concerned is taken to extend to the mineral the subject of the direction.

Inclusion of petroleum in mining lease

78. (1) The holder of a mining lease for coal may apply for the inclusion in the lease of petroleum.

(2) The application must be lodged with the Director-General.

(3) After considering the application, the Minister:

(a) may, by order in writing served on the applicant, direct that the mining lease apply to petroleum; or

(b) may refuse the application.

(4) Without limiting the generality of subsection (3), the Minister must refuse an application if the land to which the application relates:

(a) is within the New South Wales adjacent area, within the meaning of the Petroleum (Submerged Lands) Act 1982; or

(b) is subject to a petroleum exploration licence or a petroleum mining lease granted under the Petroleum Act 1955.

(5) A direction may be given unconditionally or subject to such conditions as are specified in the direction.

(6) Without limiting the generality of subsection (5), the Minister may direct that a mining lease is to apply to petroleum subject to a condition relating to any one or more of the following matters:

(a) the limitation of the right to prospect or drill for petroleum to part only of the mining area;

(b) the limitation of that right to prospecting or drilling for some specified type or form of petroleum only;

(c) the working practices and methods of extraction to be used when prospecting or drilling for petroleum;

(d) the use to which any petroleum recovered may be put;

(e) the joint mining and development of petroleum with the holder of a mining lease, or with the holder of a petroleum mining lease under the Petroleum Act 1955, over land adjoining the mining area.

Amendment of mining lease in respect of certain conditions

79. (1) The Minister may amend a mining lease so as to allow the holder of the lease to comply with a condition relating to expenditure instead of a condition relating to labour.

(2) The Minister may amend a mining lease that does not contain a condition requiring the holder of the lease to give security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition.

(3) The Minister may amend a mining lease that contains such a condition so as to vary the amount and form of the security that is required to be given.

(4) The Minister may amend any 2 or more mining leases held by the same holder that contain such a condition so as to require a single security to be given.

(5) The amendment of a mining lease takes effect on the date on which written notice of the amendment is served on the holder of the mining lease or on such later date as may be specified in the notice.

Prevention of damage to prescribed dams

80. (1) The Dams Safety Committee may recommend to the Minister that a mining lease for coal (being a mining lease granted over land within a notification area) be amended, by the variation of the conditions of the lease or by the inclusion of additional conditions in the lease, so as to prevent or mitigate any damage to a prescribed dam.

(2) If the Minister does not accept the recommendations of the Dams Safety Committee, the matter must be dealt with in consultation with the Minister administering the Dams Safety Act 1978.

(3) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with the matter to which such a recommendation relates and if, as a result of the steps so taken, agreement is not reached as to the acceptance, modification or withdrawal of the recommendation, the matter is to be referred to the Premier.

(4) If any matter is so referred, the Premier may give such decision as the Premier considers appropriate.

(5) The amendment of a mining lease takes effect on the date on which written notice of the amendment is served on the holder of the mining lease or on such later date as may be specified in the notice.

Surface prospecting in relation to subsurface leases

81. The holder of a mining lease over any land (being a lease that does not include the surface of the land) may, with the consent of:

(a) the owner and (if the owner is not the occupier) the occupier of the land; and

(b) the holder of any authority or mineral claim in force over the surface of the land,

carry out prospecting operations on the surface of the land.

Resumption etc. not to affect mining lease

82. The conveyance, transfer or compulsory acquisition of land by or under any other Act or law (including the conveyance or transfer of the land under section 604 of the Local Government Act 1919) does not affect a mining lease, or any rights under a mining lease, and the mining lease and those rights continue to have effect as if the land had not been conveyed, transferred or acquired.

Mining areas over which an authority is subsequently granted

83. Land over which a mining lease is granted and over which some other authority is subsequently granted ceases to be part of the mining area when the subsequent authority takes effect.

PART 6—CONSOLIDATION OF MINING LEASES

Division 1—Preliminary

Definitions

84. (1) In this Part:

"existing lease" means a mining lease or a consolidated mining lease;

"holder", in relation to a proposed lease, means the holder of the existing leases specified in the proposed lease as the existing leases to be consolidated;

"proposed lease" means a proposed consolidated mining lease prepared under this Part or, if the lease is amended under this Part, the lease as so amended.

(2) A reference in this Part to the grant of a proposed lease is a reference to the grant of a consolidated mining lease in the same terms as those of the proposed lease.

Existing leases that may be consolidated

85. Any 2 or more existing leases may be consolidated if the leases are held by the same person and relate to contiguous parcels of land or to parcels of land that are separated only by a road, stream or railway.

Division 2—Preparation and amendment of consolidated mining leases

Preparation of proposed lease

86. (1) The Minister may (on the application of the holder of the leases concerned or otherwise) cause a proposed lease to be prepared for the purpose of consolidating 2 or more existing leases.

(2) A proposed lease must specify:

(a) the existing leases to be consolidated; and

(b) the mineral or minerals in respect of which the proposed lease is to be granted; and

(c) the period for which the proposed lease is to be granted; and

(d) the conditions on which the proposed lease is to be granted,

and must have attached to it a description, prepared in the manner prescribed by the regulations, of the land over which the lease is to be granted.

Amendment of proposed lease

87. (1) The Minister may, at any time after the preparation of a proposed lease, make such amendments to the lease as the Minister thinks fit.

(2) The Minister may, by such an amendment, specify existing leases to be added to, or excluded from, those to be consolidated by the proposed lease.

(3) The Minister may, at any time after the preparation of a proposed lease, determine that the consolidation should not proceed.

(4) Such a determination does not prevent the Minister:

(a) from proceeding with the consolidation at a later time; or

(b) from causing a further proposed lease to be prepared for the purpose of consolidating all or any of the existing leases concerned.

Division 3—Notification of Government agencies

Notification of Director of Planning

88. (1) Before granting a proposed lease, the Minister must cause notice of the proposal to be served on the Director of Planning.

(2) Such a notice:

(a) must include a copy of the proposed lease; and

(b) must state that objections to the granting of the proposed lease, or proposals for the inclusion in the proposed lease of any condition, may be made to the Minister on or before the date specified in the notice.

(3) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

Notification of Dams Safety Committee

89. (1) Before granting a proposed lease for coal in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the Dams Safety Committee.

(2) Such a notice:

(a) must include a copy of the proposed lease; and

(b) must state that objections to the granting of the proposed lease on grounds relating to the safety of a prescribed dam, or proposals for the inclusion in the proposed lease of any condition relating to the safety of a prescribed dam, may be made to the Minister on or before the date specified in the notice.

(3) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

Subsequent amendment of proposed lease

90. (1) If:

(a) the Minister amends a proposed lease (otherwise than as a consequence of an objection or proposal made by the agency) after a copy has been served on a Government agency; and

(b) the Minister is of the opinion that the agency's attitude to the proposed lease might be materially affected were the agency given a copy of the proposed lease as amended,

the Minister must cause to be served on the agency a notice setting out details of the amendment and stating that objections to the amendment may be made to the Minister on or before the date specified in the notice.

(2) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

Objections to granting of proposed lease

91. (1) The Director of Planning:

(a) may object to the granting of a mining lease; or

(b) may propose that specified conditions be included in a mining lease.

(2) The Dams Safety Committee, in respect of land within a notification area:

(a) may object (on grounds relating to the safety of a prescribed dam) to the granting of a mining lease for coal; or

(b) may propose that specified conditions relating to the safety of a prescribed dam be included in a mining lease for coal.

(3) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(4) If the Minister does not accept the objections or proposals of the Dams Safety Committee, or if the Dams Safety Committee fails to make any proposals or to inform the Minister that it does not propose to make

any proposals, the matter must be dealt with in consultation with the Minister administering the Dams Safety Act 1978.

Resolution of objections

92. (1) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with any objection or proposal made under this Division and, if agreement is not reached concerning the acceptance, modification or withdrawal of the objection or proposal, the matter is to be referred to the Premier.

(2) The Premier may give such decision as the Premier considers appropriate in relation to any matter that is so referred.

(3) If required by the Premier to do so, the Minister must refer such a matter to a warden for inquiry and report.

Granting of proposed lease if objection or proposal made

93. (1) If an objection to the granting of a proposed lease is duly made, the lease must not be granted unless the objection is withdrawn or otherwise resolved or is rejected by the Premier.

(2) A proposed lease must include:

(a) any condition proposed under this Division (unless the proposal for the inclusion of the condition is withdrawn or is rejected by the Premier) or, if such a condition is modified, the condition as so modified; and

(b) any condition directed by the Premier to be included in the lease.

(3) The failure to include a condition in a proposed lease does not affect the validity of the lease, but the Minister may, by instrument in writing, amend the lease so as to include the condition omitted.

(4) An amendment takes effect on the date on which written notice of the amendment is served on the holder of the consolidated mining lease or on such later date as may be specified in the notice.

Division 4—Notification of holder of existing leases

Notification of holder of existing leases

94. (1) Before granting a proposed lease, the Minister must cause notice of the proposal to be served on the holder of the existing leases.

(2) Such a notice:

(a) must include a copy of the proposed lease; and

(b) must state that representations with respect to the granting of the proposed lease, or the conditions on which the proposed lease is to be granted, may be made to the Minister on or before the date specified in the notice.

(3) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

Subsequent amendment of proposed lease

95. If:

(a) the Minister amends a proposed lease (otherwise than as a consequence of representations made by the holder of the existing leases) after a copy of the lease has been served on the holder; and

(b) the Minister is of the opinion that the holder's attitude to the proposed lease might be materially affected were the holder given a copy of the proposed lease as amended,

the Minister must cause to be served on the holder a notice setting out details of the amendment and stating that representations concerning the amendment may be made to the Minister on or before the date specified in the notice.

Objections to granting of proposed lease

96. The holder of the existing leases may, on or before the date specified in the relevant notice or within such further period as the Minister may allow, make such representations with respect to the matters referred to in the notice as the holder thinks fit.

Consideration of objections

97. The Minister is to take such steps (including the amendment of the proposed lease) as the Minister considers appropriate in connection with any representations made under this Division.

Division 5—Granting of consolidated mining leases

Minister may grant consolidated mining lease

98. **(1)** After having complied with the requirements of this Part in respect of a proposed lease, the Minister may grant to the holder of the existing leases a consolidated mining lease in the same terms as those of the proposed lease.

(2) When a consolidated mining lease takes effect, each existing lease is taken to have been cancelled.

Land over which consolidated mining lease may be granted

99. The land over which a consolidated mining lease may be granted is the aggregate of all of the land the subject of the existing leases.

Conditions of consolidated mining lease

100. A consolidated mining lease is subject to such conditions (being conditions of a kind that may be imposed on a mining lease under Part 5 or Part 11) as the Minister may, when granting the lease, impose.

Term of consolidated mining lease

101. A consolidated mining lease:

(a) takes effect on the date on which it is granted or on such later date as the Minister may determine; and

(b) ceases to have effect at the expiration of such period (not extending beyond the first day by which all the existing leases that have been consolidated would, but for the consolidation, have expired) as the Minister may determine.

Form of consolidated mining lease

102. A consolidated mining lease is to be in the approved form and is to include the following particulars:

(a) a description of the land over which it is granted;

(b) a list of the mineral or minerals in respect of which it is granted;

(c) the conditions to which it is subject;

(d) the period for which it is to have effect.

Validity of consolidated mining lease not affected by certain defects

103. **(1)** The validity of a consolidated mining lease is not affected:

(a) by the failure of any person to comply with this Act or the regulations in relation to the grant, renewal or transfer of an existing lease that has been consolidated; or

(b) by the inclusion in the area of land over which the consolidated mining lease has been granted of any land not subject to an existing lease.

(2) The Minister may amend a consolidated mining lease so as to exclude from the area of land the subject of the lease:

(a) any area of land the subject of an existing lease that appears to the Minister not to have been validly granted, renewed or transferred; and

(b) any area of land that appears to the Minister not to have been subject to an existing lease.

(3) An amendment takes effect on the date on which written notice of the amendment is served on the holder of the consolidated mining lease or on such later date as may be specified in the notice.

Application of this Act and other Acts to grant of consolidated mining leases

104. (1) Part 5 does not apply to or in respect of the grant of a consolidated mining lease.

(2) The provisions of any other Act prohibiting, regulating or restricting, or having the effect of prohibiting, regulating or restricting, the grant of a mining lease do not apply to the grant of a consolidated mining lease.

Division 6—Securities for performance of obligations

Requirement of security

105. (1) If the Minister proposes to grant a consolidated mining lease on the condition that the holder gives security for the fulfilment of the obligations arising under this Act in respect of the lease, the Minister may cause written notice to be served on the holder requiring the holder to lodge the security with the Minister on or before such date as may be specified in the notice.

(2) The security required by such a condition may be in addition to, or in substitution for, any security required by the conditions of any of the existing leases.

Credit for existing securities

106. Any security given in respect of an existing lease that has not been forfeited and that is not to be applied to a consolidated mining lease is to be refunded or otherwise returned to the holder of the consolidated mining lease.

Appropriation of existing securities

107. (1) If any security required to be lodged with the Minister in relation to a consolidated mining lease is not lodged, the Minister may, by notice in writing, direct that any security given in respect of the existing leases is to be regarded as having been given, in accordance with the terms of the direction, for the fulfilment of the obligations arising under this Act in respect of the consolidated mining lease.

(2) The direction, on being served on the holder and any other person liable to make any payment under the security, has effect according to its terms.

Division 7—Preservation of certain rights, liabilities etc. on consolidation

Liability generally preserved

108. Except as otherwise provided by this Act, the cancellation of an existing lease as a result of the granting of a consolidated mining lease does not affect any liability of the person who was the holder of the lease immediately before the consolidated mining lease was granted.

Saving of interest in existing leases

109. **(1)** Any interest (whether legal or equitable) in, or affecting, an existing lease continues to have the same effect in respect of the consolidated mining lease as it had in respect of the existing lease immediately before the existing lease was consolidated.

(2) This section is subject to any determination made by a warden's court.

Councils and development consents

110. **(1)** Any development consent granted with respect to development authorised by an existing lease is taken to have been granted with respect to development authorised by the consolidated mining lease, but in relation only to that part of the land that was subject to the existing lease.

(2) Section 74 continues to have effect in respect of a consolidated mining lease in the same way as it had effect in respect of any existing lease, but in relation only to that part of the land that was subject to the existing lease.

Directions affecting range of minerals

111. Any direction under section 77 in respect of an existing lease continues to have effect in respect of a consolidated mining lease in the same way as it had effect in respect of the existing lease, but in relation only to that part of the land that was subject to the existing lease.

Rights of way

112. Any right of way marked out under section 164 in respect of an existing lease continues to have effect in respect of a consolidated mining lease in the same way as it had effect in respect of the existing lease.

PART 7—RENEWAL, TRANSFER AND CANCELLATION OF AUTHORITIES

Division 1—Renewal of authorities

Applications

113. (1) The holder of an authority may, from time to time, apply for the renewal of the authority.

(2) An application for the renewal of an exploration licence or assessment lease must be lodged with the Director-General not earlier than 2 months and not later than 1 month before the licence or lease ceases to have effect.

(3) An application for the renewal of a mining lease must be lodged with the Director-General not earlier than 5 years and not later than 1 year (or, if the term of the mining lease is for 1 year or less, not earlier than 2 months and not later than 1 month) before the mining lease ceases to have effect.

(4) An application for the renewal of an authority must be accompanied by the fee prescribed by the regulations.

(5) If an application for the renewal of an authority is in respect of part only of the land subject to the authority, the application must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land over which renewal of the authority is sought.

(6) An application for the renewal of an exploration licence may be made in respect of one or more parts (but not more than such number of parts as may be prescribed by the regulations) of the exploration area.

(7) An application for the renewal of an assessment lease or a mining lease may be made in respect of the whole, or of any single part, of the assessment area or mining area.

Power of Minister in relation to applications

114. (1) After considering an application for the renewal of an authority, the Minister:

(a) may renew the authority; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The period for which an authority is renewed may not on any one occasion exceed:

(a) 5 years in the case of an exploration licence or assessment lease; or

(b) 21 years (or such longer period as the Minister may, with the concurrence of the Premier, determine) in the case of a mining lease.

(4) On renewing an authority, the Minister may amend any of the conditions of the authority and may include further conditions in the authority.

(5) The area of land over which an authority is renewed may differ from the area of land over which the renewal of the authority is sought, but not so as to include any land that was not subject to the authority immediately before the renewal.

(6) The number of units over which an exploration licence may be renewed is not to exceed half the number of units over which the licence was in force when the application for the renewal was made unless the Minister is satisfied that special circumstances exist that justify the renewal of the licence over a larger number of units.

Notice of renewal to be served on holder of authority

115. **(1)** The Minister must cause notice of renewal of an authority to be served on the holder of the authority.

(2) Such a notice:

(a) must set out any amendments to the conditions of the authority; and

(b) must state the period for which the authority is renewed; and

(c) if the area of land over which the authority is renewed differs from the area subject to the authority immediately before the renewal, must contain a description of the land over which the authority is renewed.

Application by some only of holders of authority

116. **(1)** The Minister may not renew an authority otherwise than in the names of each of the holders of the authority unless satisfied that any holder of the authority not applying for its renewal does not wish the authority to be renewed in that person's name.

(2) The Minister may cause to be served on any holder of an authority not applying for its renewal a written notice:

(a) stating that an application for renewal of the authority has been lodged; and

(b) requiring the person, in such manner and on or before such date as is specified in the notice, to state whether or not that person wishes the authority to be renewed in that person's name.

(3) If a person on whom such a notice is served fails to state whether or not the person wishes the authority to be renewed in that person's name, the failure to do so is conclusive evidence that the person does not wish the authority to be renewed in that person's name.

Authority to have effect until application dealt with

117. (1) If an application for the renewal of an authority is not finally dealt with before the date on which the authority would otherwise cease to have effect, the authority continues to have effect, in relation only to the land to which the application relates, until the application is finally disposed of.

(2) While an authority has effect under this section, the Minister may amend any of the conditions of the authority (other than a condition relating to royalty).

(3) An amendment takes effect on the date on which written notice of the amendment is served on the holder of the authority or on such later date as may be specified in the notice.

Date from which renewal of authority has effect etc.

118. (1) The renewal of an authority takes effect on the date on which it is renewed or on such later date as may be specified in the renewal.

(2) Any amendment of the conditions of an authority takes effect on the date on which the renewal of the authority takes effect.

Partial renewals

119. If an authority is renewed as to part only of the land to which the application for renewal relates, the authority ceases to have effect in relation to the remainder of the land on the date on which the renewal takes effect.

Division 2—Transfer of authorities

Applications

120. (1) The holder of an authority may apply for approval of the transfer of the authority to some other person.

(2) An application for approval of the transfer of an authority:

(a) must be accompanied by the fee prescribed by the regulations; and

(b) must be accompanied by the consent of the proposed transferee; and

(c) must be accompanied by the particulars prescribed by the regulations; and

(d) must be lodged with the Director-General.

Power of Minister in relation to applications

121. (1) After considering an application for approval of the transfer of an authority, the Minister:

(a) may approve the transfer in accordance with the application; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused if the proposed transferee has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) In approving the transfer of an authority, the Minister may, subject to this Act, direct that any of the conditions of the authority be amended or that further conditions be included in the authority.

Registration of transfers

122. (1) The transferor or transferee of an authority for the transfer of which the Minister has given approval may apply for registration of the transfer.

(2) An application for registration of a transfer:

(a) must be lodged with the Director-General; and

(b) must be accompanied by the fee prescribed by the regulations.

(3) On receipt of such an application, the Director-General must register the transferee as the holder of the authority, unless registration of the transfer is prohibited by section 124.

(4) On registration of a transfer, the transferee becomes the holder of the authority and the authority becomes subject to the amended conditions or further conditions referred to in any relevant direction under section 121.

Partial transfers

123. **(1)** If part of an assessment lease or mining lease is transferred under this Division:

(a) the lease (in this section referred to as **"the original lease"**) is taken to have been cancelled as to the area of the part transferred; and

(b) an assessment lease or mining lease over the part transferred (in this section referred to as **"the new lease"**) is taken to have been granted to the transferee for the period ending on the date of expiry of the original lease and to include the conditions determined by the Minister in granting approval of the transfer; and

(c) if the Minister considers that it is necessary to do so as a result of the transfer, the conditions to which the original lease is subject may be amended in the manner determined by the Minister in granting approval of the transfer.

(2) Before part of an assessment lease or mining lease is transferred:

(a) the Minister and the proposed transferor must sign a document setting out the terms of any proposed amendments of the original lease; and

(b) the Minister and the proposed transferee must sign a document setting out the terms of the proposed new lease.

Caveats

124. **(1)** A person claiming a legal or equitable interest in an authority may lodge with the Director-General a caveat, accompanied by the fee prescribed by the regulations, directing the Director-General not to register any transfer of the authority otherwise than in accordance with the provisions of the caveat.

(2) Unless sooner withdrawn, a caveat remains in force for the period of 3 months from the date on which it is lodged.

(3) While a caveat remains in force, a transfer of the authority to which it relates may not be registered in contravention of the provisions of the caveat otherwise than pursuant to an order of the Supreme Court directing the Director-General to register the transfer.

(4) At the expiration of the period for which a caveat is in force, a transfer of the authority to which it relates is to be registered unless, before the expiration of that period, the Director-General is served with an order of the Supreme Court prohibiting the Director-General from registering the transfer.

Division 3—Cancellation of authorities

Grounds of cancellation

125. (1) The Minister may cancel an authority as to the whole or any part of the land to which it relates:

(a) if the holder of the authority requests the Minister to cancel the authority; or

(b) if the holder of the authority contravenes any condition of the authority or any provision of this Act or the regulations, whether or not the holder is prosecuted or convicted of any offence arising from the contravention; or

(c) if the holder of the authority fails to comply with the requirements of any agreement or assessment under Part 13 in relation to the payment of compensation; or

(d) if the holder of the authority is convicted of any offence relating to mining or minerals; or

(e) if the land is required for a public purpose.

(2) A request referred to in subsection (1) (a):

(a) must be lodged with the Director-General; and

(b) if the application is for the cancellation of the authority as to part only of the land to which it relates—must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land in respect of which the authority is to be cancelled.

Cancellations

126. (1) Before cancelling an authority on a ground referred to in section 125 (1) (b), (c) or (d), the Minister:

(a) must cause written notice of the proposed cancellation, and of the grounds of the proposed cancellation, to be served on the holder of the authority; and

(b) must give the holder of the authority a reasonable opportunity to make representations with respect to the proposed cancellation; and

(c) must take any such representations into consideration.

(2) Cancellation of an authority takes effect on the date on which written notice of the cancellation is served on the holder of the authority or on such later date as is specified in the notice.

(3) Cancellation of an authority does not affect any liability incurred by the holder of the authority before the cancellation took effect.

Compensation for cancellation

127. (1) The holder of an authority is not entitled to compensation merely because the authority is cancelled.

(2) However, if an authority is cancelled on the ground that the whole or any part of the land concerned is required for a public purpose, the holder of the authority is entitled to compensation, of an amount to be determined by the Minister, for any mining improvements made to the land.

Appeals against cancellation

128. (1) Any person who is aggrieved by the decision of the Minister to cancel an authority held by the person, or of the decision of the Minister as to the amount of compensation payable as a consequence of the cancellation, may appeal to the District Court against the decision.

(2) An appeal is to be heard by way of a new hearing, and fresh evidence, or evidence additional to the evidence available to the Minister when the decision was made, may be admitted in the hearing.

(3) Subject to any order made by the District Court, the lodging of an appeal does not operate to stay the decision appealed against.

(4) The decision of the District Court on an appeal is final and is to be given effect to as if it were the decision of the Minister.

PART 8—AUTHORITIES GENERALLY

Division 1—General procedures

Holder of authority must be at least 18

129. An authority may not be granted to an individual who has not attained the age of 18 years.

Withdrawal of application

130. (1) An application or objection in relation to the grant, renewal, transfer or cancellation of an authority may be withdrawn by means of a

notice of withdrawal signed by the applicant or objector and lodged with the Director-General and ceases to have effect when the notice is lodged.

(2) The withdrawal of an application or objection under this section is irrevocable.

Pending applications

131. For the purposes of this Act, an application for an authority is pending from the time it is lodged until the time it is finally disposed of.

Disputes as to priority of applications

132. Any dispute as to the priority of competing applications for authorities over the same land is to be determined by the Minister.

Nomination by applicant etc.

133. **(1)** An applicant or tenderer for an authority may, by notice in writing lodged with the Director-General, nominate a person to whom the authority is to be granted.

(2) The person nominated in an application or tender as the person to whom an authority is to be granted is, for the purposes of this Act, taken to be the applicant or tenderer for the authority.

Death etc. of applicant

134. An application for an authority made by a person who subsequently dies, becomes bankrupt or becomes a mentally incapacitated person:

(a) subsists for the benefit of the applicant's estate; and

(b) may continue to be dealt with,

if the applicant's legal representative or the manager of the applicant's estate so requests.

Waiver of minor procedural matters

135. **(1)** The Minister may grant or renew an authority even though the applicant has failed to comply with a requirement of this Act or the regulations:

(a) as to the time within which anything is required to be done; or

(b) as to the details to be contained in any notice served, lodged or caused to be published by the applicant; or

(c) as to the particulars to accompany any application; or

(d) as to the furnishing of declarations and other information by the applicant.

(2) This section does not authorise the Minister to grant or renew an authority in the case of an applicant who has failed to comply with such a requirement unless the Minister is satisfied that the failure is unlikely:

(a) to adversely affect any person's rights under this Act or the regulations; or

(b) to result in any person being deprived of information necessary for the effective exercise of those rights.

Gazettal of certain matters

136. As soon as practicable after:

(a) an invitation for tenders for an authority is made or withdrawn; or

(b) an application for an authority or for the renewal of an authority is made, withdrawn or refused; or

(c) an authority is granted, renewed, transferred or cancelled,

the Director-General is to cause notice of that fact to be published in the Gazette.

Limitation of right to challenge technical defects in authorities

137. (1) The grant, renewal or transfer of an authority may not be challenged in any legal proceedings commenced later than 3 months after the date on which notice of the grant, renewal or transfer of the authority is published in the Gazette.

(2) This section has effect regardless of the provisions of any other Act, but does not apply so as to affect any appeal from proceedings commenced within the 3 months referred to in subsection (1).

Division 2—Access arrangements for prospecting titles

Application of Division

138. This Division applies to the carrying out of prospecting operations under exploration licences and assessment leases (referred to in this Division as **"prospecting titles"**) on private land or on land held under a pastoral lease.

Arbitration Panel

139. (1) There is to be an Arbitration Panel.

(2) The Arbitration Panel is to consist of one or more members appointed by the Minister after consultation with the Minister for Agriculture and Rural Affairs.

(3) The conditions on which a member of the Arbitration Panel holds office (including conditions relating to remuneration and travelling and subsistence allowances) are to be as determined by the Minister.

Prospecting to be carried out in accordance with access arrangement

140. The holder of a prospecting title may not carry out prospecting operations on any land otherwise than in accordance with an access arrangement:

(a) agreed (whether orally or in writing and whether before or after the prospecting title was granted) between the holder of the title and each owner and occupier of the land; or

(b) determined by an arbitrator in accordance with this Division.

Matters for which access arrangement to provide

141. (1) An access arrangement may make provision for or with respect to the following matters:

(a) the periods during which the holder of the prospecting title is to be permitted access to the land;

(b) the parts of the land in or on which the holder of the prospecting title may prospect and the means by which the holder may gain access to those parts of the land;

(c) the kinds of prospecting operations that may be carried out in or on the land;

(d) the conditions to be observed by the holder of the prospecting title when prospecting in or on the land;

(e) the things which the holder of the prospecting title needs to do in order to protect the environment while having access to the land and carrying out prospecting operations in or on the land;

(f) the compensation to be paid to any owner or occupier of the land as a consequence of the holder of the prospecting title carrying out prospecting operations in or on the land;

(g) the manner of resolving any dispute arising in connection with the arrangement;

(h) the manner of varying the arrangement;

(i) such other matters as the parties to the arrangement may agree to include in the arrangement.

(2) An access arrangement that is determined by an arbitrator must specify the compensation, as assessed by the arbitrator, to which each owner or occupier of the land concerned is entitled under Division 1 of Part 13.

(3) In the event of an inconsistency between:

(a) a provision of an access arrangement; and

(b) a provision of this Act, of the regulations or of a condition of a prospecting title,

the provision referred to in paragraph (b) prevails.

(4) If the holder of a prospecting title contravenes an access arrangement, the owner or occupier of the land may deny the holder access to the land until:

(a) the holder ceases the contravention; or

(b) the contravention is remedied to the reasonable satisfaction of the owner or occupier.

(5) Subsection (4) does not affect any proceedings that may be brought against the holder of the prospecting title in respect of the contravention of the access arrangement.

Holder of prospecting title to seek access arrangement

142. (1) The holder of a prospecting title may, by written notice served on each owner and occupier of the land concerned, give notice of the holder's intention to obtain an access arrangement in respect of the land.

(2) The notice of the holder's intention to obtain an access arrangement must, in addition to stating the holder's intention, contain:

(a) a plan and description of the area of land over which the access is sought sufficient to enable the ready identification of that area; and

(b) a description of the prospecting methods intended to be used in that area.

(3) The holder of a prospecting title, and each owner and occupier of the land concerned, may agree (either orally or in writing and either before or after the prospecting title is granted) on an access arrangement.

Appointment of arbitrator by agreement

143. (1) If, by the end of 28 days after the holder of a prospecting title serves notice in writing on each owner and occupier of the land of the holder's intention to obtain an access arrangement, the holder and each owner and occupier of the land have been unable to agree on such

an arrangement, the holder may, by further notice in writing served on each such owner and occupier, request them to agree to the appointment of an arbitrator.

(2) The holder of a prospecting title, and each owner and occupier of the land concerned, may agree to the appointment of any person as an arbitrator.

Appointment of arbitrator in default of agreement

144. (1) If, by the end of 28 days after the holder of a prospecting title serves notice in accordance with section 143, the holder and each owner and occupier of the land concerned have been unable to agree on the appointment of an arbitrator, then any one of them may apply to the Director-General for the appointment of a member of the Arbitration Panel as an arbitrator.

(2) An application must be accompanied by the fee prescribed by the regulations.

(3) The Director-General, after consultation with the Director-General of the Department of Agriculture, is to appoint a member of the Arbitration Panel as an arbitrator.

Arbitration

145. (1) As soon as practicable after having been appointed, an arbitrator:

(a) must fix a time and place for conducting a hearing into the question of access to the land concerned; and

(b) must cause notice of his or her appointment, and of the time and place fixed for conducting the hearing, to be given to the holder of the prospecting title and to each owner and occupier of that land.

(2) The arbitrator may, by a further notice served on the holder of the prospecting title and on each owner and occupier of the land concerned, vary the time or place fixed for conducting the hearing.

(3) The arbitrator must, at the time and place fixed under this section, conduct a hearing into the question of access to the land concerned.

Right of appearance

146. (1) At any hearing into the question of access to any land by the holder of a prospecting title, the holder and each owner and occupier of the land are entitled to appear and be heard.

(2) A party to a hearing may be represented:

(a) by an agent who is not a barrister or a solicitor; or

(b) with the agreement of the parties and the leave of the arbitrator, by a barrister or a solicitor.

Conciliation

147. (1) An arbitrator is not to make a determination until the arbitrator has used his or her best endeavours to bring the parties to a settlement acceptable to all of them.

(2) If the parties come to such a settlement, the arbitrator must make a determination that gives effect to the terms of the settlement.

Procedure

148. (1) Except as otherwise provided by this Act or the regulations, the procedure at a hearing is to be as determined by the arbitrator.

(2) An arbitrator must act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

(3) An arbitrator may conduct a hearing even though one or more of the parties to the hearing fails to attend the hearing.

Interim determination by arbitrator

149. (1) As soon as practicable after concluding a hearing, an arbitrator:

(a) must make an interim determination as to whether or not the holder of the prospecting title should have a right of access to the land concerned; and

(b) if the arbitrator determines that the holder of the prospecting title should have such a right of access, must prepare a draft access arrangement in respect of that land.

(2) As soon as practicable after making an interim determination, the arbitrator:

(a) must reduce the determination to writing; and

(b) must cause a copy of the determination, together with a copy of any draft access arrangement, to be served on each of the parties to the hearing.

Further arbitration

150. (1) A party to a hearing may, within 14 days after being served with a copy of the arbitrator's interim determination, apply to the arbitrator:

(a) for reconsideration of the question of access to the land concerned; or

(b) for variation of any draft access arrangement prepared by the arbitrator in respect of that land.

(2) As soon as practicable after receiving such an application, the arbitrator:

(a) must fix a time and place for continuing the hearing into the question of access to the land concerned; and

(b) must cause notice of the time and place fixed for continuing the hearing to be given to the holder of the prospecting title and to each owner and occupier of that land.

(3) The arbitrator may, by a further notice served on the holder of the prospecting title and on each owner and occupier of the land concerned, vary the time or place fixed for continuing the hearing.

(4) The arbitrator must, at the time and place fixed under this section, continue the hearing into the question of access to the land concerned.

Final determination by arbitrator

151. (1) If an application is not made to the arbitrator within the period of 14 days referred to in section 150 (1):

(a) the interim determination is taken to be the arbitrator's final determination; and

(b) any draft access arrangement is taken to be a final access arrangement.

(2) If an application is made to the arbitrator within the period of 14 days referred to in section 150 (1), the arbitrator, as soon as practicable after concluding the continued hearing:

(a) must make a final determination as to whether or not the holder of the prospecting title should have a right of access to the land concerned; and

(b) if the arbitrator determines that the holder of the prospecting title should have such a right of access, must determine a final access arrangement in respect of that land.

(3) As soon as practicable after making a final determination, the arbitrator:

(a) must reduce the determination to writing; and

(b) must cause a copy of the determination, together with a copy of any final access arrangement forming part of the determination, to be served on each of the parties to the hearing.

Costs

152. (1) Each party to the hearing is to bear his or her own costs in relation to the hearing.

(2) The arbitrator's costs in relation to the hearing are to be borne by the holder of the prospecting title.

(3) Payment of the arbitrator's costs in relation to a hearing is, for the purpose of any security given by the holder of a prospecting title, taken to be an obligation under the title.

Withdrawal from arbitration

153. (1) The parties to a hearing may, at any time before the conclusion of the hearing, terminate the hearing by notice in writing, signed by all of the parties, served on the arbitrator.

(2) This section does not limit the liability of the holder of a prospecting title to bear the arbitrator's costs in relation to the hearing.

Liability

154. No proceedings lie against an arbitrator for or with respect to:

(a) any determination made by the arbitrator; or

(b) any publication made by the arbitrator; or

(c) any other act, matter or thing done by the arbitrator,

for the purposes of a hearing, as long as the determination, publication, act, matter or thing was made or done in good faith.

Review of determination

155. (1) A party to a hearing who is aggrieved by an arbitrator's final determination (other than a determination referred to in section 147 (2)) may apply to a warden's court for a review of the determination.

(2) An application:

(a) must be accompanied by a copy of the determination to which it relates, together with a copy of any access arrangement forming part of the determination; and

(b) must be filed in a warden's court:

(i) in the case of an interim determination that has become a final determination—within 28 days after a copy of the interim determination was served on the applicant; or

(ii) in the case of a final determination—within 14 days after a copy of the final determination was served on the applicant.

(3) An application for review may not be made:

(a) during the period of 14 days within which an application may be made to an arbitrator; or

(b) if such an application is made, until the arbitrator has made a final determination with respect to the application.

(4) The applicant must cause a copy of the application to be served on each of the other parties to the determination to which the application relates.

(5) Subject to any order of a warden's court to the contrary, an application for review of a determination operates to stay the effect of any related access arrangement in relation to a party to the arrangement from the time when a copy of the arrangement has been served on the party until the decision of a warden's court on the review.

(6) In reviewing a determination under this section, a warden's court has the functions of an arbitrator under this Division in addition to its other functions.

(7) The decision of a warden's court on a review of a determination is final and is to be given effect to as if it were the determination of an arbitrator.

Effect of access arrangement etc.

156. An access arrangement determined by an arbitrator:

(a) takes effect:

(i) in the case of a draft access arrangement that is taken to be a final access arrangement—at the end of the period of 14 days after a copy of the draft access arrangement has been served on each of the parties; or

(ii) in the case of a final access arrangement prepared under section 151—when a copy of the arrangement has been served on each of the parties,

or on such later date as may be specified in the arrangement; and

(b) subject to section 141 (3), has effect as if its terms were embodied in a deed that had been duly executed by each of the parties.

Variation of access arrangements

157. An access arrangement determined by an arbitrator may, subject to the terms of the arrangement, be varied by the arbitrator with the consent of all of the parties to the arrangement.

Duration of access arrangements

158. An access arrangement does not run with the land and, unless sooner terminated, terminates:

(a) if an owner or occupier of the land with whom the arrangement is made ceases to be an owner or occupier of the land; or

(b) on the death of an owner or occupier of the land with whom the arrangement is made.

Division 3—Records and registration

Records

159. (1) The Director-General is to cause to be kept a record of every authority granted, renewed, transferred or cancelled.

(2) Such a record must be kept in the form, and must contain the particulars, prescribed by the regulations.

(3) The record must be kept available at the head office of the Department for inspection, free of charge, by members of the public.

Interest in authority to be created by instrument in writing

160. (1) A legal or equitable interest in an authority may not be created or disposed of except by instrument in writing.

(2) The creation of a legal or equitable interest in an authority does not affect the liability of the holder of the authority for any breach of the conditions of the authority or of any of the provisions of this Act or the regulations.

Registration of certain interests

161. (1) The Director-General is to keep a register of legal and equitable interests in authorities.

(2) Any person claiming a legal or equitable interest in an authority may apply for registration of the interest.

(3) An application must be lodged with the Director-General and must be accompanied by the fee prescribed by the regulations and by documentary evidence of the legal or equitable interest concerned.

(4) The Director-General may, if satisfied that the applicant holds the interest concerned, register the document by which the legal or equitable interest is evidenced.

(5) The Director-General may, on application by the holder of an interest or otherwise, make such amendments to the register kept under this section as are appropriate to reflect dealings in the interest.

(6) Without limiting the generality of subsection (5), the Director-General may cancel the registration of an interest if of the opinion that the interest has ceased to exist.

(7) The registration of an interest under this section is not to be taken to be evidence of the existence of the interest.

(8) For the purposes of any legal proceedings concerning an authority:

(a) a registered interest has priority over an interest that is not registered; and

(b) an earlier registered interest has priority over a later registered interest.

(9) The register must be kept available at the head office of the Department for inspection, free of charge, by members of the public.

Devolution of rights of holder of authority

162. A person on whom the rights of the holder of an authority have devolved by operation of law may apply to the Director-General to have that person's name recorded as the holder of the authority and, if the Minister is satisfied that those rights have so devolved, the Director-General must so record the name of the applicant.

Colliery holdings

163. (1) The Director-General is to cause to be kept a register of colliery holdings (referred to in this section as **"the register"**) in such form as may be prescribed by the regulations.

(2) The Director-General is to cause to be recorded in the register:

(a) such particulars as are necessary to give effect to a direction given under this section; and

(b) such other particulars as may be prescribed by the regulations.

(3) A person who has a right (whether under a mining lease or otherwise) to mine for coal or to carry out coal mining purposes on any land may apply to have the land registered as a colliery holding or recorded on the register as part of an existing colliery holding.

(4) A person who has an interest in a colliery holding may apply to have the registration of the colliery holding cancelled or amended so as to exclude land from the colliery holding.

(5) An application under this section:

(a) must be lodged with the Director-General; and

(b) must be accompanied by the particulars prescribed by the regulations.

(6) The Minister may, by order in writing, direct that specified land (being land in which a person has, in the Minister's opinion, a right to mine for coal or to carry out mining purposes in connection with mining for coal) be registered as a colliery holding or recorded on the register as part of an existing colliery holding.

(7) The Minister may, by order in writing, direct that the registration of a colliery holding be cancelled or amended so as to exclude specified land from the colliery holding.

(8) A direction may be given under subsection (6) or (7) whether or not an application has been made under subsection (3) or (4) in respect of the same land.

(9) The Director-General is to cause copies of any direction under subsection (6) or (7) to be served on such persons as, in the Director-General's opinion, have a right to mine coal or to carry out mining purposes in connection with mining for coal in the land or colliery holding to which the instrument relates.

Division 4—Miscellaneous

Rights of way

164. **(1)** The holder of an authority is entitled to a right of way (to be marked out in the manner prescribed by the regulations) between the land subject to the authority and the nearest practicable point of a public road.

(2) The holder of the authority:

(a) must place substantial gates or grids (or, if the owner or occupier of the land so requires, gates and grids) at all fences intersected by the right of way; or

(b) if those fences are rabbit-proof, marsupial-proof or dog-proof fences—must place rabbit-proof, marsupial-proof or dog-proof gates at all such fences, as the case requires.

(3) Any such gate or grid must be of a design and construction that is adequate to prevent stock from straying.

(4) The costs of marking out a right of way and of installing and maintaining any gates or grids required by this section are to be borne by the holder of the authority.

(5) A right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised, as may be prescribed by the regulations or as may be imposed by a warden in any particular case.

(6) A warden may hold an inquiry into any matter arising under, or in connection with, a right of way conferred by this section.

(7) Such an inquiry may be held on the application of the owner or occupier of any land affected by the right of way, on the application of the holder of any authority entitled to the right of way or on the warden's own motion.

Right of access to water

165. (1) If land subject to an authority includes the surface of any private land or Crown land held under a pastoral lease, the owner or occupier of the surface is entitled to free and uninterrupted access, for stock watering and water drainage purposes, to the water in any stream (whether perennial or intermittent) or any lagoon or swamp (whether permanent or temporary) on or adjacent to that land.

(2) If any dispute arises between the holder of an authority and any such owner or occupier concerning the right of access, either the holder or the owner or occupier, or all of them, may, by written notice lodged with the Director-General, request the Minister to determine the dispute.

(3) Any such dispute is to be referred to a warden for inquiry and report and is to be determined by the Minister on the basis of the warden's report.

(4) A determination of the Minister under subsection (3) is final.

Use of water, timber and pasturage etc.

166. (1) If land subject to an authority includes the surface of any private land or Crown land held under a pastoral lease, the holder of the authority must not:

(a) use water artificially conserved on that land; or

(b) fell trees, strip bark or cut timber on that land,

otherwise than in accordance with the consent of the owner or occupier of the surface of the land or, if the owner or occupier refuses consent or attaches unreasonable conditions to the consent, with the approval of a warden.

(2) If land subject to a mining lease includes the surface of any private land or Crown land held under a pastoral lease, the holder of the lease must not:

(a) depasture horses on the land, or keep on the land any dog that is not kept under effective control, unless the land is securely fenced; or

(b) remove rock or earth from the land, except in connection with mining operations, otherwise than with the consent of the owner or occupier of the surface of the land.

Joint holders of authorities

167. If there is more than one holder of an authority, each of the holders is jointly and severally liable for the fulfilment of the obligations arising under this Act in relation to the authority.

Suspension of conditions

168. **(1)** The Minister may (whether on the application of the holder of the authority or otherwise) suspend any of the conditions of an authority for such period, or until the happening of such event, as the Minister may determine.

(2) The suspension of conditions of an authority may be granted unconditionally or subject to such alternative conditions as the Minister may consider appropriate.

(3) The suspension of the conditions of an authority takes effect on the date on which written notice of the suspension is served on the holder of the authority or on such later date as may be specified in the notice.

(4) A condition of an authority that is suspended on the application of the holder of an authority may not be suspended for more than:

(a) 3 months at a time, in the case of an exploration licence; or

(b) 6 months at a time, in the case of an assessment lease or a mining lease.

Forfeiture of security deposit

169. **(1)** Such part of any security in relation to an authority as the Minister may determine is to be forfeited to the Crown if the holder of

the authority fails to fulfil the obligations arising under this Act in relation to the authority.

(2) Money realised from the forfeiture of any such security is to be applied for the purpose of fulfilling the obligations arising under this Act in relation to the authority.

Settlement of certain disputes

170. (1) If any dispute arises between the holders of 2 or more authorities concerning their respective rights in relation to any land or minerals, any one or more of them may refer the dispute to the Minister, who must in turn refer the dispute to a warden for inquiry and report.

(2) On receipt of the warden's report, the Minister may, by order, give such directions to all or any of the persons in dispute as (having regard to the public interest and the circumstances of the case) seem to the Minister to be just and equitable, and may, by the same or a subsequent order, direct the payment by all or any of the persons in dispute of any costs and expenses incidental to the conduct of the inquiry.

(3) A person to whom such a direction relates must not contravene the direction.

Maximum penalty: 20 penalty units.

Minister and certain other persons indemnified in certain circumstances

171. The holder of an authority holds the Crown, the Minister and any person employed in the administration of this Act indemnified against all claims against the Crown, the Minister or any such person arising out of:

(a) anything done or omitted to be done pursuant to, or as a consequence of, the authority; or

(b) anything done or omitted to be done by the holder of the authority, or by any agent or employee of the holder, on or in respect of any land subject to the authority.

Evidentiary provision

172. A certificate that is signed by the Director-General and that states that on a date, or during a period, specified in the certificate:

(a) an authority so specified was or was not granted, renewed, transferred or cancelled; or

(b) a condition so specified was or was not a condition of an authority so specified; or

(c) a person so specified was or was not the holder of an authority so specified; or

(d) land so specified was or was not subject to an authority or to an authority so specified; or

(e) an authority so specified was or was not transferred or was or was not transferred to a person so specified; or

(f) a legal or equitable interest so specified (being a legal or equitable interest of a kind referred to in section 161) was or was not registered under that section,

is admissible in evidence in all courts and is evidence of the fact or facts so stated.

PART 9—MINERAL CLAIMS

Division 1—Mineral claims districts

Constitution of mineral claims districts

173. (1) The Governor may, by order published in the Gazette, constitute any land within a single mining division as a mineral claims district and may, by the same or a subsequent order so published, name the district and fix its boundaries.

(2) Such an order:

(a) may not be made except on the recommendation of the Minister; and

(b) may not be made over land within a reserve if an order under section 367 directs that mineral claims are not to be granted over land in the reserve; and

(c) may not be made over land within an exempted area except in accordance with the consent of the controlling body for that area.

Notice of proposal to constitute mineral claims district

174. (1) The Minister must cause notice of any proposed recommendation to be served on:

(a) each Government agency that, in the opinion of the Minister, would be materially affected by the recommendation; and

(b) each council within whose area is situated the land to which the proposed recommendation relates.

(2) Such a notice:

(a) must identify the proposed boundaries of the mineral claims district; and

(b) must specify proposed conditions for inclusion in the order to be made under section 175 with respect to the mineral claims district.

Special conditions

175. **(1)** The Minister may, by order published in the Gazette, specify the conditions that are to apply to mineral claims granted over land within any specified mineral claims district.

(2) Without limiting the generality of subsection (1), the conditions that may be specified in an order under this section include conditions as to the following matters:

(a) the shape and size of mineral claims that may be granted;

(b) the minerals in respect of which mineral claims may be granted;

(c) the maximum number of mineral claims that may be held by any one person;

(d) the nature and extent of prospecting and mining operations that may be carried out in respect of mineral claims;

(e) the period for which a mineral claim is to have effect;

(f) the security deposits to be lodged in respect of the granting of mineral claims;

(g) the compensation payable in respect of the carrying out of prospecting and mining operations;

(h) the royalties payable in respect of minerals recovered under mineral claims;

(i) the depth below the surface of the land to which prospecting or mining operations may be carried out;

(j) the obligations of the holders of mineral claims as to the rehabilitation of land on which prospecting or mining operations have been carried out.

(3) The Minister must have regard to, but (except as provided by subsection (4)) is not bound by, any representations made by a person or body to whom notice has been given under section 174.

(4) To the extent to which an order under this section applies to land within an exempted area, the order must include any conditions required by the controlling body for that area to be included in the order.

(5) This section does not authorise the making of conditions that permit a mineral claim to be granted over land having an area of more than 2 hectares or that permit a mineral claim to have a term of more than 5 years.

(6) A condition limiting the maximum number of mineral claims that may be held by any one person does not prevent a person from becoming the holder of further mineral claims that devolve on the person by operation of law.

Division 2—Applications

Marking out of proposed claim area

176. **(1)** Before applying for a mineral claim, a person must, in the manner prescribed by the regulations, mark out the area of land over which the person wishes the mineral claim to be granted.

(2) The area marked out must be situated wholly within a single mining division and must comply with the regulations in relation to shape and size.

Notice of intention to apply for mineral claim

177. **(1)** A person may not apply for a mineral claim over Crown land until after the person has caused notice of the proposed application to be served on the occupier of the land to which the proposed application relates.

(2) Such a notice must identify, in the manner prescribed by the regulations, the land to which the application relates.

Application for granting of mineral claim

178. **(1)** Any person may apply for a mineral claim.

(2) An application:

(a) must identify, in the manner prescribed by the regulations, the land to which it relates; and

(b) must specify the mineral or minerals in respect of which the mineral claim is sought; and

(c) must be accompanied by the fee prescribed by the regulations; and

(d) must be lodged with the mining registrar for the mining division within which the land to which it relates is situated; and

(e) in the case of an application that relates to private land—must be accompanied by the written consent of both the owner and the occupier of the land to the granting of the mineral claim; and

(f) in the case of an application that relates to Crown land—must be accompanied by a copy of the notice served on the occupier of that land under section 177 and a statutory declaration to the effect that the notice was so served.

Objection as to agricultural land

179. (1) The occupier of any Crown land the subject of a notice under section 177 may object to the granting of a mineral claim over the land on the basis that the land is agricultural land.

(2) Such an objection must be in writing and must be lodged with the mining registrar for the mining division within which the land is situated within 28 days after the notice is served.

(3) On receipt of an objection, the mining registrar is to refer the objection to the Director-General of the Department of Agriculture who is to determine the objection in accordance with Schedule 2.

Division 3—Restrictions on the grant of mineral claims

General restrictions

180. (1) A mineral claim may not be granted over land having an area of more than 2 hectares.

(2) A mineral claim over land that is not situated within a mineral claims district may not be granted in the name of a person who holds more than one other mineral claim over any such land within the same mining division.

(3) Subsection (2) does not prevent a person from becoming the holder of a mineral claim that has devolved on the person by operation of law.

(4) A mineral claim may not be granted in respect of coal.

Exempted areas

181. (1) A mineral claim may not be granted over land within an exempted area (other than land within a mineral claims district) except with the written consent of the controlling body of that area.

(2) A written consent given under this section is irrevocable.

Land in reserve or opal prospecting area

182. A mineral claim may not be granted over any land within:

(a) an opal prospecting block that is the subject of an opal prospecting licence held by a person other than the applicant for the mineral claim; or

(b) a reserve in respect of which an order prohibiting the granting of mineral claims is in force under section 367; or

(c) a mineral allocation area constituted in respect of any mineral or minerals to which the application for the mineral claim relates.

Land subject to authority

183. (1) A mineral claim may not be granted over any land:

(a) the subject of an exploration licence that includes any mineral or minerals in respect of which the claim is sought; or

(b) the subject of an assessment lease, a mining lease or a mineral claim; or

(c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the firstmentioned mineral claim was lodged,

otherwise than to or with the written consent of the holder of, or the applicant for, that licence, lease or claim.

(2) A written consent given under this section is irrevocable.

(3) If, as a result of such a consent, a mineral claim is granted in respect of land referred to in subsection (1), that land:

(a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim referred to in that subsection; or

(b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim so referred to,

as the case requires.

Land subject to exploration licence over different minerals etc.

184. (1) If an application for a mineral claim is lodged in respect of land that is subject wholly or partly to one or more exploration licences (other than exploration licences that include any mineral or minerals in respect of which the claim is sought), the mining registrar must cause notice of the application to be served on the holder of every such exploration licence.

(2) A person served with such a notice may object to the granting of the mineral claim by lodging with the mining registrar, on or before the date specified in the notice, a written notice stating the grounds of the objection.

(3) If such an objection is made, the mining registrar must refer the objection to an inspector for investigation and report and must determine the objection on the basis of the inspector's report.

(4) This section does not apply to an application that is made with the written consent of the holder of every exploration licence over the land concerned.

(5) A written consent given under this section is irrevocable.

(6) If a mineral claim is granted over land that is subject to an exploration licence, that land ceases to be subject to the exploration licence when the mineral claim is granted.

Land on which private mining operations being carried on

185. **(1)** A mineral claim may not be granted over any land in relation to a privately owned mineral:

(a) if mining operations are being carried out on the land by or with the consent of the owner of the mineral; and

(b) if a notice has been lodged with the Director-General in respect of those mining operations in accordance with section 8,

except with the written consent of the owner of the mineral.

(2) A written consent given under this section is irrevocable.

(3) Any dispute as to whether or not this section applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Director-General on the basis of the warden's report.

Colliery holdings

186. A mineral claim may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that prospecting or mining operations may be carried out under the claim without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the claim area.

Agricultural land

187. **(1)** A mineral claim may not be granted over any land that, as a consequence of an objection to the granting of the claim, has been determined to be agricultural land in accordance with Schedule 2.

(2) This section does not prevent a mineral claim from being granted over land that is within a mineral claims district merely because an objection to the granting of the claim has been made on the basis that the land is agricultural land.

Dwelling-houses, gardens and improvements

188. (1) A mineral claim may not be granted over any land:

(a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of its occupier or a woolshed or shearing shed which is in use as such; or

(b) on which, or within the prescribed distance of which, is situated any garden; or

(c) on which, or within the prescribed distance of which, is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes,

except with the written consent of the occupier (and, in the case of private land, the owner) of the land.

(2) The prescribed distance is:

(a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a); and

(b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b) and (c).

(3) A written consent given under this section is irrevocable.

(4) Subsection (1) does not apply in respect of a dwelling-house, woolshed, shearing shed, garden or improvement that was not in existence when the application for the mineral claim was lodged.

(5) Any dispute as to whether or not subsection (1) applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Director-General on the basis of the warden's report.

(6) A mineral claim may not be granted over land below the surface of land referred to in subsection (1) except at such depths, and subject to such conditions, as the mining registrar considers sufficient to minimise damage to that surface.

Mineral claim not to be re-granted to former holder

189. (1) A person who has been the holder of a mineral claim that has been cancelled pursuant to an order of a warden's court may not be granted a further mineral claim over any part of the land over which the earlier mineral claim was held until the expiration of the period of 12 months following the making of the order.

(2) This section is subject to any further order made by the warden's court by which the original order was made.

Division 4—Granting of mineral claims

Power of mining registrar in relation to applications

190. (1) After considering an application for a mineral claim, the mining registrar:

(a) may grant a mineral claim to the applicant; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) If an objection to the granting of the mineral claim on the basis that the land concerned is agricultural land has been lodged with the mining registrar before the application is determined, the mining registrar may (in the case of land that is situated within a mineral claims district) and must (in any other case) defer consideration of the application until the objection has been determined.

(4) Before granting a mineral claim, the mining registrar may require the applicant to give security for the fulfilment of the obligations arising under this Act in relation to the mineral claim:

(a) in the case of a mineral claim over land that is situated within a mineral claims district—in such amount and form as the mining registrar may (in accordance with the special conditions) require; or

(b) in any other case—in such amount and form as the mining registrar may (in accordance with the regulations) require.

(5) If the mining registrar refuses to grant a mineral claim, the mining registrar is to cause notice of the decision, and of the reasons for the decision, to be served on the applicant.

(6) If more than one application is made for a mineral claim over the same area of land, the applications are to be dealt with in the order in which they are lodged or, if they are lodged simultaneously, in such order as may be prescribed by the regulations.

Land over which mineral claim may be granted

191. (1) A mineral claim may be granted in respect of any mineral or minerals, regardless of whether the mineral or minerals are publicly owned, privately owned or partly publicly and partly privately owned.

(2) A mineral claim may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil between or below any specified depth or depths below the surface of land.

Conditions of mineral claim

192. (1) A mineral claim is subject to:

(a) in the case of a claim that is granted over land within a mineral claims district—such conditions as the mining registrar may (in accordance with the special conditions) impose; and

(b) in any other case—such conditions as the mining registrar may (in accordance with the regulations) impose.

(2) Without limiting the generality of subsection (1), a condition may be imposed on a mineral claim requiring the holder of the claim to pay royalty to the Minister on any minerals recovered under the claim.

(3) Part 14 applies to royalty payable under such a condition in the same way as it applies to royalty payable on a mineral recovered under a mining lease.

Term of mineral claim

193. A mineral claim:

(a) takes effect on the date on which it is granted or on such later date as the mining registrar may determine; and

(b) ceases to have effect at the expiration of such period (not exceeding 5 years or, in the case of a mineral claim over land that is situated within a mineral claims district, not exceeding such shorter period as the special conditions may specify) as the mining registrar may determine.

Certificate of mineral claim

194. (1) On granting a mineral claim, the mining registrar is to cause a certificate to be given to the holder of the claim of the fact that the claim has been granted.

(2) A certificate is to be in the approved form and is to include the following particulars:

(a) a description of the land over which the mineral claim is granted;

(b) a list of the mineral or minerals in respect of which the mineral claim is granted;

(c) the conditions to which the mineral claim is subject;

(d) the period for which the mineral claim is to have effect.

Division 5—Rights and duties under a mineral claim

Rights under mineral claim

195. (1) The holder of a mineral claim may, in accordance with the conditions of the claim, prospect for and mine the mineral or minerals in respect of which the claim is granted and may, in connection with any such prospecting or mining:

(a) erect buildings and structures; and

(b) exercise any rights in the nature of easements; and

(c) carry out works; and

(d) remove from the claim area any timber, stone or gravel.

(2) If an application for an assessment lease or mining lease is made by the holder of a mineral claim, the claim continues in force until the application is finally disposed of.

Claim areas over which authority is subsequently granted

196. Land over which a mineral claim is granted and over which an authority or further mineral claim is subsequently granted ceases to be part of the claim area when the authority or further claim takes effect.

Division 6—Renewal, transfer and cancellation of mineral claims

Application for renewal

197. (1) The holder of a mineral claim may apply for renewal of the claim.

(2) An application for renewal of a mineral claim:

(a) must be accompanied by the fee prescribed by the regulations; and

(b) must be lodged, within 28 days before the day on which the claim would otherwise expire, with the mining registrar for the mining division within which the claim area is situated.

(3) A mineral claim the subject of such an application remains in force until the application is finally disposed of.

Determination of application for renewal

198. (1) After considering an application for renewal of a mineral claim, the mining registrar:

(a) may renew the mineral claim; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The mining registrar may, on renewing a mineral claim, vary the conditions of the claim:

(a) in the case of a mineral claim that is granted over land within a mineral claims district—in such manner as the mining registrar may (in accordance with the special conditions) determine; and

(b) in any other case—in such manner as the mining registrar may (in accordance with the regulations) determine.

Partial renewal

199. A mineral claim may be renewed as to the whole or any part of the claim area and, if it is renewed as to part only of the claim area, the remainder ceases to be part of the claim area when the renewal takes effect.

Application for transfer

200. (1) The holder of a mineral claim may apply for the transfer of the claim to some other person.

(2) An application for the transfer of a mineral claim:

(a) must be accompanied by the fee prescribed by the regulations; and

(b) must be lodged with the mining registrar for the mining division within which the claim area is situated; and

(c) must be accompanied by the written consent of the proposed transferee; and

(d) in the case of an application that relates to private land—must be accompanied by the written consent of the owner and the occupier of the land.

(3) The mining registrar may defer consideration of an application that is the subject of legal proceedings, or of an inquiry under this Act, pending the outcome of those proceedings or that inquiry.

Determination of application for transfer

201. (1) After considering an application for transfer of a mineral claim, the mining registrar:

(a) may transfer the mineral claim; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The mining registrar may, on transferring a mineral claim, vary the conditions of the claim:

(a) in the case of a claim that is granted over land within a mineral claims district—in such manner as the mining registrar may (in accordance with the special conditions) determine; and

(b) in any other case—in such manner as the mining registrar may (in accordance with the regulations) determine.

(4) A mineral claim may not be transferred to a person if the person would consequently become the holder of more mineral claims than the maximum number allowed by this Act.

Devolution by operation of law

202. (1) The mining registrar may, on the application of a person on whom a mineral claim has devolved by operation of law, transfer the claim to that person.

(2) An application under this section:

(a) must be accompanied by the fee prescribed by the regulations; and

(b) must be lodged with the mining registrar for the mining division within which the claim area is situated.

(3) The mining registrar may defer consideration of an application that is the subject of legal proceedings, or of an inquiry under this Act, pending the outcome of those proceedings or that inquiry.

Grounds of cancellation

203. (1) A mining registrar may cancel a mineral claim, as to the whole or any part of the land to which it relates:

(a) if the holder of the claim requests the mining registrar to cancel the claim; or

(b) if, as a result of an objection made under section 179, it is determined in accordance with Schedule 2 that the land is agricultural land; or

(c) if the holder of the claim contravenes any condition of the claim or any provision of this Act or the regulations, whether or not the holder is prosecuted or convicted of any offence arising from the contravention; or

(d) if the holder of the claim fails to comply with the requirements of any agreement or assessment under Part 13 in relation to the payment of compensation; or

(e) if the holder of the claim is convicted of any offence relating to mining or minerals; or

(f) if the land is required for a public purpose; or

(g) if the mining registrar is ordered by a warden's court to cancel the claim.

(2) A request referred to in subsection (1) (a):

(a) must be lodged with the mining registrar for the mining division within which the claim area is situated; and

(b) if the application is for the cancellation of the claim as to part only of the land to which it relates—must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land in respect of which the claim is to be cancelled.

(3) The mining registrar may defer cancellation of a mineral claim that is the subject of legal proceedings, or of an inquiry under this Act, pending the outcome of those proceedings or that inquiry.

Cancellations

204. (1) Before cancelling a mineral claim on a ground referred to in section 203 (1) (c), (d) or (e), the mining registrar:

(a) must cause written notice of the proposed cancellation, and of the grounds of the proposed cancellation, to be served on the holder of the claim; and

(b) must give the holder of the claim a reasonable opportunity to make representations with respect to the proposed cancellation; and

(c) must take any such representations into consideration.

(2) Cancellation of a mineral claim takes effect on the date on which written notice of the cancellation is served on the holder of the claim or on such later date as is specified in the notice.

(3) Cancellation of a mineral claim does not affect any liability incurred by the holder of the claim before the cancellation took effect.

Compensation for cancellation

205. (1) The holder of a mineral claim is not entitled to compensation merely because the claim is cancelled.

(2) However, if a mineral claim is cancelled on the ground that the whole or any part of the land concerned is required for a public purpose,

the holder of the claim is entitled to compensation, of an amount to be determined by the Minister, for any mining improvements made to the land.

Appeals against cancellation

206. (1) Any person who is aggrieved by the decision of a mining registrar to cancel a mineral claim held by the person, or of the decision of the Minister as to the amount of compensation payable as a consequence of the cancellation, may appeal to the District Court against the decision.

(2) An appeal is to be heard by way of a new hearing, and fresh evidence, or evidence additional to the evidence available to the mining registrar or Minister when the decision was made, may be admitted in the hearing.

(3) Subject to any order made by the District Court, the lodging of an appeal does not operate to stay the decision appealed against.

(4) The decision of the District Court on an appeal is final and is to be given effect to as if it were the decision of the mining registrar or Minister, as the case may be.

Division 7—Miscellaneous

Holder of mineral claim must be at least 18

207. A mineral claim may not be granted to an individual who has not attained the age of 18 years.

Withdrawal of application

208. (1) An application or objection in relation to the grant, renewal, transfer or cancellation of a mineral claim may be withdrawn by means of a notice of withdrawal lodged by the applicant or objector with the mining registrar with whom the application or objection was lodged and ceases to have effect when the notice is lodged.

(2) The withdrawal of an application or objection under this section is irrevocable.

Pending applications

209. For the purposes of this Act, an application for a mineral claim is pending from the time it is lodged under this Act until the time it is finally disposed of.

Death etc. of applicant for granting of mineral claim

210. An application for a mineral claim made by a person who subsequently dies, becomes bankrupt or becomes a mentally incapacitated person:

(a) subsists for the benefit of the applicant's estate; and

(b) may continue to be dealt with,

if the applicant's legal representative or the manager of the applicant's estate so requests.

Rights of way

211. (1) The holder of a mineral claim is entitled to a right of way (to be marked out in the manner prescribed by the regulations) between the claim area and the nearest practicable point of a public road.

(2) The holder of the mineral claim:

(a) must place substantial gates or grids (or, if the owner or occupier of the land so requires, gates and grids) at all fences intersected by the right of way; or

(b) if those fences are rabbit-proof, marsupial-proof or dog-proof fences—must place rabbit-proof, marsupial-proof or dog-proof gates at all such fences, as the case requires.

(3) Any such gate or grid must be of a design and construction that is adequate to prevent stock from straying.

(4) The costs of marking out a right of way and of installing and maintaining any gates or grids required by this section are to be borne by the holder of the mineral claim.

(5) A right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised, as may be prescribed by the regulations or as may be imposed by a warden in any particular case.

(6) A warden may hold an inquiry into any matter arising under, or in connection with, a right of way conferred by this section.

(7) Such an inquiry may be held on the application of the owner or occupier of any land affected by the right of way, on the application of the holder of any mineral claim entitled to the right of way or on the warden's own motion.

Right of access to water

212. (1) If land subject to a mineral claim includes the surface of any private land or Crown land held under a pastoral lease, the owner or

occupier of the surface is entitled to free and uninterrupted access, for stock watering and water drainage purposes, to the water in any stream (whether perennial or intermittent) or any lagoon or swamp (whether permanent or temporary) on or adjacent to that land.

(2) If any dispute arises between the holder of a mineral claim and any such owner or occupier concerning the right of access, either the holder or the owner or occupier, or all of them, may, by written notice lodged with the Minister, request the Minister to determine the dispute.

(3) Any such dispute is to be referred to a warden for inquiry and report and is to be determined by the Minister on the basis of the warden's report.

(4) A determination by the Minister under subsection (3) is final.

Use of water, timber and pasturage etc.

213. (1) If land subject to a mineral claim includes the surface of any private land or Crown land held under a pastoral lease, the holder of the mineral claim must not:

(a) use water artificially conserved on that land; or

(b) fell trees, strip bark or cut timber on that land,

otherwise than in accordance with the consent of the owner or occupier of the surface of the land or, if the owner or occupier refuses consent or attaches unreasonable conditions to the consent, with the approval of a warden.

(2) If land subject to a mineral claim includes the surface of any private land or Crown land held under a pastoral lease, the holder of the claim must not:

(a) depasture horses on the land, or keep on the land any dog that is not under effective control, unless the land is securely fenced; or

(b) remove rock or earth from the land, except in connection with mining operations, otherwise than with the consent of the owner or occupier of the surface of the land.

Joint holders of mineral claims

214. If there is more than one holder of a mineral claim, each of the holders is jointly and severally liable for the fulfilment of the obligations arising under this Act in relation to the claim.

Suspension of conditions

215. (1) The mining registrar may (whether on the application of the holder of the claim or otherwise) suspend any of the conditions of a

mineral claim (other than conditions of the kind referred to in section 175 (4)) for such period, or until the happening of such event, as the mining registrar may determine.

(2) The suspension of conditions of a mineral claim may be granted unconditionally or subject to such alternative conditions as the mining registrar may consider appropriate.

(3) The suspension of conditions of a mineral claim takes effect on the date on which written notice of the suspension is served on the holder of the mineral claim or on such later date as may be specified in the notice.

(4) A condition of a mineral claim that is suspended on the application of the holder of the claim may not be suspended for more than 3 months at a time.

Forfeiture of security deposit

216. (1) Such part of any security in relation to a mineral claim as the Director-General may determine is to be forfeited to the Crown if the holder of the claim fails to fulfil the obligations arising under this Act in relation to the claim.

(2) Money realised from the forfeiture of any such security may be applied for the purpose of rehabilitating any land in the State affected by prospecting or mining operations.

Settlement of certain disputes

217. (1) If any dispute arises between the holders of 2 or more mineral claims concerning their respective rights in relation to any land or minerals, any one or more of them may refer the dispute to the Minister, who must in turn refer the dispute to a warden for inquiry and report.

(2) On receipt of the warden's report, the Minister may, by order, give such directions to all or any of the persons in dispute as (having regard to the public interest and the circumstances of the case) seem to the Minister to be just and equitable, and may, by the same or a subsequent order, direct the payment by all or any of the persons in dispute of any costs and expenses incidental to the conduct of the inquiry.

(3) A person to whom such a direction relates must not contravene the direction.

Maximum penalty: 20 penalty units.

Minister and certain other persons indemnified in certain circumstances

218. The holder of a mineral claim holds the Crown, the Minister and any person employed in the administration of this Act indemnified against all claims against the Crown, the Minister or any such person arising out of:

(a) anything done or omitted to be done pursuant to, or as a consequence of, the claim; or

(b) anything done or omitted to be done by the holder of the claim, or by any agent or employee of the holder, on or in respect of any land subject to the claim.

Evidentiary provision

219. A certificate that is signed by a mining registrar and that states that on a date, or during a period, specified in the certificate:

(a) a mineral claim so specified was or was not granted, renewed, transferred or cancelled; or

(b) a condition so specified was or was not a condition of a mineral claim so specified; or

(c) a person so specified was or was not the holder of a mineral claim so specified; or

(d) land so specified was or was not subject to a mineral claim or to a mineral claim so specified,

is admissible in evidence in all courts and is evidence of the fact or facts so stated.

PART 10—OPAL PROSPECTING LICENCES

Division 1—Opal prospecting areas

Opal prospecting areas

220. The Minister may, by order published in the Gazette, constitute any Crown land as an opal prospecting area and may, by the same or a subsequent order so published, name the area and fix its boundaries.

Notification of occupiers of land

221. Before constituting any occupied Crown land as an opal prospecting area or adding any occupied Crown land to an existing opal prospecting area, the Minister must cause written notice to be served on any occupier of the land:

(a) of the proposal to constitute the land as an opal prospecting area; and

(b) of the grounds on which the occupier may make an objection to the constitution of the land as an opal prospecting area; and

(c) of the manner and form in which the occupier may make such an objection.

Objections

222. **(1)** An occupier of Crown land who has been served with a notice of the Minister's proposal to constitute the land as an opal prospecting area, or to add the land to an existing opal prospecting area, may, within 28 days after being so served, make an objection to the proposal on any of the following grounds:

(a) on the ground that the land the subject of the proposal is agricultural land;

(b) on one or more grounds of the kind prescribed by the regulations.

(2) Such an objection:

(a) must be lodged with the Director-General; and

(b) must be in the approved form.

(3) The Minister:

(a) must refer such part of an objection as has been made on the ground referred to in subsection (1) (a) to the Director-General of the Department of Agriculture for determination of the question of whether the land concerned is agricultural land; and

(b) must refer such part of an objection as has been made on a ground referred to in subsection (1) (b) to a warden for inquiry and report.

(4) An objection referred to the Director-General of the Department of Agriculture is to be determined in accordance with Schedule 2.

(5) An objection referred to a warden is to be determined by the Minister on the basis of the warden's report.

Certain land not to be included in opal prospecting area

223. **(1)** Land may not be constituted as an opal prospecting area or added to an existing opal prospecting area:

(a) if an application for an authority is pending in respect of the land; or

(b) if an authority is in force in respect of the land; or

(c) if the land forms part of a reserve, an exempted area, a mineral allocation area for opal or a colliery holding; or

(d) if it has been determined in accordance with Schedule 2 that the land is agricultural land.

(2) Land that is within a national park, state recreation area, historic site, nature reserve, state game reserve, Aboriginal area, protected archaeological area, wildlife district, wildlife refuge, wildlife assessment area or Aboriginal place within the meaning of the National Parks and Wildlife Act 1974 may not be constituted as an opal prospecting area, or added to an existing opal prospecting area, except with the consent of the Minister administering that Act.

Opal prospecting blocks

224. **(1)** The Minister may, by order published in the Gazette, constitute any land within an opal prospecting area as an opal prospecting block.

(2) Such an order:

(a) may give the opal prospecting block a designation and fix its boundaries; and

(b) may specify any periods during which an opal prospecting licence may not be granted in respect of the opal prospecting block.

(3) An opal prospecting block may not exceed such dimensions as may be prescribed by the regulations.

Map of opal prospecting area to be prepared

225. **(1)** As soon as practicable after land within an opal prospecting area has been constituted as an opal prospecting block, the Minister:

(a) must cause a map to be prepared, on which the following particulars are to be depicted:

(i) the boundary of the opal prospecting area;

(ii) the boundary of each opal prospecting block within the opal prospecting area;

(iii) the name of the opal prospecting area;

(iv) the designation of each opal prospecting block within the opal prospecting area;

(v) the period for which an opal prospecting licence over an opal prospecting block within the opal prospecting area may be granted;

(vi) any special conditions that are to apply to an opal prospecting licence in relation to the program of work to be carried out in an opal prospecting block, the amount of money to be expended on prospecting and any other matters

that the Minister considers should be depicted on the map as special conditions; and

(b) must cause a copy of the map to be furnished to the mining registrar for each mining division within which the opal prospecting area, or any part of the opal prospecting area, is situated.

(2) The Minister may from time to time cause such a map to be amended:

(a) by varying the boundary of the opal prospecting area; or

(b) by varying the boundary of one or more opal prospecting blocks within the opal prospecting area; or

(c) by varying the period for which an opal prospecting licence over an opal prospecting block within the opal prospecting area may be granted; or

(d) by varying the special conditions which are to apply to an opal prospecting licence.

(3) As soon as practicable after a map is amended, the Minister must cause a copy of the amended map to be furnished to the mining registrar for each mining division within which the relevant opal prospecting area, or any part of the area, is situated.

(4) A mining registrar to whom a copy of a map is furnished must, during ordinary office hours, keep the copy of the map available, free of charge, for public inspection.

Division 2—Opal prospecting licences

Applications

226. (1) Any person may apply for an opal prospecting licence.

(2) An application for an opal prospecting licence must be lodged with the mining registrar for the mining division in which the opal prospecting block is situated.

(3) If more than one application is lodged with a mining registrar in respect of the same opal prospecting block, the applications are to be dealt with in the order in which they are lodged or, if they are lodged simultaneously, in such order as may be prescribed by the regulations.

Restrictions on grant of licence

227. An opal prospecting licence may not be granted over an opal prospecting block:

(a) to an individual who has not attained the age of 18 years;

(b) over which any other opal prospecting licence is in force or has (at any time within the 10 days preceding the day on which the application for the licence was lodged) been in force; or

(c) over which a mineral claim is in force; or

(d) to a person who is the holder of an opal prospecting licence over any other opal prospecting block in the same mining division; or

(e) during a period specified in the order by which the opal prospecting block is constituted as a period during which such a licence may not be granted.

Granting of licence

228. (1) On payment of the fee prescribed by the regulations, a mining registrar with whom an application is lodged must, subject to this Division, grant to the applicant an opal prospecting licence over the opal prospecting block to which the application relates.

(2) A mining registrar must, in the manner prescribed by the regulations, cause a record to be kept of each opal prospecting licence granted by the mining registrar.

Conditions of licence

229. An opal prospecting licence is subject to:

(a) any special conditions that apply to the opal prospecting block over which the licence is granted; and

(b) any other conditions that the mining registrar considers appropriate to impose.

Term of licence

230. An opal prospecting licence has effect for the period specified on the map in respect of the opal prospecting block concerned.

Form of licence

231. An opal prospecting licence is to be in the approved form and is to include the following particulars:

(a) the designation of the opal prospecting block over which the licence is granted;

(b) the period for which the licence is to have effect.

Rights under licence

232. (1) The holder of an opal prospecting licence may, in accordance with the licence, prospect for opals in the opal prospecting block over which the licence is granted.

(2) While an opal prospecting licence is in force, no person, other than the holder of the licence, may prospect for opals in any part of the opal prospecting block to which the licence relates.

(3) Nothing in this section prevents the holder of a mineral claim from exercising, in relation to any land within an opal prospecting block, any right conferred by the claim.

(4) An application for a mineral claim is a nullity to the extent to which it relates to any part of an opal prospecting block in respect of which any person other than the applicant holds an opal prospecting licence.

Grounds of cancellation

233. (1) A mining registrar may cancel an opal prospecting licence:

(a) if the holder of the licence requests the mining registrar to cancel the licence; or

(b) if the holder of the licence contravenes any condition of the licence or any provision of this Act or the regulations, whether or not the holder is prosecuted or convicted of any offence arising from the contravention; or

(c) if the holder of the licence fails to comply with the requirements of any agreement or assessment under Part 13 in relation to the payment of compensation; or

(d) if the holder of the licence is convicted of any offence relating to mining or minerals; or

(e) if the mining registrar is ordered by a warden's court to cancel the licence.

(2) A request referred to in subsection (1) (a) must be lodged with the mining registrar for the mining division within which the opal prospecting block is situated.

Cancellations

234. (1) Before cancelling an opal prospecting licence on a ground referred to in section 233 (1) (b), (c) or (d), the mining registrar:

(a) must cause written notice of the proposed cancellation, and of the grounds of the proposed cancellation, to be served on the holder of the licence; and

(b) must give the holder of the licence a reasonable opportunity to make representations with respect to the proposed cancellation; and

(c) must take any such representations into consideration.

(2) Cancellation of an opal prospecting licence takes effect on the date on which written notice of the cancellation is served on the holder of the licence or on such later date as is specified in the notice.

(3) Cancellation of an opal prospecting licence does not affect any liability incurred by the holder of the licence before the cancellation took effect.

Division 3—Miscellaneous

Certain claims for damages prohibited

235. No action lies against the Crown, the Minister or any person administering this Act in respect of any injury or loss suffered or incurred in relation to the exercise of any right conferred by an opal prospecting licence.

Evidentiary provision

236. A certificate that is signed by a mining registrar and that states that on a date, or during a period, specified in the certificate:

(a) an opal prospecting licence so specified was or was not granted; or

(b) a condition so specified was or was not a condition the subject of an opal prospecting licence so specified; or

(c) a person so specified was or was not the holder of an opal prospecting licence so specified; or

(d) an opal prospecting block was or was not subject to an opal prospecting licence or to an opal prospecting licence so specified,

is admissible in evidence in all courts and is evidence of the fact or facts so stated.

PART 11—PROTECTION OF THE ENVIRONMENT

Division 1—Environment to be considered before grant of authorities or mineral claims

Need to protect natural resources etc. to be taken into account

237. (1) In deciding whether or not to grant an authority or mineral claim, the Minister is to take into account the need to conserve and protect:

(a) the flora, fauna, fish, fisheries and scenic attractions; and

(b) the features of Aboriginal, architectural, archaeological, historical or geological interest,

in or on the land over which the authority or claim is sought.

(2) The Minister may cause such studies (including environmental impact studies) to be carried out as the Minister considers necessary to enable such a decision to be made.

Division 2—Conditions for protecting the environment

Inclusion of conditions for protecting the environment

238. The conditions subject to which an authority or mineral claim is granted or renewed must, if the Minister considers it appropriate, include conditions relating to the conservation and protection of:

(a) the flora, fauna, fish, fisheries and scenic attractions; and

(b) the features of Aboriginal, architectural, archaeological, historical or geological interest,

in or on the land subject to the authority or claim.

Rehabilitation etc. of area damaged by mining

239. **(1)** The conditions subject to which an authority or mineral claim is granted or renewed may include such conditions relating to:

(a) the rehabilitation, levelling, regrassing, reforesting or contouring of such part of the land over which the authority or claim has effect as may have been damaged or adversely affected by prospecting operations or mining operations; and

(b) the filling in, sealing or fencing off of excavations, shafts and tunnels,

as may be prescribed by the regulations or as the Minister may, in any particular case, determine.

(2) The Minister may amend an authority or mineral claim:

(a) that does not contain conditions of the kind that may be imposed under this Division; or

(b) that does contain such conditions, being conditions that the Minister considers are inadequate,

so as to include conditions or further conditions of that kind or so as to alter any such conditions.

(3) Any conditions of the kind referred to in subsection (1) (a) are to be in a form approved by the Commissioner of the Soil Conservation

Service and after consultation with the Director of National Parks and Wildlife.

(4) An amendment takes effect on the date on which notice of the amendment is served on the holder of the authority or mineral claim or on such later date as may be specified in the notice.

Division 3—Directions to rehabilitate land

Direction to comply with conditions of authority or mineral claim

240. (1) The Minister may cause to be served on a person who is or has been the holder of an authority or mineral claim a written notice directing the person to take specified steps, within a specified time, to give effect to any conditions included in the authority or claim under Division 2.

(2) A person on whom such a direction has been served must not fail to comply with the direction.

Maximum penalty: 20 penalty units.

Rehabilitation by Minister at holder's expense

241. (1) If a person on whom a direction is served under this Division does not comply with the direction, the Minister may cause to be taken any of the steps specified in the notice in which the direction was given.

(2) Any costs or expenses incurred by the Crown under this section are a debt due to the Crown by the person on whom the direction was served and are recoverable in a court of competent jurisdiction.

Recovery of costs of rehabilitation

242. (1) In any proceedings for the recovery of a debt due to the Crown under this Division, a certificate that is signed by the Minister and that states that a specified amount is the amount of the debt so due is admissible in evidence in all courts and is evidence of that fact.

(2) A debt due to the Crown under this Division is recoverable whether or not the person by whom it is due is prosecuted or convicted of an offence under this Division.

Division 4—Directions to remove mining plant

Application of Division

243. This Division applies to land that ceases to be subject to an authority or mineral claim.

Definitions

244. In this Division:

"mining plant" means any building, plant, machinery, equipment, tools or other property that has been used for mining or mining purposes, whether or not affixed to land, but does not include any timber or other material used or applied in the construction or support of any shaft, drive, gallery, adit, terrace, race, dam or other mining work;

"prescribed period", in relation to land that has ceased to be subject to an authority or mineral claim, means the period of 6 months from the date on which the land ceased to be subject to the authority or claim or such longer period as the Minister may, in any particular case, allow.

Clearing away of mining plant

245. (1) The holder of an authority or mineral claim over land that ceases to be subject to the authority or claim:

(a) may, within the prescribed period; and

(b) must, if directed to do so by the Minister by notice in writing, within the period specified in the notice,

cause to be removed from the land any mining plant brought onto, or erected on, that land in the course of mining operations carried out under the authority or claim.

(2) The Minister may give a direction under this section even though the prescribed period has not expired.

Sale of mining plant

246. (1) If mining plant is not duly removed under this Division, the Minister may direct that the mining plant be sold by public auction.

(2) Any mining plant remaining unsold after the public auction held may be sold by private treaty.

(3) The following amounts are to be deducted from the proceeds of any such sale:

(a) the costs of the sale and of any matter incidental to or connected with the sale;

(b) the costs of removing from the land concerned any mining plant remaining unsold after the public auction;

(c) any amount owing in respect of compensation for compensable loss within the meaning of Division 1 of Part 13;

(d) any other amount that the Director-General certifies to be a deductible amount.

(4) Any balance remaining is to be paid to the Treasurer as unclaimed money, and sections 6 (2) and 10 of the Unclaimed Money Act 1982 apply to the balance so paid in the same way as they would have applied had the balance been paid to the Treasurer under section 6 of that Act.

(5) If the proceeds of sale are less than the amounts to be deducted, the proceeds are to be applied in meeting those amounts in such manner as the Minister directs.

PART 12—POWERS OF ENTRY

Division 1—Entry by inspectors

Powers of inspectors

247. **(1)** For the purposes of this Act, an inspector:

(a) may enter any land the subject of an authority or a mineral claim, or an application for an authority or a mineral claim, and any land in an opal prospecting area; and

(b) may inspect that land and any mine, works, operations, buildings or structure on that land; and

(c) may remove samples of ore or other mineral deposits from that land.

(2) An inspector may direct the person in charge of any mine, works, operations, buildings or structure on any such land to provide the inspector with all reasonable facilities and assistance.

(3) A person to whom such a direction is given must not fail to comply with the direction.

Maximum penalty: 20 penalty units.

Certificates of authority

248. **(1)** For the purpose of enabling an inspector to exercise a power conferred by this Division, the Minister may issue the inspector with a certificate of authority.

(2) A certificate of authority must be in the form prescribed by the regulations, must be signed by the person by whom it is issued and must include the following particulars:

(a) a statement to the effect that it has been issued under this Act;

(b) the name of the person to whom it has been granted;

(c) the nature of the powers it confers.

Division 2—Entry by other persons

Entry on land for rehabilitation purposes etc.

249. (1) The Minister may grant a permit to any person to enter any land so as to enable the person:

(a) to carry out any rehabilitation work in accordance with a direction in force under section 240; or

(b) to remove any mining plant from any land in accordance with a direction under section 245 or as a result of a sale conducted under section 246.

(2) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:

(a) enter the land to which the permit relates; and

(b) do on that land all such things as are reasonably necessary to achieve the purpose for which the permit is granted.

Surveys

250. (1) The Minister may grant a permit to a mining surveyor or any other officer of the Department to enter any land so as to enable the person to carry out a survey for the purpose of defining any road or for any other purpose authorised by this Act.

(2) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:

(a) enter the land to which the permit relates; and

(b) do on that land all such things as are reasonably necessary to achieve the purpose for which the permit is granted.

Ore sampling

251. (1) The Minister may grant a permit to a geologist, geophysicist or geochemist employed in the Department to enter any land so as to enable the person to take samples of ores and mineral deposits.

(2) The holder of a permit under this section, and any assistant of the holder, may, in accordance with the permit:

(a) enter the land to which the permit relates; and

(b) remove samples of ores or other mineral deposits from the land.

Environmental assessment

252. (1) A warden may, on the application of a person who proposes to undertake an assessment (for the purposes of this Act or the Environmental Planning and Assessment Act 1979) of the likely effect on the environment of the activities to be carried out under an authority or a mineral claim, grant a permit to the applicant to enter any land so as to enable the person to undertake the assessment.

(2) For the purpose of determining an application for a permit, a warden may hold an inquiry into any matter arising under, or in connection with, the application.

(3) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:

(a) enter the land to which the permit relates; and

(b) do on that land all such things as are reasonably necessary to carry out the assessment to which the permit relates.

(4) The rights conferred by the permit may not be exercised within land in an exempted area except with the consent of the Minister.

(5) Such consent may be given unconditionally or subject to conditions.

(6) In the case of land within a national park, state recreation area, historic site, nature reserve, state game reserve, Aboriginal area, protected archaeological area, wildlife district, wildlife refuge, wildlife management area or Aboriginal place within the meaning of the National Parks and Wildlife Act 1974, such consent may not be given except with the concurrence of the Minister administering that Act.

Encroachments by mining works etc.

253. (1) A warden may, on the application of a person having the care and management of a public road or railway, grant a permit to a surveyor or other person to enter and inspect any land the subject of an authority or a mineral claim so as to enable the person to ascertain whether any work carried out on that land:

(a) is encroaching on that road or railway; or

(b) is likely to cause injury or damage to that road or railway or to any building or structure adjacent to that road or railway.

(2) A warden may, on the application of an owner or occupier of land adjoining land the subject of an authority or a mineral claim, grant a permit to a surveyor or other person to enter and inspect that land so as to enable the person to ascertain whether any work carried out on that land is encroaching on the adjoining land.

(3) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:

(a) enter and inspect the land to which the permit relates; and

(b) survey that land or any part of that land; and

(c) make plans and sections of that land or any part of that land and of any buildings, structures or works situated on that land.

Permit to enter Crown land

254. **(1)** A mining registrar may grant a permit to any person to enter Crown land held under a pastoral lease so as to enable the person to mark out a proposed mineral claim or to comply with the conditions of a mineral claim.

(2) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:

(a) enter the land to which the permit relates; and

(b) do all such things as are reasonably necessary for the purpose of marking out a proposed mineral claim or of complying with the conditions of any mineral claim.

Division 3—Exercise of power of entry

Restriction of power of entry

255. **(1)** A power conferred by this Act to enter any land, or to do anything on any land, may not be exercised unless the inspector or other person proposing to exercise the power:

(a) is in possession of the relevant certificate of authority or permit; and

(b) gives reasonable notice to the occupier of the land of intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power; and

(c) exercises the power at a reasonable time, unless the power is being exercised in an emergency; and

(d) produces the certificate of authority or permit if required to do so by the occupier of the land; and

(e) uses no more force than is reasonably necessary to effect the entry or to do the thing authorised by the certificate of authority or permit.

(2) If damage is caused by an inspector or other person exercising a power of entry under this Part, the owner of the land (in the case of

private land) or the occupier of the land (in the case of Crown land) is entitled to payment from the Crown of a reasonable amount of compensation unless the occupier of the land obstructed, hindered or restricted the inspector or other person in the exercise of the power.

Premises used for dwelling purposes

256. Nothing in this Part enables an inspector or other person to enter any premises or part of premises that are being used as a dwelling otherwise than with the consent of the occupier of the premises or part.

Obstruction

257. A person must not, without reasonable excuse, obstruct, hinder or restrict an inspector or other person in the exercise of the powers conferred on the inspector or other person by this Part.

Maximum penalty: 20 penalty units.

Division 4—Miscellaneous

Conditions of permit

258. A permit is subject to such conditions as are specified in the permit.

Term of permit

259. Unless sooner cancelled, a permit remains in force for such period not exceeding:

(a) except as provided by paragraph (b), 12 months from the date it is granted; or

(b) in the case of a permit to mark out a proposed mineral claim, 14 days from the date it is granted,

as is specified in the permit.

Form of permit

260. A permit must be in the form prescribed by the regulations, must be signed by the person by whom it is granted and must include the following particulars:

(a) a statement to the effect that it has been granted under this Act;

(b) the name of the person to whom it has been granted;

(c) the nature of the powers it confers;

(d) a description of the land over which it is granted;

(e) the conditions to which it is subject;

(f) the period for which it is to have effect.

Cancellation of permit

261. (1) The Minister may, for such reason as the Minister thinks fit, cancel a permit that has been granted by the Minister.

(2) A warden may, for such reason as the warden thinks fit, cancel a permit that has been granted by the warden.

(3) A mining registrar may, for such reason as the mining registrar thinks fit, cancel a permit that has been granted by the mining registrar.

PART 13—COMPENSATION

Division 1—Prospecting and mining

Definition

262. In this Division:

"compensable loss" means loss caused, or likely to be caused, by:

(a) damage to the surface of land, to crops, trees, grasses or other vegetation (including fruit and vegetables) or to buildings, structures or works, being damage which has been caused by or which may arise from prospecting or mining operations; or

(b) deprivation of the possession or of the use of the surface of land or any part of the surface; or

(c) severance of land from other land of the owner or occupier of that land; or

(d) surface rights of way and easements; or

(e) destruction or loss of, or injury to, disturbance of or interference with, stock; or

(f) damage consequential on any matter referred to in paragraph (a)–(e),

but does not include loss that is compensable under the Mine Subsidence Compensation Act 1961.

Compensation arising under exploration licence

263. (1) On the granting of an exploration licence:

(a) the occupier of any Crown land, and the owner and any occupier of any private land, subject to the licence; and

(b) the occupier of any Crown land, and the owner and any occupier of any private land, not subject to the licence,

become entitled to compensation for any compensable loss suffered, or likely to be suffered, by them as a result of the exercise of the rights conferred by the licence or by an access arrangement in respect of the licence.

(2) The holder of an exploration licence may agree with an owner or occupier as to the amount of compensation payable, but an agreement reached is not valid unless it is in writing, signed by or on behalf of the parties to the agreement, and lodged with the Director-General.

(3) Such of the provisions of an access arrangement (whether or not in writing) as relate to compensation have effect as an agreement for the purposes of this section.

(4) Payment of compensation under this section (other than compensation payable under an access arrangement agreed on as referred to in section 140 (a)) is taken, for the purposes of any security given by the licensee, to be an obligation under the licence.

Compensation arising under assessment lease

264. (1) On the granting of an assessment lease:

(a) the occupier of any Crown land, and the owner and any occupier of any private land, subject to the lease; and

(b) the occupier of any Crown land, and the owner and any occupier of any private land, not subject to the lease,

become entitled to compensation for any compensable loss suffered, or likely to be suffered, by them as a result of the exercise of the rights conferred by the lease or by an access arrangement in respect of the lease.

(2) The holder of an assessment lease may agree with an owner or occupier as to the amount of compensation payable, but an agreement reached is not valid unless it is in writing, signed by or on behalf of the parties to the agreement, and lodged with the Director-General.

(3) Such of the provisions of an access arrangement (whether or not in writing) as relate to compensation have effect as an agreement for the purposes of this section.

(4) Payment of compensation under this section (other than compensation payable under an access arrangement agreed on as referred to in section 140 (a)) is taken, for the purposes of any security given by the lessee, to be an obligation under the lease.

Compensation arising under mining lease

265. (1) On the granting of a mining lease:

(a) the occupier of any Crown land, and the owner and any occupier of any private land, subject to the lease; and

(b) the owner and occupier of any private land, and any occupier of any Crown land, not subject to the lease,

become entitled to compensation for any compensable loss suffered, or likely to be suffered, by them as a result of the exercise of the rights conferred by the lease.

(2) The holder of a mining lease may agree with an owner or occupier as to the amount of compensation payable, but an agreement reached is not valid unless it is in writing, signed by or on behalf of the parties to the agreement, and lodged with the Director-General.

(3) If a valid agreement is not entered into under this section within such period as may be prescribed by the regulations, the holder of a mining lease, or an owner or occupier of land, may apply to a warden to assess the amount of compensation payable, and a warden is to assess the compensation payable.

(4) The holder of a mining lease is not authorised to exercise any rights under the lease on the surface of any part of the mining area unless the amount of any compensation payable to an owner or occupier under subsection (1) (a) in respect of that part of the mining area is the subject of a valid agreement or of an assessment made by a warden.

Compensation arising under mineral claim

266. (1) On the granting of a mineral claim:

(a) the owner and occupier of any land over which the claim is registered; and

(b) the owner and any occupier of any other land,

become entitled to compensation for any compensable loss suffered, or likely to be suffered, by them as a result of the exercise of the rights conferred by the claim.

(2) The amount of the compensation payable under this section is such amount:

(a) as may be determined by agreement between the holder of the mineral claim and the owner or occupier, or owner and occupier, concerned; or

(b) if no such agreement is made, as may be assessed by a warden.

(3) The holder of a mineral claim must, before exercising any right conferred by the claim:

(a) serve notice of the holder's intention to exercise the right on any person entitled to compensation under this section; and

(b) pay the amount of compensation payable under this section into a warden's court or to any person so entitled.

Compensation arising under opal prospecting licence

267. (1) On the issue of an opal prospecting licence:

(a) the occupier of any Crown land within the opal prospecting block to which the licence relates; and

(b) the owner and any occupier of any private land, and the occupier of any other Crown land,

become entitled to compensation from the holder of the licence for any compensable loss that they suffer, or are likely to suffer, as a result of the exercise of the rights conferred by the licence.

(2) The amount of the compensation payable under this section is such amount:

(a) as may be determined by agreement between the holder of the opal prospecting licence and the owner or occupier, or owner and occupier, concerned; or

(b) if no such agreement is made, as may be assessed by a warden.

(3) The holder of an opal prospecting licence must, before exercising any right conferred by the licence:

(a) serve notice of the holder's intention to exercise the right on any person entitled to compensation under this section; and

(b) pay the amount of compensation payable under this section into a warden's court or to any person so entitled.

Compensation payable on transfer of certain authorities etc.

268. If an authority or mineral claim over private land is transferred from a person who is an owner or occupier of the land to a person who is not an owner or occupier of the land, the provisions of this Act relating to compensation apply to the person to whom the authority or claim is transferred.

Division 2—Environmental assessment

Definitions

269. In this Division:

"compensable loss" means loss caused, or likely to be caused, by:

(a) interference with the use of land; or

(b) damage to land, to any crops, trees, grasses or other vegetation on the land or to any buildings, structures and works on the land; or

(c) damage consequential on any matter referred to in paragraph (a) or (b),

but does not include loss that is compensable under the Mine Subsidence Compensation Act 1961;

"environmental assessment permit" means a permit granted under section 252.

Compensation arising under environmental assessment permit

270. (1) If the holder of an environmental assessment permit enters any land under the authority of the permit:

(a) in the case of Crown land—the Crown and any occupier of the land; and

(b) in the case of private land—the owner and occupier of the land,

become entitled to compensation from the holder of the permit for any compensable loss they suffer as a result of the exercise of the rights conferred by the permit.

(2) The amount of compensation payable under this section is such amount as may be assessed by a warden on the application of the holder of the environmental assessment permit, the Crown or the owner or occupier concerned.

(3) Nothing in this section affects any remedy available to any person whose lands are entered pursuant to a power conferred by or under Part 12.

Division 3—Procedure for assessing compensation

Definitions

271. In this Division:

"authorisation" means an exploration licence, assessment lease, mining lease, mineral claim, opal prospecting licence or environmental assessment permit;

"compensable loss", in relation to the assessment of compensation payable under Division 1 or 2, has the same meaning as it has in that Division.

Assessment of compensation

272. The assessment of compensation payable under this Part:

(a) must be made in the manner prescribed by the regulations; and

(b) must not be made until notice in the approved form:

(i) has been published in a newspaper circulating generally in the State and in one or more newspapers circulating in the locality in which the land concerned is situated; or

(ii) has been served on each person who appears to a warden to be interested in the assessment; and

(c) must not exceed in amount the market value (for other than mining purposes) of the land and the buildings, structures and works situated on the land.

Payment into court

273. The total amount of compensation assessed under this Division is to be paid into a warden's court at such times, and in respect of such periods, as is specified in the order of assessment.

Payment out of court

274. **(1)** As compensable loss occurs, money held in a warden's court by way of compensation is to be paid out of a warden's court, on the application of any person entitled to the compensation, in accordance with the agreement or order under which it is payable.

(2) If, after the expiration of 6 months, and before the expiration of 12 months, from the date on which the authorisation concerned ceases to have effect, the whole or any part of an amount paid into court under this section has neither been paid out nor ordered to be paid out, the person who paid the amount into court may apply to a warden for payment out to that person of the whole or any part of that amount, and a warden may order the payment to be made.

(3) If, after the expiration of 12 months from the date on which the authorisation concerned ceases to have effect, the whole or any part of an amount paid into court under this section has neither been paid out nor ordered to be paid out, a warden may cause the whole or any part of that amount to be paid into the Treasury for payment into the Consolidated Fund.

Procedure of court in making assessment

275. In making an assessment of compensation under this Division, a warden:

(a) may make the assessment at any time and at any place; and

(b) may make the assessment in the absence of any person who appears to be interested in the assessment, if the warden is satisfied that the person has been served with a notice in accordance with this Part; and

(c) may adjourn the hearing of the matter to any time and any place, subject to such terms as to costs or otherwise as the warden thinks fit; and

(d) has and may exercise the powers of a warden's court.

Additional assessment

276. (1) If, after an assessment of compensation has been made, it is proved to the satisfaction of a warden:

(a) that the whole of the amount paid into court under this Part has been duly paid out; and

(b) that further compensable loss has been caused, or is likely to be caused, in respect of the land to which the assessment relates, or to other land,

the warden must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.

(2) If it is proved to the satisfaction of a warden:

(a) that an access arrangement does not make provision for or with respect to compensation; and

(b) that compensable loss has been caused, or is likely to be caused, in respect of the land to which the arrangement relates,

the warden must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.

(3) If it is proved to the satisfaction of a warden:

(a) that the whole of the amount assessed by or in accordance with an access arrangement determined by an arbitrator as referred to in section 140 (b) has been paid in accordance with the arrangement; and

(b) that further compensable loss has been caused, or is likely to be caused, in respect of the land to which the assessment relates or to other land,

the warden must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.

(4) A warden's decision on such an application has effect as an assessment of compensation under this Division.

(5) In making an assessment of compensation, a warden must have regard to any agreement between the parties concerned as to the compensation payable.

Directions to furnish names and addresses

277. (1) If a warden considers that the owner or occupier of any land may be entitled to compensation under this Part, the warden may, by instrument in writing served on the holder of the authorisation concerned, direct the holder to notify the warden of the name and address of the owner or occupier of the land.

(2) An instrument served under this section must specify a date on or before which compliance with the direction contained in the instrument is required.

Appeals

278. The provisions of Divisions 3 and 4 of Part 15 apply to and in respect of an assessment made by a warden under this Part, and to and in respect of a person dissatisfied with such an assessment, as if the assessment were a decision of a warden's court and the person were a party to a complaint or proceeding dissatisfied with the decision.

Division 4—Consolidated mining leases

Compensation not payable on consolidation

279. (1) Compensation is not payable under this Part in respect of the grant of a consolidated mining lease.

(2) Any compensation to which a person is entitled under this Part in respect of the grant of an existing lease that is consolidated under Part 6 is to be assessed or agreed on and paid as if the existing lease had not been consolidated.

Compensation already due not affected by consolidation

280. (1) Except as provided by this Division, any compensation assessed, agreed on or paid under this Part in respect of an existing lease that is consolidated under Part 6 is not affected by the consolidation of the existing lease and is to be dealt with as if the existing lease had not been consolidated.

(2) If any compensation is paid into court under this Part in respect of an existing lease that is consolidated under Part 6, the date on which the existing lease ceases to have effect is taken, for the purposes of this Part, to be the date on which the consolidated mining lease ceases to have effect.

Compensation for further loss

281. (1) If:

(a) compensation has been assessed or agreed on under this Part in respect of an existing lease that is consolidated under Part 6; and

(b) the date of expiry of the consolidated mining lease is later than the date on which the existing lease would have expired if it had not been consolidated; and

(c) it is proved to the satisfaction of a warden that:

(i) further loss has been caused in respect of the land to which the assessment or agreement related, or in respect of other land, after the date on which the existing lease would have so expired, being compensable loss within the meaning of Division 1; and

(ii) in the case of an assessment, the whole of the amount paid into court pursuant to this Part has been duly paid out,

a warden is to assess the loss in accordance with Division 3 and order that the amount so assessed be paid by the holder of the consolidated mining lease to which the assessment relates, within the time and to the persons specified in the order.

(2) The provisions of section 276 have effect with respect to a consolidated mining lease even though the assessment referred to in that section relates to an existing lease that has been consolidated under Part 6.

PART 14—ROYALTY

Division 1—Publicly owned minerals

Liability to pay royalty

282. (1) The holder of a mining lease is liable to pay royalty to the Minister on publicly owned minerals recovered under the lease.

(2) Royalty that is payable to the Minister under a condition of a mining lease (being a condition of the kind referred to in section 70 (4)) is payable in addition to, and not instead of, royalty payable under this Division.

Rate of royalty

283. (1) Royalty on a publicly owned mineral is payable under this Division:

(a) at the base rate prescribed by the regulations in respect of that mineral; and

(b) if the regulations so provide—at the additional rate prescribed by the regulations in respect of that mineral.

(2) Royalty under this Division is payable on a publicly owned mineral at the rate or rates applicable as at the time the material from which it is recovered is extracted from the land.

(3) A rate of royalty prescribed for the purposes of this Division may be prescribed:

(a) as a percentage of the value of minerals recovered from the land; or

(b) as an amount payable on the basis of any specified measurement of minerals recovered from the land; or

(c) by reference to such other matters as the Minister determines.

(4) The quantity of minerals recovered is to be calculated (whether by volume or by weight) in the manner prescribed by the regulations.

(5) The value of minerals recovered is to be calculated (whether by volume or by weight) in the manner determined by the Minister.

Division 2—Privately owned minerals

Liability to pay royalty

284. (1) The holder of a mining lease is liable to pay royalty to the Minister on privately owned minerals recovered from the land as if those minerals were publicly owned minerals.

(2) If royalty (including any interest on royalty) is paid to or recovered by the Minister in respect of a privately owned mineral, the Minister is to pay:

(a) seven-eighths of the amount so paid or recovered to the owner of the mineral; and

(b) one-eighth of the amount so paid or recovered to the Treasurer for payment into the Consolidated Fund.

Rate of royalty

285. Royalty is payable under this Division:

(a) except as provided by paragraph (b)—at the base rate prescribed under section 283 (1) (a) in respect of the mineral concerned; or

(b) in the case of a mineral other than coal—at such other rate as may be agreed on between the holder of the mineral claim or authority concerned and the owner of the mineral.

Division 3—Petroleum

Royalty payable on petroleum recovered under mining lease for coal

286. (1) The holder of a mining lease for coal who recovers petroleum from a mining area by virtue of the fact that, under section 78, petroleum is included in the lease is liable to pay royalty to the Minister on the petroleum recovered.

(2) The amount payable as royalty under this Division in respect of petroleum is the rate prescribed for the purposes of this Division by or under the Petroleum Act 1955.

(3) Royalty under this Division is payable on petroleum at the rate or rates applicable as at the time the petroleum is recovered from the land.

Division 4—Miscellaneous

Exemption from royalty

287. (1) If the Minister, on application by the holder of a mining lease, is satisfied that the value of publicly owned minerals recovered as a result of mining operations carried on during a royalty period was less than the appropriate amount, no royalty is payable to the Minister under this Act in respect of those minerals.

(2) In this section:

"appropriate amount", in relation to a royalty period, means:

(a) if the royalty period is 12 months—$2,000; and

(b) if the royalty period is less than 12 months—such amount as bears to $2,000 the same proportion as the number of days in the royalty period bears to 365;

"mining operations" means mining operations carried on:

(a) on a parcel of land subject to a mining lease held by a person who is not the holder of any other mining lease; or

(b) on 2 or more parcels of land subject to 2 or more mining leases, if the holder of each parcel is the same person and if each parcel adjoins the other or another of those parcels;

"royalty period", in relation to a mineral recovered by a person under a mining lease, means:

(a) the period commencing on the day on which the person first became entitled, under the mining lease, to mine the mineral, and ending on the last day of the first period in respect of which the person is required by this Act to pay royalty in respect of the mineral; or

(b) the period commencing on the day after the last day of any period in respect of which the person is required by this Act to pay royalty in respect of the mineral and ending on the last day of the next such period; or

(c) if, during a period referred to in paragraph (b), the person ceases to be entitled to mine the mineral on the land the subject of the mining lease—the period commencing on the day after the last day of the previous royalty period and ending on the day on which the person ceases to be so entitled.

Trust fund etc.

288. The Minister may, by written notice served on the holder of a mining lease, require that person:

(a) to establish a trust fund, in the manner specified in the notice, and to pay into the trust fund (at the time or times so specified) a specified proportion of the money accruing from the sale of minerals (being a proportion that will, in the opinion of the Minister, be sufficient to meet the royalty payable to the Minister under this Act in respect of those minerals); or

(b) to lodge with the Director-General (within such time as is specified in the notice) security, in such amount and in such form as is so specified, for the performance of that person's obligations in respect of the payment of royalty,

and the holder of the mining lease must comply with any such requirement.

Returns

289. (1) The holder of a mining lease is to furnish to the Minister returns in such form, at such intervals, in respect of such periods and containing such information, as may be prescribed by the regulations.

(2) The Minister may authorise the holder of a mining lease to furnish to the Minister returns in a different form, at different intervals or in respect of different periods from the form, intervals or periods so prescribed.

(3) A person must not:

(a) refuse or fail to comply with a requirement under this section to the extent to which the person is capable of complying with it; or

(b) in purported compliance with such a requirement, furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 50 penalty units.

Minister may require information to be furnished etc.

290. (1) The Minister may cause to be served on any person (being a person whom the Minister has reason to believe is capable of giving information or producing or making available books or documents relating to minerals recovered or the value of minerals recovered) written notice requiring the person:

(a) to furnish to the Minister in writing, within the period and in the manner specified in the notice, any such information; or

(b) to attend before the Minister, or before a person specified in the notice, at a time and place so specified, in order to answer questions relating to minerals recovered or the value of minerals recovered; or

(c) to produce to a person specified in the notice, at a time and place so specified, books or documents in that person's custody or control relating to minerals recovered or the value of minerals recovered.

(2) A person is not excused from furnishing information, answering a question or producing books or documents when required to do so merely because the information so furnished, the answer to the question or the production of the books or documents, might tend to incriminate the person.

(3) However, the information, answer, books or documents are not admissible in evidence against the person in proceedings other than proceedings for an offence against this section.

(4) A person to whom books or documents are produced pursuant to a requirement under this section may make copies of, or take extracts from, the books or documents.

(5) A person must not:

(a) refuse or fail to comply with a requirement under this section to the extent to which the person is capable of complying with it; or

(b) in purported compliance with such a requirement, furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 50 penalty units.

Payment of royalty

291. (1) Royalty payable to the Minister under this Act is payable:

(a) except in so far as a determination under paragraph (b) has effect—at such times, and in respect of such periods, as may be specified in or determined in accordance with the regulations; or

(b) on demand by the Minister in respect of such periods as the Minister determines.

(2) If an amount of royalty payable to the Minister is not paid:

(a) by the time that it becomes payable in accordance with the regulations; or

(b) within 28 days of the demand for its payment,

interest is, if the Minister so directs, to be added to the amount due at such rate as the Minister determines.

(3) The regulations may make provision for or with respect to the manner in which royalty payable to the Minister under this Act is to be paid and, in particular, may require that payment of any royalty referred to in the regulations is to accompany a return made under this Part.

Recovery of royalty

292. (1) Royalty, and any interest on the royalty, payable to the Minister under this Act are debts due to the Crown and are recoverable in a court of competent jurisdiction.

(2) A certificate that is signed by the Minister and that states that on a date, or during a period, specified in the certificate, an amount of royalty or interest so specified was payable to the Minister under this Act by a person so specified is admissible in evidence in all courts and is evidence of the fact or facts so certified.

PART 15—WARDENS AND WARDENS' COURTS

Division 1—Appointment of wardens and establishment of wardens' courts

Appointment of chief warden and wardens

293. (1) The Governor may appoint a chief warden and such other wardens as may be necessary for the administration of this Act.

(2) A person may not be appointed as chief warden or warden unless the person is a Magistrate.

(3) Each warden is a warden for the whole State.

Establishment of wardens' courts

294. (1) The Governor may, by order published in the Gazette, establish wardens' courts which may be held at such places as the Governor may from time to time appoint.

(2) A warden's court is a court of record.

(3) A warden's court is constituted by a warden sitting alone.

Mining registrars to be registrars of wardens' courts

295. The mining registrar for a mining division is to be the registrar of any warden's court established within the division.

Jurisdiction of wardens' courts

296. A warden's court has jurisdiction to hear and determine proceedings relating to any of the following matters:

(a) the area, dimensions or boundaries of land subject to an authority or mineral claim;

(b) the right to the possession or occupation of any land by virtue of an authority or mineral claim;

(c) the right to the use and enjoyment of water for prospecting or mining and any dispute or question relating to such a right;

(d) trespass or encroachment on, or injury to, land subject to an authority or mineral claim, or interference with, or injury to, any mining improvement;

(e) any demand for debt or damages arising out of prospecting or mining; or

(f) any demand for specific performance of any contract relating to any authority or mineral claim;

(g) the right to any mineral in, or to be recovered from, any land subject to an authority or mineral claim, and the rights under, or arising out of, any contract relating to any such mineral;

(h) any transfer or disposition of, or charge on, land subject to an authority or mineral claim;

(i) matters concerning:

(i) any partnership relating to an authority or mineral claim, or to prospecting or mining; or

(ii) the existence, formation and dissolution of any such partnership; or

(iii) the taking of accounts in connection with any such partnership; or

(iv) the contributions of the partners as between themselves; or

(v) the determination of questions arising between the partners;

(j) contributions by or between persons holding joint or several interests in an authority or mineral claim towards rent or other expenses in relation to the authority or claim;

(k) trespass or encroachment on, or injury to, land as a result of prospecting or mining;

(l) trespass or encroachment on, injury to or any matter affecting, roads, railways or other property of whatever kind constructed, held or occupied under this Act;

(m) the partition, sale, disposal or division of any mining improvements, or the proceeds of the sale of any mining improvements, held by 2 or more persons;

(n) any question or dispute arising as to the working or management of land subject to an authority or mineral claim;

(o) all rights claimed in, under or in relation to an authority or mineral claim or purported authority or mineral claim;

(p) any question or dispute as to the validity of the granting of an authority or mineral claim;

(q) any question or dispute in connection with a consolidated mining lease arising under section 109, including any question or dispute concerning the rights and obligations conferred or imposed by an interest referred to in that section or the priority of any such interest;

(r) any question or dispute in connection with an interest (whether legal or equitable) in, or affecting, an authority or mineral claim;

(s) any question or dispute in connection with an assessment or agreement in respect of compensation under Part 13, arising because of the transfer of an authority or mineral claim or of part of such an authority or claim;

(t) the review of an arbitrator's determination under Division 2 of Part 8;

(u) any question or dispute as to the provisions of an access arrangement or as to any matter arising as a consequence of such an arrangement.

Decisions etc. of wardens' courts bind parties

297. A decision or order of a warden's court is, subject to this Act, binding on the parties.

Division 2—Practice and procedure in wardens' courts

Signing of process etc.

298. (1) Any summons, subpoena, order, warrant or other process issued out of a warden's court must be signed by a warden or by the registrar of the warden's court.

(2) A warden or registrar may issue a summons, subpoena, order, warrant or other process returnable before any warden's court.

(3) Any such summons, subpoena, order, warrant or other process has effect throughout the State.

Time for holding warden's court

299. A warden's court may be held before a warden at such times as the warden may, from time to time, appoint.

Register to be kept

300. (1) The registrar of a warden's court must cause to be kept in respect of the court a register, in the form prescribed by the rules:

(a) of the particulars of each complaint and application made to the court under this Act; and

(b) of each decision and order made by the court in relation to each such complaint and application; and

(c) of such further particulars as may be prescribed by the rules.

(2) A copy of an entry in the register of a warden's court of any decision or order of the court must, on demand, be furnished to any party to the complaint or application to which the entry relates.

(3) A document purporting to be a copy of an entry in the register of a warden's court, and certified by a warden or registrar to be a true copy of that entry, is admissible in all courts and is conclusive evidence that the decision or order to which the document relates was made.

Commencement of proceedings by summons

301. (1) Proceedings on the hearing of a complaint must be commenced by a summons which, on payment of the fee prescribed by the rules, is to be issued by a warden or by the registrar of a warden's court to the complainant on the complainant's application.

(2) A summons:

(a) must state concisely the facts constituting the complaint to which it relates and, if money is claimed, the amount of the claim; and

(b) must state a day for the appearance of the defendant before the warden's court; and

(c) must be in the form and contain the particulars prescribed by the rules.

(3) A summons must be served on the defendant either personally or by leaving the summons at that person's last known address with any person apparently of or above the age of 16 years.

(4) If it appears to a warden sitting in chambers that any defendant cannot after diligent inquiry be found, or cannot for any cause after reasonable effort be served with the summons in accordance with subsection (3), the warden:

(a) may order that service of the summons, in such manner as the warden may direct, be taken to be good service on the defendant; and

(b) may, if necessary, postpone the hearing to allow service to be effected in the manner specified in the order.

(5) Service of the summons in the manner specified in such an order is taken to be good service for all purposes.

Complaint may be heard without summons

302. (1) If all of the parties to a complaint consent in writing, a warden may hear and determine the complaint summarily in the presence of the parties and without requiring formal proceedings to be taken in a warden's court.

(2) A determination made by a warden under subsection (1) is final.

(3) If one or more, but not all, of the parties to a complaint consent in writing and the warden is satisfied that the other parties to the complaint are aware:

(a) of the nature of the complaint; and

(b) of the time and place at which the complaint is to be heard,

the warden may hear and determine the complaint summarily in the presence of the consenting parties and without requiring formal proceedings to be taken in a warden's court.

(4) A determination made by a warden under subsection (3) is taken to be a determination of a warden's court.

(5) A written consent referred to in subsection (1) or (3) must be signed by the party or parties consenting.

(6) For the purpose of hearing and determining a complaint under this section, a warden has and may exercise all the functions of a warden's court.

Warden to hear and determine complaint

303. (1) On the day stated in the summons, or on the day to which hearing of the complaint may have been adjourned, the warden's court hearing the complaint may require proof of the service of the summons on such of the parties to the complaint as have not appeared.

(2) In the absence of any of the parties to the complaint who, having been duly served with a summons, do not appear, but in the presence of all of the other parties (or of such of them as appear to the court sufficiently to represent all of the other parties) the warden's court hearing the complaint is to hear and determine the complaint in a summary manner.

Right of appearance

304. A party to proceedings before a warden's court is entitled to appear and be heard personally, or by a solicitor or barrister, or, if the court permits, by an agent.

Complaint not to be dismissed for informality

305. (1) A complaint may not be dismissed:

(a) for informality in the summons or in the entry of the summons; or

(b) for a defect or misnomer or inaccurate description of a person or place; or

(c) on the ground that the complainant appears to be entitled to relief differing from that claimed in the summons; or

(d) on the ground that there is any variance between the summons and the evidence adduced at the hearing on the part of the complainant.

(2) If it appears to a warden's court that, because of any circumstances referred to in subsection (1), a complaint should be amended, the court may make the amendment subject to such terms as to costs, adjournment or otherwise as to the court seems just.

Amendment of proceedings

306. (1) A warden's court may adjourn the hearing of a complaint to any other time or place, and may make any amendments to the proceedings necessary to determine the real issues between the parties, even though the summons to which the complaint relates does not show the substance of the facts constituting the complaint.

(2) If it appears that a person who should have been joined as a defendant has not been so joined, a warden's court may, on the application of the complainant, amend the proceedings so as to include that person as a defendant, and may adjourn the hearing of the complaint so as to enable that person to be served with the summons.

(3) If it appears that a person who should have been joined as a complainant has not been so joined, a warden's court may, with the consent of that person and on the application of any party to the proceedings, amend the proceedings so as to include that person as a complainant.

(4) An amendment under this section may be made subject to such terms as to costs, adjournment or otherwise as to the warden's court seems just.

Registrar of warden's court may adjourn court in absence of warden

307. If, on a day appointed for the holding of a warden's court, or on a day to which the holding of a warden's court has been adjourned, the warden by whom the court is constituted does not attend the court, the registrar of the court may adjourn the court for such time or until such day as the registrar may determine.

Defendant may pay money into court

308. (1) A defendant in proceedings before a warden's court in which money is claimed may, at any time not later than 2 days before the hearing, pay into the court:

(a) the amount claimed, together with the complainant's costs up to the time of the payment; or

(b) such lesser amount as the defendant considers a full satisfaction in respect of the matter complained of.

(2) If such an amount is paid into court, the registrar of the court must give notice to the complainant of the payment and must, on demand, pay the amount so paid to the complainant or to the complainant's legal representative.

(3) In the event that:

(a) the full amount claimed by the complainant, together with costs, is paid into court; or

(b) the lesser amount is accepted by the complainant in full satisfaction of the complainant's claim,

no proceedings may subsequently be brought in any court in respect of that claim.

(4) In the event that:

(a) a lesser amount is paid into court; and

(b) the complainant elects to proceed and not to accept the lesser amount; and

(c) the complainant fails to recover any amount in respect of the complainant's claim additional to the lesser amount,

the warden may order the complainant to pay such of the defendant's costs as are incurred after the date of the payment into court.

Instalments may be ordered

309. If a warden's court makes an order for the payment of money, the court may order that the amount be paid at such times and in such instalments as the court may specify in the order.

Complaints for injury to property etc.

310. (1) On the hearing of a complaint for the recovery of possession of, or for an encroachment or trespass on, or for an unlawful interference with or injury to, any land, mining improvement or water, or any share or interest in any land, mining improvement or water, a warden's court may determine the boundaries of that land or the quantity of water to be taken by any party to the complaint.

(2) If the decision of the warden's court is in favour of the complainant, the court must determine whether any sum in the nature of mesne profits or damages should be paid to the complainant by the defendant (and, if so, what sum) and may also order that:

(a) possession of anything sued for be delivered to the complainant; or

(b) the complainant be put into possession of the land or mining improvement; or

(c) any defendant or servant of the defendant, or any building, fixture, implement, matter or thing, be removed from the land or mining improvement; or

(d) any defendant be restrained from using the water.

(3) If the warden's court finds that the complainant has wrongfully encroached or trespassed on, or interfered with, any land, mining improvement or water in respect of which the proceedings were brought, the court may grant to the defendant against the complainant the same relief as the court is empowered to grant to a successful complainant.

(4) If, in any proceedings before a warden's court in respect of the right to divert any water or to remove a mining improvement, the decision of the court is in favour of the complainant, the court:

(a) may declare the complainant to be entitled to divert the water or remove the mining improvement; and

(b) may make an order restraining the defendant from interfering with or preventing the diversion or removal.

Warden may order deposit of mineral etc.

311. **(1)** On application by summons by any party to proceedings in a warden's court, the court may order any other party to the proceedings to deposit, pending its decision, any earth, mineral, money or chattels:

(a) the right to which will, in the opinion of the court, be put in issue in the course of those proceedings; and

(b) which may then be in, or at any time before the termination of the proceedings may come into, the possession or control of that other party.

(2) Such an order must specify the thing to be so deposited and must direct the deposit to be made, at or before a time specified in the order, with a person or at a place so specified, either in the name of the warden or in the name of some other person so specified.

(3) Except where such an order is claimed in the summons referred to in subsection (1), an order under this section must not be made except after 12 hours' notice served by the applicant for the order on the other parties to the proceedings, or on such of them as appear to the warden sufficiently to represent those other parties.

(4) A person against whom an order under this section has been made must not fail to comply with the order.

Maximum penalty: 20 penalty units.

Warden may grant injunction

312. (1) If an application is made to a warden's court by a person claiming to hold a legal or equitable interest in any land subject to an authority or mineral claim, or in any property, the court may, on such terms as to costs or otherwise as it may consider just, grant an injunction restraining any specified person:

(a) from encroaching on, occupying, using or working the land or property; or

(b) from seeking, washing out, extracting or removing any earth or minerals from the land; or

(c) from selling or disposing of or otherwise interfering with the property; or

(d) from doing any act that may affect the interest concerned in the whole, or any part, of the land or property.

(2) An injunction remains in force for the period specified in the injunction, unless it is sooner discharged.

(3) An injunction may be applied for:

(a) on summons claiming an injunction, with or without other relief; or

(b) on application for an injunction.

(4) Notice of an application for an injunction must be served on the persons, and within the period, prescribed by the rules.

(5) The rules of procedure governing the hearing of a summons also govern the hearing of an application for an injunction.

Granting of injunctions in cases of urgency

313. (1) If an applicant for an injunction satisfies a warden's court that there are urgent reasons for granting the injunction, the warden may, in any case in which the warden might otherwise grant an injunction, grant an injunction to have effect for a period of not more than one month (including the day on which the injunction is made) without the requirement of a summons or service of notice of the application.

(2) The warden may not grant a continuance of an injunction granted under this section, and may not grant a further injunction under this

section, but application for a further injunction may be made under section 312, either during or after the period of the injunction granted under this section.

(3) An application for an injunction under this section may be heard by a warden at any warden's court.

Orders protecting adjacent authorities and mineral claims

314. (1) The holder of an authority or mineral claim over land which is adjacent to:

(a) land that is the subject of an injunction; or

(b) land on which is located property that is the subject of an injunction,

may apply to the warden by whom the injunction was granted for an order permitting the land or property under injunction to be worked so as to prevent or minimise damage to or depreciation of the land over which the authority or mineral claim is held.

(2) A warden to whom such an application is made:

(a) may order, on such terms as the warden thinks fit, such working of that land or property as in the warden's opinion will be sufficient to prevent that damage or depreciation; and

(b) may make such further order as to the cost of that working as the warden considers just.

(3) An order may not be made under this section unless the applicant shows to the satisfaction of the warden that the authority or mineral claim concerned will sustain damage or be materially depreciated in value by reason of the non-working of the land or property under injunction.

Contravention of injunction

315. A person against whom an injunction has been granted must not contravene the injunction.

Maximum penalty: 50 penalty units.

Court may order payment of money or delivery of mineral

316. (1) If any money or mineral is claimed in a warden's court, the court may order the payment of such money or the delivery of such mineral as it may find to be due or deliverable by one party to another.

(2) If such a claim arises out of a mining partnership, adventure or interest, the warden's court may take accounts in respect of that partnership, adventure or interest, to the extent to which it may be

necessary to ascertain what money or mineral (if any) is so due by one party to the other, and may make such further order as it considers just.

(3) If a warden's court orders payment of money in respect of any debt, damages, costs or otherwise, the court may make a further order:

(a) that any mineral in the possession, and being the property, of the party directed to make the payment must (to the extent in value of the payment as estimated by the court) be delivered up to the party entitled to the payment; and

(b) that the mineral to that extent be seized and delivered accordingly.

(4) If such a further order is made, the order for payment of money may only be enforced in respect of any balance remaining due after deducting the value of the mineral so delivered to the party entitled to payment.

Costs may be allowed

317. (1) The costs of all proceedings under this Act before a warden (whether in a warden's court or otherwise) are in the discretion of the warden and the amount of such costs may be determined by the warden or taxed, as the warden may direct.

(2) The reference in subsection (1) to costs includes a reference to an arbitrator's costs in relation to a hearing under Division 2 of Part 8.

Form and service of orders

318. (1) An order made by a warden's court must be in the form prescribed by the rules.

(2) An order must, unless the warden's court otherwise directs, be served by delivering a copy to the person to be bound by the order, and by showing to that person at the same time the original order if that person requires to see it.

(3) If a warden's court so directs, it is sufficient service of any order if a copy of the order is published in such newspaper, and within such time, as the court may direct and a copy of the order is affixed in such conspicuous place at or near the property to which the order relates as the court appoints.

Certain orders may be entered as judgments

319. An order for the payment of money made by a warden's court may be entered as a judgment in any court of competent jurisdiction.

Warden may authorise person or officer to perform any prescribed act

320. If a warden's court is empowered or required by this Act to cause any act to be performed, and the mode of performing that act is not expressly provided for, it is lawful for:

(a) any person verbally authorised by the warden constituting the court and in the presence of the warden; or

(b) any police officer or special constable authorised in writing under the hand of the warden,

to perform that act, and all police officers must, if required by the warden, assist the warden, or a person so authorised, to perform that act.

Division 3—Appeals to the District Court

Right to appeal from warden's court to District Court

321. (1) Any person who is aggrieved by a decision of a warden's court may, in accordance with the rules of the District Court, appeal to the District Court against the decision.

(2) An appeal is to be heard by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence available to the warden's court when the original decision was made, may be admitted in proceedings on the appeal.

(3) In hearing an appeal under this section, the District Court has, in addition to its other functions, the functions of a warden's court.

(4) The District Court may, pending its determination of an appeal, make such interlocutory orders (including orders as to costs) as it considers appropriate.

(5) On hearing an appeal the District Court:

(a) may make an order reversing or varying the decision appealed from; or

(b) may make an order dismissing the appeal; or

(c) may make such other order as it considers just,

and may make such further order with respect to the costs of the appeal, and of the proceedings appealed from, as it may think fit.

Appeal stays decision appealed against

322. The making of an appeal operates to stay the effect of the decision against which the appeal is made except to the extent to which the District Court may otherwise order.

Mode of enforcing decision after appeal

323. The decision of the District Court on an appeal is taken to be the decision of the warden's court and may be enforced accordingly.

Right of appeal under Division 4 abandoned

324. A person who appeals to the District Court under this Division in relation to any proceedings is taken to have abandoned the person's right of appeal to the Supreme Court under Division 4 in relation to those proceedings.

Division 4—Appeals to the Supreme Court

Case stated for opinion of Supreme Court

325. (1) A party to any proceedings in a warden's court who is dissatisfied with the determination or direction of the court in point of law may, in accordance with the rules of the Supreme Court, apply in writing to the warden constituting the warden's court to state and sign a case, setting out the facts and grounds of the determination, for the opinion of the Supreme Court.

(2) Before the warden states a case in accordance with subsection (1), the appellant must lodge with the registrar of the warden's court the fees prescribed by the rules, and must give security to the satisfaction of the warden for the due performance of any order which the Supreme Court may make.

(3) If the warden is of the opinion that an application made under this section is merely frivolous, the warden may then, but not otherwise, refuse to state a case.

(4) If the warden refuses to state a case, the warden must, on the request of the appellant, sign and deliver to the appellant a certificate of refusal.

(5) If the warden refuses to state a case, the Supreme Court may, on application by the appellant, order the warden to state the case subject to the appellant's lodging the fees and giving the security referred to in subsection (2).

(6) Within 7 days after receiving the stated case, the appellant:

(a) must serve notice in writing of the application, and a copy of the case (signed by the warden), on the other parties to the proceedings to which the case relates; and

(b) must transmit the case to the Prothonotary of the Supreme Court or to such other officer of the Supreme Court as may be designated by rules of the Supreme Court.

(7) In this section, a reference to an appellant is a reference to a party who makes an application under subsection (1).

Powers of Supreme Court on hearing a stated case

326. (1) On hearing proceedings on a stated case, the Supreme Court:

(a) may reverse, affirm or amend the determination or direction in respect of which the case was stated; or

(b) may remit the matter to the warden with its opinion on the case; or

(c) may make such other order in relation to the matter as it considers just.

(2) The Supreme Court may cause the case to be sent back to the warden for amendment and, in that event, the order of the Court may be made after the case has been so amended.

(3) The Supreme Court may make such order as to costs as it thinks fit.

(4) A warden who has stated a case under this Division is not liable to any costs in respect of the proceedings on the case.

(5) An order made by the Supreme Court under this section is final and binding on the parties.

(6) The practice and procedure in relation to the stating of cases is to be as prescribed by rules of the Supreme Court.

Mode of enforcing decision after appeal

327. The decision of the Supreme Court on a stated case is taken to be the decision of the warden's court and may be enforced accordingly.

Right of appeal under Division 3 abandoned

328. A person who appeals to the Supreme Court under this Division in relation to any proceedings is taken to have abandoned the person's right of appeal to the District Court under Division 3 in relation to those proceedings.

Division 5—Administrative matters

Documents and affidavits may be in writing or print

329. (1) Documents used in proceedings under this Act, or in relation to those proceedings, may be in writing or in print or partly in writing and partly in print.

(2) An affidavit to be used in proceedings under this Act may be sworn before a Judge of the Supreme Court or a commissioner for that Court for taking affidavits, before a Judge of the District Court, before a warden or before a justice.

Contempt of court and penalties

330. (1) If any person:

(a) is guilty of contempt in the face of a warden's court or of a warden exercising the functions of a warden's court; or

(b) on being summoned, or examined as a witness, in a suit or proceeding in a warden's court, refuses to be sworn or to answer any lawful question or is guilty of wilful prevarication,

the warden's court or warden may, by order, commit that person to prison for any time not exceeding 10 days or impose on that person a penalty not exceeding 5 penalty units.

(2) If the person is in default of payment of the fine, the warden's court or warden may commit the person to prison for any time not exceeding 10 days unless the fine is sooner paid.

(3) For the purpose of enforcing any such order of commitment, the warden's court or warden may issue a warrant in the form prescribed by the rules.

(4) Such a warrant is good and valid in law without any other order, summons or adjudication whatever, and the bailiff or gaoler to whom the warrant is addressed must obey that warrant.

Interpleader

331. (1) If a claim is made:

(a) in respect of goods taken in execution under process issued out of the District Court or a warden's court; or

(b) in respect of the proceeds or value of such goods,

by a person who is not the party against whom the process has issued, the Registrar of the District Court or a warden may, on application of the person charged with the execution of the process, issue a summons calling the person issuing the process and the person making the claim to appear before the District Court or the warden's court.

(2) If a summons has been so issued, any action which may have been brought in the Supreme Court or in the District Court in respect of the claim is stayed, and the court in which the action has been brought:

(a) on proof of the issue of the summons; and

(b) on proof that the goods were so taken in execution,

may order the person bringing the action to pay the costs of all proceedings had on the action after the service on that person of the summons.

(3) On the return of the summons, the District Court or warden's court must determine the claim and make such order between the parties, in respect of the claim and the costs of the proceedings, as it considers just.

(4) Any order so made may be enforced in the same way as any other order made in proceedings before the District Court or a warden's court and the determination and order are final.

Division 6—Rules and practice directions

Practice and procedure etc. of wardens' courts

332. The Governor may make rules in relation to the following matters:

(a) the practice and procedure of wardens' courts;

(b) the execution of the process of wardens' courts;

(c) the fees to be allowed for barristers and solicitors practising in wardens' courts;

(d) the expenses to be paid to witnesses in proceedings before wardens' courts;

(e) the forms to be used for matters or proceedings in wardens' courts;

(f) the forms to be used for the keeping of books, entries and accounts by the registrars of wardens' courts.

Chief warden may issue practice directions

333. The chief warden may issue practice directions, not inconsistent with this Act or the rules made under this Division, for or with respect to the practice and procedure of wardens' courts.

Division 7—Other functions of wardens

Inquiries generally

334. **(1)** The Minister may direct a warden to hold an inquiry into any matter arising under, or connected with, this Act.

(2) If, by or under this Act, a warden is authorised or required to inquire into any matter, the warden may for that purpose hold an inquiry into that matter and into all reasonably incidental matters.

Mining registrar may request inquiry by warden

335. (1) A mining registrar may refer to a warden for inquiry the question of whether Division 3 of Part 9 has been contravened by the granting of a mineral claim.

(2) After the conclusion of the inquiry, the warden is to furnish the mining registrar with a report on the warden's finding.

Procedure on inquiry

336. Any inquiry held by a warden is to be conducted in public and, in holding the inquiry, the warden has and may exercise the functions of a warden's court.

No appeals against a warden's administrative functions

337. No appeal lies from any decision or determination of a warden on an inquiry or in respect of any other function exercised by the warden acting otherwise than as a warden's court.

Division 8—Miscellaneous

Witness neglecting to appear

338. A person must not, without reasonable cause, fail to comply with a summons or subpoena requiring the person to attend as a witness:

(a) at proceedings before a warden's court; or

(b) at any inquiry before a warden,

if the summons or subpoena has been duly served on the person and if the costs of attendance, as fixed by the rules, have been tendered to the person.

Maximum penalty: 5 penalty units.

Disobedience of order

339. A person against whom an order (other than an order for the payment of money) has been made by a warden's court must not fail to comply with the order.

Maximum penalty: 10 penalty units.

Person removed from land not to retake possession etc.

340. A person must not:

(a) after being removed from any land pursuant to an order of a warden's court—attempt to retain or retake possession of that land; or

(b) after a decision by a warden's court that some other person is entitled to use for mining purposes, or to divert, any water—resist that other person or his or her agents in that use or diversion.

Maximum penalty: 10 penalty units.

PART 16—THE GEOLOGICAL AND MINING MUSEUM

Division 1—Preliminary

Definitions

341. In this Part:

"Director" means the Director of the Museum;

"mineral" includes uranium and petroleum;

"Museum" means the Geological and Mining Museum originally established under the Mining Act 1906;

"Trust" means the Geological and Mining Museum Trust constituted under this Part;

"trustee" means a trustee appointed to the Trust.

Division 2—The Geological and Mining Museum Trust

Constitution of the Trust

342. (1) There is constituted by this Act a corporation under the corporate name of the Geological and Mining Museum Trust.

(2) The Trust is to consist of 9 trustees appointed by the Governor on the recommendation of the Minister, at least 4 of whom are to be persons who are, in the opinion of the Minister, knowledgeable and experienced in geology or mineral resource development.

(3) The Director is eligible (if otherwise qualified) to be appointed as a trustee.

(4) Part 1 of Schedule 3 has effect with respect to the trustees.

(5) Part 2 of Schedule 3 has effect with respect to the procedure of the Trust.

Objects of the Trust

343. The objects of the Trust are to control and manage the Museum in a manner which:

(a) stimulates interest in the sciences and technologies related to the development and use of mineral and energy resources; and

(b) increases and disseminates knowledge of the importance of mining, and of mineral and energy resources, to the socio-economic development of Australia; and

(c) promotes the responsible development and use of mineral and energy resources.

Functions of the Trust

344. (1) The Trust has the functions conferred or imposed on it by or under this or any other Act.

(2) The Trust may:

(a) manage and maintain all Trust property and property in the custody of the Trust; and

(b) construct premises to be used for the Museum; and

(c) acquire specimens, equipment, photographic items, historical publications and other items and scientific data relating to the sciences and technologies associated with the mineral and energy industries; and

(d) provide to any person scientific information concerning those sciences and technologies; and

(e) undertake scientific research in those sciences and technologies; and

(f) promote and provide exhibitions, lectures, films, publications and other educational instruction or materials; and

(g) subject to any conditions the Trust imposes, permit the use of any premises used for the Museum in relation to:

(i) activities of an educational or cultural nature; or

(ii) social functions; or

(iii) State occasions; or

(iv) charitable, commercial or other promotional activities; or

(v) the holding of conferences or meetings; and

(h) subject to any conditions the Trust imposes, permit the use of any premises used for the Museum for the taking of photographs, the making of films or sound recordings and the production of television or radio programs or material; and

(i) provide, or allow the provision of, food or other refreshments on any premises used for the Museum and apply for, hold or dispose of any relevant licence, permit or other authority for that purpose; and

(j) engage, or enter into contracts or arrangements with, artists, entertainers, lecturers and performers:

(i) to appear on any premises used for the Museum; or

(ii) in connection with any service provided in pursuance of the objects of the Trust; and

(k) charge and receive fees or other amounts for, or in connection with, entry into any premises used for the Museum or any advice or service provided, any article sold or any permission given by the Trust.

(3) Subject to this Part and the regulations, the Trust has the control and management of the Museum and of all property vested in the Trust.

(4) The fees and other amounts received by the Trust (as referred to in subsection (2) (k)) and any income earned from them are its property.

(5) The Trust has such functions, in addition to those specified in this section, as are reasonably necessary for the achievement of its objects.

(6) In the exercise of its functions the Trust is subject to the control and direction of the Minister.

Division 3—Trust property

Acquisition of property

345. (1) The Trust may agree to any condition that is not inconsistent with its objects being imposed on its acquisition of any property.

(2) The Trust may acquire, by gift or by devise or bequest, any property for the purposes of this Part and the Trust may agree to and carry out the conditions of the gift, devise or bequest.

(3) The rule of law against remoteness of vesting does not apply to any condition to which the Trust has agreed under this section.

(4) If the Trust acquires any property by gift or by devise or bequest, it may retain the property in the form in which it was acquired, subject to any condition to which the Trust has agreed in relation to the property.

(5) The Stamp Duties Act 1920 does not apply to or in respect of any such acquisition of property by the Trust.

Disposal of property

346. (1) In this section:

"condition" means a condition to which the Trust has agreed under section 345.

(2) The Trust may not sell, mortgage or otherwise dispose of any real property, or any property acquired by gift or by devise or bequest, except:

(a) if the property was acquired without any condition—with the approval of the Governor; or

(b) if the property was acquired subject to a condition—in accordance with the condition or subsection (3).

(3) If the Trust determines that any property acquired by the Trust subject to a condition is not required for the purposes of the Trust, the Trust may, with the approval of the Governor and regardless of the condition:

(a) sell the property and retain the proceeds of the sale; or

(b) exchange the property for other property; or

(c) give the property to any recreational, scientific or educational institution or to a Government Department, Administrative Office or public or local authority; or

(d) if the Trust is of the opinion that the property is of no commercial value—dispose of the property without valuable consideration.

Vesting of certain property

347. (1) The Minister may direct, by notice published in the Gazette, that any property that:

(a) is vested in the Crown and subject to the control and direction of the Minister; and

(b) in the opinion of the Minister:

(i) relates to the sciences and technologies associated with the mineral and energy industries; or

(ii) is necessary for the Trust's achievement of its objects,

is to cease to be vested in the Crown and is to vest in the Trust.

(2) If the Minister gives such a direction, the property described in the direction ceases to vest in the Crown and, without any further conveyance or transfer, vests in the Trust.

Division 4—Administration

Staff of the Trust etc.

348. (1) For the purposes of this Part:

(a) a Director of the Museum; and

(b) such other persons as may be necessary to enable the Trust to exercise its functions,

may be employed under Part 2 of the Public Sector Management Act 1988.

(2) The Trust may, with the approval of the Minister, arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a Government Department, an Administrative Office or a public or local authority.

(3) The Trust may engage such consultants as the Trust requires to exercise its functions.

The Director

349. (1) The Director is the chief executive officer of the Trust.

(2) The Director is responsible for the administration and management of the Museum, and of any services provided in connection with it, subject to and in accordance with any directions of the Trust.

(3) The Director has such other functions as are conferred or imposed on the Director by or under this or any other Act.

Committees

350. (1) The Trust may establish committees to assist it in connection with the exercise of any of its functions.

(2) A person may be appointed to be a member of such a committee whether or not the person is a trustee.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is, subject to the regulations, to be as determined by the Trust or (subject to any determination of the Trust) by the committee.

Division 5—Financial provisions

Financial year

351. (1) The financial year of the Trust is the year commencing on 1 July.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

Funds of the Trust

352. (1) The Trust is to establish at a bank in New South Wales an account to be known as the Geological and Mining Museum Trust Account (in this section referred to as **"the Trust Account"**).

(2) The funds of the Trust are to be paid to the credit of the Trust Account and are to consist of:

(a) any money appropriated by Parliament for the purposes of the Trust; and

(b) all money derived by the Trust from admission fees and from fees and other charges imposed for the hire of the Trust's property or any part of it; and

(c) all money derived by the Trust from the sale, leasing, letting or hire or other disposal by the Trust of any property which the Trust has power to sell, lease, let or hire or otherwise dispose of; and

(d) all money received by the Trust as profit arising out of any investment made by it in the exercise of its powers; and

(e) all money borrowed by the Trust; and

(f) all other money received from any source by the Trust.

(3) A payment of money must not be made to the credit of the Trust Account if the payment would be a breach of a condition affecting the money.

(4) The funds of the Trust are to be applied only:

(a) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the Trust in the exercise of its functions; and

(b) in the payment of any remuneration payable under this Part.

Investment powers

353. (1) The Trust has, in respect of the funds held by the Trust, the investment powers conferred on the Trust by Part 3 of the Public Authorities (Financial Arrangements) Act 1987.

(2) If Part 3 of that Act does not confer investment powers on the Trust in respect of any such funds, the Trust may invest those funds:

(a) in any manner authorised for the investment of trust funds; or

(b) in any other manner approved by the Minister with the concurrence of the Treasurer.

Investment common funds

354. (1) The Trust may establish one or more investment common funds.

(2) The Trust may from time to time, without liability for breach of trust, bring into or withdraw from any such investment common fund the whole or any part of trust funds or other funds held by the Trust.

(3) Subject to subsection (4), the Trust must periodically distribute the income of each investment common fund among the funds participating in the common fund, having regard to the extent of the participation of each fund in the common fund during the relevant accounting period.

(4) The Trust may, if it considers it expedient to do so, from time to time add some portion of the income of an investment common fund to the capital of the common fund or use some portion of the income to establish or augment a fund or funds as a provision against capital depreciation or reduction of income.

(5) If an investment is brought into an investment common fund:

(a) the Trust is taken to hold the investment on behalf of and for the benefit of the common fund instead of the participating trust fund or other fund; and

(b) the participating fund is taken to have contributed to the common fund an amount of money equivalent to the value attributed to the investment by the Trust at the time it is brought into the common fund; and

(c) on the withdrawal of the participating fund from the common fund, the amount of money to be withdrawn is to be the amount equivalent to the value attributed by the Trust to the equity in the common fund of the participating fund at the time of withdrawal.

(6) The inclusion in an investment common fund of trust funds does not affect any trust to which those trust funds (or money attributed to them) are subject.

(7) On the withdrawal of trust funds from an investment common fund, the funds (or money attributed to them) continue to be subject to the trust.

Terms of trust to prevail

355. In respect of the trust funds of the Trust:

(a) the investment powers of the Trust; and

(b) the power of the Trust to bring the trust funds into an investment common fund,

are subject to any express direction in or express condition of the trust.

Division 6—Miscellaneous

Reports to Minister

356. The Trust is required, in addition to any other report required by the Annual Reports (Statutory Bodies) Act 1984, to provide the Minister with such reports on the activities of the Trust as the Minister may from time to time direct.

Delegation by Trust and Director

357. (1) The Trust may delegate any function under this Act (other than this power of delegation) to any person.

(2) The Director may sub-delegate to a person any function delegated to the Director by the Trust, if the Director is authorised in writing to do so by the Trust.

Recovery of charges etc. by Trust

358. Any charge, fee or money due to the Trust may be recovered by the Trust as a debt in a court of competent jurisdiction.

PART 17—ADMINISTRATION

Division 1—Administration

Boards of management

359. (1) The Minister may constitute a board of management for the whole or any part of New South Wales.

(2) A board of management may exercise, in respect of the area for which it is constituted, such of the functions of the Minister or of the Director-General as are delegated to it under this Act.

(3) The regulations may provide for the constitution of a board of management and may regulate, or provide for the regulation of, its procedure.

Mining registrars and other staff

360. Mining registrars and such other staff as may be necessary for the purposes of this Act may be employed under Part 2 of the Public Sector Management Act 1988.

Inspectors

361. The Minister may, by instrument in writing, appoint a person to be an inspector for the purposes of this Act.

Exclusion of personal liability

362. No matter or thing done by a body constituted by or under this Act, by a member of any such body or by any person acting under the direction of any such body subjects any such member or person personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of this or any other Act.

Delegation of functions by Minister or Director-General

363. (1) The Minister may delegate any function under this Act (except this power of delegation) to the holder of any office.

(2) The Director-General may delegate any function under this Act (except this power of delegation or any function delegated to the Director-General by the Minister) to the holder of any office.

(3) A reference in this section to a function under this Act includes a reference to a function under a condition of an authority, a mineral claim or an opal prospecting licence.

Minister etc. not to be holder of an authority, mineral claim or opal prospecting licence

364. (1) Neither the Minister nor any person employed in the Department may be the holder of an authority, a mineral claim or an opal prospecting licence.

(2) This section does not prevent the Director-General from being the holder, on behalf of the Crown, of an exploration licence for an allocated mineral in respect of land within a mineral allocation area.

Disclosure of information etc.

365. (1) A person must not disclose any information obtained in connection with the administration or execution of this Act, unless the disclosure is made:

(a) with the consent of the person from whom the information was obtained; or

(b) in connection with the administration or execution of this Act; or

(c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or

(d) for the purposes of any investigation or inquiry conducted by a warden under this Act; or

(e) with the concurrence of the Minister.

(2) A person employed in the Department must not use for the purposes of personal gain any information obtained in connection with the administration or execution of this Act.

Maximum penalty: 50 penalty units.

Division 2—Classification of lands

Mining divisions

366. (1) The Governor may, by order published in the Gazette, constitute any land as a mining division and may, by the same or a subsequent order so published, name the division and fix its boundaries.

(2) A mining registrar is to be appointed for each mining division constituted under this section.

Reserves

367. (1) The Governor may, by order published in the Gazette, constitute any land as a reserve and may, by the same or a subsequent order so published, name the reserve and fix its boundaries.

(2) The Governor may, by an order under this section, give any one or more of the following directions:

(a) that no exploration licence is to be granted over land in the reserve;

(b) that no assessment lease is to be granted over land in the reserve;

(c) that no mining lease is to be granted over land in the reserve;

(d) that no mineral claim is to be granted over land in the reserve.

(3) In an order constituting land as a reserve, the Governor may stipulate that the reserve is to extend only to the surface of the land, to the surface of the land and the subsoil below the surface, to the surface of the land and the subsoil to a specified depth below the surface, or to the subsoil below or between any specified depth or depths below the surface of the land.

(4) If:

(a) an application for an exploration licence is made or pending in respect of land that is the subject of a direction under subsection (2) (a); or

(b) an application for an assessment lease is made or pending in respect of land that is the subject of a direction under subsection (2) (b); or

(c) an application for a mining lease is made or pending in respect of land that is the subject of a direction under subsection (2) (c); or

(d) an application for a mineral claim is made or pending in respect of land that is the subject of a direction under subsection (2) (d),

the application is a nullity to the extent to which it is made in respect of the land the subject of the direction, but, if the application is also made in respect of other land, the application is taken to have been made in respect of that other land.

Mineral allocation areas

368. (1) The Governor may, by order published in the Gazette, constitute any land as a mineral allocation area and may, by the same or a subsequent order so published, name the area and fix its boundaries.

(2) A mineral allocation area may be constituted for all minerals, for specified minerals or groups of minerals or for all minerals other than specified minerals or groups of minerals.

(3) More than one mineral allocation area may be constituted in respect of any land.

Notification areas

369. (1) The Dams Safety Committee may, by order published in the Gazette in relation to a prescribed dam, declare that the land described in the order, excluding land under the dam, is the notification area for the dam.

(2) A notification area is an area which surrounds a prescribed dam and in relation to which the Dams Safety Committee is required by this Act to be notified of certain proposals to grant assessment leases or mining leases.

Graticulation of the Earth's surface

370. (1) For the purposes of this Act, the surface of the Earth is taken to be divided into graticular sections:

(a) by the meridian of Greenwich and by the meridians that are at a distance from that meridian of 5 minutes, or a multiple of 5 minutes, of longitude; and

(b) by the equator and by parallels of latitude that are at a distance from the equator of 5 minutes, or a multiple of 5 minutes, of latitude,

each graticular section being bounded:

(c) by portions of 2 of those meridians that are at a distance from each other of 5 minutes of longitude; and

(d) by portions of 2 of those parallels of latitude that are at a distance from each other of 5 minutes of latitude.

(2) For the purposes of this Act, each graticular section is taken to be divided into 25 units, each unit being bounded:

(a) by portions of 2 meridians (being the meridian of Greenwich or the meridians that are at a distance from that meridian of 1 minute, or a multiple of 1 minute, of longitude) that are at a distance from each other of 1 minute of longitude; and

(b) by portions of 2 parallels of latitude (being the equator or parallels of latitude that are at a distance from the equator of 1 minute, or a multiple of 1 minute, of latitude) that are at a distance from each other of 1 minute of latitude.

Points etc. to be ascertained by reference to Australian Geodetic Datum

371. **(1)** If, for the purposes of this Act or for the purposes of an order, instrument or notification under 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 a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6,378,160 metres and a flattening of 100/29825 and by reference to the position of the Johnston Geodetic Station in the Northern Territory.

(2) The Johnston Geodetic Station is taken to be situated at 133 degrees, 12 minutes and 30.0771 seconds of East Longitude and at 25 degrees, 56 minutes and 54.5515 seconds of South Latitude and to have ground level of 571.2 metres above the spheroid referred to in subsection (1).

Division 3—Offences

Obstruction of wardens etc.

372. A person must not, without reasonable excuse, obstruct, hinder or resist a warden, a mining registrar, an inspector or any other person in the exercise of a function under this Act.

Maximum penalty: 20 penalty units.

Obstruction etc. of holder of authority etc.

373. A person must not, without reasonable excuse, obstruct or hinder the holder of an authority, a mineral claim or an opal prospecting licence from doing any act which that holder is authorised by this Act to do.

Maximum penalty: 20 penalty units.

False or misleading information etc.

374. A person must not:

(a) in or in connection with an application under this Act; or

(b) in purported compliance with any requirement under this Act,

furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 10 penalty units.

Proceedings for offences

375. (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a warden's court or before a Local Court constituted by a Magistrate sitting alone.

(2) For the purpose of dealing with such an offence, a warden's court has the functions of, and is taken to be, a Local Court.

Offences by corporations

376. (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under subsection (1) whether or not the corporation has been proceeded against or convicted under the provision concerned.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Division 4—Miscellaneous

Museums and laboratories

377. The Minister may establish and maintain in connection with the Department:

(a) museums for the purpose of providing instruction, by means of displays, classes, lectures or other methods, in geology, mineralogy, chemistry and engineering in their scientific and practical application to mining pursuits; and

(b) laboratories for the assaying and testing of mineral products or for other analytical determination.

Purchase of coal bearing land

378. The Minister may, from funds appropriated by Parliament, purchase on behalf of the Crown land containing seams of coal.

PART 18—SUPPLEMENTARY

Saving of royal prerogative

379. Except as expressly provided by this Act, this Act does not affect any prerogative of the Crown in respect of gold mines and silver mines.

Saving of other Acts etc.

380. Except as expressly provided by this Act, this Act does not affect any other Act or law that prohibits, regulates or restricts, or that has the effect of prohibiting, regulating or restricting:

(a) the grant, renewal or transfer of an authority, a mineral claim or an opal prospecting licence; or

(b) the exercise of any right conferred by or under this Act in respect of an authority, a mineral claim or an opal prospecting licence.

Prospecting unaffected by Environmental Planning and Assessment Act 1979

381. If a person is authorised under this Act to prospect on any land:

(a) nothing in, or done under, the Environmental Planning and Assessment Act 1979 or an environmental planning instrument operates so as to prevent the person from carrying on prospecting operations on that land; and

(b) to the extent to which anything in, or done under, that Act or any such instrument would so operate, it is of no effect in relation to the person.

Applications generally

382. (1) An application under this Act must be in or to the effect of the approved form.

(2) An application that is required to be lodged with a person must be so lodged in such manner, and during such times, as may be prescribed by the regulations but may, if the regulations so provide, be lodged with some other person.

Service of documents

383. (1) A document that is authorised or required under this Act to be served on any person may be served:

(a) personally or by post; or

(b) by leaving it with a person apparently of or above the age of 16 years at, or by posting it to, the person's place of business or, in the case of a corporation, the registered office of the corporation.

(2) If an owner or occupier of land on whom a document is authorised or required under this Act to be served is absent from the State or cannot, after diligent inquiry, be found, and that person's place of residence or business cannot, after diligent inquiry, be ascertained, the document may be served by affixing it on some conspicuous part of the land.

(3) If under this Act a document is authorised or required to be served on the holder of an authority or a mineral claim and there is more than one such holder, service on any one such holder of the document, together with copies of the document addressed to the other holders, is taken to be service on all of the holders.

(4) If a person has more than one place of business, service may be effected under this section at any of those places.

(5) Nothing in this section prevents service of a document from being effected by facsimile transmission or other electronic means, or by the use of the facilities of a document exchange, but the burden of establishing that service has been so effected lies on the person asserting that fact.

Defence in proceedings for defamation

384. (1) A person has qualified privilege in any proceedings for defamation arising out of an objection lodged under this Act.

(2) This section does not limit any other right, privilege or immunity that a person has as a defendant in any such proceedings.

Payment of compensation

385. Any amount payable under this Act by way of compensation is to be paid out of money appropriated by Parliament.

Recovery of unpaid fees etc.

386. Any fee or charge imposed by or under this Act may be recovered, as a debt, in any court of competent jurisdiction.

Government agencies

387. The Minister may, by order published in the Gazette, designate a corporation established by an Act as a Government agency for the purposes of the definition of "Government agency" in the Dictionary of words and expressions at the end of this Act.

Regulations

388. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to any matter referred to in Schedule 4.

(2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

Repeals

389. (1) The Mining Act 1973 and the Coal Mining Act 1973 are repealed.

(2) The Mining Regulations 1974 and the Coal Mining Regulations 1974 are repealed.

Amendment of other Acts

390. Each Act mentioned in Schedule 5 is amended in the manner set out in that Schedule.

Savings, transitional and other provisions

391. Schedule 6 has effect.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES

(Secs. 41, 52, 63 and 64)

PART 1—ASSESSMENT LEASES

Notification of Government agencies and councils

1. (1) Before granting an assessment lease, the Minister must cause notice of the proposal to be served on:

(a) each Government agency that, in the opinion of the Minister, would be materially affected by the granting of the lease; and

(b) the Director of Planning; and

(c) each council within whose local government area the land the subject of the proposed lease is situated.

(2) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease (on the grounds that the authority concerned has major proposals for some other use of that land) may be made to the Minister on or before the date specified in the notice.

(3) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

Objections to granting of assessment lease

2. (1) A public authority on which a notice under this Division is served may object to the granting of an assessment lease on the grounds that the person or body has major proposals for some other use of the land.

(2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(3) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the applicant for the assessment lease concerned.

Resolution of objections

3. (1) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with any objection under this Part and, if agreement is not reached concerning the acceptance, modification or withdrawal of the objection, the matter is to be referred to the Premier.

(2) If any matter is so referred, the Premier may give such decision as the Premier considers appropriate.

(3) If required by the Premier to do so, the Minister must refer such a matter to a warden for inquiry and report.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

Granting of assessment lease if objection made

4. An assessment lease in respect of which an objection has been duly made may not be granted unless the objection is withdrawn or otherwise resolved or is rejected by the Premier.

PART 2—MINING LEASES

Division 1—Notification of Government agencies

Notification of Government agencies

5. (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be served on each Government agency that, in the opinion of the Minister, would be materially affected by the granting of the lease.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be served on each Government agency that, in the opinion of the Minister, would be materially affected by the granting of the lease.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

Notification of Director of Planning

6. (1) Before granting a mining lease (whether by way of tender or otherwise), the Minister must cause notice of the proposal to be served on the Director of Planning.

(2) Such a notice:

(a) must state that a tender for the lease or an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

(c) must contain a detailed description of the works to be undertaken if the lease is granted, including works and activities relating to:

(i) the preparation of the land for mining; and

(ii) the rehabilitation of the land either during the carrying on of mining operations or after they have ceased; and

(d) must contain a copy of any environmental impact statement that is required by Part 5 of the Environmental Planning and Assessment Act 1979 to be prepared in relation to the tender or application; and

(e) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(3) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

(4) If, before granting a mining lease, the Minister becomes aware that the detailed description contained in a notice served under this clause requires alteration for any reason, the Minister must, before granting the lease, cause notice of the alteration to be served on the Director of Planning.

Notification of Dams Safety Committee

7. (1) Before inviting tenders for a mining lease for coal in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the Dams Safety Committee.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of the lease on grounds relating to the safety of a prescribed dam, or proposals for the inclusion in the lease of any condition relating to the safety of the prescribed dam, may be made to the Minister on or before the date specified in the notice.

(3) Before granting a mining lease for coal (otherwise than by way of tender) in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the Dams Safety Committee.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease on grounds relating to the safety of a prescribed dam, or proposals for the inclusion in the lease of any condition relating to the safety of the prescribed dam, may be made to the Minister on or before the date specified in the notice.

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

Notification of controlling bodies of exempted areas

8. (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be served on the controlling body of each exempted area to which the invitation will relate.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be served on the controlling body of each exempted area over which the lease is sought.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

Objections to granting of mining lease

9. (1) An authority (other than the Dams Safety Committee) on which a notice under this Division is served:

(a) may object to the granting of a mining lease; or

(b) may propose that specified conditions be included in the lease.

(2) The Dams Safety Committee, in respect of land within a notification area:

(a) may object (on grounds relating to the safety of the prescribed dam) to the granting of a mining lease for coal; or

(b) may propose that specified conditions relating to the safety of the prescribed dam be included in the lease.

(3) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(4) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the tenderer or applicant for the mining lease concerned.

(5) If the Minister does not accept the objections or proposals of the Dams Safety Committee, or if the Dams Safety Committee fails to make any proposals or to inform the Minister that it does not propose to make any proposals, the matter must be dealt with in consultation with the Minister administering the Dams Safety Act 1978.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

Resolution of objections

10. (1) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with any objection or proposal made under this Division and, if agreement is not reached concerning the acceptance, modification or withdrawal of the objection or proposal, the matter is to be referred to the Premier.

(2) If any matter is so referred, the Premier may give such decision as the Premier considers appropriate.

(3) If required by the Premier to do so, the Minister must refer such a matter to a warden for inquiry and report.

Granting of mining lease if objection or proposal made

11. (1) If an objection to the granting of a mining lease is duly made:

(a) in the case of an objection to the invitation of tenders—the invitation must not be made; or

(b) in the case of an objection to the granting of a mining lease—the lease must not be granted,

unless the objection is withdrawn or otherwise resolved or is rejected by the Premier.

(2) A mining lease must include:

(a) any condition proposed under this Division (unless the proposal for the inclusion of the condition is withdrawn or is rejected by the Premier) or, if such a condition is modified, the condition as so modified; and

(b) any condition directed by the Premier to be included in the lease.

(3) The failure to include a condition in a mining lease does not affect the validity of the lease, but the Minister may, by instrument in writing, amend the lease so as to include the condition omitted.

(4) The Minister must cause to be served on the holder of a mining lease amended under this clause a written notice setting out details of the amendment.

(5) Such an amendment takes effect on the date on which the notice is served or on such later date as may be specified in the notice.

Division 2—Notification of councils etc. where development consent required for mining

Application of Division

12. This Division applies to land for which development consent is required before the land may be used for the purpose of obtaining minerals.

Notification of applicant and council

13. (1) Before granting a mining lease (whether by tender or otherwise) over land to which this Division applies, the Minister:

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

(a) must cause a written notice to be served on the applicant or tenderer requiring the applicant or tenderer, on or before the date specified in the notice, to apply to the appropriate consent authority for development consent to the use of the land for the purpose of obtaining minerals; and

(b) must cause a written notice to be served on the consent authority concerned informing the authority:

(i) that the applicant or tenderer has been required to apply for development consent; and

(ii) that proposals for the inclusion in the mining lease of conditions (including special purpose conditions) which the authority wishes to have included in the lease should be lodged with the Director-General on or before such date as is specified in the notice.

(2) This clause does not apply to the granting of a mining lease over land in respect of which a development consent to the use of the land for the purpose of obtaining minerals is in force.

Consent of landowner not necessary in application required by this Division

14. Any requirement of the Environmental Planning and Assessment Act 1979 that an application for development consent be accompanied by the consent of the owner of the land concerned does not apply to an application under this Division.

Definition

15. In this Division:

"special purpose condition" means a condition concerning:

(a) the preparation of land for mining; or

(b) the mining methods to be employed while mining operations are being carried on; or

(c) the rehabilitation of land, either while mining operations are being carried on or after they have ceased; or

(d) the safety measures to be adopted, either before mining operations are commenced, while they are being carried on or after they have ceased; or

(e) the security to be given with regard to the performance of any matter referred to in paragraph (a), (b), (c) or (d).

Division 3—Notification of councils etc. where development consent not required for mining

Application of Division

16. This Division applies to land for which no development consent is required before the land may be used for the purpose of obtaining minerals.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

Notification of councils

17. (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be served on each council within whose local government area is situated the land to which the invitation relates.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be served on each council within whose local government area is situated the land over which the mining lease is proposed to be granted.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

Objections to granting of mining lease

18. (1) A council on which a notice is served under this Division:

(a) may object to the granting of a mining lease; or

(b) may propose that specified conditions be included in the mining lease.

(2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(3) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the tenderer or applicant for the mining lease concerned.

Consideration of objections

19. In deciding whether or not to grant a mining lease, the Minister must take into account any objection or proposal made under this Division.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

Division 4—Notification of owners of private land

Application of Division

20. This Division applies to a mining lease that is proposed to extend to the surface of private land or to the surface of Crown land held under a pastoral lease.

Notification of owners and occupiers of certain land

21. (1) Before inviting tenders for a mining lease to which this Division applies, the Minister must cause notice of the proposal to be served on any owner or occupier of the land concerned.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of the lease on the grounds that the land is agricultural land may be made to the Minister within 28 days after the date on which the notice is served.

(3) An applicant for a mining lease to which this Division applies must (within 21 days after lodging the application) cause notice of the application to be served on any owner or occupier of the land concerned.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description, prepared in the manner prescribed by the regulations, of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease on the grounds that the land is agricultural land may be made to the Minister within 28 days after the date on which the notice is served.

(5) A copy of every notice served in accordance with subclause (3) must be lodged with the Director-General within 21 days after the date on which the notice was served, together with a statutory declaration to the effect that each such notice was served and setting out the name and address of each owner or occupier on whom it was served.

Objections to granting of mining lease

22. (1) An owner or occupier of private land, or of Crown land held under a pastoral lease, may object to the granting of the mining lease concerned on the ground that the land, or any part of the land, over which the lease is sought is agricultural land.

(2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

(3) Subclause (1) does not apply if:

(a) in the case of private land—every owner and occupier of the land; or

(b) in the case of Crown land held under a pastoral lease—every occupier of the land,

consents in writing to the granting of the mining lease over the land or if the applicant for the mining lease consents in writing to the surface of the land being excluded from the application.

(4) A written consent given under this clause is irrevocable.

(5) On receipt of an objection under this clause, the Director-General is to refer the objection to the Director-General of the Department of Agriculture who is to determine the objection in accordance with Schedule 2.

Agricultural land

23. (1) If land is determined to be agricultural land as a consequence of an objection under this Division:

(a) in the case of an objection to the invitation of tenders—the invitation must not be made; or

(b) in the case of an objection to the granting of a mining lease—the lease must not be granted,

except with the written consent of the occupier (and, in the case of private land, the owner) of the land.

(2) A written consent given under this clause is irrevocable.

(3) A mining lease may not be granted beneath the surface of any agricultural land except at such depths, and subject to such conditions, as the Minister considers sufficient to minimise damage to the surface.

(4) A mining lease may nevertheless be granted over any part of land that has been determined to be agricultural land, including the surface of any such land, if the Minister considers that the granting of the lease over that part of the land is necessary to give access to any other part of the land to which the lease applies.

Division 5—Notification of other persons

Notification of the general public

24. (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be published in the Gazette, in a newspaper circulating generally in the State and in one or more newspapers circulating in the locality in which the land is situated.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

(c) must state that objections to the granting of the lease may be made to the Minister by any person (other than a person referred to in clause 28); and

(d) must state that such objections should be made on or before the date specified in the notice.

(3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be published in a newspaper circulating generally in the State and in one or more newspapers circulating in the locality concerned.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease may be made to the Minister by any person (other than a person referred to in clause 28); and

(d) must state that such objections should be made on or before the date specified in the notice.

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of publication of the notice.

Notification of owners of prescribed dams

25. (1) Before inviting tenders for a mining lease for coal in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the owner of the relevant prescribed dam.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of a mining lease may be made to the Minister on or before the date specified in the notice by any owner of the prescribed dam (other than a person referred to in clause 28) and may also be made under Division 1 (on grounds relating to the safety of the prescribed dam) by the Dams Safety Committee.

(3) Before granting a mining lease for coal in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the owner of the relevant prescribed dam.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease may be made to the Minister on or before the date specified in the notice by any owner of the prescribed dam (other than a person referred to in clause 28) and may also be made under Division 1 (on grounds relating to the safety of the prescribed dam) by the Dams Safety Committee.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

Objections to granting of mining lease

26. (1) Any person (other than a person referred to in clause 28) may object to the granting of a mining lease.

(2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(3) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the tenderer or applicant for the mining lease concerned.

Warden's inquiry and report

27. (1) The Minister may not invite tenders for a mining lease, or grant a mining lease, until a warden has inquired into and reported on any objection under this Division.

(2) At the conclusion of the inquiry, the warden must announce in open court the warden's finding and the purport of the warden's report and must transmit the finding and report to the Minister.

Certain persons not entitled to object

28. An objection may not be made under this Division:

(a) by any public authority that is entitled to object under Division 1 or 3 to the granting of a mining lease; or

(b) by any person who is entitled, under the Environmental Planning and Assessment Act 1979, to make submissions in relation to the granting of any development consent that is required before the land concerned may be used for the purpose of obtaining minerals.

SCHEDULE 2—AGRICULTURAL LAND

(Secs. 179 and 222 and cl. 22, Sch. 1)

Definitions

1. (1) In this Schedule:

"agricultural land" means:

(a) land that has been sown with not less than 2 crops of an annual species during the period of 10 years immediately preceding the relevant date; or

(b) land that has been sown with 1 crop of an annual species during the period of 10 years immediately preceding the relevant date if the relevant authority is satisfied that:

SCHEDULE 2—AGRICULTURAL LAND—*continued*

(i) having regard to the date on which the land was brought under cultivation, it would not be reasonable to expect more than one such crop to have been sown; and

(ii) there was a sufficient reason for not having brought the land under cultivation at an earlier date; or

(c) land on which:

(i) at the relevant date, shade, shelter or windbreak trees are growing; or

(ii) at any time during the period of 10 years immediately preceding the relevant date, edible fruit or nut bearing trees, vines or any other perennial crop approved by the relevant authority have or has been growing; or

(d) pastures:

(i) that are sown with seed of a species and at a rate of application, or treated with fertiliser of a composition and at a rate of application, satisfactory to the relevant authority; and

(ii) that have, as a result of that sowing or treatment, maintained a level of pasture production that is substantially above that which might be expected of natural pastures; or

(e) land that is used, to an extent acceptable to the relevant authority, for the production of grass seed, pasture legume seed, hay or silage; or

(f) land that has a preponderance of improved species of pasture grasses;

"the relevant authority" means the Director-General of the Department of Agriculture or any officer of that Department authorised by the Director-General of that Department to exercise functions under this Schedule;

"the relevant date" means the date or dates with reference to which the relevant authority is required under clause 2 to decide whether or not any land is agricultural land.

(2) For the purposes of paragraphs (a) and (b) of the definition of "agricultural land" in subclause (1), land is not to be treated as having been sown with a crop of an annual species unless, in the opinion of the relevant authority, the crop sown was carried through to a successful use.

Decision by the relevant authority as to whether or not land is agricultural land

2. (1) When the relevant authority is required to decide whether or not any land is agricultural land, the relevant authority must do so:

(a) in the case of a reference under section 179, by deciding whether or not the land was agricultural land on the date on which the application for the mineral claim concerned was lodged; and

SCHEDULE 2—AGRICULTURAL LAND—*continued*

(b) in the case of a reference under section 222, by deciding whether or not the land was agricultural land on the date on which the notice, pursuant to which the objection referred to in that section was made, was served in accordance with section 221; and

(c) in the case of a reference under clause 22 of Schedule 1, by deciding whether or not the land was agricultural land on the date on which the application for the mining lease concerned was lodged.

(2) If the Director-General, when referring a question for decision under clause 22 of Schedule 1, certifies a date pursuant to clause 3 of this Schedule, the relevant authority may not decide, pursuant to subclause (1) (c), that the land concerned is agricultural land unless satisfied that it was agricultural land on the date so certified.

Date to be certified by Director-General

3. When referring a question for decision under clause 22 of Schedule 1, the Director-General, if the applicant for a mining lease over any land was, when the application was lodged, the holder of an exploration licence or mineral claim over that land, must issue to the relevant authority a certificate to that effect and as to the date on which the application for that licence or claim was lodged.

Relevant authority may decide that part only of land is agricultural land

4. If the relevant authority is required to decide whether or not any land is agricultural land, nothing in this Act operates so as to prevent the relevant authority from deciding that a part only of the land is agricultural land.

SCHEDULE 3—THE GEOLOGICAL AND MINING MUSEUM

(Sec. 342)

PART 1—THE TRUSTEES

Chairperson of the Trust

1. (1) Of the trustees, one is to be appointed as Chairperson of the Trust (in and by the trustee's instrument of appointment or by another instrument executed by the Governor).

(2) The Governor may remove a trustee from the office of Chairperson at any time.

(3) A trustee who is Chairperson vacates the office of Chairperson if the trustee:

(a) is removed from that office by the Governor; or

(b) resigns that office by instrument in writing addressed to the Minister; or

(c) ceases to be a trustee.

SCHEDULE 3—THE GEOLOGICAL AND MINING MUSEUM—*continued*

Deputies

2. (1) The Minister may, from time to time, appoint a person to be the deputy of a trustee, and the Minister may revoke any such appointment.

(2) In the absence of a trustee, the trustee's deputy:

(a) is, if available, to act in the place of the trustee; and

(b) while so acting, has all the functions of the trustee and is taken to be the trustee.

(3) The deputy of a trustee who is Chairperson of the Trust does not have the trustee's functions as Chairperson.

(4) A person while acting in the place of a trustee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Term of office

3. (1) Subject to this Schedule, a trustee holds office for such period (not exceeding 3 years) as may be specified in the trustee's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(2) A person may be re-appointed as a trustee but no trustee is to hold office for more than 3 consecutive terms.

Remuneration

4. A trustee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the trustee.

Vacancy in office of a trustee

5. (1) The office of a trustee becomes vacant if the trustee:

(a) dies; or

(b) completes a term of office and is not re-appointed; or

(c) resigns the office by instrument in writing addressed to the Minister; or

(d) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or

(e) is absent from 4 consecutive meetings of the Trust of which reasonable notice has been given to the trustee personally or in the ordinary course of post (unless the trustee is granted leave by the Trust or unless, before the expiration of 6 weeks after the last of those meetings, the trustee is excused by the Trust for being absent from those meetings); or

(f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

SCHEDULE 3—THE GEOLOGICAL AND MINING MUSEUM—*continued*

(g) becomes a mentally incapacitated person; or

(h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Governor may remove a trustee from office at any time.

(3) Without limiting the generality of subclause (2), the Governor may remove from office a trustee who contravenes the provisions of clause 7.

Filling of vacancy in office of trustee

6. If the office of any trustee becomes vacant, a person is, subject to this Schedule, to be appointed to fill the vacancy.

Disclosure of pecuniary interests

7. (1) If:

(a) a trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Trust; and

(b) the interest appears to raise a conflict with the proper performance of the trustee's duties in relation to the consideration of the matter,

the trustee is required, as soon as possible after the relevant facts have come to the trustee's knowledge, to disclose the nature of the interest at a meeting of the Trust.

(2) A disclosure by a trustee at a meeting of the Trust that the trustee:

(a) is a member, or is in the employment, of a specified company or other body; or

(b) is a partner, or is in the employment, of a specified person; or

(c) has some other specified interest relating to a specified company or other body or a specified person,

is sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded in a book kept for the purpose and that book is required to be open at all reasonable hours to the inspection of any person on payment of the fee determined by the trustees.

(4) After a trustee has disclosed the nature of an interest in any matter or thing, the trustee may not, unless the Minister or the other trustees otherwise determine:

(a) be present during any deliberation of the Trust, or take part in any decision of the Trust, with respect to that matter; or

(b) exercise any function under this Act with respect to that thing.

SCHEDULE 3—THE GEOLOGICAL AND MINING MUSEUM—*continued*

(5) For the purposes of the making of a determination of the trustees under subclause (4), a trustee who has a direct or indirect pecuniary interest in a matter to which the disclosure relates may not:

(a) be present during any deliberation of the other trustees for the purposes of making the determination; or

(b) take part in the making by the other trustees of the determination.

(6) A contravention of this clause does not invalidate any decision of the trustees or the exercise of any function under this Act.

(7) This clause does not apply to or in respect of an interest of a trustee (being the provision of goods or services to the trustee by the Trust) if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

(8) In this clause:

(a) a reference to a meeting of the Trust includes a reference to a meeting of a committee of the Trust; and

(b) a reference to a trustee includes a reference to a member of such a committee.

Effect of certain other Acts

8. (1) The Public Sector Management Act 1988 does not apply to or in respect of the appointment of a trustee and a trustee is not, as a trustee, subject to that Act (except Part 8).

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a trustee or from accepting and retaining any remuneration payable to the person under this Act as a trustee.

(3) The office of a trustee is not, for the purposes of any Act, an office or place of profit under the Crown.

PART 2—THE PROCEDURE OF THE GEOLOGICAL AND MINING MUSEUM TRUST

General procedure

9. The procedure for the calling of meetings of the Trust and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Trust.

SCHEDULE 3—THE GEOLOGICAL AND MINING MUSEUM—*continued*

Quorum

10. The quorum for a meeting of the Trust is 5 trustees.

Presiding trustee

11. (1) The Chairperson of the Trust or, in the absence of the Chairperson, another trustee elected to chair the meeting by the trustees present is to preside at a meeting of the Trust.

(2) The person presiding at any meeting of the Trust has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

12. A decision supported by a majority of the votes cast at a meeting of the Trust at which a quorum is present is the decision of the Trust.

Minutes

13. The Trust must cause full and accurate minutes to be kept of the proceedings of each meeting of the Trust.

The Director

14. The Director, if not a trustee:

(a) is entitled to be heard by the Trust on any matter considered by the Trust and, unless the Trust otherwise directs, is entitled to be present at each meeting of the Trust; and

(b) is an ex officio member of each committee of the Trust.

SCHEDULE 4—REGULATION MAKING POWERS

(Sec. 388)

Prospecting

1. Regulating prospecting and the carrying on of operations for that purpose, the methods which may or may not be used for that purpose and the duties of specified persons in relation to prospecting operations.

Mining

2. Regulating mining and the carrying on of operations for that purpose, the methods which may or may not be used for that purpose and the duties of specified persons in relation to mining operations.

SCHEDULE 4—REGULATION MAKING POWERS—*continued*

Fossicking

3. Regulating fossicking and the carrying on of operations for that purpose and the methods which may or may not be used for that purpose.

Administrative matters

4. Prescribing the qualifications for, and the functions of, wardens, mining registrars, mining inspectors, mining surveyors and other persons acting in the administration of this Act.

Mining improvements

5. Regulating the construction, use and maintenance of mining improvements on Crown lands in cases where a mining lease has not been granted.

Tourist activities

6. Regulating the conduct of tourist activities in mining areas.

Wardens' inquiries

7. Prescribing the procedure to be followed in connection with any inquiry held by a warden under this Act.

Fees, charges and refunds

8. Regulating the imposition of fees and charges and authorising the refund or waiver of fees and charges.

Statistics, records and accounts

9. Providing for:

(a) the compilation of mining statistics; and

(b) the furnishing of information for the purpose of enabling mining statistics to be compiled; and

(c) the keeping of records and books of account; and

(d) the inspection of, and the taking of extracts from, records and books so kept; and

(e) the furnishing of returns and records.

Arbitrators' costs

10. Regulating arbitrators' costs under this Act.

SCHEDULE 4—REGULATION MAKING POWERS—*continued*

The Geological and Mining Museum Trust

11. Providing, in relation to the Geological and Mining Museum Trust, for:

(a) the meetings of the Trust; and

(b) the committees of the Trust; and

(c) the use and custody of the seal of the Trust; and

(d) the use of property or services provided by the Trust; and

(e) the methods to be used in the care of property of the Trust; and

(f) the determination and payment of fees to the Trust; and

(g) the election of a person by the Trust who has rendered any service to the Geological and Mining Museum or who has furthered the objects of the Trust as an honorary associate of the Museum.

Savings and transitional provisions

12. Prescribing provisions of a savings or transitional nature consequent on the consolidation of any existing leases under Part 6 or the transfer of parts of assessment leases or mining leases under Part 7.

SCHEDULE 5—AMENDMENT OF OTHER ACTS

(Sec. 390)

Aboriginal Land Rights Act 1983 No. 42

Section 45 (Mineral rights and mining on Aboriginal land):

(a) Omit section 45 (12) (b), insert instead:

(b) in respect of any other mineral, pursuant to any right conferred by or under the Mining Act 1992, or any other law, being a right in force at the time the lands were vested in that Council or a mineral claim or authority referred to in subsection (13) (b), or a renewal or extension of any such right, mineral claim or authority.

(b) From section 45 (13) (a), omit "authority, claim, licence, permit or right", insert instead "right, mineral claim or authority".

(c) From section 45 (13) (b), omit "claim or the granting of an authority pursuant to any rights conferred by section 26E or 50 of the Mining Act 1973", insert instead "mineral claim or the granting of an authority pursuant to an exclusive right conferred by the Mining Act 1992".

Coal Acquisition Act 1981 No. 109

Section 3 (Definitions):

From the definition of "coal", omit "Coal Mining Act, 1973,", insert instead "Mining Act 1992".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Coal Mines Regulation Act 1982 No. 67

(1) Section 5 (**Definitions**):

From the definition of "colliery holding" in section 5 (1), omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 124 (**Owners of land on which abandoned mines are situated may be required to close shafts and outlets**):

Omit section 124 (8) (b), insert instead:

(b) a mine the subject of a mining lease granted under the Mining Act 1992 in respect of coal.

(3) Section 139 (**Barriers and protective pillars**):

From section 139 (5) (b), omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

(4) Section 142 (**Definitions**):

(a) From the definition of "prospecting area", omit "authorisation or a concession granted under the Coal Mining Act 1973", insert instead "authority granted under the Mining Act 1992".

(b) From the definition of "registered holder", omit "authorisation or concession granted under the Coal Mining Act 1973", insert instead "authority granted under the Mining Act 1992".

(5) Section 146 (**Definitions**):

From paragraph (a) of the definition of "mine", omit "coal lease under the Coal Mining Act 1973", insert instead "mining lease in respect of coal under the Mining Act 1992".

Coal Ownership (Restitution) Act 1990 No. 19

Section 3 (**Definitions**):

From the definition of "colliery holding", omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

Conveyancing Act 1919 No. 6

(1) Section 6 (**Application of Act to Real Property Act 1900 and other Acts**):

From section 6 (2), omit ", the Mining Act 1973, the Coal Mining Act 1973", insert instead "or the Mining Act 1992".

(2) Schedule 3 (**Conditions of sale**):

From clause 3 (a), omit "Mining Act 1973, or the Coal Mining Act 1973", insert instead "Mining Act 1992".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Crown Lands Act 1989 No. 6

(1) Section 3 (Definitions):

From paragraph (b) of the definition of "mineral" in section 3 (1), omit "Mining Act 1973 or the Coal Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 49 (Licences for removal of certain minerals):

Omit "Mining Act 1973" wherever occurring, insert instead "Mining Act 1992".

Crown Lands (Continued Tenures) Act 1989 No. 7

Schedule 6 (Conditions etc.):

From the definition of "material" in clause 2 (6), omit "Mining Act 1973", insert instead "Mining Act 1992".

Dams Safety Act 1978 No. 96

From sections 8, 16, 18, omit "Mining Act 1973" wherever occurring, insert instead "Mining Act 1992".

Energy Administration Act 1987 No. 103

Section 37 (Operation of certain other Acts):

From section 37 (2), omit "Mining Act 1973 or the Coal Mining Act 1973, and the Corporation is bound by each of those Acts", insert instead "Mining Act 1992, and the Corporation is bound by that Act".

Forestry Act 1916 No. 55

(1) Section 21 (Land subject to mining law):

From section 21, omit "Mining Act 1973, the Coal Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 27 (Penalty for unlawfully taking timber, products or forest materials):

From section 27 (3) (a) (ii), omit "Mining Act 1973 or the Coal Mining Act 1973 or any tenure granted under either of those Acts", insert instead "Mining Act 1992 or any mineral claim or mining lease under that Act".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Irrigation Act 1912 No. 73

From section 25, omit "Mining Act, 1973, or the Coal Mining Act, 1973", insert instead "Mining Act 1992".

Local Government Act 1919 No. 41

(1) Section 4 (**Definitions**):

(a) From the definition of "Lease", omit "claim registered under Part 4 of the Mining Act 1973,", insert instead "mineral claim under the Mining Act 1992".

(b) From the definition of "Lessee", omit "claim under the Mining Act 1973", insert instead "mineral claim under the Mining Act 1992".

(2) Section 531 (**Application and interpretation**):

From section 531 (3), omit "Mining Act, 1973, and the Coal Mining Act, 1973", insert instead "Mining Act 1992".

Maritime Services Act 1935 No. 47

(1) Section 13A, section 13H, section 13JA, section 13JB:

Omit "coal or shale or any substance prescribed as a mineral under the Mining Act, 1973" wherever occurring, insert instead "any mineral within the meaning of the Mining Act 1992".

(2) Section 13C, section 13J, section 13JD, section 13JF, section 13YB, section 13YC, section 13Z:

From sections 13C (2), 13J (3), 13JD (2), 13JF (7), 13YB, 13YC and 13Z, omit "Mining Act 1973 or the Coal Mining Act 1973" wherever occurring, insert instead "Mining Act 1992".

Mine Subsidence Compensation Act 1961 No. 22

(1) Section 4 (**Definitions**):

From the definition of "Colliery holding", omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 14A (**Recovery by Board in the case of unlawful mining operations**):

Omit section 14A (1), insert instead:

(1) In this section, **"unlawful mining operations"** means mining operations, in relation to coal or shale, carried out by a person in contravention of:

(a) Part 2 of the Mining Act 1992; or

(b) any enactment, covenant or stipulation by which the person is bound relating to the method or extent of the extraction of coal or shale.

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Mines Inspection Act 1901 No. 75

From sections 4, 48A, 50 and 54, omit "Mining Act 1973" wherever occurring, insert instead "Mining Act 1992".

Mines Rescue Act 1925 No. 3

Section 6 (Contribution to rescue stations by proprietor of colliery holding):

From the definition of "colliery holding" in section 6 (1), omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

National Parks and Wildlife Act 1974 No. 80

(1) **Section 39 (Existing interests):**

From section 39 (4), omit "authorisation, lease or licence under the Mining Act 1973, the Coal Mining Act 1973", insert instead "lease or licence under the Mining Act 1992".

(2) **Section 41 (Mining):**

From section 41 (2), omit "Mining Act 1973, the Coal Mining Act 1973", insert instead "Mining Act 1992".

(3) **Section 47C (Limitations on power to reserve under s. 47B):**

From section 47C (c), omit "or Ministers administering the Mining Act 1973 and the Coal Mining Act 1973", insert instead "or the Minister administering the Mining Act 1992".

(4) **Section 47H (Existing interests):**

From section 47H (4), omit "authorisation, lease or licence under the Mining Act 1973, the Coal Mining Act 1973,", insert instead "lease or licence under the Mining Act 1992".

(5) **Section 47J (Provisions relating to mining):**

(a) Omit section 47J (1) (a) and (b), insert instead:

(a) any mining lease under the Mining Act 1992; or

(b) From section 47J (2) and (4), omit "Mining Act 1973, the Coal Mining Act 1973" wherever occurring, insert instead "Mining Act 1992".

(c) From section 47J (6), omit "claim shall not be registered under Part 4 of the Mining Act 1973,", insert instead "mineral claim must not be registered under the Mining Act 1992".

(d) From section 47J (7), omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Petroleum (Onshore) Act 1991

(1) Section 3 (Definitions):

From the definition of "petroleum" in section 3 (1), omit "Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 7 (Offence of prospecting or mining without authority):

Omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

(3) Sections 73, 103, 104, 105:

Omit "Mining Act 1973", wherever occurring, insert instead "Mining Act 1992".

(4) Section 73 (Disputes between holders of petroleum titles and other persons carrying on operations on the land):

Omit section 73 (1) (b).

(5) Section 105 (Wardens' courts):

Omit "Part 9", insert instead "Part 15".

Radiation Control Act 1990 No. 13

Section 38 (Consultation and co-operation between Ministers):

From section 38 (a), omit "Mining Act 1973", insert instead "Mining Act 1992".

Stamp Duties Act 1920 No. 47

Section 3 (Definitions):

From paragraph (a) of the definition of "Mining company" in section 3 (1), omit "Mining Act 1973", insert instead "Mining Act 1992".

State Coal Mines Act 1912 No. 70

(1) Section 1 (Short title and definitions):

From the definition of "Crown lands" in section 1 (2), omit "Crown lands within the meaning of section 6 of the Mining Act, 1973", insert instead "Crown land within the meaning of the Mining Act 1992".

(2) Section 2 (Crown lands may be set apart):

From section 2 (2), omit "claim shall not be registered over any such lands under Part IV of the Mining Act, 1973", insert instead "mineral claim must not be registered under Part 9 of the Mining Act 1992 over any such lands".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

(3) Section 7 (Appeal against valuation):

From section 7 (3), omit "claim shall not be registered over the land so described under Part IV of the Mining Act, 1973", insert instead "mineral claim must not be registered under Part 9 of the Mining Act 1992 over the land so described".

(4) Section 10 (Private lands may be set apart):

(a) From section 10 (1), omit "Parts IV and V of the Mining Act, 1973,", insert instead "Parts 3–9 of the Mining Act 1992".

(b) From section 10 (2), omit "Part VIII of the Coal Mining Act 1973", insert instead "Part 13 of the Mining Act 1992".

(5) Section 15 (Mine to be vested in authority):

(a) From section 15 (5), omit "Mining Act, 1973" where firstly and secondly occurring, insert instead "Mining Act 1992".

(b) From section 15 (5), omit "Coal Mining Act, 1973, or the Mining Act, 1973, as the case may be", insert instead "Mining Act 1992".

(6) Section 21A (Authority may prospect for coal):

Omit "Coal Mining Act, 1973,", insert instead "Mining Act 1992".

Trustee Act 1925 No. 14

(1) Section 9 (Vesting):

From section 9 (3A), omit "Mining Act 1973 or the Coal Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 78 (Effect of vesting order):

From section 78 (4), omit "Mining Act 1973", insert instead "Mining Act 1992".

Very Fast Train (Route Investigation) Act 1989 No. 44

(1) Section 19 (Determination of claim for compensation):

(a) From section 19 (3), omit "Part 9 of the Mining Act 1973", insert instead "Part 15 of the Mining Act 1992".

(b) From section 19 (6), omit "Section 146 (Costs may be allowed) of the Mining Act 1973", insert instead "Section 317 (Costs may be allowed) of the Mining Act 1992".

(2) Section 20 (Delegation):

From section 20 (b), omit "Mining Act 1973", insert instead "Mining Act 1992".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Western Lands Act 1901 No. 70

(1) Section 3 (Definitions):

From section 3 (1), omit the definition of "Minerals", insert instead:

"Mineral" means any mineral within the meaning of the Mining Act 1992.

(2) Section 18E (Subsisting leases: extension):

Omit section 18E (2) (c) (iii), insert instead:

(iii) within an area over which, by virtue of the provisions of the Mining Act 1992 or any instrument under that Act, an authority or claim, or a particular authority or claim, under that Act cannot be granted or registered—unless the Director-General of the Department of Mineral Resources so approves;

Wills, Probate and Administration Act 1898 No. 13

Section 75A (Delegation):

From section 75A (2), omit "Mining Act 1973", insert instead "Mining Act 1992".

Workers Compensation Act 1987 No. 70

Schedule 1 (Deemed employment of workers):

From clause 6, omit "Mining Act 1973 or the Coal Mining Act 1973", insert instead "Mining Act 1992".

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 391)

PART 1—REGULATIONS

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Mining Act 1992

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate so as:

(a) to 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 its date of publication; or

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted before the date of its publication.

PART 2—PROVISIONS CONSEQUENT ON THE ENACTMENT OF THE MINING ACT 1992

Definitions

2. (1) In this Part:

"entitlement" means:

(a) an authority, claim or opal prospecting licence granted or deemed to be granted under the Mining Act 1973; or

(b) an authorisation or concession granted or deemed to be granted under the Coal Mining Act 1973;

"the relevant commencement" means:

(a) in relation to a provision of the Mining Act 1973 or the Coal Mining Act 1973—the date on which the provision is repealed; and

(b) in relation to a provision of this Act—the date on which the provision commences.

(2) A reference in this Part to the granting of an entitlement includes, in the case of a claim under the Mining Act 1973, a reference to the registration of the claim.

Mining Act 1973 or the Coal Mining Act 1973 to continue to apply to certain applications

3. (1) This clause applies to an application for, or for the renewal or transfer of:

(a) any authority, claim or opal prospecting licence under the Mining Act 1973; or

(b) any authorisation or concession under the Coal Mining Act 1973.

(2) The provisions of the Mining Act 1973 or the Coal Mining Act 1973 continue to apply to applications and tenders duly lodged before the relevant commencement as if this Act had not been enacted.

(3) Clause 4 applies to:

(a) an authority, claim or opal prospecting licence granted under the Mining Act 1973 by virtue of this clause; and

(b) an authorisation or concession granted under the Coal Mining Act 1973 by virtue of this clause,

as if it had been granted immediately before the relevant commencement.

(4) A reference in this clause to an application or tender that has been duly lodged includes a reference to an application or tender that, although not duly lodged, is an application or tender that could lawfully be dealt with under the Mining Act 1973 or the Coal Mining Act 1973.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Existing mining entitlements

4. (1) An exploration licence granted under the Mining Act 1973 or an exploration permit or authorisation granted under the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to be an exploration licence granted under this Act.

(2) A mining lease or mining purposes lease granted under the Mining Act 1973 or a coal lease granted under the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to be a mining lease granted under this Act.

(3) A claim registered under the Mining Act 1973 and in force immediately before the relevant commencement is taken to be a mineral claim granted under this Act.

(4) An opal prospecting licence granted under the Mining Act 1973 and in force immediately before the relevant commencement is taken to be an opal prospecting licence granted under this Act.

(5) In this clause, a reference to any form of entitlement granted under the Mining Act 1973 or the Coal Mining Act 1973 includes a reference to an entitlement that is deemed to have been granted under either of those Acts.

Directions concerning certain mining leases

5. A direction in force under section 92 of the Mining Act 1973 immediately before the relevant commencement is taken to be a direction under section 77 of this Act.

Directions concerning certain coal leases

6. (1) Any coal lease that is the subject of a direction given under section 72 of the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to have been amended so as to include that mineral as a mineral to which the corresponding mining lease under this Act applies.

(2) Any direction given under section 72A of the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to be a direction in force under section 78 of this Act.

Directions to protect the environment

7. (1) Any condition imposed on an authority, authorisation or concession in accordance with section 118, 119 or 119A of the Mining Act 1973 or section 94, 95 or 95A of the Coal Mining Act 1973 is taken to have been imposed under Division 2 of Part 11 of this Act.

(2) Any direction given under section 120 of the Mining Act 1973 or section 96 of the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to be a direction in force under section 240 of this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(3) Any direction given under section 172 of the Mining Act 1973 or section 115 of the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to be a direction in force under section 245 of this Act.

Environmental planning and assessment matters

8. Sections 65 and 74 of this Act apply to and in respect of a mining lease granted in accordance with section 116 of the Mining Act 1973 or section 91 of the Coal Mining Act 1973 before the relevant commencement in the same way as they apply to and in respect of a mining lease granted in accordance with this Act.

Consolidation of leases

9. (1) Part 5A of the Mining Act 1973 continues to apply to a draft consolidated mining lease prepared under section 111C of that Act before the relevant commencement as if this Act had not been enacted.

(2) Any consolidated mining lease granted under Part 5A of the Mining Act 1973 as a consequence of the operation of subclause (1) is taken to have been granted under Part 6 of this Act.

(3) Part 4A of the Coal Mining Act 1973 continues to apply to a draft consolidated coal lease prepared under section 82C of that Act before the relevant commencement as if this Act had not been enacted.

(4) Any consolidated coal lease granted under Part 4A of the Coal Mining Act 1973 as a consequence of the operation of subclause (3) is taken to have been granted under Part 6 of this Act.

Register of colliery holdings

10. The register of colliery holdings kept under section 115A of the Coal Mining Act 1973 is taken to be the register of colliery holdings kept under section 163 of this Act.

Rights of way

11. Any right of way in force under section 175 of the Mining Act 1973 or 117 of the Coal Mining Act 1973 immediately before the relevant commencement is taken to be a right of way in force under section 164 of this Act.

Suspension of authorities

12. Any suspension of the conditions of an authority made under Part 5 of the Mining Act 1973 and in force immediately before the relevant commencement is taken to be a suspension of the conditions of the corresponding authority under section 168 of this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Caveats

13. Any caveat duly lodged under section 109 of the Mining Act 1973 or section 106 of the Coal Mining Act 1973 before the relevant commencement is taken to be a caveat duly lodged under section 124 of this Act and is to have effect as if this Act had been in force when it was lodged.

Claims

14. (1) Any obligation under the Mining Act 1973 in connection with a claim registered under Part 4 of that Act (being an obligation in existence in force immediately before the relevant commencement) is taken to be an obligation under this Act in connection with the corresponding mineral claim.

(2) Any security given in respect of a claim under Part 4 of the Mining Act 1973 before the relevant commencement is taken to be security given in respect of the corresponding mineral claim under this Act.

(3) Any claim whose registration had been renewed under Part 4 of the Mining Act 1973 before the relevant commencement is taken to be a mineral claim renewed under Part 9 of this Act.

(4) A certificate of registration of a claim or of renewal of registration of a claim issued before the relevant commencement is taken to have been duly issued under this Act.

(5) Any application for the registration of a person on whom the rights of a registered holder of a claim have devolved as the holder of the claim (being an application that had not been finally dealt with before the relevant commencement) is to continue to be dealt with as if this Act had not been enacted.

(6) Any such registration is taken to be a transfer duly effected under this Act.

(7) Any suspension of the conditions of a registered claim under Part 4 of the Mining Act 1973 and in force immediately before the relevant commencement is taken to be a suspension of the conditions of the corresponding mineral claim under section 215 of this Act.

Permits

15. (1) Any permit granted under section 36A of the Mining Act 1973 and in force immediately before the relevant commencement continues to have effect for the purposes for which it was granted.

(2) A permit may be issued under section 254 of this Act in relation to the obligations of the holder of a registered claim under Part 4 of the Mining Act 1973.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Licence to process tailings

16. Any licence in force under section 173 of the Mining Act 1973 immediately before the relevant commencement continues in force for the term for which it was granted as if this Act had not been enacted.

Licence to construct tunnels etc.

17. Any licence in force under section 174 of the Mining Act 1973 immediately before the relevant commencement continues in force for the duration of the mining lease (including any mining purposes lease that is taken to be a mining lease) in relation to which it was granted.

Access arrangements

18. (1) An access arrangement in force under Division 4A of Part 5 of the Mining Act 1973 immediately before the relevant commencement is taken to be an access arrangement in force under Division 2 of Part 8 of this Act.

(2) A person who held office as an arbitrator under section 84E of the Mining Act 1973 immediately before the relevant commencement is taken to have been appointed under section 143 of this Act.

(3) The Arbitration Panel established by section 84B of the Mining Act 1973 is taken to be the Arbitration Panel established under section 139 of this Act.

(4) Any person who was a member of the Arbitration Panel established under section 84B of the Mining Act 1973 immediately before the relevant commencement is taken to be a member of the Arbitration Panel established by section 139 of this Act.

(5) The conditions under which a member of the Arbitration Panel held office under the Mining Act 1973 immediately before the relevant commencement are, until they are duly changed under this Act, to be the conditions under which the member holds office as a member of the Arbitration Panel under this Act.

(6) Any notice served under section 84E or 84F of the Mining Act 1973 before the relevant commencement is taken to have been duly served under section 142 or 143 of this Act.

(7) Any matter done by an arbitrator before the relevant commencement for the purposes of a hearing under Division 4A of Part 5 of the Mining Act 1973 is taken to have been done for the purposes of Division 2 of Part 8 of this Act.

(8) An interim determination in force under section 84K of the Mining Act 1973 immediately before the relevant commencement is taken to be an interim determination under section 149 of this Act.

(9) A final determination in force under section 84M of the Mining Act 1973 immediately before the relevant commencement is taken to be a final determination under section 151 of this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(10) Section 154 of this Act applies to a hearing conducted under Division 4A of Part 5 of the Mining Act 1973 in the same way as it applies to a hearing conducted under Division 2 of Part 8 of this Act.

Compensation

19. Any compensation payable under Part 8 of the Mining Act 1973 or Part 8 of the Coal Mining Act 1973 in respect of the granting of an entitlement under either of those Acts, or the exercise of rights under either of those Acts, before the relevant commencement is taken to be compensation payable under Part 13 of this Act.

Royalty

20. Part 14 of this Act applies to royalty on coal and other minerals recovered pursuant to an instrument in force under the Mining Act 1973 or the Coal Mining Act 1973 before the relevant commencement in the same way as it applies to coal and other minerals recovered after that commencement.

Trust funds

21. Any trust fund duly established under section 99 of the Mining Act 1973 or section 77B of the Coal Mining Act 1973 and in existence immediately before the relevant commencement is taken to have been duly established under section 288 of this Act.

Inspectors

22. Any person who was an inspector under section 183 of the Mining Act 1973 immediately before the relevant commencement is taken to be an inspector under this Act.

Wardens and other officers

23. Any person who held office as chief warden, warden or mining registrar under the Mining Act 1973 immediately before the relevant commencement is taken to have been appointed as chief warden, warden or mining registrar under this Act.

Wardens' courts

24. Any warden's court established under the Mining Act 1973 and in existence immediately before the relevant commencement is taken to have been established under this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Proceedings

25. (1) Any proceedings that had been commenced under the Mining Act 1973 in a warden's court but had not been finally dealt with before the relevant commencement are to continue to be dealt with in accordance with this Act.

(2) Any decision of a warden's court under the Mining Act 1973 and in force immediately before the relevant commencement is taken to be a decision of a warden's court under this Act.

(3) Any order or injunction made or granted by a warden's court, or by a warden, under the Mining Act 1973 and in force immediately before the relevant commencement is taken to be an order or injunction made or granted under this Act.

(4) Any writ of execution issued by a warden's court under the Mining Act 1973 and in force immediately before the relevant commencement is to be enforced as if this Act had not been enacted.

(5) Any authorisation granted by a warden's court, or by a warden, under the Mining Act 1973 or the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to have been granted under this Act.

(6) Any summons or subpoena issued by a warden's court, or by a warden, under the Mining Act 1973 and in force immediately before the relevant commencement is taken to have been issued under this Act.

Appeals

26. The Mining Act 1973 continues to apply to an appeal, or an application for determination of a stated case, made under that Act before the relevant commencement as if this Act had not been enacted.

Wardens' inquiries

27. Any inquiry conducted by a warden under section 178 or 178A of the Mining Act 1973 before the relevant commencement is taken to be a warden's inquiry under this Act.

Evidentiary certificates

28. A certificate issued under section 26F, 37A or 111 of the Mining Act 1973 or under section 108 of the Coal Mining Act 1973 before the relevant commencement continues to have effect in relation to proceedings under that Act as if this Act had not been enacted.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Certain decisions by the Minister

29. Any decision given by the Minister in respect of a dispute referred to in section 179 of the Mining Act 1973 or section 121 of the Coal Mining Act 1973 before the relevant commencement is taken to be a decision given under the corresponding section of this Act.

Agreements concerning payment by instalments

30. Any agreement in force under section 127 of the Coal Mining Act 1973 immediately before the relevant commencement continues in force as if it were a condition of a mining lease under section 70 (4) of this Act.

Delegations

31. Any delegation in force immediately before the relevant commencement under the Mining Act 1973 or the Coal Mining Act 1973 is taken to have been given under this Act and continues to have effect as if it had been given under this Act.

Disclosure of information

32. Any information obtained by a person in connection with the administration or execution of the Mining Act 1973 or the Coal Mining Act 1973 is taken to have been obtained by the person in connection with the administration or execution of this Act.

Mining divisions

33. Any division of a mining district constituted under the Mining Act 1973 and in existence immediately before the relevant commencement is taken to be a mining division constituted under this Act, with the same name and boundaries as it had immediately before the relevant commencement.

Reserves

34. (1) Any reserve constituted under the Mining Act 1973 (including any reserve that is deemed to have been constituted under that Act) and in existence immediately before the relevant commencement is taken to be a reserve constituted under this Act, with the same name and boundaries as it had immediately before the relevant commencement.

(2) Any order in force under section 24 of the Mining Act 1973 immediately before the relevant commencement, being an order containing a direction prohibiting the granting or registration of a particular entitlement over land in a reserve is taken to be an order prohibiting the granting of the entitlement that, by virtue of clause 4, is the corresponding entitlement over land in the reserve.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Opal prospecting areas

35. (1) Any opal prospecting area constituted under the Mining Act 1973 and in existence immediately before the relevant commencement is taken to be an opal prospecting area constituted under this Act, with the same name and boundaries as it had immediately before the relevant commencement.

(2) Any notice served in accordance with section 25A (2) of the Mining Act 1973 before the relevant commencement is taken to be a notice duly served under section 221 of this Act.

(3) Any objection duly made under section 25B (1) of the Mining Act 1973 before the relevant commencement is taken to be an objection duly lodged under section 222 of this Act.

(4) Any opal prospecting block constituted under the Mining Act 1973 and in existence immediately before the relevant commencement is taken to be an opal prospecting block constituted under this Act, with the same designation and boundaries as it had immediately before the relevant commencement.

(5) Any map prepared under section 25C of the Mining Act 1973 before the relevant commencement is taken to have been duly prepared under section 225 of this Act.

(6) The particulars depicted on any such map are taken to be the corresponding particulars for the purposes of this Act.

Claims for damages

36. Section 26H of the Mining Act 1973 continues to apply in relation to any injury or loss referred to in that section (being an injury or loss sustained before the relevant commencement) as if this Act had not been enacted.

Notices and instruments

37. Any notice or instrument published or served in accordance with any provision of the Mining Act 1973 or the Coal Mining Act 1973 before the relevant commencement is taken to have been duly served under the corresponding provision of this Act.

Records

38. Any records kept before the relevant commencement under section 105 of the Mining Act 1973 or section 102 of the Coal Mining Act 1973 are to form part of the records kept under section 159 of this Act.

Museums and laboratories

39. Any museum or laboratory established under the Mining Act 1973 and in existence immediately before the relevant commencement is taken to have been established under this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

The Geological and Mining Museum

40. (1) The Geological and Mining Museum constituted by this Act is a continuation of, and the same legal entity as, the Geological and Mining Museum constituted by section 169B of the Mining Act 1973.

(2) The persons holding office as trustees of the Museum immediately before the relevant commencement continue as trustees under this Act as if they had been appointed under this Act.

(3) The person holding office as Director of the Museum immediately before the relevant commencement continues to hold office under this Act as if appointed under this Act.

(4) Any person who was a member of staff of the Museum immediately before the relevant commencement continues to be a member of staff of the Museum.

(5) Any committee established under section 169J of the Mining Act 1973 and in existence immediately before the relevant commencement is taken to have been established under section 350 of this Act.

(6) The Geological and Mining Museum Trust Account established under the Mining Act 1973 is taken to be the account of that name established under this Act.

Geological and Mining Museum Regulation 1990

41. (1) The Geological and Mining Museum Regulation 1990 continues in force as if it had been made under this Act.

(2) Any reference in that regulation to a provision of the Mining Act 1973 is taken to be a reference to the corresponding provision of this Act.

Directions concerning graticular sections

42. A direction in force immediately before the relevant commencement for the purposes of the definition of "block" or "unit" in section 6 (1) of the Mining Act 1973 or section 6 (1) of the Coal Mining Act 1973 is taken to be a direction for the purposes of the corresponding definition in the Dictionary at the end of this Act.

Instruments under sec. 77 of the Mining Act 1973

43. An instrument lodged with the Director-General in accordance with section 77 (1) (c) of the Mining Act 1973 before the relevant commencement is taken to be a notice of intention duly given in accordance with section 8 (1) of this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

References to provisions of repealed Acts

44. (1) In determining a relevant date in accordance with section 62 (4) of this Act:

(a) a reference to the date on which a notice was published in the Gazette under section 136 of this Act includes a reference to the date on which a notice was published in the Gazette under section 31 of the Coal Mining Act 1973; and

(b) a reference to the date on which an application for an exploration licence was lodged under this Act includes, in the case of an application relating to coal, a reference to the date on which an application for an authorisation or exploration permit was lodged under the Coal Mining Act 1973; and

(c) a reference to the date on which a mineral claim was granted under this Act includes a reference to the date on which a claim was registered under the Mining Act 1973.

(2) A reference in clause 3 of Schedule 2 to the date on which an application for an exploration licence or mineral claim was lodged includes, in the case of an exploration licence, claim, authorisation or concession granted under the Mining Act 1973 or the Coal Mining Act 1973 that is taken to be an exploration licence or mineral claim granted under this Act, a reference to the date on which the application for the exploration licence, claim, authorisation or concession was lodged under the Mining Act 1973 or the Coal Mining Act 1973.

Miscellaneous applications

45. Any application (other than an application referred to in clause 3) that had been made but not dealt with under a provision of the Mining Act 1973 or the Coal Mining Act 1973 before the relevant commencement is taken to be an application under the corresponding provision of this Act and may continue to be dealt with accordingly.

Construction of certain references

46. In any other Act or instrument:

(a) a reference to the Mining Act 1973 or the Coal Mining Act 1973 includes a reference to this Act; and

(b) a reference to a provision of the Mining Act 1973 or the Coal Mining Act 1973 includes a reference to the corresponding provision of this Act; and

(c) a reference to an entitlement granted under the Mining Act 1973 or the Coal Mining Act 1973 includes a reference to the corresponding entitlement granted under this Act.

DICTIONARY OF WORDS AND EXPRESSIONS

(Sec. 4)

"access arrangement" means an access arrangement under Division 2 of Part 8;

"allocated mineral", in relation to a mineral allocation area, means a mineral or group of minerals in respect of which the mineral allocation area is constituted;

"approved" means approved by the Minister;

"Arbitration Panel" means the Arbitration Panel established by section 139;

"arbitrator" means an arbitrator appointed under Division 2 of Part 8;

"assessment area" means land the subject of an assessment lease;

"assessment lease" means an assessment lease granted under Part 4;

"authority" means an exploration licence, an assessment lease or a mining lease;

"block" means a graticular section referred to in section 370 or, if the Minister so directs in a particular case, part of such a graticular section;

"chief inspector of coal mines" means the chief inspector of coal mines appointed under the Coal Mines Regulation Act 1982;

"chief warden" means the chief warden appointed under section 293;

"claim area" means land the subject of a mineral claim;

"colliery holding" means a colliery holding registered in accordance with section 163;

"consent authority" has the same meaning as it has in the Environmental Planning and Assessment Act 1979;

"consolidated mining lease" means a lease granted under Part 6;

"controlling body", in relation to an exempted area, means:

(a) in the case of land referred to in paragraph (a) or (c) of the definition of "exempted area"—the person having the control and management of the land; or

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

(b) in the case of land referred to in paragraph (b) of that definition—the holder of the lease referred to in that paragraph; or

(c) in the case of land referred to in paragraph (d) of that definition—the person prescribed by the regulations as the controlling body for that land for the purposes of this definition;

"council" has the same meaning as it has in the Local Government Act 1919;

"Crown land" means all land within the State that is not private land, and includes the seabed and subsoil beneath the coastal waters of the State;

"Crown Lands Acts" has the same meaning as it has in the Crown Lands Act 1989;

"Crown lease for pastoral purposes" means:

(a) a Crown lease, under the Crown Lands Acts, of land which contains a condition restricting the use of the land to grazing or to grazing and the giving of access to water; or

(b) a Crown lease, under the Crown Lands Acts, of land set apart for grazing, whether or not the whole or any part of the land may, under the lease, be used for agricultural purposes;

"dam" includes the water or other material impounded by the dam;

"Dams Safety Committee" means the Dams Safety Committee constituted by section 7 of the Dams Safety Act 1978;

"Department" means the Department of Mineral Resources;

"development consent" has the same meaning as it has in the Environmental Planning and Assessment Act 1979;

"Director-General" means the Director-General of the Department;

"environmental planning instrument" has the same meaning as it has in the Environmental Planning and Assessment Act 1979;

"exempted area" means an area constituted by land:

(a) reserved, dedicated, appropriated, resumed or acquired for public purposes (except land reserved for a temporary common or a commonage), whether vested in the Crown or in any person as trustee for public purposes; or

(b) held under a lease for water supply by virtue of a special lease or otherwise; or

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

(c) transferred, granted or vested in trust by the Crown for the purpose of a race-course, cricket-ground, recreation reserve, park or permanent common or for any other public purpose; or

(d) prescribed by the regulations for the purposes of this definition;

"exercise a function" includes perform a duty;

"exploration area" means land the subject of an exploration licence;

"exploration licence" means an exploration licence granted under Part 3;

"function" includes power, authority and duty;

"Government agency" means:

(a) a Government Department; or

(b) an Administrative Office; or

(c) a corporation designated by the Minister under section 387;

"group of minerals" means any minerals prescribed by the regulations as a group of minerals for the purposes of this definition;

"inspector" means an inspector appointed under section 361;

"irrigation area" means an irrigation area constituted under the Irrigation Act 1912, the Wentworth Irrigation Act 1890, the Hay Irrigation Act 1902 or the Balranald Irrigation Act 1902;

"land", in relation to the coastal waters of the State, includes the seabed and subsoil beneath those waters;

"local government area" has the same meaning as it has in the Local Government Act 1919;

"mine" means:

(a) when used as a noun—any place, pit, shaft, drive, level or other excavation, drift, gutter, lead, vein, lode, reef or salt-pan (whether occurring naturally or artificially created) in, on or by means of which, any mining operation is carried on; and

(b) when used as a verb—to extract material from land for the purpose of recovering minerals from the material so extracted or to rehabilitate land from which material has been so extracted;

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

"mineral" means any substance prescribed by the regulations as a mineral for the purposes of this definition, and includes coal and oil shale, but does not include uranium or petroleum;

"mineral allocation area" means a mineral allocation area constituted under section 368;

"mineral claim" means a mineral claim granted under Part 9;

"mineral claims district" means a mineral claims district constituted under Division 1 of Part 9;

"mining area" means land the subject of a mining lease;

"mining division" means a mining division constituted under section 366;

"mining improvement" includes:

(a) any machinery used for or in connection with prospecting or mining; and

(b) any race, drain, dam or reservoir so used;

"mining lease" means a mining lease granted under Part 5, and includes a consolidated mining lease;

"mining operations" means operations carried out in the course of mining;

"mining purpose" means any purpose prescribed by the regulations as a mining purpose for the purposes of this definition;

"mining registrar" means:

(a) a mining registrar appointed under section 360; or

(b) in relation to a mining division, a mining registrar exercising and performing in that division the functions of a mining registrar under this Act;

"notification area", in relation to a prescribed dam, means the land for the time being declared under section 369 to be the notification area for the dam;

"occupier" means, in relation to any land, a person entitled to lawful occupation of that land, being a person of a class prescribed by the regulations for the purposes of this definition;

"opal prospecting area" means an opal prospecting area constituted under Division 1 of Part 10;

"opal prospecting block" means an opal prospecting block constituted under Division 1 of Part 10;

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

"opal prospecting licence" means an opal prospecting licence granted under Division 2 of Part 10;

"owner", in relation to private land, includes:

(a) any person to whom the Crown has lawfully contracted to sell that land under the Crown Lands Acts, or to whom the Crown has granted any lease of that land under those Acts; and

(b) the trustee for an owner, the legal representative of a deceased or bankrupt owner, the manager, appointed under the Protected Estates Act 1983, of the estate of an owner who is a protected person within the meaning of that Act, and a mortgagee in possession,

and, in relation to Crown land held under a pastoral lease, includes a holder of the pastoral lease;

"party" means:

(a) in relation to a hearing before an arbitrator—a person who is entitled to appear and be heard at the hearing pursuant to section 146; or

(b) in relation to an access arrangement—the holder of a prospecting title to whom, or an owner or occupier of land to which, the arrangement relates;

"pastoral lease" means:

(a) a Crown lease for pastoral purposes; or

(b) a special lease for pastoral purposes; or

(c) a Western Lands lease for pastoral purposes;

"petroleum" has the same meaning as it has in the Petroleum Act 1955;

"prescribed dam" has the same meaning as it has in the Dams Safety Act 1978;

"private land" means:

(a) land held in fee simple by any person, other than land vested in the Crown or in any person holding the land for or on behalf of the Crown or as trustee for public purposes; or

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

(b) land (other than land held under a pastoral lease) held under any of the tenures continued in force under the Crown Lands (Continued Tenures) Act 1989 or comprised in a folio of the Register kept under the Real Property Act 1900, being a folio created in respect of any such tenure; or

(c) land in the process of alienation from the Crown,

and includes any other land declared by the regulations to be private land, but does not include any land declared by the regulations to be Crown land;

"privately owned mineral" means a mineral that is not owned by, or reserved to, the Crown;

"prospect" means to carry out works on, or to remove samples from, land for the purpose of testing the mineral bearing qualities of the land;

"prospecting operations" means operations carried out in the course of prospecting;

"publicly owned mineral" means a mineral that is owned by, or reserved to, the Crown;

"reserve" means a reserve constituted under section 367;

"special conditions" means:

(a) in relation to a mineral claims district—the conditions specified under section 175 as the conditions to which mineral claims registered over land within the district are to be subject; or

(b) in relation to an opal prospecting block—the conditions specified in respect of the block on the map prepared under section 225;

"special lease for pastoral purposes" means a special lease, under the Crown Lands Acts, which contains a condition restricting the use of the land to grazing or to grazing and the giving of access to water;

"surveyor" means a surveyor registered under the Surveyors Act 1929;

"unit" means a unit into which a block is divided as referred to in section 370 or, if the Minister so directs in a particular case, part of such a unit;

"warden" means any warden appointed under section 293, and includes the chief warden;

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

"warden's court" means a warden's court established under section 294;

"Western lands lease for pastoral purposes" means:

(a) a lease, under the Western Lands Act 1901, of land which contains a condition restricting the use of the land to grazing or to grazing and the giving of access to water; or

(b) a lease, under the Western Lands Act 1901, of land set apart for grazing, whether or not the whole or any part of the land may, under the lease, be used for agricultural purposes.

FIRST PRINT

MINING BILL 1992

NEW SOUTH WALES

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to repeal and re-enact the Mining Act 1973 and the Coal Mining Act 1973 so as to consolidate the provisions of those Acts into one Act. The proposed Act is based on the Mining Act 1973, modified in various respects, but includes also such of the provisions of the Coal Mining Act 1973 as need to be preserved in relation to coal. The modifications to the current law include:

(a) the extension of the current tendering process for exploration permits and coal leases to exploration licences and mining leases for minerals other than coal; and

(b) the extension (from a maximum of 2 years to a maximum of 5 years) of the duration of exploration licences; and

(c) the creation of a new mining title (to be known as an "assessment lease") that will allow a person to develop an area of land prior to applying for a mining lease over that land; and

(d) the abolition of mining purposes leases; and

(e) the establishment of "mineral claims districts" for the purpose of streamlining the procedures for granting mineral claims; and

(f) the extension (from 50 square metres to a maximum of 2 hectares) of the area of land over which a mineral claim may be registered, and the extension (from 1 year to a maximum of 5 years) of the duration of a mineral claim; and

(g) the extension of the provisions concerning royalty to minerals recovered under an exploration licence, an assessment lease or a mineral claim; and

(h) the determination of royalty by regulation rather than, as is currently the case, by administrative determination; and

(i) the abolition of the current requirements for the payment of rent by the holder of a mining lease; and

(j) the abolition of fossicking areas and fossicking licences; and

(k) other matters of a minor, consequential or ancillary nature.

The Bill also contains consequential amendments to other Acts and provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

PART 1—PRELIMINARY

This Part (clauses 1–4) contains provisions of a machinery nature dealing with the citation and commencement of the proposed Act, the effect of the proposed Act on the Crown and the definition of words and expressions used in the proposed Act.

PART 2—PROSPECTING AND MINING GENERALLY

This Part (clauses 5–12) contains provisions prohibiting the conduct of prospecting or mining of publicly owned or privately owned minerals otherwise than in accordance with the proposed Act. It also contains a provision declaring that the property in a lawfully mined mineral passes to the person on whose behalf it is mined when the material from which it is recovered is severed from the land from which it is mined. It also contains a provision declaring that fossicking is a lawful activity.

PART 3—EXPLORATION LICENCES

Applications and tenders (Division 1—clauses 13–17)

These provisions enable an exploration licence to be obtained in two ways: by tender in the case of land within a mineral allocation area or by application in any other case. The required forms of tender or application for an exploration licence are set out. An application must specify the group or groups of minerals in respect of which the application is made. A tender or application must include certain particulars (for example, the financial resources and technical advice available to the tenderer or applicant). The Minister may require an applicant or tenderer who is a corporation to supply the Minister with information to enable the Minister to determine the extent to which the corporation's affairs are directed by a foreign company or recognised company and may amend the application or tender.

Restrictions on the grant of exploration licences (Division 2—clauses 18–21)

These provisions set out the restrictions on the grant of an exploration licence. An exploration licence may not be granted over land in an opal prospecting area or in a reserve in respect of which an order has been made prohibiting the grant of a licence. A licence may not be granted over land already subject to an exploration licence, mineral claim, assessment lease or mining lease (or in respect of which an application for such a licence, claim or lease has been made) without the consent of the holder of, or applicant for, the licence, claim or lease. A licence may not be granted over private land in relation to a mineral not reserved to, or vested in, the Crown if certain mining operations are already being carried out and must not be granted over land in a colliery holding unless prospecting operations can be carried out without detriment to the colliery or the safety of persons employed in it.

Granting of exploration licences (Division 3—clauses 22–28)

These provisions restrict the size of the area of land over which an exploration licence may be granted. A licence must include particulars as to the description of the land over which it is granted, the group or groups of minerals in respect of which it is

granted, the period for which it is to have effect (which must not exceed 5 years) and the conditions to which it is subject. The conditions may include a requirement that the holder of the licence give security for fulfilment of the obligations arising under the Act in respect of the licence.

Rights and duties under an exploration licence (Division 4—clauses 29–32)

An exploration licence confers on the holder of the licence the right to carry out prospecting operations in the exploration area for the group or groups of minerals to which it relates. The exercise of these rights in exempted areas is limited by the requirement that the holder may do so only with the consent of the Minister. The consent of the occupier of the land must also be obtained before the holder exercises any right on certain other land (for example, land on which there is a dwelling-house, garden or dam).

PART 4—ASSESSMENT LEASES

Applications (Division 1—clauses 33–35)

These provisions set out the required form of application for an assessment lease. In addition to describing the land over which it is sought, it must include certain other particulars (for example, the financial resources and technical advice available to the applicant). The Minister may require an applicant which is a corporation to supply the Minister with information to enable the Minister to determine the extent to which the corporation's affairs are directed by a foreign company or recognised company and may amend the application.

Restrictions on the grant of assessment leases (Division 2—clauses 36–40)

These provisions set out the restrictions on the grant of an assessment lease. An assessment lease may not be granted over land in an opal prospecting area or in a reserve in respect of which an order has been made prohibiting the grant of a lease. An assessment lease may not be granted over land that is subject to an exploration licence, mineral claim, assessment lease or mining lease (or in respect of which an application for such a claim or lease has been made) without the consent of the holder of, or applicant for, the claim or lease. An assessment lease may not be granted over private land in relation to a mineral not reserved to, or vested in, the Crown if certain mining operations are already being carried out and must not be granted over land in a colliery holding unless prospecting operations can be carried out without detriment to the colliery or the safety of persons employed in it.

Granting of assessment leases (Division 3—clauses 41–46)

These provisions prevent the grant of an assessment lease if an objection made to its grant has not been withdrawn or otherwise resolved or rejected by the Premier. An assessment lease may be granted only over land over which it was sought although the land over which the lease is granted may differ in size or shape from the land over which it was sought. The lease must include particulars as to the description of the land over which it is granted, the period for which it is to have effect (which must not exceed 5 years) and the conditions to which it is subject. The conditions may include a requirement that the holder of the lease give security for fulfilment of the obligations arising under the Act in respect of the lease.

Rights and duties under an assessment lease (Division 4—clauses 47–50)

An assessment lease confers on the holder of the lease the right to prospect in the assessment area. The exercise of these rights in exempted areas is limited by the requirement that the holder may do so only with the consent of the Minister. The consent of the occupier of the land must also be obtained before the holder exercises any right on certain other land (for example, land on which there is a dwelling-house, garden or dam).

PART 5—MINING LEASES

Applications and tenders (Division 1—clauses 51–56)

These provisions enable a mining lease to be obtained in two ways: by tender in the case of land in a mineral allocation area or by application in any other case. The required forms of tender or application for a mining lease are set out. An application must specify the mineral or minerals in respect of which it is made. A tender or application must include certain particulars (for example, the financial resources and technical advice available to the tenderer or applicant). A tender may include particulars of the amount of the tender including the amount or royalty that the tenderer will pay in addition to the cash reserve price specified in the invitation for the tender. The Minister may require an applicant or tenderer which is a corporation to supply the Minister with information to enable the Minister to determine the extent to which the corporation's affairs are directed by a foreign company or recognised company and may amend the application or tender. The Minister may, at the request of the applicant, direct that the application be dealt with as an application for an exploration licence or assessment lease.

Restrictions on the grant of mining leases (Division 2—clauses 57–62)

These provisions set out the restrictions on the grant of a mining lease. A mining lease may not be granted over land that is in an opal prospecting area or in a reserve in respect of which an order has been made prohibiting the grant of a mining lease. A mining lease may not be granted over land already subject to an exploration licence, mineral claim, assessment lease or mining lease (or in respect of which an application for such a licence, claim or lease has been made) without the consent of the holder of, or applicant for, the licence, claim or lease. A lease may not be granted over private land in relation to a mineral not reserved to or vested in the Crown if certain mining operations are already being carried out and must not be granted over land in a colliery holding unless prospecting operations can be carried out without detriment to the colliery or the safety of persons employed in it. The Minister is required to notify the holder of any exploration licence over land in respect of which an application for a mining lease is lodged of the fact that such an application has been lodged. The holder of the exploration licence may object to the grant of the mining lease. The consent of the occupier of the land is required before a mining lease is granted over certain other land (for example, land on which there is a dwelling-house, garden or dam).

Granting of mining leases (Division 3—clauses 63–72)

The Director-General must ensure that the land over which a mining lease is sought has been surveyed before the lease is granted. A mining lease may be granted only over land over which it was sought although the land over which the lease is granted may

differ in size or shape from the land over which it was sought. The lease must include particulars as to the description of the land for which it is granted, the mineral or minerals in respect of which it is granted, the period for which it is to have effect (which, in general, must not exceed 21 years) and the conditions to which it is subject. The conditions may include conditions related to, for example, the transporting of any mineral or disposal of material discarded from mining operations even if the conditions do not relate to a matter to be carried out on or in the vicinity of the land subject to the lease. If public money has been expended in testing land to determine its mineral bearing capacity or carrying out any environmental impact study or research program necessary to assess whether the lease should be granted, the applicant for the lease may be required to pay an amount to the Minister to cover the costs incurred.

Rights and duties under a mining lease (Division 4—clauses 73–83)

A mining lease is to confer on the holder of the lease the right to carry out prospecting and mining operations in the mining area. The holder may carry out any mining purpose in the mining area. However, the Minister may order that the purpose be carried out in accordance with a condition or that operations be discontinued. The holder may fence the surface of any land if this is included in the mining area and may be required to fence any shaft, machinery or other works. Provision is also made for the addition of a mineral to the lease and, in the case of a mining lease granted in respect of coal, for the inclusion in the lease of petroleum. The Minister is authorised to amend a mining lease to substitute conditions relating to expenditure for conditions relating to labour. Such an amendment may require the holder to give security for the fulfilment of obligations under the lease. The provisions also make it clear that the resumption or appropriation of land the subject of a lease does not affect the rights granted under the lease.

PART 6—CONSOLIDATION OF MINING LEASES

This Part (clauses 84–112) re-enacts Part 5A of the Mining Act 1973. It makes provision for the consolidation of mining leases and consolidated mining leases. Two or more leases may be consolidated if they are held by the same person and are contiguous or separated only by a road, stream or railway. Provision is made for preparation of a draft consolidated mining lease and for grant of the lease only after any objections made by the Director of Planning and the Dams Safety Committee have been dealt with and any representations made by the holder of any existing leases to be consolidated are taken into account. Provision is made to preserve various elements of the existing leases in the consolidated lease (for example, the conditions to which the leases were subject) and instruments affecting those leases.

PART 7—RENEWAL, TRANSFER AND CANCELLATION OF AUTHORITIES

This Part (clauses 113–128) provides for the manner of renewing or transferring authorities. It limits the period for which an authority may be renewed on any one occasion (5 years in the case of an exploration licence or assessment lease and, normally, 21 years in the case of a mining lease). The Minister may cancel an authority if, for example, the holder contravenes the conditions of the authority. The Minister may also do so if the land is required for a public purpose. Cancellation of an authority is subject to a right of appeal to the District Court. The holder of an authority cancelled for this reason is to be entitled to compensation for mining improvements made to the land.

PART 8—AUTHORITIES GENERALLY

General procedures (Division 1—clauses 129–137)

This Division deals with matters concerning the withdrawal of applications, the priority between applications, the waiver of minor procedural requirements, the Gazettal of certain matters and the limitation of the right to challenge technical defects in authorities that have been granted.

Access arrangements for prospecting titles (Division 2—clauses 138–158)

This Division re-enacts Division 4A of Part 5 of the Mining Act 1973. It makes provision for the rights of access that may be exercised by holders of prospecting titles (that is, exploration licences and assessment leases) over land to which those titles relate. Access arrangements may be made between the owners and occupiers of those lands and the holders of prospecting titles in order to define the rights of access that may be exercised in relation to those lands. Provision is made for arbitration of the question whether the holder of a prospecting title should have access over land where an access arrangement has not been agreed to by the parties concerned.

Records and registration (Division 3—clauses 159–163)

This Division provides for the keeping of certain records, the establishment of a register of interests, the transfer and devolution of certain interests and the maintenance of a register of colliery holdings.

Miscellaneous (Division 4—clauses 164–172)

This Division deals with certain matters ancillary to the rights conferred by an authority. It contains provisions concerning rights of way, rights of access to water, use of water, timber and pasturage, provisions concerning the suspension of conditions of an authority, the forfeiture of security deposits and the settlement of disputes by the Minister and provisions requiring the holder of an authority to provide certain indemnities. It also provides for the issue of evidentiary certificates.

PART 9—MINERAL CLAIMS

Mineral claims districts (Division 1—clauses 173–175)

This Division provides for the constitution of mineral claims districts by order of the Governor. Such an order may not be made over land that is within a reserve in respect of which the granting of a mineral claim is prohibited or over land in exempted areas (for example, land reserved for public purposes or vested in the Crown for the purpose of a park) without the consent of the body controlling the land. Before the order is made, the Minister must notify the council for the local government area in which the land is situated and any Government agency that may be affected by the proposed order. The order may set out the "special" conditions to which mineral claims granted over land in the district are to be subject. These may include conditions as to the minerals in respect of which a mineral claim may be granted, the term for which a mineral claim may be granted and the nature and extent of the mining and prospecting operations that may be carried out in the area.

Applications (Division 2—clauses 176–179)

This Division sets out the procedures that must be followed in making an application for a mineral claim. It requires a potential applicant to mark out a claim area and serve notice of the proposed application on the occupier of the land if it is Crown land. The form the application must take is specified. Provision is made for the occupier of Crown land to object to the granting of a mineral claim on the basis that the land concerned is agricultural land.

Restrictions on the grant of mineral claims (Division 3—clauses 180–189)

This Division sets out the restrictions on the granting of mineral claims. Mineral claims may not be granted over land having an area of more than 2 hectares. Mineral claims may be granted only over land in an opal prospecting area in the name of the holder of an opal prospecting licence. Mineral claims may not be granted over agricultural land, over land within a reserve in which the granting of a mineral claim is prohibited by order or over land within a mineral allocation area for opal. Mineral claims over land in certain areas (for example, land on which there is a dwelling-house, garden or dam) may be granted only with the consent of the owner or occupier of the land concerned.

Granting of mineral claims (Division 4—clauses 190–194)

This Division requires a mineral claim to include particulars as to the description of the land to which the claim relates, a list of the mineral or minerals in respect of which the claim is granted, the conditions to which the claim is subject and the period for which the claim is to have effect. If the claim is granted over land in a mineral claims district it will be subject to the conditions set out in the order constituting the district. In any other case, it will be subject to any conditions imposed by the mining registrar in accordance with the regulations. A mineral claim may be granted for a term of not more than 5 years.

Rights and duties under a mineral claim (Division 5—clauses 195, 196)

A mineral claim confers on the holder of the claim the right to carry out prospecting or mining operations in the claim area. It also authorises the holder to erect buildings and structures, exercise rights in the nature of easements, carry out works and remove timber, stone or gravel in connection with prospecting and mining operations.

Renewal, transfer and cancellation of mineral claims (Division 6—clauses 197–206)

This Division provides for the manner of renewing or transferring a mineral claim. A mining registrar may cancel a mineral claim at the request of the holder, if ordered to do so by the Minister or a warden's court or if (following an objection to the granting of the claim by the occupier of Crown land) the land is determined to be agricultural land. The holder of the mineral claim is not, in general, entitled to compensation on cancellation of the claim.

Miscellaneous (Division 7—clauses 207–219)

This Division includes miscellaneous provisions relating to evidentiary matters, withdrawal of applications for mineral claims, settlement of disputes involving holders of mineral claims and similar matters. It provides for the forfeiture of security lodged in

connection with mineral claims if the holder fails to fulfil his or her obligations and for money so forfeited to be used to rehabilitate land affected by prospecting or mining operations.

PART 10—OPAL PROSPECTING LICENCES

This Part (clauses 220–236) re-enacts Part 3A of the Mining Act 1973 in relation to opal prospecting, but omits the provisions of that Part in relation to fossicking areas and fossicking licences. The provisions relating to opal prospecting licences are retained in recast form. The holder of an opal prospecting licence will continue to have the right to prospect for opals in an area (an opal prospecting area) specially set aside for the purpose.

PART 11—PROTECTION OF THE ENVIRONMENT

This Part (clauses 237–246) re-enacts Part 7 of the Mining Act 1973. The Minister is to take into account the need to protect natural resources before granting an authority. Provision is made to require the holder of an authority to rehabilitate land damaged by mining and to include conditions in an authority for the protection of the environment.

PART 12—POWERS OF ENTRY

Entry by inspectors (Division 1—clauses 247, 248)

This Division empowers inspectors to enter land in an opal prospecting area, or subject to an authority or a mineral claim, or to an application for an authority or mineral claim, and to inspect the land and structures on it and to remove samples of ore and other deposits.

Entry by other persons (Division 2—clauses 249–254)

This Division empowers the Minister to issue permits to enable persons to carry out rehabilitation work, to make surveys and to collect samples of mineral ores and empowers a warden to issue permits to enable persons to enter land for the purpose of carrying out certain environmental studies, to inspect land for the purpose of ascertaining whether a mining work is encroaching on other land or to mark out land for the purposes of a mineral claim.

Exercise of power of entry (Division 3—clauses 255–257)

This Division regulates the exercise of the rights of entry conferred by a permit and makes it an offence for a person to obstruct the holder of a permit in the exercise of the powers conferred by the permit.

Miscellaneous (Division 4—clauses 258–261)

This Division contains provisions with respect to the conditions on which a permit may be granted, the term of a permit, the form of a permit and the cancellation of a permit.

PART 13—COMPENSATION

Prospecting and mining (Division 1—clauses 262–268)

This Division defines "compensable loss" for the purposes of the Division and specifies the circumstances under which compensation for compensable loss becomes payable in respect of the exercise of the rights conferred by the Act in relation to authorities, mineral claims and opal prospecting licences.

Environmental assessment (Division 2—clauses 269, 270)

This Division defines "compensable loss" for the purposes of the Division and specifies the circumstances under which compensation for compensable loss becomes payable in respect of the exercise of the rights conferred by the Act in relation to environmental assessment permits.

Procedure for assessing compensation (Division 3—clauses 271–278)

This Division provides for the assessment of compensation by a warden's court, for the payment into and out of court of compensation so assessed, for the making of additional assessments of compensation and for the making of appeals from assessments.

Consolidated mining leases (Division 4—clauses 279–281)

This Division ensures that further compensation does not become payable merely because of the consolidation of mining leases, that existing rights to compensation are unaffected by the consolidation of mining leases but that additional compensation may nevertheless be assessed in respect of a consolidated mining lease.

PART 14—ROYALTY

Publicly owned minerals (Division 1—clauses 282, 283)

This Division provides for the payment of royalty on publicly owned minerals and for the fixing, by regulation, of royalty rates.

Privately owned minerals (Division 2—clauses 284, 285)

This Division provides for the payment of royalty on privately owned minerals and for the fixing, by regulation, of royalty rates in cases where rates are not fixed by agreement.

Petroleum (Division 3—clause 286)

This Division provides for the payment of royalty, at the rate fixed under the Petroleum Act 1955, on petroleum that is recovered under a mining lease.

Miscellaneous (Division 4—clauses 287–292)

This Division provides that the holder of a mineral claim or mining lease may be exempt from liability to pay royalty if the value of minerals won in a 12 month period is less than $2,000. The Division makes provision to secure the payment of royalty

through the establishment of a trust fund for that purpose. It includes ancillary provisions relating to matters such as the returns that must be made and the information that may be required to be furnished to establish the amount of royalty payable.

PART 15—WARDENS AND WARDENS' COURTS

Appointment of wardens and establishment of wardens' courts (Division 1—clauses 293–297)

This Division provides for the appointment of a chief warden and other wardens and for the establishment of wardens' courts. It provides that mining registrars are to be the registrars of the wardens' courts. It specifies the jurisdiction of a warden's court and provides that a decision of a warden's court is binding on the parties to the proceedings in which it is given.

Practice and procedure in wardens' courts (Division 2—clauses 298–320)

This Division deals generally with matters relating to the practice and procedure of wardens' courts.

Appeals to the District Court (Division 3—clauses 321–324)

This Division provides for a general right of appeal to the District Court from the decision of a warden's court.

Appeals to the Supreme Court (Division 4—clauses 325–328)

This Division provides for a right of appeal to the Supreme Court by way of case stated from proceedings in a warden's court.

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This Division makes provision with respect to documents and affidavits used in proceedings before a warden's court, with respect to contempt of court and with respect to interpleader.

Rules and practice directions (Division 6—clauses 332, 333)

This Division enables the Governor to make rules with respect to the practice and procedure of wardens' courts and enables the chief warden to supplement these rules with practice directions.

Other functions of wardens (Division 7—clauses 334–337)

This Division provides for the conduct of inquiries by wardens and specifies that the decision of a warden on an administrative matter is not subject to a right of appeal.

Miscellaneous (Division 8—clauses 338–340)

This Division makes it an offence for a witness to refuse to attend proceedings when required to do so, for a person to fail to comply with an order made by a warden's court or for a person to take certain action inconsistent with the effect of an order made by a warden's court.

PART 16—THE GEOLOGICAL AND MINING MUSEUM

This Part (clauses 341–358) re-enacts Part 9A of the Mining Act 1973. The Part creates the Geological and Mining Museum Trust as the body responsible for the control and management of the Geological and Mining Museum and specifies the functions of that Trust. The objects of the Trust include promoting the responsible development and use of mineral and energy resources in New South Wales. The Part includes provisions relating to Trust property, administration of the Museum and financial provisions relating to matters such as the manner in which the Trust may invest funds.

PART 17—ADMINISTRATION

Administration (Division 1—clauses 359–365)

This Division provides for the establishment of boards of management and for the appointment of mining registrars, inspectors and other staff. It excludes such persons from personal liability for acts and omissions occurring in the administration of the proposed Act, it provides for the delegation of certain functions and it prohibits the unlawful disclosure of information gained in the administration of the proposed Act.

Classification of lands (Division 2—clauses 366–371)

This Division provides for the constitution of mining divisions, reserves, mineral allocation areas and notification areas and for the graticulation of the surface of the land into blocks and units by reference to the Australian Geodetic Datum.

Offences (Division 3—clauses 372–376)

This Division creates offences of obstruction and the giving of false or misleading information and provides for the taking of proceedings for offences against the proposed Act and the regulations under it. It also deals with offences by corporations.

Miscellaneous (Division 4—clauses 377, 378)

This Division provides for the establishment of museums and laboratories and the purchase, by the Minister, of coal bearing lands.

PART 18—SUPPLEMENTARY

This Part (clauses 379–391) contains provisions of a miscellaneous nature including provisions preserving the Royal prerogative in gold and silver, provisions preserving the operation of other Acts and provisions allowing prospecting to be carried out regardless of the operation of the Environmental Planning and Assessment Act 1979. It enables the making of regulations and contains other formal machinery provisions.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES

This Schedule describes the procedure to be followed in relation to the advertising of notices of intention to grant, and of applications for, assessment leases and mining leases, in relation to the lodging of objections to the granting of assessment leases and mining leases and in relation to the resolution of objections.

SCHEDULE 2—AGRICULTURAL LAND

This Schedule describes the procedures to be followed by the Director-General of the Department of Agriculture in determining whether land is agricultural land for the purposes of dealing with certain objections under the proposed Act.

SCHEDULE 3—THE GEOLOGICAL AND MINING MUSEUM

This Schedule contains provisions relating to the Trustees and procedure of the Geological and Mining Museum Trust.

SCHEDULE 4—REGULATION MAKING POWERS

This Schedule lists the regulation making powers of the Governor under the proposed Act.

SCHEDULE 5—AMENDMENT OF OTHER ACTS

This Schedule contains amendments to other Acts consequential on the enactment of the proposed Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

This Schedule contains provisions of a savings or transitional nature. It also enables regulations of a savings or transitional nature to be made to supplement the other provisions of the Schedule.

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The Dictionary defines certain words and expressions used in the proposed Act.

FIRST PRINT

MINING BILL 1992

NEW SOUTH WALES



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DICTIONARY OF WORDS AND EXPRESSIONS

MINING BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to make provision with respect to prospecting for and mining minerals; to repeal the Mining Act 1973 and the Coal Mining Act 1973; and for other purposes.

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Mining Act 1992.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Act binds Crown

3. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Definitions

4. **(1)** In this Act, the words and expressions referred to in the Table to this section have the meanings given to them in the Dictionary at the end of this Act.

(2) In this Act, words and expressions defined in the Interpretation Act 1987 (other than words or expressions referred to in the Table to this section) have the meanings given to them by that Act.

TABLE

access arrangement
allocated mineral
approved
Arbitration Panel
arbitrator
assessment area
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block
chief inspector of coal mines
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claim area
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consent authority
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Crown land
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group of minerals
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land
local government area
mine
mineral
mineral allocation area
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mineral claims district
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occupier
opal prospecting area
opal prospecting block
opal prospecting licence
owner
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pastoral lease
petroleum
prescribed dam
private land
privately owned mineral
prospect
prospecting operations
publicly owned mineral
reserve
special conditions
special lease for pastoral purposes
surveyor
unit
warden
warden's court
Western lands lease for pastoral purposes

PART 2—PROSPECTING AND MINING GENERALLY

Mining etc. for publicly owned minerals

5. A person must not prospect for or mine any publicly owned mineral on any land otherwise than in accordance with an authority, mineral claim or opal prospecting licence that is in force in respect of that mineral and that land.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

Mining etc. for privately owned minerals on land subject to authority etc.

6. **(1)** A person must not prospect for or mine any privately owned mineral on any land over which some other person is the holder of an authority or mineral claim.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(2) This section applies whether or not the mineral for which the person prospects or mines is a mineral to which the authority or mineral claim relates.

Mining etc. for privately owned minerals on land subject to pending application for authority etc.

7. (1) A person must not prospect for or mine any privately owned mineral on any land over which some other person is the applicant for an authority or mineral claim unless the person commenced to do so before the application was made.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(2) This section applies whether or not the mineral for which the person prospects or mines is a mineral to which the application relates.

Mining etc. for privately owned minerals without due notice etc. to Director-General

8. (1) A person must not, on any land, prospect for or mine any privately owned mineral unless:

(a) the person has caused notice of intention to do so to be given to the Director-General; and

(b) the person has caused security, in a form and an amount determined in accordance with the regulations, to be lodged with the Director-General; and

(c) the person prospects for or mines the mineral in accordance with the conditions (if any) prescribed by the regulations.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(2) The notice referred to in subsection (1) (a) must contain the following particulars:

(a) the date on which the person intends to commence prospecting or mining operations;

(b) the mineral in relation to which prospecting or mining operations are to be carried on;

(c) a description, prepared in the manner prescribed by the regulations, of the land on which the prospecting or mining operations are to be carried on;

(d) if the person is not the owner of the mineral—the name and address of the owner of the mineral and the date on which the person

obtained the consent of the owner of the mineral to the person's carrying on prospecting or mining operations.

(3) The regulations referred to in subsection (1) (c) may prescribe requirements relating to:

(a) the rehabilitation, levelling, regrassing, reforesting or contouring of any parts of the land on which prospecting or mining operations are carried on that are damaged or otherwise adversely affected by those operations; and

(b) the filling in, sealing or fencing off of excavations, shafts and tunnels,

and other requirements directed at the restoration of the land or the protection of the environment.

(4) This section does not apply to a person who is prospecting or mining under an authority, mineral claim or opal prospecting licence in force in respect of the land and mineral concerned.

Mining etc. for privately owned coal

9. A person must not prospect for or mine privately owned coal on any land otherwise than in accordance with an authority for coal in force in respect of the land.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

Defence to prosecutions under Part 2

10. It is a sufficient defence to a prosecution under this Part if the person who was prospecting for or mining a mineral establishes that the person was doing so:

(a) by virtue of an entitlement arising from a legal or equitable interest that is registered under section 161; or

(b) in the course of lawful fossicking.

Property in minerals lawfully mined

11. (1) For the purposes of this or any other Act or law, it is declared that any mineral that is lawfully mined becomes the property of the person by or on behalf of whom it is mined at the time the material from which it is recovered is severed from the land from which it is mined.

(2) For the purposes of this or any other Act or law, it is declared that any mineral contained in:

(a) a stockpile of material that has been lawfully mined for the purpose of enabling the mineral to be recovered; or

(b) a pile of tailings arising from the recovery of a mineral from material that has been so mined,

remains the property of the person by or on behalf of whom the material was mined and does not become part of the land on which it is situated.

(3) However, any mineral that has been mined pursuant to a mining lease or mineral claim but is still contained in such a stockpile or pile of tailings when the lease or claim ceases to have effect:

(a) ceases to be the property of the person by or on behalf of whom the material in the stockpile or pile of tailings was mined; and

(b) becomes part of the land on which the stockpile or pile of tailings is situated,

at the time the mining lease or mineral claim ceases to have effect.

(4) This section is subject to the provisions of any private agreement.

Fossicking

12. **(1)** For the purposes of this or any other Act or law, it is declared that fossicking is a lawful activity.

(2) Subsection (1):

(a) does not affect any other Act or law that prohibits, regulates or restricts fossicking or that has the effect of prohibiting, regulating or restricting fossicking; and

(b) does not confer on any person a right to fossick on private land that is not owned by that person.

(3) Any publicly owned mineral that is recovered in the course of lawful fossicking becomes the property of the person by whom it is found at the time it is severed from the land on which it is found.

PART 3—EXPLORATION LICENCES

Division 1—Applications and tenders

Applications

13. **(1)** Any person may apply for an exploration licence.

(2) An application for an exploration licence:

(a) must specify the group or groups of minerals in respect of which it is made; and

(b) must be lodged with a mining registrar; and

(c) must be accompanied by the required particulars; and

(d) must be accompanied by the fee prescribed by the regulations.

(3) The required particulars are as follows:

(a) a description, prepared in the manner prescribed by the regulations, of the land over which the exploration licence is sought;

(b) particulars of the financial resources available to the applicant;

(c) particulars of the technical advice available to the applicant;

(d) particulars of the program of work proposed to be carried out by the applicant on the land over which the exploration licence is sought;

(e) particulars of the estimated amount of money that the applicant proposes to expend on prospecting.

(4) An application that relates to land within a mineral allocation area may not be made, except with the consent of the Minister, in relation to any group of minerals that includes an allocated mineral.

Invitations for tenders

14. (1) This section applies only in relation to allocated minerals in land within a mineral allocation area.

(2) The Minister may, by notice published:

(a) in a newspaper circulating generally throughout the State; and

(b) in one or more newspapers circulating in the locality in which the land concerned is situated,

invite tenders for an exploration licence for an allocated mineral.

(3) An invitation:

(a) must describe the land to which it relates; and

(b) must identify the allocated mineral to which it relates; and

(c) must specify the place at which, and the date on or before which, tenders for the exploration licence should be lodged.

Tenders

15. (1) A tender for an exploration licence:

(a) must be lodged with the Director-General in accordance with the invitation for the tender; and

(b) must be accompanied by the required particulars; and

(c) must be accompanied by the fee prescribed by the regulations.

(2) The required particulars are as follows:

(a) particulars of the financial resources available to the tenderer;

(b) particulars of the technical advice available to the tenderer;

(c) particulars of the program of work proposed to be carried out by the tenderer on the land over which the exploration licence is sought;

(d) particulars of the estimated amount of money that the tenderer proposes to expend on prospecting.

(3) A tender may specify that, in the event that the tender is successful, the tenderer will pay a specified amount in addition to the cash reserve price (if any) specified in the invitation for the tender.

(4) A tender may be made in respect of the whole or any part of the land described in the invitation for the tender.

Minister may require further information

16. The Minister may require the applicant or tenderer to furnish further information in connection with the application or tender, including (if the applicant or tenderer is a corporation) information as to the extent to which the controlling power in the corporation's affairs is held by a foreign company or recognised company (within the meaning of the Corporations Law) or by an individual who is a resident of a foreign country.

Minister may exclude land from application or tender

17. **(1)** The Minister may, by order in writing, direct that any part of the land to which an application or tender relates be excluded from the application or tender.

(2) A direction takes effect on the date on which written notice of the direction is served on the applicant or tenderer.

(3) A tenderer affected by any such direction may amend the tender by written notice lodged with the Director-General on or before such date as may be specified in the direction.

Division 2—Restrictions on the grant of exploration licences

Land in reserve or opal prospecting area

18. An exploration licence may not be granted over any land within:

(a) an opal prospecting area; or

(b) a reserve in respect of which an order prohibiting the granting of exploration licences is in force under section 367.

Land subject to authority

19. (1) An exploration licence may not be granted over any land:

(a) the subject of some other exploration licence that includes a group of minerals in respect of which the firstmentioned exploration licence is sought; or

(b) the subject of a mining lease, assessment lease or mineral claim; or

(c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the firstmentioned exploration licence was lodged,

otherwise than to or with the written consent of the holder of, or the applicant for, that licence, lease or claim.

(2) A written consent given under this section is irrevocable.

(3) If, as a result of such a consent, an exploration licence is granted over any such land, that land:

(a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim concerned; or

(b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim concerned,

as the case requires.

Land on which private mining operations being carried on

20. (1) An exploration licence may not be granted over any land in relation to a privately owned mineral:

(a) if mining operations are being carried out on the land by or with the consent of the owner of the mineral; and

(b) if a notice has been lodged with the Director-General in respect of those mining operations in accordance with section 8,

except with the written consent of the owner of the mineral.

(2) A written consent given under this section is irrevocable.

(3) Any dispute as to whether or not this section applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Director-General on the basis of the warden's report.

Colliery holdings

21. An exploration licence may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that prospecting operations may be carried out under the licence without any

adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the exploration area.

Division 3—Granting of exploration licences

Power of Minister in relation to applications

22. (1) After considering an application for an exploration licence, the Minister:

(a) may grant an exploration licence to the applicant; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused on the ground that the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The Minister may grant a single exploration licence in respect of 2 or more applications or 2 or more exploration licences in respect of a single application.

Power of Minister in relation to tenders

23. (1) After considering a tender in respect of land in respect of which one tender only is lodged, the Minister:

(a) may grant an exploration licence to the tenderer; or

(b) may refuse the tender.

(2) After considering all tenders in respect of land in respect of which more than one tender is lodged, the Minister:

(a) may grant an exploration licence to any one of the tenderers and refuse the other tenders; or

(b) may refuse all of the tenders.

(3) Without limiting the generality of subsections (1) and (2), a tender may be refused on the ground that the tenderer has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(4) For the purposes of this section, only one tender is lodged in respect of land if no other tender is lodged in respect of the land or any part of the land.

Land over which exploration licence may be granted

24. (1) An exploration licence may be granted over private land, over Crown land or over land that is partly private land and partly Crown land.

(2) An exploration licence may be granted in respect of any group or groups of minerals, regardless of whether the minerals in any such group are publicly owned, privately owned or partly publicly and partly privately owned.

(3) An exploration licence may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil below or between any specified depth or depths below the surface of land.

Shape and dimensions of land over which exploration licence may be granted

25. (1) The land over which an exploration licence is granted must be at least 1, but not more than 100, units in area unless the Minister determines that it is appropriate, in the particular circumstances of the case, for the licence to be granted over a larger area of land.

(2) The land over which an exploration licence is granted may differ in size or shape from, but may not include land other than, the land over which the licence was sought.

(3) Land that, by operation of section 19, is excluded from the land over which an exploration licence is granted because, when the licence is granted, the land is the subject of an assessment lease, a mining lease or a mineral claim becomes subject to the exploration licence:

(a) if the assessment lease, mining lease or mineral claim ceases to have effect in respect of the land; and

(b) if, when it does so, the land is not then subject to a further assessment lease, mining lease or mineral claim.

(4) Land that, by operation of section 19, is excluded from the land over which an exploration licence is granted because, when the licence is granted, the land is subject to a pending application for an assessment lease, mining lease or mineral claim becomes subject to the exploration licence:

(a) if the application is subsequently refused or withdrawn; or

(b) if, when the assessment lease, mining lease or mineral claim is granted, the land does not become subject to the lease or claim.

Conditions of exploration licence

26. **(1)** An exploration licence is subject to such conditions as the Minister may, when granting the licence, impose.

(2) Without limiting the generality of subsection (1), conditions of the following kind may be imposed on an exploration licence:

(a) conditions requiring the holder of the licence to pay royalty to the Minister on any minerals recovered under the licence;

(b) conditions requiring the holder of the licence to give security (in such amount and form, and on or before such date, as the Minister may determine) for the fulfilment of the obligations arising under this Act in respect of the licence.

(3) Part 14 applies to royalty payable under a condition referred to in subsection (2) (a) in the same way as it applies to royalty payable on a mineral recovered under a mining lease.

Term of exploration licence

27. An exploration licence:

(a) takes effect on the date on which it is granted or on such later date as the Minister may determine; and

(b) ceases to have effect at the expiration of such period (not exceeding 5 years) as the Minister may determine.

Form of exploration licence

28. An exploration licence is to be in the approved form and is to include the following particulars:

(a) a description of the land over which it is granted;

(b) a list of the group or groups of minerals in respect of which it is granted;

(c) the conditions to which it is subject;

(d) the period for which it is to have effect.

Division 4—Rights and duties under an exploration licence

Rights under exploration licence

29. **(1)** The holder of an exploration licence may, in accordance with the conditions of the licence, prospect on the land specified in the licence for the group or groups of minerals so specified.

(2) If an application for an assessment lease, mining lease or mineral claim made by the holder of an exploration licence is not finally dealt with before the date on which the licence would otherwise cease to have effect, the licence continues to have effect, in relation only to the land to which the application relates, until the application is finally dealt with.

Exempted areas

30. **(1)** The holder of an exploration licence may not, except with the consent of the Minister, exercise any of the rights conferred by the licence within land in an exempted area.

(2) Such consent may be given either unconditionally or subject to conditions.

Dwelling-houses, gardens and improvements

31. **(1)** The holder of an exploration licence may not exercise any of the rights conferred by the licence over land:

(a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of its occupier; or

(b) on which, or within the prescribed distance of which, is situated any garden; or

(c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes,

except with the written consent of the occupier (and, in the case of private land, the owner) of the land.

(2) The prescribed distance is:

(a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a); and

(b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b).

(3) A written consent given under this section is irrevocable.

(4) Any dispute as to whether or not subsection (1) applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

Exploration areas over which authority is subsequently granted

32. Land over which an exploration licence is granted and over which some other authority (other than an exploration licence for some other group or groups of minerals) is subsequently granted ceases to be part of the exploration area when the other authority takes effect.

PART 4—ASSESSMENT LEASES

Division 1—Applications

Applications

33. (1) Any person may apply for an assessment lease.

(2) An application for an assessment lease:

(a) must specify the mineral or minerals in respect of which it is made; and

(b) must be lodged with a mining registrar; and

(c) must be accompanied by the required particulars; and

(d) must be accompanied by the fee prescribed by the regulations.

(3) The required particulars are as follows:

(a) a description, prepared in the manner prescribed by the regulations, of the land over which the assessment lease is sought;

(b) an assessment of the mineral bearing capacity of that land and of the extent of any mineral deposits in that land;

(c) particulars of the financial resources available to the applicant;

(d) particulars of the technical advice available to the applicant;

(e) particulars of the program of work proposed to be carried out by the applicant on the land over which the assessment lease is sought;

(f) particulars of any program of marketing or environmental study proposed to be carried out by the applicant;

(g) particulars of the estimated amount of money that the applicant proposes to expend on prospecting.

(4) An application that relates to land within a mineral allocation area may not be made in relation to a mineral or group of minerals for which the mineral allocation area is constituted except:

(a) by the holder of an exploration licence or mining lease over that land in respect of that mineral or group of minerals; or

(b) with the consent of the Minister.

Minister may require further information

34. The Minister may require the applicant to furnish further information in connection with the application, including (if the applicant is a corporation) information as to the extent to which the controlling power in the corporation's affairs is held by a foreign company or recognised company (within the meaning of the Corporations Law) or by an individual who is a resident of a foreign country.

Minister may exclude land from application

35. (1) The Minister may, by order in writing, direct that any part of the land to which an application relates be excluded from the application.

(2) A direction takes effect on the date on which written notice of the direction is served on the applicant.

Division 2—Restrictions on the grant of assessment leases

Land in reserve or opal prospecting area

36. An assessment lease may not be granted over any land within:

(a) an opal prospecting area; or

(b) a reserve in respect of which an order prohibiting the granting of assessment leases is in force under section 367.

Land subject to authority

37. (1) An assessment lease may not be granted over any land:

(a) the subject of an exploration licence that includes any mineral or minerals in respect of which the assessment lease is sought; or

(b) the subject of an assessment lease, mining lease or mineral claim; or

(c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the firstmentioned assessment lease was lodged,

otherwise than to or with the written consent of the holder of, or the applicant for, that licence, lease or claim.

(2) A written consent given under this section is irrevocable.

(3) If, as a result of such a consent, an assessment lease is granted over any such land, that land:

(a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim concerned; or

(b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim concerned,

as the case requires.

Land subject to exploration licence

38. (1) If an application for an assessment lease is made in respect of land that is wholly or partly subject to one or more exploration licences (other than exploration licences that include any mineral or minerals in respect of which the assessment lease is sought), the Minister must cause notice of the application to be served on the holder of every such exploration licence.

(2) The holder of an exploration licence served with such a notice may object to the granting of the assessment lease by lodging with the Director-General, on or before the date specified in the notice, a written notice stating the grounds of the objection.

(3) If such an objection is made, the Minister must refer the application and the objection to an inspector for investigation and report and must determine the objection on the basis of the inspector's report.

(4) This section does not apply to an application that is made with the written consent of the holder of every exploration licence over the land concerned.

(5) A written consent given under this section is irrevocable.

Land on which private mining operations being carried on

39. (1) An assessment lease may not be granted over any land in relation to a privately owned mineral:

(a) if mining operations are being carried out on the land by or with the consent of the owner of the mineral; and

(b) if a notice has been lodged with the Director-General in respect of those mining operations in accordance with section 8,

except with the written consent of the owner of the mineral.

(2) A written consent given under this section is irrevocable.

(3) Any dispute as to whether or not this section applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

Colliery holdings

40. An assessment lease may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that

prospecting operations may be carried out under the lease without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the assessment area.

Division 3—Granting of assessment leases

Power of Minister in relation to applications

41. (1) After considering an application for an assessment lease, the Minister:

(a) may grant an assessment lease to the applicant; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused on the ground that the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The Minister may not grant an assessment lease under this section otherwise than in accordance with Part 1 of Schedule 1.

(4) Part 1 of Schedule 1 does not, however, apply to an application for an assessment lease made by the holder of a mining lease over the same land as that over which the assessment lease is sought.

Land over which assessment lease may be granted

42. (1) An assessment lease may be granted over private land, over Crown land or over land that is partly private land and partly Crown land.

(2) An assessment lease may be granted in respect of any mineral or minerals, regardless of whether the mineral or minerals are publicly owned, privately owned or partly publicly and partly privately owned.

(3) An assessment lease may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil below or between any specified depth or depths below the surface of land.

Shape and dimensions of land over which assessment lease may be granted

43. The land over which an assessment lease is granted may differ in size or shape from, but may not include land other than, the land over which the lease was sought.

Conditions of assessment lease

44. **(1)** An assessment lease is subject to such conditions as the Minister may, when granting the lease, impose.

(2) Without limiting the generality of subsection (1), conditions of the following kind may be imposed on an assessment lease:

(a) conditions requiring the holder of the lease to pay royalty to the Minister on any minerals recovered under the lease;

(b) conditions requiring the holder of the lease to give security (in such amount and form, and on or before such date, as the Minister may determine) for the fulfilment of the obligations arising under this Act in respect of the lease.

(3) Part 14 applies to royalty payable under a condition referred to in subsection (2) (a) in the same way as it applies to royalty payable on a mineral recovered under a mining lease.

Term of assessment lease

45. An assessment lease:

(a) takes effect on the date on which it is granted or on such later date as the Minister may determine; and

(b) ceases to have effect at the expiration of such period (not exceeding 5 years) as the Minister may determine.

Form of assessment lease

46. An assessment lease is to be in the approved form and is to include the following particulars:

(a) a description of the land over which it is granted;

(b) a list of the mineral or minerals in respect of which it is granted;

(c) the conditions to which it is subject;

(d) the period for which it is to have effect.

Division 4—Rights and duties under an assessment lease

Rights under assessment lease

47. **(1)** The holder of an assessment lease may, in accordance with the conditions of the lease, prospect on the land specified in the lease for the mineral or minerals so specified.

(2) If an application for a mining lease or mineral claim made by the holder of an assessment lease is not finally dealt with before the date on

which the assessment lease would otherwise cease to have effect, the lease continues to have effect, in relation only to the land to which the application relates, until the application is finally dealt with.

Exempted areas

48. (1) The holder of an assessment lease may not, except with the consent of the Minister, exercise any of the rights conferred by the lease on land in an exempted area.

(2) Such consent may be given either unconditionally or subject to conditions.

Dwelling-houses, gardens and improvements

49. (1) The holder of an assessment lease may not exercise any of the rights conferred by the lease over land:

(a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of its occupier; or

(b) on which, or within the prescribed distance of which, is situated any garden; or

(c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes,

except with the written consent of the occupier (and, in the case of private land, the owner) of the land.

(2) The prescribed distance is:

(a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a); and

(b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b).

(3) A written consent given under this section is irrevocable.

(4) Any dispute as to whether or not subsection (1) applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

Assessment areas over which authority is subsequently granted

50. Land over which an assessment lease is granted and over which some other authority is subsequently granted ceases to be part of the assessment area when the other authority takes effect.

PART 5—MINING LEASES

Division 1—Applications and tenders

Applications

51. (1) Any person may apply for a mining lease.

(2) An application for a mining lease:

(a) must specify the mineral or minerals in respect of which it is made; and

(b) must be lodged with a mining registrar; and

(c) must be accompanied by the required particulars; and

(d) must be accompanied by the fee prescribed by the regulations.

(3) The required particulars are as follows:

(a) a description, prepared in the manner prescribed by the regulations, of the land over which the mining lease is sought;

(b) an assessment of the mineral bearing capacity of the land and of the extent of any mineral deposits in that land;

(c) particulars of the financial resources available to the applicant;

(d) particulars of the technical advice available to the applicant;

(e) particulars of the program of work proposed to be carried out by the applicant on the area of land over which the mining lease is sought.

(4) An application that relates to land within a mineral allocation area may not be made in relation to an allocated mineral except:

(a) by the holder of an exploration licence or assessment lease over that land in respect of that mineral; or

(b) with the consent of the Minister.

Invitations for tenders

52. (1) This section applies only to allocated minerals in land within a mineral allocation area.

(2) The Minister may, by notice published:

(a) in a newspaper circulating generally throughout the State; and

(b) in one or more newspapers circulating in the locality in which the land concerned is situated,

invite tenders for a mining lease for an allocated mineral.

(3) An invitation:

(a) must describe the land to which it relates; and

(b) must identify the allocated mineral to which it relates; and

(c) must specify the place at which, and the date on or before which, tenders for the mining lease should be lodged.

(4) Tenders may not be invited under this section otherwise than in accordance with Part 2 of Schedule 1.

Tenders

53. (1) A tender for a mining lease:

(a) must be lodged with the Director-General in accordance with the invitation for the tender; and

(b) must be accompanied by the required particulars; and

(c) must be accompanied by the fee prescribed by the regulations.

(2) The required particulars are as follows:

(a) particulars of the financial resources available to the tenderer;

(b) particulars of the technical advice available to the tenderer;

(c) particulars of the program of work proposed to be carried out by the tenderer on the land over which the mining lease is sought.

(3) A tender may specify that, in the event that the tender is successful, the tenderer will pay:

(a) a specified amount; or

(b) royalty, at a specified rate, over and above the royalty payable under Part 14; or

(c) both such an amount and royalty at such a rate,

in addition to the cash reserve price (if any) specified in the invitation for the tender.

(4) A tender may also specify:

(a) whether or not an amount referred to in subsection (3) (a) will be paid by way of instalments; and

(b) if such an amount is to be paid by way of instalments—the period (not exceeding 5 years) within which the amount will be paid.

(5) A tenderer is entitled to a refund of the fee referred to in subsection (1) (c) if a mining lease is not granted to the tenderer as a consequence of the tenderer being refused development consent to the use of the land concerned, or any part of the land, for the purpose of obtaining minerals.

Minister may require further information

54. The Minister may require the applicant or tenderer to furnish further information in connection with the application or tender, including (if the applicant or tenderer is a corporation) information as to the extent to which the controlling power in the corporation's affairs is held by a foreign company or recognised company (within the meaning of the Corporations Law) or by an individual who is a resident of a foreign country.

Minister may exclude land from application or tender

55. (1) The Minister may, by order in writing, direct that any part of the land to which an application or tender relates be excluded from the application or tender.

(2) A direction takes effect on the date on which written notice of the direction is served on the applicant or tenderer.

(3) A tenderer affected by any such direction may amend the tender by written notice lodged with the Director-General on or before such date as may be specified in the direction.

Application for mining lease may be dealt with as application for exploration licence or assessment lease

56. The Minister may, at the request of the applicant, deal with an application as if it were an application for an exploration licence or assessment lease.

Division 2—Restrictions on the grant of mining leases

Land in reserve or opal prospecting area

57. A mining lease may not be granted over any land within:

(a) an opal prospecting area; or

(b) a reserve in respect of which an order prohibiting the granting of mining leases is in force under section 367.

Land subject to authority

58. (1) A mining lease may not be granted over any land:

(a) the subject of an exploration licence that includes any mineral or minerals in respect of which the mining lease is sought; or

(b) the subject of an assessment lease, mining lease or mineral claim; or

(c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the firstmentioned mining lease was lodged,

otherwise than to or with the written consent of the holder of, or the applicant for, that licence, lease or claim.

(2) A written consent given under this section is irrevocable.

(3) If, as a result of such a consent, a mining lease is granted over any such land, that land:

(a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim concerned; or

(b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim concerned,

as the case requires.

Land subject to exploration licence

59. (1) If an application for a mining lease is lodged in respect of land that is subject wholly or partly to one or more exploration licences (other than exploration licences that include any mineral or minerals in respect of which the mining lease is sought), the Minister must cause notice of the application to be served on the holder of every such exploration licence.

(2) The holder of an exploration licence served with such a notice may object to the granting of the mining lease by lodging with the Director-General, on or before the date specified in the notice, a written notice stating the grounds of the objection.

(3) If such an objection is made, the Director-General must refer the application and objection to an inspector for investigation and report and must determine the objection on the basis of the inspector's report.

(4) This section does not apply to an application that is made with the written consent of the holder of every exploration licence over the land concerned.

(5) A written consent given under this section is irrevocable.

Land on which private mining operations being carried on

60. (1) A mining lease may not be granted over any private land in relation to a privately owned mineral:

(a) if mining operations are being carried out on the land by or with the consent of the owner of the mineral; and

(b) if a notice has been lodged with the Director-General in respect of those mining operations in accordance with section 8,

except with the written consent of the owner of the mineral.

(2) A written consent given under this section is irrevocable.

(3) Any dispute as to whether or not this section applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

Colliery holdings

61. A mining lease may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that prospecting or mining operations may be carried out under the lease without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the mining area.

Dwelling-houses, gardens and improvements

62. **(1)** A mining lease may not be granted over any land:

(a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of its occupier; or

(b) on which, or within the prescribed distance of which, is situated any garden; or

(c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes,

except with the written consent of the occupier (and, in the case of private land, the owner) of the land.

(2) The prescribed distance is:

(a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a); and

(b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b).

(3) A written consent given under this section is irrevocable.

(4) Subsection (1) does not apply in respect of a dwelling-house, garden or improvement that was not in existence at the relevant date.

(5) The relevant date is:

(a) in the case of a mining lease the subject of a tender under section 53, the date on which notice of the invitation for tenders for the mining lease was published in the Gazette under section 136; or

(b) in the case of a mining lease the subject of an application made by the holder of an exploration licence granted as a result of a tender under section 15 in respect of the same land, or of an assessment lease granted over the same land to the holder of such an exploration licence, the date on which notice of the invitation for tenders for the exploration licence was published in the Gazette under section 136; or

(c) in the case of a mining lease for coal the subject of an application made by the holder of an exploration licence for coal in respect of the same land, or of an assessment lease for coal granted over the same land to the holder of such an exploration licence, the date on which the application for the exploration licence was lodged; or

(d) in the case of a mining lease the subject of an application made by the holder of an assessment lease or mineral claim over the same land, the date on which the lease or claim was granted; or

(e) in the case of a mining lease the subject of an application made otherwise than by a person referred to in paragraph (a), (b), (c) or (d), the date on which the application for the mining lease was lodged.

(6) Any dispute as to whether or not subsection (1) applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

(7) A mining lease must not be granted over land below the surface of land referred to in subsection (1) except at such depths, and subject to such conditions, as the Minister considers sufficient to minimise damage to that surface.

Division 3—Granting of mining leases

Power of Minister in relation to applications

63. (1) After considering an application for a mining lease, the Minister:

(a) may grant a mining lease to the applicant; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused on the ground that the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The Minister may grant a single mining lease in respect of more than one application.

(4) A mining lease may not be granted under this section otherwise than in accordance with Part 2 of Schedule 1.

Power of Minister in relation to tenders

64. (1) After considering a tender in respect of which one tender only is lodged, the Minister:

(a) may grant a mining lease to the tenderer; or

(b) may refuse the tender.

(2) After considering all tenders in respect of land in respect of which more than one tender is lodged, the Minister:

(a) may grant a mining lease to any one of the tenderers; or

(b) may refuse all of the tenders.

(3) Without limiting the generality of subsections (1) and (2), a tender may be refused on the ground that the tenderer has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(4) For the purposes of this section, only one tender is lodged in respect of land if no other tender is lodged in respect of the land or any part of the land.

(5) A mining lease may not be granted under this section otherwise than in accordance with Part 2 of Schedule 1.

Development consents under the Environmental Planning and Assessment Act 1979

65. (1) This section applies to land for which development consent is required before the land may be used for the purpose of obtaining minerals.

(2) The Minister must not grant a mining lease over land to which this section applies unless an appropriate development consent is in force in respect of the land.

(3) If a mining lease is granted over land for which an appropriate development consent has been given:

(a) any condition (being a special purpose condition within the meaning of Division 2 of Part 2 of Schedule 1) imposed on the development consent by a consent authority, or by a body hearing an appeal from a consent authority, is void; and

(b) the development consent (to the extent only to which it relates to the use of the land concerned for the purpose of obtaining minerals) is taken to have been given free of the condition.

Survey of land to be carried out

66. (1) Before a mining lease is granted, the Director-General must ensure that the land over which the mining lease is to be granted has been properly surveyed.

(2) For the purpose of doing so, the Director-General may direct the applicant for the mining lease to cause a survey to be prepared in accordance with such requirements as may be specified in the direction.

Recovery of public money expended on testing for minerals or research

67. (1) If public money has been expended:

(a) in the course of testing any land (by way of drilling or otherwise) for the mineral bearing capacity of the land; or

(b) in the course of conducting an environmental impact study or other research program in connection with the proper assessment of any application for a mining lease that has been or may be made in respect of any land,

the Minister may, by notice in writing, require any applicant for a mining lease over the land or any part of the land to reimburse the Government, within the time specified in the notice, for the money, or any part of the money, so expended.

(2) The applicant may elect to pay:

(a) a lump sum of the amount specified in the notice as being the proportion of the cost (at current market rates) of carrying out the testing, impact study or research program that the Minister determines should be paid by the applicant; or

(b) instalments (of such amounts and paid at such times as may be specified in the notice) totalling the amount referred to in paragraph (a).

(3) It is a condition of any mining lease granted to an applicant who has been required to reimburse the Government under this section that any amount that remains unpaid as at the time the lease takes effect is to be paid to the Minister in accordance with the election made by the applicant.

(4) If public money has been expended in connection with several parcels of land, the amount so expended is to be apportioned among them in such manner as the Minister thinks fit.

Land over which mining lease may be granted

68. (1) A mining lease may be granted over private land, over Crown land or over land that is partly private land and partly Crown land.

(2) A mining lease may be granted in respect of any mineral or minerals, regardless of whether the mineral or minerals are publicly owned, privately owned or partly publicly and partly privately owned.

(3) A mining lease may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil between or below any specified depth or depths below the surface of land.

Shape and dimensions of land over which mining lease may be granted

69. The land over which a mining lease is granted may differ in size or shape from, but may not include land other than, the land over which the lease was sought.

Conditions of mining lease

70. (1) A mining lease is subject to:

(a) a condition that the holder of the lease will not suspend mining operations in the mining area otherwise than in accordance with the written consent of the Minister; and

(b) such other conditions as the Minister may, when granting the lease, impose.

(2) Without limiting the generality of subsection (1), conditions of the following kind may be imposed on a mining lease:

(a) conditions requiring the holder of the mining lease to give security, in such amount and form as the Minister may determine, for the fulfilment of the obligations arising under this Act in respect of the lease;

(b) conditions relating to mining or mining operations;

(c) conditions relating to the transporting of any mineral or other thing for the purpose of mining;

(d) conditions relating to the treatment or preparation for sale of any mineral;

(e) conditions relating to the disposal or retention of material discarded from mining operations or from the treatment or preparation for sale of any mineral;

(f) conditions relating to the use to which any mineral may be put, whether or not the condition relates to a matter to be carried out on, or in the vicinity of, the mining area.

(3) If the Minister proposes to grant a mining lease to a person on the condition that the person gives security, the Minister may cause a written notice to be served on the person requiring the person to lodge the security with the Minister on or before the date specified in the notice.

(4) A mining lease granted on the basis of a tender lodged under section 53 is taken to include a condition in the terms specified in the tender for the purposes of subsection (3) of that section.

Term of mining lease

71. A mining lease:

(a) takes effect on the date on which it is granted or on such later date as the Minister may determine; and

(b) ceases to have effect at the expiration of such period (not exceeding 21 years or such longer period as the Minister, with the concurrence of the Premier, may determine) as the Minister may determine.

Form of mining lease

72. A mining lease is to be in the approved form and is to include the following particulars:

(a) a description of the land over which it is granted;

(b) a list of the mineral or minerals in respect of which it is granted;

(c) the conditions to which it is subject;

(d) the period for which it is to have effect.

Division 4—Rights and duties under a mining lease

Rights under mining lease

73. (1) The holder of a mining lease may, in accordance with the conditions of the lease:

(a) prospect on the land specified in the lease for, and mine on that land, the mineral or minerals so specified; and

(b) carry out on that land such primary treatment operations (such as crushing, sizing, grading, washing and leaching) as are necessary to separate the mineral or minerals from the material from which they are recovered; and

(c) carry out on that land any mining purpose.

(2) If an application for an assessment lease made by the holder of a mining lease is not finally dealt with before the date on which the mining lease would otherwise cease to have effect, the lease continues to have effect, in relation only to the land to which the application relates, until the application is finally dealt with.

Mining unaffected by Environmental Planning and Assessment Act 1979

74. **(1)** While a mining lease has effect:

(a) nothing in, or done under, the Environmental Planning and Assessment Act 1979 or an environmental planning instrument operates so as to prevent the holder of the mining lease from carrying on mining operations in the mining area; and

(b) to the extent to which anything in, or done under, that Act or any such instrument would so operate, it is of no effect in relation to the holder of the mining lease.

(2) Subsection (1) ceases to apply to a mining lease over land for which development consent to the use of land for the purpose of obtaining minerals is required if mining operations under the lease have not begun within 5 years after the date on which the development consent is given.

(3) This section does not exempt the holder of a mining lease from obtaining any consent under the Environmental Planning and Assessment Act 1979 that the person is required to obtain in connection with the erection of buildings, the opening of roads or the subdivision of land.

Mining purposes

75. **(1)** The Minister may, by order in writing, direct that:

(a) a specified mining purpose be carried out in accordance with any condition specified in the order; or

(b) the carrying out of a specified mining purpose be discontinued for such period as is specified in the order.

(2) An order takes effect on the date on which written notice of the order is served on the holder of the mining lease concerned or on such later date as may be specified in the notice.

(3) A person on whom an order is served must not contravene the order.

Maximum penalty: 50 penalty units.

Fencing of land subject to mining lease

76. **(1)** The holder of a mining lease may fence the whole or any part of the mining area.

(2) The holder of the mining lease must erect and maintain a fence around any unfenced shaft, machinery or other works on the surface of the mining area if required to do so by notice in writing:

(a) given by the owner or occupier of the land; or

(b) in the case of unoccupied Crown land, given by the Minister.

Addition of mineral to mining lease

77. (1) The holder of a mining lease may apply for the inclusion in the lease of a mineral additional to the mineral or minerals to which the lease relates.

(2) The application must be lodged with the Director-General.

(3) The holder of a mining lease over any private land or over any Crown land held under a pastoral lease must, within 21 days after lodging the application, serve on every owner and occupier of the private land, and on every occupier of the Crown land, a copy of the application.

(4) After considering the application, the Minister:

(a) may, by order in writing served on the applicant, direct that the mining lease apply to the additional mineral specified in the direction; or

(b) may refuse the application.

(5) A direction may be given unconditionally or subject to such conditions as are specified in the direction.

(6) While a direction is in force, the mining lease concerned is taken to extend to the mineral the subject of the direction.

Inclusion of petroleum in mining lease

78. (1) The holder of a mining lease for coal may apply for the inclusion in the lease of petroleum.

(2) The application must be lodged with the Director-General.

(3) After considering the application, the Minister:

(a) may, by order in writing served on the applicant, direct that the mining lease apply to petroleum; or

(b) may refuse the application.

(4) Without limiting the generality of subsection (3), the Minister must refuse an application if the land to which the application relates:

(a) is within the New South Wales adjacent area, within the meaning of the Petroleum (Submerged Lands) Act 1982; or

(b) is subject to a petroleum exploration licence or a petroleum mining lease granted under the Petroleum Act 1955.

(5) A direction may be given unconditionally or subject to such conditions as are specified in the direction.

(6) Without limiting the generality of subsection (5), the Minister may direct that a mining lease is to apply to petroleum subject to a condition relating to any one or more of the following matters:

(a) the limitation of the right to prospect or drill for petroleum to part only of the mining area;

(b) the limitation of that right to prospecting or drilling for some specified type or form of petroleum only;

(c) the working practices and methods of extraction to be used when prospecting or drilling for petroleum;

(d) the use to which any petroleum recovered may be put;

(e) the joint mining and development of petroleum with the holder of a mining lease, or with the holder of a petroleum mining lease under the Petroleum Act 1955, over land adjoining the mining area.

Amendment of mining lease in respect of certain conditions

79. (1) The Minister may amend a mining lease so as to allow the holder of the lease to comply with a condition relating to expenditure instead of a condition relating to labour.

(2) The Minister may amend a mining lease that does not contain a condition requiring the holder of the lease to give security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition.

(3) The Minister may amend a mining lease that contains such a condition so as to vary the amount and form of the security that is required to be given.

(4) The Minister may amend any 2 or more mining leases held by the same holder that contain such a condition so as to require a single security to be given.

(5) The amendment of a mining lease takes effect on the date on which written notice of the amendment is served on the holder of the mining lease or on such later date as may be specified in the notice.

Prevention of damage to prescribed dams

80. (1) The Dams Safety Committee may recommend to the Minister that a mining lease for coal (being a mining lease granted over land

within a notification area) be amended, by the variation of the conditions of the lease or by the inclusion of additional conditions in the lease, so as to prevent or mitigate any damage to a prescribed dam.

(2) If the Minister does not accept the recommendations of the Dams Safety Committee, the matter must be dealt with in consultation with the Minister administering the Dams Safety Act 1978.

(3) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with the matter to which such a recommendation relates and if, as a result of the steps so taken, agreement is not reached as to the acceptance, modification or withdrawal of the recommendation, the matter is to be referred to the Premier.

(4) If any matter is so referred, the Premier may give such decision as the Premier considers appropriate.

(5) The amendment of a mining lease takes effect on the date on which written notice of the amendment is served on the holder of the mining lease or on such later date as may be specified in the notice.

Surface prospecting in relation to subsurface leases

81. The holder of a mining lease over any land (being a lease that does not include the surface of the land) may, with the consent of:

(a) the owner and (if the owner is not the occupier) the occupier of the land; and

(b) the holder of any authority or mineral claim in force over the surface of the land,

carry out prospecting operations on the surface of the land.

Resumption etc. not to affect mining lease

82. The conveyance, transfer or compulsory acquisition of land by or under any other Act or law (including the conveyance or transfer of the land under section 604 of the Local Government Act 1919) does not affect a mining lease, or any rights under a mining lease, and the mining lease and those rights continue to have effect as if the land had not been conveyed, transferred or acquired.

Mining areas over which an authority is subsequently granted

83. Land over which a mining lease is granted and over which some other authority is subsequently granted ceases to be part of the mining area when the subsequent authority takes effect.

PART 6—CONSOLIDATION OF MINING LEASES

Division 1—Preliminary

Definitions

84. (1) In this Part:

"existing lease" means a mining lease or a consolidated mining lease;

"holder", in relation to a proposed lease, means the holder of the existing leases specified in the proposed lease as the existing leases to be consolidated;

"proposed lease" means a proposed consolidated mining lease prepared under this Part or, if the lease is amended under this Part, the lease as so amended.

(2) A reference in this Part to the grant of a proposed lease is a reference to the grant of a consolidated mining lease in the same terms as those of the proposed lease.

Existing leases that may be consolidated

85. Any 2 or more existing leases may be consolidated if the leases are held by the same person and relate to contiguous parcels of land or to parcels of land that are separated only by a road, stream or railway.

Division 2—Preparation and amendment of consolidated mining leases

Preparation of proposed lease

86. (1) The Minister may (on the application of the holder of the leases concerned or otherwise) cause a proposed lease to be prepared for the purpose of consolidating 2 or more existing leases.

(2) A proposed lease must specify:

(a) the existing leases to be consolidated; and

(b) the mineral or minerals in respect of which the proposed lease is to be granted; and

(c) the period for which the proposed lease is to be granted; and

(d) the conditions on which the proposed lease is to be granted,

and must have attached to it a description, prepared in the manner prescribed by the regulations, of the land over which the lease is to be granted.

Amendment of proposed lease

87. (1) The Minister may, at any time after the preparation of a proposed lease, make such amendments to the lease as the Minister thinks fit.

(2) The Minister may, by such an amendment, specify existing leases to be added to, or excluded from, those to be consolidated by the proposed lease.

(3) The Minister may, at any time after the preparation of a proposed lease, determine that the consolidation should not proceed.

(4) Such a determination does not prevent the Minister:

(a) from proceeding with the consolidation at a later time; or

(b) from causing a further proposed lease to be prepared for the purpose of consolidating all or any of the existing leases concerned.

Division 3—Notification of Government agencies

Notification of Director of Planning

88. (1) Before granting a proposed lease, the Minister must cause notice of the proposal to be served on the Director of Planning.

(2) Such a notice:

(a) must include a copy of the proposed lease; and

(b) must state that objections to the granting of the proposed lease, or proposals for the inclusion in the proposed lease of any condition, may be made to the Minister on or before the date specified in the notice.

(3) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

Notification of Dams Safety Committee

89. (1) Before granting a proposed lease for coal in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the Dams Safety Committee.

(2) Such a notice:

(a) must include a copy of the proposed lease; and

(b) must state that objections to the granting of the proposed lease on grounds relating to the safety of a prescribed dam, or proposals for the inclusion in the proposed lease of any condition relating to the safety of a prescribed dam, may be made to the Minister on or before the date specified in the notice.

(3) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

Subsequent amendment of proposed lease

90. (1) If:

(a) the Minister amends a proposed lease (otherwise than as a consequence of an objection or proposal made by the agency) after a copy has been served on a Government agency; and

(b) the Minister is of the opinion that the agency's attitude to the proposed lease might be materially affected were the agency given a copy of the proposed lease as amended,

the Minister must cause to be served on the agency a notice setting out details of the amendment and stating that objections to the amendment may be made to the Minister on or before the date specified in the notice.

(2) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

Objections to granting of proposed lease

91. (1) The Director of Planning:

(a) may object to the granting of a mining lease; or

(b) may propose that specified conditions be included in a mining lease.

(2) The Dams Safety Committee, in respect of land within a notification area:

(a) may object (on grounds relating to the safety of a prescribed dam) to the granting of a mining lease for coal; or

(b) may propose that specified conditions relating to the safety of a prescribed dam be included in a mining lease for coal.

(3) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(4) If the Minister does not accept the objections or proposals of the Dams Safety Committee, or if the Dams Safety Committee fails to make any proposals or to inform the Minister that it does not propose to make any proposals, the matter must be dealt with in consultation with the Minister administering the Dams Safety Act 1978.

Resolution of objections

92. (1) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with any objection or proposal made

under this Division and, if agreement is not reached concerning the acceptance, modification or withdrawal of the objection or proposal, the matter is to be referred to the Premier.

(2) The Premier may give such decision as the Premier considers appropriate in relation to any matter that is so referred.

(3) If required by the Premier to do so, the Minister must refer such a matter to a warden for inquiry and report.

Granting of proposed lease if objection or proposal made

93. (1) If an objection to the granting of a proposed lease is duly made, the lease must not be granted unless the objection is withdrawn or otherwise resolved or is rejected by the Premier.

(2) A proposed lease must include:

(a) any condition proposed under this Division (unless the proposal for the inclusion of the condition is withdrawn or is rejected by the Premier) or, if such a condition is modified, the condition as so modified; and

(b) any condition directed by the Premier to be included in the lease.

(3) The failure to include a condition in a proposed lease does not affect the validity of the lease, but the Minister may, by instrument in writing, amend the lease so as to include the condition omitted.

(4) An amendment takes effect on the date on which written notice of the amendment is served on the holder of the consolidated mining lease or on such later date as may be specified in the notice.

Division 4—Notification of holder of existing leases

Notification of holder of existing leases

94. (1) Before granting a proposed lease, the Minister must cause notice of the proposal to be served on the holder of the existing leases.

(2) Such a notice:

(a) must include a copy of the proposed lease; and

(b) must state that representations with respect to the granting of the proposed lease, or the conditions on which the proposed lease is to be granted, may be made to the Minister on or before the date specified in the notice.

(3) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

Subsequent amendment of proposed lease

95. If:

(a) the Minister amends a proposed lease (otherwise than as a consequence of representations made by the holder of the existing leases) after a copy of the lease has been served on the holder; and

(b) the Minister is of the opinion that the holder's attitude to the proposed lease might be materially affected were the holder given a copy of the proposed lease as amended,

the Minister must cause to be served on the holder a notice setting out details of the amendment and stating that representations concerning the amendment may be made to the Minister on or before the date specified in the notice.

Objections to granting of proposed lease

96. The holder of the existing leases may, on or before the date specified in the relevant notice or within such further period as the Minister may allow, make such representations with respect to the matters referred to in the notice as the holder thinks fit.

Consideration of objections

97. The Minister is to take such steps (including the amendment of the proposed lease) as the Minister considers appropriate in connection with any representations made under this Division.

Division 5—Granting of consolidated mining leases

Minister may grant consolidated mining lease

98. (1) After having complied with the requirements of this Part in respect of a proposed lease, the Minister may grant to the holder of the existing leases a consolidated mining lease in the same terms as those of the proposed lease.

(2) When a consolidated mining lease takes effect, each existing lease is taken to have been cancelled.

Land over which consolidated mining lease may be granted

99. The land over which a consolidated mining lease may be granted is the aggregate of all of the land the subject of the existing leases.

Conditions of consolidated mining lease

100. A consolidated mining lease is subject to such conditions (being conditions of a kind that may be imposed on a mining lease under Part 5 or Part 11) as the Minister may, when granting the lease, impose.

Term of consolidated mining lease

101. A consolidated mining lease:

(a) takes effect on the date on which it is granted or on such later date as the Minister may determine; and

(b) ceases to have effect at the expiration of such period (not extending beyond the first day by which all the existing leases that have been consolidated would, but for the consolidation, have expired) as the Minister may determine.

Form of consolidated mining lease

102. A consolidated mining lease is to be in the approved form and is to include the following particulars:

(a) a description of the land over which it is granted;

(b) a list of the mineral or minerals in respect of which it is granted;

(c) the conditions to which it is subject;

(d) the period for which it is to have effect.

Validity of consolidated mining lease not affected by certain defects

103. **(1)** The validity of a consolidated mining lease is not affected:

(a) by the failure of any person to comply with this Act or the regulations in relation to the grant, renewal or transfer of an existing lease that has been consolidated; or

(b) by the inclusion in the area of land over which the consolidated mining lease has been granted of any land not subject to an existing lease.

(2) The Minister may amend a consolidated mining lease so as to exclude from the area of land the subject of the lease:

(a) any area of land the subject of an existing lease that appears to the Minister not to have been validly granted, renewed or transferred; and

(b) any area of land that appears to the Minister not to have been subject to an existing lease.

(3) An amendment takes effect on the date on which written notice of the amendment is served on the holder of the consolidated mining lease or on such later date as may be specified in the notice.

Application of this Act and other Acts to grant of consolidated mining leases

104. (1) Part 5 does not apply to or in respect of the grant of a consolidated mining lease.

(2) The provisions of any other Act prohibiting, regulating or restricting, or having the effect of prohibiting, regulating or restricting, the grant of a mining lease do not apply to the grant of a consolidated mining lease.

Division 6—Securities for performance of obligations

Requirement of security

105. (1) If the Minister proposes to grant a consolidated mining lease on the condition that the holder gives security for the fulfilment of the obligations arising under this Act in respect of the lease, the Minister may cause written notice to be served on the holder requiring the holder to lodge the security with the Minister on or before such date as may be specified in the notice.

(2) The security required by such a condition may be in addition to, or in substitution for, any security required by the conditions of any of the existing leases.

Credit for existing securities

106. Any security given in respect of an existing lease that has not been forfeited and that is not to be applied to a consolidated mining lease is to be refunded or otherwise returned to the holder of the consolidated mining lease.

Appropriation of existing securities

107. (1) If any security required to be lodged with the Minister in relation to a consolidated mining lease is not lodged, the Minister may, by notice in writing, direct that any security given in respect of the existing

leases is to be regarded as having been given, in accordance with the terms of the direction, for the fulfilment of the obligations arising under this Act in respect of the consolidated mining lease.

(2) The direction, on being served on the holder and any other person liable to make any payment under the security, has effect according to its terms.

Division 7—Preservation of certain rights, liabilities etc. on consolidation

Liability generally preserved

108. Except as otherwise provided by this Act, the cancellation of an existing lease as a result of the granting of a consolidated mining lease does not affect any liability of the person who was the holder of the lease immediately before the consolidated mining lease was granted.

Saving of interest in existing leases

109. (1) Any interest (whether legal or equitable) in, or affecting, an existing lease continues to have the same effect in respect of the consolidated mining lease as it had in respect of the existing lease immediately before the existing lease was consolidated.

(2) This section is subject to any determination made by a warden's court.

Councils and development consents

110. (1) Any development consent granted with respect to development authorised by an existing lease is taken to have been granted with respect to development authorised by the consolidated mining lease, but in relation only to that part of the land that was subject to the existing lease.

(2) Section 74 continues to have effect in respect of a consolidated mining lease in the same way as it had effect in respect of any existing lease, but in relation only to that part of the land that was subject to the existing lease.

Directions affecting range of minerals

111. Any direction under section 77 in respect of an existing lease continues to have effect in respect of a consolidated mining lease in the same way as it had effect in respect of the existing lease, but in relation only to that part of the land that was subject to the existing lease.

Rights of way

112. Any right of way marked out under section 164 in respect of an existing lease continues to have effect in respect of a consolidated mining lease in the same way as it had effect in respect of the existing lease.

PART 7—RENEWAL, TRANSFER AND CANCELLATION OF AUTHORITIES

Division 1—Renewal of authorities

Applications

113. (1) The holder of an authority may, from time to time, apply for the renewal of the authority.

(2) An application for the renewal of an exploration licence or assessment lease must be lodged with the Director-General not earlier than 2 months and not later than 1 month before the licence or lease ceases to have effect.

(3) An application for the renewal of a mining lease must be lodged with the Director-General not earlier than 5 years and not later than 1 year (or, if the term of the mining lease is for 1 year or less, not earlier than 2 months and not later than 1 month) before the mining lease ceases to have effect.

(4) An application for the renewal of an authority must be accompanied by the fee prescribed by the regulations.

(5) If an application for the renewal of an authority is in respect of part only of the land subject to the authority, the application must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land over which renewal of the authority is sought.

(6) An application for the renewal of an exploration licence may be made in respect of one or more parts (but not more than such number of parts as may be prescribed by the regulations) of the exploration area.

(7) An application for the renewal of an assessment lease or a mining lease may be made in respect of the whole, or of any single part, of the assessment area or mining area.

Power of Minister in relation to applications

114. (1) After considering an application for the renewal of an authority, the Minister:

(a) may renew the authority; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The period for which an authority is renewed may not on any one occasion exceed:

(a) 5 years in the case of an exploration licence or assessment lease; or

(b) 21 years (or such longer period as the Minister may, with the concurrence of the Premier, determine) in the case of a mining lease.

(4) On renewing an authority, the Minister may amend any of the conditions of the authority and may include further conditions in the authority.

(5) The area of land over which an authority is renewed may differ from the area of land over which the renewal of the authority is sought, but not so as to include any land that was not subject to the authority immediately before the renewal.

(6) The number of units over which an exploration licence may be renewed is not to exceed half the number of units over which the licence was in force when the application for the renewal was made unless the Minister is satisfied that special circumstances exist that justify the renewal of the licence over a larger number of units.

Notice of renewal to be served on holder of authority

115. (1) The Minister must cause notice of renewal of an authority to be served on the holder of the authority.

(2) Such a notice:

(a) must set out any amendments to the conditions of the authority; and

(b) must state the period for which the authority is renewed; and

(c) if the area of land over which the authority is renewed differs from the area subject to the authority immediately before the renewal, must contain a description of the land over which the authority is renewed.

Application by some only of holders of authority

116. (1) The Minister may not renew an authority otherwise than in the names of each of the holders of the authority unless satisfied that any holder of the authority not applying for its renewal does not wish the authority to be renewed in that person's name.

(2) The Minister may cause to be served on any holder of an authority not applying for its renewal a written notice:

(a) stating that an application for renewal of the authority has been lodged; and

(b) requiring the person, in such manner and on or before such date as is specified in the notice, to state whether or not that person wishes the authority to be renewed in that person's name.

(3) If a person on whom such a notice is served fails to state whether or not the person wishes the authority to be renewed in that person's name, the failure to do so is conclusive evidence that the person does not wish the authority to be renewed in that person's name.

Authority to have effect until application dealt with

117. (1) If an application for the renewal of an authority is not finally dealt with before the date on which the authority would otherwise cease to have effect, the authority continues to have effect, in relation only to the land to which the application relates, until the application is finally disposed of.

(2) While an authority has effect under this section, the Minister may amend any of the conditions of the authority (other than a condition relating to royalty).

(3) An amendment takes effect on the date on which written notice of the amendment is served on the holder of the authority or on such later date as may be specified in the notice.

Date from which renewal of authority has effect etc.

118. (1) The renewal of an authority takes effect on the date on which it is renewed or on such later date as may be specified in the renewal.

(2) Any amendment of the conditions of an authority takes effect on the date on which the renewal of the authority takes effect.

Partial renewals

119. If an authority is renewed as to part only of the land to which the application for renewal relates, the authority ceases to have effect in relation to the remainder of the land on the date on which the renewal takes effect.

Division 2—Transfer of authorities

Applications

120. (1) The holder of an authority may apply for approval of the transfer of the authority to some other person.

(2) An application for approval of the transfer of an authority:

(a) must be accompanied by the fee prescribed by the regulations; and

(b) must be accompanied by the consent of the proposed transferee; and

(c) must be accompanied by the particulars prescribed by the regulations; and

(d) must be lodged with the Director-General.

Power of Minister in relation to applications

121. (1) After considering an application for approval of the transfer of an authority, the Minister:

(a) may approve the transfer in accordance with the application; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused if the proposed transferee has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) In approving the transfer of an authority, the Minister may, subject to this Act, direct that any of the conditions of the authority be amended or that further conditions be included in the authority.

Registration of transfers

122. (1) The transferor or transferee of an authority for the transfer of which the Minister has given approval may apply for registration of the transfer.

(2) An application for registration of a transfer:

(a) must be lodged with the Director-General; and

(b) must be accompanied by the fee prescribed by the regulations.

(3) On receipt of such an application, the Director-General must register the transferee as the holder of the authority, unless registration of the transfer is prohibited by section 124.

(4) On registration of a transfer, the transferee becomes the holder of the authority and the authority becomes subject to the amended conditions or further conditions referred to in any relevant direction under section 121.

Partial transfers

123. (1) If part of an assessment lease or mining lease is transferred under this Division:

(a) the lease (in this section referred to as **"the original lease"**) is taken to have been cancelled as to the area of the part transferred; and

(b) an assessment lease or mining lease over the part transferred (in this section referred to as **"the new lease"**) is taken to have been granted to the transferee for the period ending on the date of expiry of the original lease and to include the conditions determined by the Minister in granting approval of the transfer; and

(c) if the Minister considers that it is necessary to do so as a result of the transfer, the conditions to which the original lease is subject may be amended in the manner determined by the Minister in granting approval of the transfer.

(2) Before part of an assessment lease or mining lease is transferred:

(a) the Minister and the proposed transferor must sign a document setting out the terms of any proposed amendments of the original lease; and

(b) the Minister and the proposed transferee must sign a document setting out the terms of the proposed new lease.

Caveats

124. (1) A person claiming a legal or equitable interest in an authority may lodge with the Director-General a caveat, accompanied by the fee prescribed by the regulations, directing the Director-General not to register any transfer of the authority otherwise than in accordance with the provisions of the caveat.

(2) Unless sooner withdrawn, a caveat remains in force for the period of 3 months from the date on which it is lodged.

(3) While a caveat remains in force, a transfer of the authority to which it relates may not be registered in contravention of the provisions of the caveat otherwise than pursuant to an order of the Supreme Court directing the Director-General to register the transfer.

(4) At the expiration of the period for which a caveat is in force, a transfer of the authority to which it relates is to be registered unless, before the expiration of that period, the Director-General is served with an order of the Supreme Court prohibiting the Director-General from registering the transfer.

Division 3—Cancellation of authorities

Grounds of cancellation

125. **(1)** The Minister may cancel an authority as to the whole or any part of the land to which it relates:

(a) if the holder of the authority requests the Minister to cancel the authority; or

(b) if the holder of the authority contravenes any condition of the authority or any provision of this Act or the regulations, whether or not the holder is prosecuted or convicted of any offence arising from the contravention; or

(c) if the holder of the authority fails to comply with the requirements of any agreement or assessment under Part 13 in relation to the payment of compensation; or

(d) if the holder of the authority is convicted of any offence relating to mining or minerals; or

(e) if the land is required for a public purpose.

(2) A request referred to in subsection (1) (a):

(a) must be lodged with the Director-General; and

(b) if the application is for the cancellation of the authority as to part only of the land to which it relates—must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land in respect of which the authority is to be cancelled.

Cancellations

126. **(1)** Before cancelling an authority on a ground referred to in section 125 (1) (b), (c) or (d), the Minister:

(a) must cause written notice of the proposed cancellation, and of the grounds of the proposed cancellation, to be served on the holder of the authority; and

(b) must give the holder of the authority a reasonable opportunity to make representations with respect to the proposed cancellation; and

(c) must take any such representations into consideration.

(2) Cancellation of an authority takes effect on the date on which written notice of the cancellation is served on the holder of the authority or on such later date as is specified in the notice.

(3) Cancellation of an authority does not affect any liability incurred by the holder of the authority before the cancellation took effect.

Compensation for cancellation

127. (1) The holder of an authority is not entitled to compensation merely because the authority is cancelled.

(2) However, if an authority is cancelled on the ground that the whole or any part of the land concerned is required for a public purpose, the holder of the authority is entitled to compensation, of an amount to be determined by the Minister, for any mining improvements made to the land.

Appeals against cancellation

128. (1) Any person who is aggrieved by the decision of the Minister to cancel an authority held by the person, or of the decision of the Minister as to the amount of compensation payable as a consequence of the cancellation, may appeal to the District Court against the decision.

(2) An appeal is to be heard by way of a new hearing, and fresh evidence, or evidence additional to the evidence available to the Minister when the decision was made, may be admitted in the hearing.

(3) Subject to any order made by the District Court, the lodging of an appeal does not operate to stay the decision appealed against.

(4) The decision of the District Court on an appeal is final and is to be given effect to as if it were the decision of the Minister.

PART 8—AUTHORITIES GENERALLY

Division 1—General procedures

Holder of authority must be at least 18

129. An authority may not be granted to an individual who has not attained the age of 18 years.

Withdrawal of application

130. (1) An application or objection in relation to the grant, renewal, transfer or cancellation of an authority may be withdrawn by means of a

notice of withdrawal signed by the applicant or objector and lodged with the Director-General and ceases to have effect when the notice is lodged.

(2) The withdrawal of an application or objection under this section is irrevocable.

Pending applications

131. For the purposes of this Act, an application for an authority is pending from the time it is lodged until the time it is finally disposed of.

Disputes as to priority of applications

132. Any dispute as to the priority of competing applications for authorities over the same land is to be determined by the Minister.

Nomination by applicant etc.

133. (1) An applicant or tenderer for an authority may, by notice in writing lodged with the Director-General, nominate a person to whom the authority is to be granted.

(2) The person nominated in an application or tender as the person to whom an authority is to be granted is, for the purposes of this Act, taken to be the applicant or tenderer for the authority.

Death etc. of applicant

134. An application for an authority made by a person who subsequently dies, becomes bankrupt or becomes a mentally incapacitated person:

(a) subsists for the benefit of the applicant's estate; and

(b) may continue to be dealt with,

if the applicant's legal representative or the manager of the applicant's estate so requests.

Waiver of minor procedural matters

135. (1) The Minister may grant or renew an authority even though the applicant has failed to comply with a requirement of this Act or the regulations:

(a) as to the time within which anything is required to be done; or

(b) as to the details to be contained in any notice served, lodged or caused to be published by the applicant; or

(c) as to the particulars to accompany any application; or

(d) as to the furnishing of declarations and other information by the applicant.

(2) This section does not authorise the Minister to grant or renew an authority in the case of an applicant who has failed to comply with such a requirement unless the Minister is satisfied that the failure is unlikely:

(a) to adversely affect any person's rights under this Act or the regulations; or

(b) to result in any person being deprived of information necessary for the effective exercise of those rights.

Gazettal of certain matters

136. As soon as practicable after:

(a) an invitation for tenders for an authority is made or withdrawn; or

(b) an application for an authority or for the renewal of an authority is made, withdrawn or refused; or

(c) an authority is granted, renewed, transferred or cancelled,

the Director-General is to cause notice of that fact to be published in the Gazette.

Limitation of right to challenge technical defects in authorities

137. (1) The grant, renewal or transfer of an authority may not be challenged in any legal proceedings commenced later than 3 months after the date on which notice of the grant, renewal or transfer of the authority is published in the Gazette.

(2) This section has effect regardless of the provisions of any other Act, but does not apply so as to affect any appeal from proceedings commenced within the 3 months referred to in subsection (1).

Division 2—Access arrangements for prospecting titles

Application of Division

138. This Division applies to the carrying out of prospecting operations under exploration licences and assessment leases (referred to in this Division as **"prospecting titles"**) on private land or on land held under a pastoral lease.

Arbitration Panel

139. (1) There is to be an Arbitration Panel.

(2) The Arbitration Panel is to consist of one or more members appointed by the Minister after consultation with the Minister for Agriculture and Rural Affairs.

(3) The conditions on which a member of the Arbitration Panel holds office (including conditions relating to remuneration and travelling and subsistence allowances) are to be as determined by the Minister.

Prospecting to be carried out in accordance with access arrangement

140. The holder of a prospecting title may not carry out prospecting operations on any land otherwise than in accordance with an access arrangement:

(a) agreed (whether orally or in writing and whether before or after the prospecting title was granted) between the holder of the title and each owner and occupier of the land; or

(b) determined by an arbitrator in accordance with this Division.

Matters for which access arrangement to provide

141. **(1)** An access arrangement may make provision for or with respect to the following matters:

(a) the periods during which the holder of the prospecting title is to be permitted access to the land;

(b) the parts of the land in or on which the holder of the prospecting title may prospect and the means by which the holder may gain access to those parts of the land;

(c) the kinds of prospecting operations that may be carried out in or on the land;

(d) the conditions to be observed by the holder of the prospecting title when prospecting in or on the land;

(e) the things which the holder of the prospecting title needs to do in order to protect the environment while having access to the land and carrying out prospecting operations in or on the land;

(f) the compensation to be paid to any owner or occupier of the land as a consequence of the holder of the prospecting title carrying out prospecting operations in or on the land;

(g) the manner of resolving any dispute arising in connection with the arrangement;

(h) the manner of varying the arrangement;

(i) such other matters as the parties to the arrangement may agree to include in the arrangement.

(2) An access arrangement that is determined by an arbitrator must specify the compensation, as assessed by the arbitrator, to which each owner or occupier of the land concerned is entitled under Division 1 of Part 13.

(3) In the event of an inconsistency between:

(a) a provision of an access arrangement; and

(b) a provision of this Act, of the regulations or of a condition of a prospecting title,

the provision referred to in paragraph (b) prevails.

(4) If the holder of a prospecting title contravenes an access arrangement, the owner or occupier of the land may deny the holder access to the land until:

(a) the holder ceases the contravention; or

(b) the contravention is remedied to the reasonable satisfaction of the owner or occupier.

(5) Subsection (4) does not affect any proceedings that may be brought against the holder of the prospecting title in respect of the contravention of the access arrangement.

Holder of prospecting title to seek access arrangement

142. (1) The holder of a prospecting title may, by written notice served on each owner and occupier of the land concerned, give notice of the holder's intention to obtain an access arrangement in respect of the land.

(2) The notice of the holder's intention to obtain an access arrangement must, in addition to stating the holder's intention, contain:

(a) a plan and description of the area of land over which the access is sought sufficient to enable the ready identification of that area; and

(b) a description of the prospecting methods intended to be used in that area.

(3) The holder of a prospecting title, and each owner and occupier of the land concerned, may agree (either orally or in writing and either before or after the prospecting title is granted) on an access arrangement.

Appointment of arbitrator by agreement

143. (1) If, by the end of 28 days after the holder of a prospecting title serves notice in writing on each owner and occupier of the land of the holder's intention to obtain an access arrangement, the holder and each owner and occupier of the land have been unable to agree on such an arrangement, the holder may, by further notice in writing served on each such owner and occupier, request them to agree to the appointment of an arbitrator.

(2) The holder of a prospecting title, and each owner and occupier of the land concerned, may agree to the appointment of any person as an arbitrator.

Appointment of arbitrator in default of agreement

144. (1) If, by the end of 28 days after the holder of a prospecting title serves notice in accordance with section 143, the holder and each owner and occupier of the land concerned have been unable to agree on the appointment of an arbitrator, then any one of them may apply to the Director-General for the appointment of a member of the Arbitration Panel as an arbitrator.

(2) An application must be accompanied by the fee prescribed by the regulations.

(3) The Director-General, after consultation with the Director-General of the Department of Agriculture, is to appoint a member of the Arbitration Panel as an arbitrator.

Arbitration

145. (1) As soon as practicable after having been appointed, an arbitrator:

(a) must fix a time and place for conducting a hearing into the question of access to the land concerned; and

(b) must cause notice of his or her appointment, and of the time and place fixed for conducting the hearing, to be given to the holder of the prospecting title and to each owner and occupier of that land.

(2) The arbitrator may, by a further notice served on the holder of the prospecting title and on each owner and occupier of the land concerned, vary the time or place fixed for conducting the hearing.

(3) The arbitrator must, at the time and place fixed under this section, conduct a hearing into the question of access to the land concerned.

Right of appearance

146. (1) At any hearing into the question of access to any land by the holder of a prospecting title, the holder and each owner and occupier of the land are entitled to appear and be heard.

(2) A party to a hearing may be represented:

(a) by an agent who is not a barrister or a solicitor; or

(b) with the agreement of the parties and the leave of the arbitrator, by a barrister or a solicitor.

Conciliation

147. (1) An arbitrator is not to make a determination until the arbitrator has used his or her best endeavours to bring the parties to a settlement acceptable to all of them.

(2) If the parties come to such a settlement, the arbitrator must make a determination that gives effect to the terms of the settlement.

Procedure

148. (1) Except as otherwise provided by this Act or the regulations, the procedure at a hearing is to be as determined by the arbitrator.

(2) An arbitrator must act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

(3) An arbitrator may conduct a hearing even though one or more of the parties to the hearing fails to attend the hearing.

Interim determination by arbitrator

149. (1) As soon as practicable after concluding a hearing, an arbitrator:

(a) must make an interim determination as to whether or not the holder of the prospecting title should have a right of access to the land concerned; and

(b) if the arbitrator determines that the holder of the prospecting title should have such a right of access, must prepare a draft access arrangement in respect of that land.

(2) As soon as practicable after making an interim determination, the arbitrator:

(a) must reduce the determination to writing; and

(b) must cause a copy of the determination, together with a copy of any draft access arrangement, to be served on each of the parties to the hearing.

Further arbitration

150. (1) A party to a hearing may, within 14 days after being served with a copy of the arbitrator's interim determination, apply to the arbitrator:

(a) for reconsideration of the question of access to the land concerned; or

(b) for variation of any draft access arrangement prepared by the arbitrator in respect of that land.

(2) As soon as practicable after receiving such an application, the arbitrator:

(a) must fix a time and place for continuing the hearing into the question of access to the land concerned; and

(b) must cause notice of the time and place fixed for continuing the hearing to be given to the holder of the prospecting title and to each owner and occupier of that land.

(3) The arbitrator may, by a further notice served on the holder of the prospecting title and on each owner and occupier of the land concerned, vary the time or place fixed for continuing the hearing.

(4) The arbitrator must, at the time and place fixed under this section, continue the hearing into the question of access to the land concerned.

Final determination by arbitrator

151. (1) If an application is not made to the arbitrator within the period of 14 days referred to in section 150 (1):

(a) the interim determination is taken to be the arbitrator's final determination; and

(b) any draft access arrangement is taken to be a final access arrangement.

(2) If an application is made to the arbitrator within the period of 14 days referred to in section 150 (1), the arbitrator, as soon as practicable after concluding the continued hearing:

(a) must make a final determination as to whether or not the holder of the prospecting title should have a right of access to the land concerned; and

(b) if the arbitrator determines that the holder of the prospecting title should have such a right of access, must determine a final access arrangement in respect of that land.

(3) As soon as practicable after making a final determination, the arbitrator:

(a) must reduce the determination to writing; and

(b) must cause a copy of the determination, together with a copy of any final access arrangement forming part of the determination, to be served on each of the parties to the hearing.

Costs

152. (1) Each party to the hearing is to bear his or her own costs in relation to the hearing.

(2) The arbitrator's costs in relation to the hearing are to be borne by the holder of the prospecting title.

(3) Payment of the arbitrator's costs in relation to a hearing is, for the purpose of any security given by the holder of a prospecting title, taken to be an obligation under the title.

Withdrawal from arbitration

153. (1) The parties to a hearing may, at any time before the conclusion of the hearing, terminate the hearing by notice in writing, signed by all of the parties, served on the arbitrator.

(2) This section does not limit the liability of the holder of a prospecting title to bear the arbitrator's costs in relation to the hearing.

Liability

154. No proceedings lie against an arbitrator for or with respect to:

(a) any determination made by the arbitrator; or

(b) any publication made by the arbitrator; or

(c) any other act, matter or thing done by the arbitrator,

for the purposes of a hearing, as long as the determination, publication, act, matter or thing was made or done in good faith.

Review of determination

155. (1) A party to a hearing who is aggrieved by an arbitrator's final determination (other than a determination referred to in section 147 (2)) may apply to a warden's court for a review of the determination.

(2) An application:

(a) must be accompanied by a copy of the determination to which it relates, together with a copy of any access arrangement forming part of the determination; and

(b) must be filed in a warden's court:

(i) in the case of an interim determination that has become a final determination—within 28 days after a copy of the interim determination was served on the applicant; or

(ii) in the case of a final determination—within 14 days after a copy of the final determination was served on the applicant.

(3) An application for review may not be made:

(a) during the period of 14 days within which an application may be made to an arbitrator; or

(b) if such an application is made, until the arbitrator has made a final determination with respect to the application.

(4) The applicant must cause a copy of the application to be served on each of the other parties to the determination to which the application relates.

(5) Subject to any order of a warden's court to the contrary, an application for review of a determination operates to stay the effect of any related access arrangement in relation to a party to the arrangement from the time when a copy of the arrangement has been served on the party until the decision of a warden's court on the review.

(6) In reviewing a determination under this section, a warden's court has the functions of an arbitrator under this Division in addition to its other functions.

(7) The decision of a warden's court on a review of a determination is final and is to be given effect to as if it were the determination of an arbitrator.

Effect of access arrangement etc.

156. An access arrangement determined by an arbitrator:

(a) takes effect:

(i) in the case of a draft access arrangement that is taken to be a final access arrangement—at the end of the period of 14 days after a copy of the draft access arrangement has been served on each of the parties; or

(ii) in the case of a final access arrangement prepared under section 151—when a copy of the arrangement has been served on each of the parties,

or on such later date as may be specified in the arrangement; and

(b) subject to section 141 (3), has effect as if its terms were embodied in a deed that had been duly executed by each of the parties.

Variation of access arrangements

157. An access arrangement determined by an arbitrator may, subject to the terms of the arrangement, be varied by the arbitrator with the consent of all of the parties to the arrangement.

Duration of access arrangements

158. An access arrangement does not run with the land and, unless sooner terminated, terminates:

(a) if an owner or occupier of the land with whom the arrangement is made ceases to be an owner or occupier of the land; or

(b) on the death of an owner or occupier of the land with whom the arrangement is made.

Division 3—Records and registration

Records

159. (1) The Director-General is to cause to be kept a record of every authority granted, renewed, transferred or cancelled.

(2) Such a record must be kept in the form, and must contain the particulars, prescribed by the regulations.

Interest in authority to be created by instrument in writing

160. (1) A legal or equitable interest in an authority may not be created or disposed of except by instrument in writing.

(2) The creation of a legal or equitable interest in an authority does not affect the liability of the holder of the authority for any breach of the conditions of the authority or of any of the provisions of this Act or the regulations.

Registration of certain interests

161. (1) The Director-General is to keep a register of legal and equitable interests in authorities.

(2) Any person claiming a legal or equitable interest in an authority may apply for registration of the interest.

(3) An application must be lodged with the Director-General and must be accompanied by the fee prescribed by the regulations and by documentary evidence of the legal or equitable interest concerned.

(4) The Director-General may, if satisfied that the applicant holds the interest concerned, register the document by which the legal or equitable interest is evidenced.

(5) The Director-General may, on application by the holder of an interest or otherwise, make such amendments to the register kept under this section as are appropriate to reflect dealings in the interest.

(6) Without limiting the generality of subsection (5), the Director-General may cancel the registration of an interest if of the opinion that the interest has ceased to exist.

(7) The registration of an interest under this section is not to be taken to be evidence of the existence of the interest.

(8) For the purposes of any legal proceedings concerning an authority:

(a) a registered interest has priority over an interest that is not registered; and

(b) an earlier registered interest has priority over a later registered interest.

Devolution of rights of holder of authority

162. A person on whom the rights of the holder of an authority have devolved by operation of law may apply to the Director-General to have that person's name recorded as the holder of the authority and, if the Minister is satisfied that those rights have so devolved, the Director-General must so record the name of the applicant.

Colliery holdings

163. (1) The Director-General is to cause to be kept a register of colliery holdings (referred to in this section as **"the register"**) in such form as may be prescribed by the regulations.

(2) The Director-General is to cause to be recorded in the register:

(a) such particulars as are necessary to give effect to a direction given under this section; and

(b) such other particulars as may be prescribed by the regulations.

(3) A person who has a right (whether under a mining lease or otherwise) to mine for coal or to carry out coal mining purposes on any land may apply to have the land registered as a colliery holding or recorded on the register as part of an existing colliery holding.

(4) A person who has an interest in a colliery holding may apply to have the registration of the colliery holding cancelled or amended so as to exclude land from the colliery holding.

(5) An application under this section:

(a) must be lodged with the Director-General; and

(b) must be accompanied by the particulars prescribed by the regulations.

(6) The Minister may, by order in writing, direct that specified land (being land in which a person has, in the Minister's opinion, a right to mine for coal or to carry out mining purposes in connection with mining for coal) be registered as a colliery holding or recorded on the register as part of an existing colliery holding.

(7) The Minister may, by order in writing, direct that the registration of a colliery holding be cancelled or amended so as to exclude specified land from the colliery holding.

(8) A direction may be given under subsection (6) or (7) whether or not an application has been made under subsection (3) or (4) in respect of the same land.

(9) The Director-General is to cause copies of any direction under subsection (6) or (7) to be served on such persons as, in the Director-General's opinion, have a right to mine coal or to carry out mining purposes in connection with mining for coal in the land or colliery holding to which the instrument relates.

Division 4—Miscellaneous

Rights of way

164. **(1)** The holder of an authority is entitled to a right of way (to be marked out in the manner prescribed by the regulations) between the land subject to the authority and the nearest practicable point of a public road.

(2) The holder of the authority:

(a) must place substantial gates or grids (or, if the owner or occupier of the land so requires, gates and grids) at all fences intersected by the right of way; or

(b) if those fences are rabbit-proof, marsupial-proof or dog-proof fences—must place rabbit-proof, marsupial-proof or dog-proof gates at all such fences, as the case requires.

(3) Any such gate or grid must be of a design and construction that is adequate to prevent stock from straying.

(4) The costs of marking out a right of way and of installing and maintaining any gates or grids required by this section are to be borne by the holder of the authority.

(5) A right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised, as may be prescribed by the regulations or as may be imposed by a warden in any particular case.

(6) A warden may hold an inquiry into any matter arising under, or in connection with, a right of way conferred by this section.

(7) Such an inquiry may be held on the application of the owner or occupier of any land affected by the right of way, on the application of the holder of any authority entitled to the right of way or on the warden's own motion.

Right of access to water

165. (1) If land subject to an authority includes the surface of any private land or Crown land held under a pastoral lease, the owner or occupier of the surface is entitled to free and uninterrupted access, for stock watering and water drainage purposes, to the water in any stream (whether perennial or intermittent) or any lagoon or swamp (whether permanent or temporary) on or adjacent to that land.

(2) If any dispute arises between the holder of an authority and any such owner or occupier concerning the right of access, either the holder or the owner or occupier, or all of them, may, by written notice lodged with the Director-General, request the Minister to determine the dispute.

(3) Any such dispute is to be referred to a warden for inquiry and report and is to be determined by the Minister on the basis of the warden's report.

(4) A determination of the Minister under subsection (3) is final.

Use of water, timber and pasturage etc.

166. (1) If land subject to an authority includes the surface of any private land or Crown land held under a pastoral lease, the holder of the authority must not:

(a) use water artificially conserved on that land; or

(b) fell trees, strip bark or cut timber on that land,

otherwise than in accordance with the consent of the owner or occupier of the surface of the land or, if the owner or occupier refuses consent or attaches unreasonable conditions to the consent, with the approval of a warden.

(2) If land subject to a mining lease includes the surface of any private land or Crown land held under a pastoral lease, the holder of the lease must not:

(a) depasture horses on the land, or keep on the land any dog that is not kept under effective control, unless the land is securely fenced; or

(b) remove rock or earth from the land, except in connection with mining operations, otherwise than with the consent of the owner or occupier of the surface of the land.

Joint holders of authorities

167. If there is more than one holder of an authority, each of the holders is jointly and severally liable for the fulfilment of the obligations arising under this Act in relation to the authority.

Suspension of conditions

168. (1) The Minister may (whether on the application of the holder of the authority or otherwise) suspend any of the conditions of an authority for such period, or until the happening of such event, as the Minister may determine.

(2) The suspension of conditions of an authority may be granted unconditionally or subject to such alternative conditions as the Minister may consider appropriate.

(3) The suspension of the conditions of an authority takes effect on the date on which written notice of the suspension is served on the holder of the authority or on such later date as may be specified in the notice.

(4) A condition of an authority that is suspended on the application of the holder of an authority may not be suspended for more than:

(a) 3 months at a time, in the case of an exploration licence; or

(b) 6 months at a time, in the case of an assessment lease or a mining lease.

Forfeiture of security deposit

169. (1) Such part of any security in relation to an authority as the Minister may determine is to be forfeited to the Crown if the holder of the authority fails to fulfil the obligations arising under this Act in relation to the authority.

(2) Money realised from the forfeiture of any such security is to be applied for the purpose of fulfilling the obligations arising under this Act in relation to the authority.

Settlement of certain disputes

170. (1) If any dispute arises between the holders of 2 or more authorities concerning their respective rights in relation to any land or minerals, any one or more of them may refer the dispute to the Minister, who must in turn refer the dispute to a warden for inquiry and report.

(2) On receipt of the warden's report, the Minister may, by order, give such directions to all or any of the persons in dispute as (having regard to the public interest and the circumstances of the case) seem to the Minister to be just and equitable, and may, by the same or a subsequent order, direct the payment by all or any of the persons in dispute of any costs and expenses incidental to the conduct of the inquiry.

(3) A person to whom such a direction relates must not contravene the direction.

Maximum penalty: 20 penalty units.

Minister and certain other persons indemnified in certain circumstances

171. The holder of an authority holds the Crown, the Minister and any person employed in the administration of this Act indemnified against all claims against the Crown, the Minister or any such person arising out of:

(a) anything done or omitted to be done pursuant to, or as a consequence of, the authority; or

(b) anything done or omitted to be done by the holder of the authority, or by any agent or employee of the holder, on or in respect of any land subject to the authority.

Evidentiary provision

172. A certificate that is signed by the Director-General and that states that on a date, or during a period, specified in the certificate:

(a) an authority so specified was or was not granted, renewed, transferred or cancelled; or

(b) a condition so specified was or was not a condition of an authority so specified; or

(c) a person so specified was or was not the holder of an authority so specified; or

(d) land so specified was or was not subject to an authority or to an authority so specified; or

(e) an authority so specified was or was not transferred or was or was not transferred to a person so specified; or

(f) a legal or equitable interest so specified (being a legal or equitable interest of a kind referred to in section 161) was or was not registered under that section,

is admissible in evidence in all courts and is evidence of the fact or facts so stated.

PART 9—MINERAL CLAIMS

Division 1—Mineral claims districts

Constitution of mineral claims districts

173. (1) The Governor may, by order published in the Gazette, constitute any land within a single mining division as a mineral claims district and may, by the same or a subsequent order so published, name the district and fix its boundaries.

(2) Such an order:

(a) may not be made except on the recommendation of the Minister; and

(b) may not be made over land within a reserve if an order under section 367 directs that mineral claims are not to be granted over land in the reserve; and

(c) may not be made over land within an exempted area except in accordance with the consent of the controlling body for that area.

Notice of proposal to constitute mineral claims district

174. (1) The Minister must cause notice of any proposed recommendation to be served on:

(a) each Government agency that, in the opinion of the Minister, would be materially affected by the recommendation; and

(b) each council within whose area is situated the land to which the proposed recommendation relates.

(2) Such a notice:

(a) must identify the proposed boundaries of the mineral claims district; and

(b) must specify proposed conditions for inclusion in the order to be made under section 175 with respect to the mineral claims district.

Special conditions

175. (1) The Minister may, by order published in the Gazette, specify the conditions that are to apply to mineral claims granted over land within any specified mineral claims district.

(2) Without limiting the generality of subsection (1), the conditions that may be specified in an order under this section include conditions as to the following matters:

(a) the shape and size of mineral claims that may be granted;

(b) the minerals in respect of which mineral claims may be granted;

(c) the maximum number of mineral claims that may be held by any one person;

(d) the nature and extent of prospecting and mining operations that may be carried out in respect of mineral claims;

(e) the period for which a mineral claim is to have effect;

(f) the security deposits to be lodged in respect of the granting of mineral claims;

(g) the compensation payable in respect of the carrying out of prospecting and mining operations;

(h) the royalties payable in respect of minerals recovered under mineral claims;

(i) the depth below the surface of the land to which prospecting or mining operations may be carried out;

(j) the obligations of the holders of mineral claims as to the rehabilitation of land on which prospecting or mining operations have been carried out.

(3) The Minister must have regard to, but (except as provided by subsection (4)) is not bound by, any representations made by a person or body to whom notice has been given under section 174.

(4) To the extent to which an order under this section applies to land within an exempted area, the order must include any conditions required by the controlling body for that area to be included in the order.

(5) This section does not authorise the making of conditions that permit a mineral claim to be granted over land having an area of more than 2 hectares or that permit a mineral claim to have a term of more than 5 years.

(6) A condition limiting the maximum number of mineral claims that may be held by any one person does not prevent a person from becoming the holder of further mineral claims that devolve on the person by operation of law.

Division 2—Applications

Marking out of proposed claim area

176. (1) Before applying for a mineral claim, a person must, in the manner prescribed by the regulations, mark out the area of land over which the person wishes the mineral claim to be granted.

(2) The area marked out must be situated wholly within a single mining division and must comply with the regulations in relation to shape and size.

Notice of intention to apply for mineral claim

177. (1) A person may not apply for a mineral claim over Crown land until after the person has caused notice of the proposed application to be served on the occupier of the land to which the proposed application relates.

(2) Such a notice must identify, in the manner prescribed by the regulations, the land to which the application relates.

Application for granting of mineral claim

178. (1) Any person may apply for a mineral claim.

(2) An application:

(a) must identify, in the manner prescribed by the regulations, the land to which it relates; and

(b) must specify the mineral or minerals in respect of which the mineral claim is sought; and

(c) must be accompanied by the fee prescribed by the regulations; and

(d) must be lodged with the mining registrar for the mining division within which the land to which it relates is situated; and

(e) in the case of an application that relates to private land—must be accompanied by the written consent of both the owner and the occupier of the land to the granting of the mineral claim; and

(f) in the case of an application that relates to Crown land—must be accompanied by a copy of the notice served on the occupier of that land under section 177 and a statutory declaration to the effect that the notice was so served.

Objection as to agricultural land

179. (1) The occupier of any Crown land the subject of a notice under section 177 may object to the granting of a mineral claim over the land on the basis that the land is agricultural land.

(2) Such an objection must be in writing and must be lodged with the mining registrar for the mining division within which the land is situated within 28 days after the notice is served.

(3) On receipt of an objection, the mining registrar is to refer the objection to the Director-General of the Department of Agriculture who is to determine the objection in accordance with Schedule 2.

Division 3—Restrictions on the grant of mineral claims

General restrictions

180. (1) A mineral claim may not be granted over land having an area of more than 2 hectares.

(2) A mineral claim over land that is not situated within a mineral claims district may not be granted in the name of a person who holds more than one other mineral claim over any such land within the same mining division.

(3) Subsection (2) does not prevent a person from becoming the holder of a mineral claim that has devolved on the person by operation of law.

(4) A mineral claim may not be granted in respect of coal.

Exempted areas

181. (1) A mineral claim may not be granted over land within an exempted area (other than land within a mineral claims district) except with the written consent of the controlling body of that area.

(2) A written consent given under this section is irrevocable.

Land in reserve or opal prospecting area

182. A mineral claim may not be granted over any land within:

(a) an opal prospecting block that is the subject of an opal prospecting licence held by a person other than the applicant for the mineral claim; or

(b) a reserve in respect of which an order prohibiting the granting of mineral claims is in force under section 367; or

(c) a mineral allocation area constituted in respect of any mineral or minerals to which the application for the mineral claim relates.

Land subject to authority

183. (1) A mineral claim may not be granted over any land:

(a) the subject of an exploration licence that includes any mineral or minerals in respect of which the claim is sought; or

(b) the subject of an assessment lease, a mining lease or a mineral claim; or

(c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the firstmentioned mineral claim was lodged,

otherwise than to or with the written consent of the holder of, or the applicant for, that licence, lease or claim.

(2) A written consent given under this section is irrevocable.

(3) If, as a result of such a consent, a mineral claim is granted in respect of land referred to in subsection (1), that land:

(a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim referred to in that subsection; or

(b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim so referred to,

as the case requires.

Land subject to exploration licence over different minerals etc.

184. **(1)** If an application for a mineral claim is lodged in respect of land that is subject wholly or partly to one or more exploration licences (other than exploration licences that include any mineral or minerals in respect of which the claim is sought), the mining registrar must cause notice of the application to be served on the holder of every such exploration licence.

(2) A person served with such a notice may object to the granting of the mineral claim by lodging with the mining registrar, on or before the date specified in the notice, a written notice stating the grounds of the objection.

(3) If such an objection is made, the mining registrar must refer the objection to an inspector for investigation and report and must determine the objection on the basis of the inspector's report.

(4) This section does not apply to an application that is made with the written consent of the holder of every exploration licence over the land concerned.

(5) A written consent given under this section is irrevocable.

(6) If a mineral claim is granted over land that is subject to an exploration licence, that land ceases to be subject to the exploration licence when the mineral claim is granted.

Land on which private mining operations being carried on

185. **(1)** A mineral claim may not be granted over any land in relation to a privately owned mineral:

(a) if mining operations are being carried out on the land by or with the consent of the owner of the mineral; and

(b) if a notice has been lodged with the Director-General in respect of those mining operations in accordance with section 8,

except with the written consent of the owner of the mineral.

(2) A written consent given under this section is irrevocable.

(3) Any dispute as to whether or not this section applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Director-General on the basis of the warden's report.

Colliery holdings

186. A mineral claim may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that prospecting or mining operations may be carried out under the claim without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the claim area.

Agricultural land

187. **(1)** A mineral claim may not be granted over any land that, as a consequence of an objection to the granting of the claim, has been determined to be agricultural land in accordance with Schedule 2.

(2) This section does not prevent a mineral claim from being granted over land that is within a mineral claims district merely because an objection to the granting of the claim has been made on the basis that the land is agricultural land.

Dwelling-houses, gardens and improvements

188. **(1)** A mineral claim may not be granted over any land:

(a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of its occupier or a woolshed or shearing shed which is in use as such; or

(b) on which, or within the prescribed distance of which, is situated any garden; or

(c) on which, or within the prescribed distance of which, is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes,

except with the written consent of the occupier (and, in the case of private land, the owner) of the land.

(2) The prescribed distance is:

(a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a); and

(b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b) and (c).

(3) A written consent given under this section is irrevocable.

(4) Subsection (1) does not apply in respect of a dwelling-house, woolshed, shearing shed, garden or improvement that was not in existence when the application for the mineral claim was lodged.

(5) Any dispute as to whether or not subsection (1) applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Director-General on the basis of the warden's report.

(6) A mineral claim may not be granted over land below the surface of land referred to in subsection (1) except at such depths, and subject to such conditions, as the mining registrar considers sufficient to minimise damage to that surface.

Mineral claim not to be re-granted to former holder

189. **(1)** A person who has been the holder of a mineral claim that has been cancelled pursuant to an order of a warden's court may not be granted a further mineral claim over any part of the land over which the earlier mineral claim was held until the expiration of the period of 12 months following the making of the order.

(2) This section is subject to any further order made by the warden's court by which the original order was made.

Division 4—Granting of mineral claims

Power of mining registrar in relation to applications

190. **(1)** After considering an application for a mineral claim, the mining registrar:

(a) may grant a mineral claim to the applicant; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) If an objection to the granting of the mineral claim on the basis that the land concerned is agricultural land has been lodged with the mining registrar before the application is determined, the mining registrar may (in the case of land that is situated within a mineral claims district) and must (in any other case) defer consideration of the application until the objection has been determined.

(4) Before granting a mineral claim, the mining registrar may require the applicant to give security for the fulfilment of the obligations arising under this Act in relation to the mineral claim:

(a) in the case of a mineral claim over land that is situated within a mineral claims district—in such amount and form as the mining registrar may (in accordance with the special conditions) require; or

(b) in any other case—in such amount and form as the mining registrar may (in accordance with the regulations) require.

(5) If the mining registrar refuses to grant a mineral claim, the mining registrar is to cause notice of the decision, and of the reasons for the decision, to be served on the applicant.

(6) If more than one application is made for a mineral claim over the same area of land, the applications are to be dealt with in the order in which they are lodged or, if they are lodged simultaneously, in such order as may be prescribed by the regulations.

Land over which mineral claim may be granted

191. (1) A mineral claim may be granted in respect of any mineral or minerals, regardless of whether the mineral or minerals are publicly owned, privately owned or partly publicly and partly privately owned.

(2) A mineral claim may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil between or below any specified depth or depths below the surface of land.

Conditions of mineral claim

192. (1) A mineral claim is subject to:

(a) in the case of a claim that is granted over land within a mineral claims district—such conditions as the mining registrar may (in accordance with the special conditions) impose; and

(b) in any other case—such conditions as the mining registrar may (in accordance with the regulations) impose.

(2) Without limiting the generality of subsection (1), a condition may be imposed on a mineral claim requiring the holder of the claim to pay royalty to the Minister on any minerals recovered under the claim.

(3) Part 14 applies to royalty payable under such a condition in the same way as it applies to royalty payable on a mineral recovered under a mining lease.

Term of mineral claim

193. A mineral claim:

(a) takes effect on the date on which it is granted or on such later date as the mining registrar may determine; and

(b) ceases to have effect at the expiration of such period (not exceeding 5 years or, in the case of a mineral claim over land that is situated within a mineral claims district, not exceeding such shorter period as the special conditions may specify) as the mining registrar may determine.

Certificate of mineral claim

194. (1) On granting a mineral claim, the mining registrar is to cause a certificate to be given to the holder of the claim of the fact that the claim has been granted.

(2) A certificate is to be in the approved form and is to include the following particulars:

(a) a description of the land over which the mineral claim is granted;

(b) a list of the mineral or minerals in respect of which the mineral claim is granted;

(c) the conditions to which the mineral claim is subject;

(d) the period for which the mineral claim is to have effect.

Division 5—Rights and duties under a mineral claim

Rights under mineral claim

195. (1) The holder of a mineral claim may, in accordance with the conditions of the claim, prospect for and mine the mineral or minerals in respect of which the claim is granted and may, in connection with any such prospecting or mining:

(a) erect buildings and structures; and

(b) exercise any rights in the nature of easements; and

(c) carry out works; and

(d) remove from the claim area any timber, stone or gravel.

(2) If an application for an assessment lease or mining lease is made by the holder of a mineral claim, the claim continues in force until the application is finally disposed of.

Claim areas over which authority is subsequently granted

196. Land over which a mineral claim is granted and over which an authority or further mineral claim is subsequently granted ceases to be part of the claim area when the authority or further claim takes effect.

Division 6—Renewal, transfer and cancellation of mineral claims

Application for renewal

197. **(1)** The holder of a mineral claim may apply for renewal of the claim.

(2) An application for renewal of a mineral claim:

(a) must be accompanied by the fee prescribed by the regulations; and

(b) must be lodged, within 28 days before the day on which the claim would otherwise expire, with the mining registrar for the mining division within which the claim area is situated.

(3) A mineral claim the subject of such an application remains in force until the application is finally disposed of.

Determination of application for renewal

198. **(1)** After considering an application for renewal of a mineral claim, the mining registrar:

(a) may renew the mineral claim; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The mining registrar may, on renewing a mineral claim, vary the conditions of the claim:

(a) in the case of a mineral claim that is granted over land within a mineral claims district—in such manner as the mining registrar may (in accordance with the special conditions) determine; and

(b) in any other case—in such manner as the mining registrar may (in accordance with the regulations) determine.

Partial renewal

199. A mineral claim may be renewed as to the whole or any part of the claim area and, if it is renewed as to part only of the claim area, the remainder ceases to be part of the claim area when the renewal takes effect.

Application for transfer

200. (1) The holder of a mineral claim may apply for the transfer of the claim to some other person.

(2) An application for the transfer of a mineral claim:

(a) must be accompanied by the fee prescribed by the regulations; and

(b) must be lodged with the mining registrar for the mining division within which the claim area is situated; and

(c) must be accompanied by the written consent of the proposed transferee; and

(d) in the case of an application that relates to private land—must be accompanied by the written consent of the owner and the occupier of the land.

(3) The mining registrar may defer consideration of an application that is the subject of legal proceedings, or of an inquiry under this Act, pending the outcome of those proceedings or that inquiry.

Determination of application for transfer

201. (1) After considering an application for transfer of a mineral claim, the mining registrar:

(a) may transfer the mineral claim; or

(b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The mining registrar may, on transferring a mineral claim, vary the conditions of the claim:

(a) in the case of a claim that is granted over land within a mineral claims district—in such manner as the mining registrar may (in accordance with the special conditions) determine; and

(b) in any other case—in such manner as the mining registrar may (in accordance with the regulations) determine.

(4) A mineral claim may not be transferred to a person if the person would consequently become the holder of more mineral claims than the maximum number allowed by this Act.

Devolution by operation of law

202. (1) The mining registrar may, on the application of a person on whom a mineral claim has devolved by operation of law, transfer the claim to that person.

(2) An application under this section:

(a) must be accompanied by the fee prescribed by the regulations; and

(b) must be lodged with the mining registrar for the mining division within which the claim area is situated.

(3) The mining registrar may defer consideration of an application that is the subject of legal proceedings, or of an inquiry under this Act, pending the outcome of those proceedings or that inquiry.

Grounds of cancellation

203. (1) A mining registrar may cancel a mineral claim, as to the whole or any part of the land to which it relates:

(a) if the holder of the claim requests the mining registrar to cancel the claim; or

(b) if, as a result of an objection made under section 179, it is determined in accordance with Schedule 2 that the land is agricultural land; or

(c) if the holder of the claim contravenes any condition of the claim or any provision of this Act or the regulations, whether or not the holder is prosecuted or convicted of any offence arising from the contravention; or

(d) if the holder of the claim fails to comply with the requirements of any agreement or assessment under Part 13 in relation to the payment of compensation; or

(e) if the holder of the claim is convicted of any offence relating to mining or minerals; or

(f) if the land is required for a public purpose; or

(g) if the mining registrar is ordered by a warden's court to cancel the claim.

(2) A request referred to in subsection (1) (a):

(a) must be lodged with the mining registrar for the mining division within which the claim area is situated; and

(b) if the application is for the cancellation of the claim as to part only of the land to which it relates—must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land in respect of which the claim is to be cancelled.

(3) The mining registrar may defer cancellation of a mineral claim that is the subject of legal proceedings, or of an inquiry under this Act, pending the outcome of those proceedings or that inquiry.

Cancellations

204. (1) Before cancelling a mineral claim on a ground referred to in section 203 (1) (c), (d) or (e), the mining registrar:

(a) must cause written notice of the proposed cancellation, and of the grounds of the proposed cancellation, to be served on the holder of the claim; and

(b) must give the holder of the claim a reasonable opportunity to make representations with respect to the proposed cancellation; and

(c) must take any such representations into consideration.

(2) Cancellation of a mineral claim takes effect on the date on which written notice of the cancellation is served on the holder of the claim or on such later date as is specified in the notice.

(3) Cancellation of a mineral claim does not affect any liability incurred by the holder of the claim before the cancellation took effect.

Compensation for cancellation

205. (1) The holder of a mineral claim is not entitled to compensation merely because the claim is cancelled.

(2) However, if a mineral claim is cancelled on the ground that the whole or any part of the land concerned is required for a public purpose, the holder of the claim is entitled to compensation, of an amount to be determined by the Minister, for any mining improvements made to the land.

Appeals against cancellation

206. (1) Any person who is aggrieved by the decision of a mining registrar to cancel a mineral claim held by the person, or of the decision of the Minister as to the amount of compensation payable as a consequence of the cancellation, may appeal to the District Court against the decision.

(2) An appeal is to be heard by way of a new hearing, and fresh evidence, or evidence additional to the evidence available to the mining registrar or Minister when the decision was made, may be admitted in the hearing.

(3) Subject to any order made by the District Court, the lodging of an appeal does not operate to stay the decision appealed against.

(4) The decision of the District Court on an appeal is final and is to be given effect to as if it were the decision of the mining registrar or Minister, as the case may be.

Division 7—Miscellaneous

Holder of mineral claim must be at least 18

207. A mineral claim may not be granted to an individual who has not attained the age of 18 years.

Withdrawal of application

208. (1) An application or objection in relation to the grant, renewal, transfer or cancellation of a mineral claim may be withdrawn by means of a notice of withdrawal lodged by the applicant or objector with the mining registrar with whom the application or objection was lodged and ceases to have effect when the notice is lodged.

(2) The withdrawal of an application or objection under this section is irrevocable.

Pending applications

209. For the purposes of this Act, an application for a mineral claim is pending from the time it is lodged under this Act until the time it is finally disposed of.

Death etc. of applicant for granting of mineral claim

210. An application for a mineral claim made by a person who subsequently dies, becomes bankrupt or becomes a mentally incapacitated person:

(a) subsists for the benefit of the applicant's estate; and

(b) may continue to be dealt with,

if the applicant's legal representative or the manager of the applicant's estate so requests.

Rights of way

211. (1) The holder of a mineral claim is entitled to a right of way (to be marked out in the manner prescribed by the regulations) between the claim area and the nearest practicable point of a public road.

(2) The holder of the mineral claim:

(a) must place substantial gates or grids (or, if the owner or occupier of the land so requires, gates and grids) at all fences intersected by the right of way; or

(b) if those fences are rabbit-proof, marsupial-proof or dog-proof fences—must place rabbit-proof, marsupial-proof or dog-proof gates at all such fences, as the case requires.

(3) Any such gate or grid must be of a design and construction that is adequate to prevent stock from straying.

(4) The costs of marking out a right of way and of installing and maintaining any gates or grids required by this section are to be borne by the holder of the mineral claim.

(5) A right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised, as may be prescribed by the regulations or as may be imposed by a warden in any particular case.

(6) A warden may hold an inquiry into any matter arising under, or in connection with, a right of way conferred by this section.

(7) Such an inquiry may be held on the application of the owner or occupier of any land affected by the right of way, on the application of the holder of any mineral claim entitled to the right of way or on the warden's own motion.

Right of access to water

212. (1) If land subject to a mineral claim includes the surface of any private land or Crown land held under a pastoral lease, the owner or occupier of the surface is entitled to free and uninterrupted access, for stock watering and water drainage purposes, to the water in any stream (whether perennial or intermittent) or any lagoon or swamp (whether permanent or temporary) on or adjacent to that land.

(2) If any dispute arises between the holder of a mineral claim and any such owner or occupier concerning the right of access, either the holder or the owner or occupier, or all of them, may, by written notice lodged with the Minister, request the Minister to determine the dispute.

(3) Any such dispute is to be referred to a warden for inquiry and report and is to be determined by the Minister on the basis of the warden's report.

(4) A determination by the Minister under subsection (3) is final.

Use of water, timber and pasturage etc.

213. (1) If land subject to a mineral claim includes the surface of any private land or Crown land held under a pastoral lease, the holder of the mineral claim must not:

(a) use water artificially conserved on that land; or

(b) fell trees, strip bark or cut timber on that land,

otherwise than in accordance with the consent of the owner or occupier of the surface of the land or, if the owner or occupier refuses consent or attaches unreasonable conditions to the consent, with the approval of a warden.

(2) If land subject to a mineral claim includes the surface of any private land or Crown land held under a pastoral lease, the holder of the claim must not:

(a) depasture horses on the land, or keep on the land any dog that is not under effective control, unless the land is securely fenced; or

(b) remove rock or earth from the land, except in connection with mining operations, otherwise than with the consent of the owner or occupier of the surface of the land.

Joint holders of mineral claims

214. If there is more than one holder of a mineral claim, each of the holders is jointly and severally liable for the fulfilment of the obligations arising under this Act in relation to the claim.

Suspension of conditions

215. (1) The mining registrar may (whether on the application of the holder of the claim or otherwise) suspend any of the conditions of a mineral claim (other than conditions of the kind referred to in section 175 (4)) for such period, or until the happening of such event, as the mining registrar may determine.

(2) The suspension of conditions of a mineral claim may be granted unconditionally or subject to such alternative conditions as the mining registrar may consider appropriate.

(3) The suspension of conditions of a mineral claim takes effect on the date on which written notice of the suspension is served on the holder of the mineral claim or on such later date as may be specified in the notice.

(4) A condition of a mineral claim that is suspended on the application of the holder of the claim may not be suspended for more than 3 months at a time.

Forfeiture of security deposit

216. (1) Such part of any security in relation to a mineral claim as the Director-General may determine is to be forfeited to the Crown if the holder of the claim fails to fulfil the obligations arising under this Act in relation to the claim.

(2) Money realised from the forfeiture of any such security may be applied for the purpose of rehabilitating any land in the State affected by prospecting or mining operations.

Settlement of certain disputes

217. (1) If any dispute arises between the holders of 2 or more mineral claims concerning their respective rights in relation to any land or minerals, any one or more of them may refer the dispute to the Minister, who must in turn refer the dispute to a warden for inquiry and report.

(2) On receipt of the warden's report, the Minister may, by order, give such directions to all or any of the persons in dispute as (having regard to the public interest and the circumstances of the case) seem to the Minister to be just and equitable, and may, by the same or a subsequent order, direct the payment by all or any of the persons in dispute of any costs and expenses incidental to the conduct of the inquiry.

(3) A person to whom such a direction relates must not contravene the direction.

Maximum penalty: 20 penalty units.

Minister and certain other persons indemnified in certain circumstances

218. The holder of a mineral claim holds the Crown, the Minister and any person employed in the administration of this Act indemnified against all claims against the Crown, the Minister or any such person arising out of:

(a) anything done or omitted to be done pursuant to, or as a consequence of, the claim; or

(b) anything done or omitted to be done by the holder of the claim, or by any agent or employee of the holder, on or in respect of any land subject to the claim.

Evidentiary provision

219. A certificate that is signed by a mining registrar and that states that on a date, or during a period, specified in the certificate:

(a) a mineral claim so specified was or was not granted, renewed, transferred or cancelled; or

(b) a condition so specified was or was not a condition of a mineral claim so specified; or

(c) a person so specified was or was not the holder of a mineral claim so specified; or

(d) land so specified was or was not subject to a mineral claim or to a mineral claim so specified,

is admissible in evidence in all courts and is evidence of the fact or facts so stated.

PART 10—OPAL PROSPECTING LICENCES

Division 1—Opal prospecting areas

Opal prospecting areas

220. The Minister may, by order published in the Gazette, constitute any Crown land as an opal prospecting area and may, by the same or a subsequent order so published, name the area and fix its boundaries.

Notification of occupiers of land

221. Before constituting any occupied Crown land as an opal prospecting area or adding any occupied Crown land to an existing opal prospecting area, the Minister must cause written notice to be served on any occupier of the land:

(a) of the proposal to constitute the land as an opal prospecting area; and

(b) of the grounds on which the occupier may make an objection to the constitution of the land as an opal prospecting area; and

(c) of the manner and form in which the occupier may make such an objection.

Objections

222. (1) An occupier of Crown land who has been served with a notice of the Minister's proposal to constitute the land as an opal prospecting area, or to add the land to an existing opal prospecting area, may, within 28 days after being so served, make an objection to the proposal on any of the following grounds:

(a) on the ground that the land the subject of the proposal is agricultural land;

(b) on one or more grounds of the kind prescribed by the regulations.

(2) Such an objection:

(a) must be lodged with the Director-General; and

(b) must be in the approved form.

(3) The Minister:

(a) must refer such part of an objection as has been made on the ground referred to in subsection (1) (a) to the Director-General of the Department of Agriculture for determination of the question of whether the land concerned is agricultural land; and

(b) must refer such part of an objection as has been made on a ground referred to in subsection (1) (b) to a warden for inquiry and report.

(4) An objection referred to the Director-General of the Department of Agriculture is to be determined in accordance with Schedule 2.

(5) An objection referred to a warden is to be determined by the Minister on the basis of the warden's report.

Certain land not to be included in opal prospecting area

223. (1) Land may not be constituted as an opal prospecting area or added to an existing opal prospecting area:

(a) if an application for an authority is pending in respect of the land; or

(b) if an authority is in force in respect of the land; or

(c) if the land forms part of a reserve, an exempted area, a mineral allocation area for opal or a colliery holding; or

(d) if it has been determined in accordance with Schedule 2 that the land is agricultural land.

(2) Land that is within a national park, state recreation area, historic site, nature reserve, state game reserve, Aboriginal area, protected archaeological area, wildlife district, wildlife refuge, wildlife assessment area or Aboriginal place within the meaning of the National Parks and

Wildlife Act 1974 may not be constituted as an opal prospecting area, or added to an existing opal prospecting area, except with the consent of the Minister administering that Act.

Opal prospecting blocks

224. (1) The Minister may, by order published in the Gazette, constitute any land within an opal prospecting area as an opal prospecting block.

(2) Such an order:

(a) may give the opal prospecting block a designation and fix its boundaries; and

(b) may specify any periods during which an opal prospecting licence may not be granted in respect of the opal prospecting block.

(3) An opal prospecting block may not exceed such dimensions as may be prescribed by the regulations.

Map of opal prospecting area to be prepared

225. (1) As soon as practicable after land within an opal prospecting area has been constituted as an opal prospecting block, the Minister:

(a) must cause a map to be prepared, on which the following particulars are to be depicted:

(i) the boundary of the opal prospecting area;

(ii) the boundary of each opal prospecting block within the opal prospecting area;

(iii) the name of the opal prospecting area;

(iv) the designation of each opal prospecting block within the opal prospecting area;

(v) the period for which an opal prospecting licence over an opal prospecting block within the opal prospecting area may be granted;

(vi) any special conditions that are to apply to an opal prospecting licence in relation to the program of work to be carried out in an opal prospecting block, the amount of money to be expended on prospecting and any other matters that the Minister considers should be depicted on the map as special conditions; and

(b) must cause a copy of the map to be furnished to the mining registrar for each mining division within which the opal prospecting area, or any part of the opal prospecting area, is situated.

(2) The Minister may from time to time cause such a map to be amended:

(a) by varying the boundary of the opal prospecting area; or

(b) by varying the boundary of one or more opal prospecting blocks within the opal prospecting area; or

(c) by varying the period for which an opal prospecting licence over an opal prospecting block within the opal prospecting area may be granted; or

(d) by varying the special conditions which are to apply to an opal prospecting licence.

(3) As soon as practicable after a map is amended, the Minister must cause a copy of the amended map to be furnished to the mining registrar for each mining division within which the relevant opal prospecting area, or any part of the area, is situated.

(4) A mining registrar to whom a copy of a map is furnished must, during ordinary office hours, keep the copy of the map available, free of charge, for public inspection.

Division 2—Opal prospecting licences

Applications

226. **(1)** Any person may apply for an opal prospecting licence.

(2) An application for an opal prospecting licence must be lodged with the mining registrar for the mining division in which the opal prospecting block is situated.

(3) If more than one application is lodged with a mining registrar in respect of the same opal prospecting block, the applications are to be dealt with in the order in which they are lodged or, if they are lodged simultaneously, in such order as may be prescribed by the regulations.

Restrictions on grant of licence

227. An opal prospecting licence may not be granted over an opal prospecting block:

(a) to an individual who has not attained the age of 18 years;

(b) over which any other opal prospecting licence is in force or has (at any time within the 10 days preceding the day on which the application for the licence was lodged) been in force; or

(c) over which a mineral claim is in force; or

(d) to a person who is the holder of an opal prospecting licence over any other opal prospecting block in the same mining division; or

(e) during a period specified in the order by which the opal prospecting block is constituted as a period during which such a licence may not be granted.

Granting of licence

228. (1) On payment of the fee prescribed by the regulations, a mining registrar with whom an application is lodged must, subject to this Division, grant to the applicant an opal prospecting licence over the opal prospecting block to which the application relates.

(2) A mining registrar must, in the manner prescribed by the regulations, cause a record to be kept of each opal prospecting licence granted by the mining registrar.

Conditions of licence

229. An opal prospecting licence is subject to:

(a) any special conditions that apply to the opal prospecting block over which the licence is granted; and

(b) any other conditions that the mining registrar considers appropriate to impose.

Term of licence

230. An opal prospecting licence has effect for the period specified on the map in respect of the opal prospecting block concerned.

Form of licence

231. An opal prospecting licence is to be in the approved form and is to include the following particulars:

(a) the designation of the opal prospecting block over which the licence is granted;

(b) the period for which the licence is to have effect.

Rights under licence

232. (1) The holder of an opal prospecting licence may, in accordance with the licence, prospect for opals in the opal prospecting block over which the licence is granted.

(2) While an opal prospecting licence is in force, no person, other than the holder of the licence, may prospect for opals in any part of the opal prospecting block to which the licence relates.

(3) Nothing in this section prevents the holder of a mineral claim from exercising, in relation to any land within an opal prospecting block, any right conferred by the claim.

(4) An application for a mineral claim is a nullity to the extent to which it relates to any part of an opal prospecting block in respect of which any person other than the applicant holds an opal prospecting licence.

Grounds of cancellation

233. **(1)** A mining registrar may cancel an opal prospecting licence:

(a) if the holder of the licence requests the mining registrar to cancel the licence; or

(b) if the holder of the licence contravenes any condition of the licence or any provision of this Act or the regulations, whether or not the holder is prosecuted or convicted of any offence arising from the contravention; or

(c) if the holder of the licence fails to comply with the requirements of any agreement or assessment under Part 13 in relation to the payment of compensation; or

(d) if the holder of the licence is convicted of any offence relating to mining or minerals; or

(e) if the mining registrar is ordered by a warden's court to cancel the licence.

(2) A request referred to in subsection (1) (a) must be lodged with the mining registrar for the mining division within which the opal prospecting block is situated.

Cancellations

234. **(1)** Before cancelling an opal prospecting licence on a ground referred to in section 233 (1) (b), (c) or (d), the mining registrar:

(a) must cause written notice of the proposed cancellation, and of the grounds of the proposed cancellation, to be served on the holder of the licence; and

(b) must give the holder of the licence a reasonable opportunity to make representations with respect to the proposed cancellation; and

(c) must take any such representations into consideration.

(2) Cancellation of an opal prospecting licence takes effect on the date on which written notice of the cancellation is served on the holder of the licence or on such later date as is specified in the notice.

(3) Cancellation of an opal prospecting licence does not affect any liability incurred by the holder of the licence before the cancellation took effect.

Division 3—Miscellaneous

Certain claims for damages prohibited

235. No action lies against the Crown, the Minister or any person administering this Act in respect of any injury or loss suffered or incurred in relation to the exercise of any right conferred by an opal prospecting licence.

Evidentiary provision

236. A certificate that is signed by a mining registrar and that states that on a date, or during a period, specified in the certificate:

(a) an opal prospecting licence so specified was or was not granted; or

(b) a condition so specified was or was not a condition the subject of an opal prospecting licence so specified; or

(c) a person so specified was or was not the holder of an opal prospecting licence so specified; or

(d) an opal prospecting block was or was not subject to an opal prospecting licence or to an opal prospecting licence so specified,

is admissible in evidence in all courts and is evidence of the fact or facts so stated.

PART 11—PROTECTION OF THE ENVIRONMENT

Division 1—Environment to be considered before grant of authorities or mineral claims

Need to protect natural resources etc. to be taken into account

237. (1) In deciding whether or not to grant an authority or mineral claim, the Minister is to take into account the need to conserve and protect:

(a) the flora, fauna, fish, fisheries and scenic attractions; and

(b) the features of Aboriginal, architectural, archaeological, historical or geological interest,

in or on the land over which the authority or claim is sought.

(2) The Minister may cause such studies (including environmental impact studies) to be carried out as the Minister considers necessary to enable such a decision to be made.

Division 2—Conditions for protecting the environment

Inclusion of conditions for protecting the environment

238. The conditions subject to which an authority or mineral claim is granted or renewed may include conditions relating to the conservation and protection of:

(a) the flora, fauna, fish, fisheries and scenic attractions; and

(b) the features of Aboriginal, architectural, archaeological, historical or geological interest,

in or on the land subject to the authority or claim.

Rehabilitation etc. of area damaged by mining

239. (1) The conditions subject to which a mining lease or mineral claim is granted or renewed may include such conditions relating to:

(a) the rehabilitation, levelling, regrassing, reforesting or contouring of any part of the mining area or claim area that may have been damaged or adversely affected by mining operations; and

(b) the filling in, sealing or fencing off of excavations, shafts and tunnels,

as may be prescribed by the regulations or as the Minister may, in any particular case, determine.

(2) The Minister may amend a mining lease or mineral claim:

(a) that does not contain conditions of the kind that may be imposed under this section; or

(b) that does contain such conditions, being conditions that the Minister considers are inadequate,

so as to include conditions or further conditions of that kind or so as to alter any such conditions.

(3) Any conditions of the kind referred to in subsection (1) (a) are to be in a form approved by the Commissioner of the Soil Conservation Service.

(4) An amendment takes effect on the date on which notice of the amendment is served on the holder of the mining lease or mineral claim or on such later date as may be specified in the notice.

Division 3—Directions to rehabilitate land

Direction to comply with conditions of authority or mineral claim

240. (1) The Minister may cause to be served on a person who is or has been the holder of an authority or mineral claim a written notice directing the person to take specified steps, within a specified time, to give effect to any conditions included in the authority or claim under Division 2.

(2) A person on whom such a direction has been served must not fail to comply with the direction.

Maximum penalty: 20 penalty units.

Rehabilitation by Minister at holder's expense

241. (1) If a person on whom a direction is served under this Division does not comply with the direction, the Minister may cause to be taken any of the steps specified in the notice in which the direction was given.

(2) Any costs or expenses incurred by the Crown under this section are a debt due to the Crown by the person on whom the direction was served and are recoverable in a court of competent jurisdiction.

Recovery of costs of rehabilitation

242. (1) In any proceedings for the recovery of a debt due to the Crown under this Division, a certificate that is signed by the Minister and that states that a specified amount is the amount of the debt so due is admissible in evidence in all courts and is evidence of that fact.

(2) A debt due to the Crown under this Division is recoverable whether or not the person by whom it is due is prosecuted or convicted of an offence under this Division.

Division 4—Directions to remove mining plant

Application of Division

243. This Division applies to land that ceases to be subject to an authority or mineral claim.

Definitions

244. In this Division:

"mining plant" means any building, plant, machinery, equipment, tools or other property that has been used for mining or mining purposes, whether or not affixed to land, but does not include any

timber or other material used or applied in the construction or support of any shaft, drive, gallery, adit, terrace, race, dam or other mining work;

"prescribed period", in relation to land that has ceased to be subject to an authority or mineral claim, means the period of 6 months from the date on which the land ceased to be subject to the authority or claim or such longer period as the Minister may, in any particular case, allow.

Clearing away of mining plant

245. (1) The holder of an authority or mineral claim over land that ceases to be subject to the authority or claim:

(a) may, within the prescribed period; and

(b) must, if directed to do so by the Minister by notice in writing, within the period specified in the notice,

cause to be removed from the land any mining plant brought onto, or erected on, that land in the course of mining operations carried out under the authority or claim.

(2) The Minister may give a direction under this section even though the prescribed period has not expired.

Sale of mining plant

246. (1) If mining plant is not duly removed under this Division, the Minister may direct that the mining plant be sold by public auction.

(2) Any mining plant remaining unsold after the public auction held may be sold by private treaty.

(3) The following amounts are to be deducted from the proceeds of any such sale:

(a) the costs of the sale and of any matter incidental to or connected with the sale;

(b) the costs of removing from the land concerned any mining plant remaining unsold after the public auction;

(c) any amount owing in respect of compensation for compensable loss within the meaning of Division 1 of Part 13;

(d) any other amount that the Director-General certifies to be a deductible amount.

(4) Any balance remaining is to be paid to the Treasurer as unclaimed money, and sections 6 (2) and 10 of the Unclaimed Money Act 1982 apply to the balance so paid in the same way as they would have applied had the balance been paid to the Treasurer under section 6 of that Act.

(5) If the proceeds of sale are less than the amounts to be deducted, the proceeds are to be applied in meeting those amounts in such manner as the Minister directs.

PART 12—POWERS OF ENTRY

Division 1—Entry by inspectors

Powers of inspectors

247. (1) For the purposes of this Act, an inspector:

(a) may enter any land the subject of an authority or a mineral claim, or an application for an authority or a mineral claim, and any land in an opal prospecting area; and

(b) may inspect that land and any mine, works, operations, buildings or structure on that land; and

(c) may remove samples of ore or other mineral deposits from that land.

(2) An inspector may direct the person in charge of any mine, works, operations, buildings or structure on any such land to provide the inspector with all reasonable facilities and assistance.

(3) A person to whom such a direction is given must not fail to comply with the direction.

Maximum penalty: 20 penalty units.

Certificates of authority

248. (1) For the purpose of enabling an inspector to exercise a power conferred by this Division, the Minister may issue the inspector with a certificate of authority.

(2) A certificate of authority must be in the form prescribed by the regulations, must be signed by the person by whom it is issued and must include the following particulars:

(a) a statement to the effect that it has been issued under this Act;

(b) the name of the person to whom it has been granted;

(c) the nature of the powers it confers.

Division 2—Entry by other persons

Entry on land for rehabilitation purposes etc.

249. (1) The Minister may grant a permit to any person to enter any land so as to enable the person:

(a) to carry out any rehabilitation work in accordance with a direction in force under section 240; or

(b) to remove any mining plant from any land in accordance with a direction under section 245 or as a result of a sale conducted under section 246.

(2) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:

(a) enter the land to which the permit relates; and

(b) do on that land all such things as are reasonably necessary to achieve the purpose for which the permit is granted.

Surveys

250. (1) The Minister may grant a permit to a mining surveyor or any other officer of the Department to enter any land so as to enable the person to carry out a survey for the purpose of defining any road or for any other purpose authorised by this Act.

(2) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:

(a) enter the land to which the permit relates; and

(b) do on that land all such things as are reasonably necessary to achieve the purpose for which the permit is granted.

Ore sampling

251. (1) The Minister may grant a permit to a geologist, geophysicist or geochemist employed in the Department to enter any land so as to enable the person to take samples of ores and mineral deposits.

(2) The holder of a permit under this section, and any assistant of the holder, may, in accordance with the permit:

(a) enter the land to which the permit relates; and

(b) remove samples of ores or other mineral deposits from the land.

Environmental assessment

252. (1) A warden may, on the application of a person who proposes to undertake an assessment (for the purposes of this Act or the

Environmental Planning and Assessment Act 1979) of the likely effect on the environment of the activities to be carried out under an authority or a mineral claim, grant a permit to the applicant to enter any land so as to enable the person to undertake the assessment.

(2) For the purpose of determining an application for a permit, a warden may hold an inquiry into any matter arising under, or in connection with, the application.

(3) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:

(a) enter the land to which the permit relates; and

(b) do on that land all such things as are reasonably necessary to carry out the assessment to which the permit relates.

(4) The rights conferred by the permit may not be exercised within land in an exempted area except with the consent of the Minister.

(5) Such consent may be given unconditionally or subject to conditions.

(6) In the case of land within a national park, state recreation area, historic site, nature reserve, state game reserve, Aboriginal area, protected archaeological area, wildlife district, wildlife refuge, wildlife management area or Aboriginal place within the meaning of the National Parks and Wildlife Act 1974, such consent may not be given except with the concurrence of the Minister administering that Act.

Encroachments by mining works etc.

253. **(1)** A warden may, on the application of a person having the care and management of a public road or railway, grant a permit to a surveyor or other person to enter and inspect any land the subject of an authority or a mineral claim so as to enable the person to ascertain whether any work carried out on that land:

(a) is encroaching on that road or railway; or

(b) is likely to cause injury or damage to that road or railway or to any building or structure adjacent to that road or railway.

(2) A warden may, on the application of an owner or occupier of land adjoining land the subject of an authority or a mineral claim, grant a permit to a surveyor or other person to enter and inspect that land so as to enable the person to ascertain whether any work carried out on that land is encroaching on the adjoining land.

(3) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:

(a) enter and inspect the land to which the permit relates; and

(b) survey that land or any part of that land; and

(c) make plans and sections of that land or any part of that land and of any buildings, structures or works situated on that land.

Permit to enter Crown land

254. (1) A mining registrar may grant a permit to any person to enter Crown land held under a pastoral lease so as to enable the person to mark out a proposed mineral claim or to comply with the conditions of a mineral claim.

(2) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:

(a) enter the land to which the permit relates; and

(b) do all such things as are reasonably necessary for the purpose of marking out a proposed mineral claim or of complying with the conditions of any mineral claim.

Division 3—Exercise of power of entry

Restriction of power of entry

255. (1) A power conferred by this Act to enter any land, or to do anything on any land, may not be exercised unless the inspector or other person proposing to exercise the power:

(a) is in possession of the relevant certificate of authority or permit; and

(b) gives reasonable notice to the occupier of the land of intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power; and

(c) exercises the power at a reasonable time, unless the power is being exercised in an emergency; and

(d) produces the certificate of authority or permit if required to do so by the occupier of the land; and

(e) uses no more force than is reasonably necessary to effect the entry or to do the thing authorised by the certificate of authority or permit.

(2) If damage is caused by an inspector or other person exercising a power of entry under this Part, the owner of the land (in the case of private land) or the occupier of the land (in the case of Crown land) is entitled to payment from the Crown of a reasonable amount of compensation unless the occupier of the land obstructed, hindered or restricted the inspector or other person in the exercise of the power.

Premises used for dwelling purposes

256. Nothing in this Part enables an inspector or other person to enter any premises or part of premises that are being used as a dwelling otherwise than with the consent of the occupier of the premises or part.

Obstruction

257. A person must not, without reasonable excuse, obstruct, hinder or restrict an inspector or other person in the exercise of the powers conferred on the inspector or other person by this Part.

Maximum penalty: 20 penalty units.

Division 4—Miscellaneous

Conditions of permit

258. A permit is subject to such conditions as are specified in the permit.

Term of permit

259. Unless sooner cancelled, a permit remains in force for such period not exceeding:

(a) except as provided by paragraph (b), 12 months from the date it is granted; or

(b) in the case of a permit to mark out a proposed mineral claim, 14 days from the date it is granted,

as is specified in the permit.

Form of permit

260. A permit must be in the form prescribed by the regulations, must be signed by the person by whom it is granted and must include the following particulars:

(a) a statement to the effect that it has been granted under this Act;

(b) the name of the person to whom it has been granted;

(c) the nature of the powers it confers;

(d) a description of the land over which it is granted;

(e) the conditions to which it is subject;

(f) the period for which it is to have effect.

Cancellation of permit

261. (1) The Minister may, for such reason as the Minister thinks fit, cancel a permit that has been granted by the Minister.

(2) A warden may, for such reason as the warden thinks fit, cancel a permit that has been granted by the warden.

(3) A mining registrar may, for such reason as the mining registrar thinks fit, cancel a permit that has been granted by the mining registrar.

PART 13—COMPENSATION

Division 1—Prospecting and mining

Definition

262. In this Division:

"compensable loss" means loss caused, or likely to be caused, by:

(a) damage to the surface of land, to crops, trees, grasses or other vegetation (including fruit and vegetables) or to buildings, structures or works, being damage which has been caused by or which may arise from prospecting or mining operations; or

(b) deprivation of the possession or of the use of the surface of land or any part of the surface; or

(c) severance of land from other land of the owner or occupier of that land; or

(d) surface rights of way and easements; or

(e) destruction or loss of, or injury to, disturbance of or interference with, stock; or

(f) damage consequential on any matter referred to in paragraph (a)–(e),

but does not include loss that is compensable under the Mine Subsidence Compensation Act 1961.

Compensation arising under exploration licence

263. (1) On the granting of an exploration licence:

(a) the occupier of any Crown land, and the owner and any occupier of any private land, subject to the licence; and

(b) the occupier of any Crown land, and the owner and any occupier of any private land, not subject to the licence,

become entitled to compensation for any compensable loss suffered, or likely to be suffered, by them as a result of the exercise of the rights

conferred by the licence or by an access arrangement in respect of the licence.

(2) The holder of an exploration licence may agree with an owner or occupier as to the amount of compensation payable, but an agreement reached is not valid unless it is in writing, signed by or on behalf of the parties to the agreement, and lodged with the Director-General.

(3) Such of the provisions of an access arrangement (whether or not in writing) as relate to compensation have effect as an agreement for the purposes of this section.

(4) Payment of compensation under this section (other than compensation payable under an access arrangement agreed on as referred to in section 140 (a)) is taken, for the purposes of any security given by the licensee, to be an obligation under the licence.

Compensation arising under assessment lease

264. (1) On the granting of an assessment lease:

(a) the occupier of any Crown land, and the owner and any occupier of any private land, subject to the lease; and

(b) the occupier of any Crown land, and the owner and any occupier of any private land, not subject to the lease,

become entitled to compensation for any compensable loss suffered, or likely to be suffered, by them as a result of the exercise of the rights conferred by the lease or by an access arrangement in respect of the lease.

(2) The holder of an assessment lease may agree with an owner or occupier as to the amount of compensation payable, but an agreement reached is not valid unless it is in writing, signed by or on behalf of the parties to the agreement, and lodged with the Director-General.

(3) Such of the provisions of an access arrangement (whether or not in writing) as relate to compensation have effect as an agreement for the purposes of this section.

(4) Payment of compensation under this section (other than compensation payable under an access arrangement agreed on as referred to in section 140 (a)) is taken, for the purposes of any security given by the lessee, to be an obligation under the lease.

Compensation arising under mining lease

265. (1) On the granting of a mining lease:

(a) the occupier of any Crown land, and the owner and any occupier of any private land, subject to the lease; and

(b) the owner and occupier of any private land, and any occupier of any Crown land, not subject to the lease,

become entitled to compensation for any compensable loss suffered, or likely to be suffered, by them as a result of the exercise of the rights conferred by the lease.

(2) The holder of a mining lease may agree with an owner or occupier as to the amount of compensation payable, but an agreement reached is not valid unless it is in writing, signed by or on behalf of the parties to the agreement, and lodged with the Director-General.

(3) If a valid agreement is not entered into under this section within such period as may be prescribed by the regulations, the holder of a mining lease, or an owner or occupier of land, may apply to a warden to assess the amount of compensation payable, and a warden is to assess the compensation payable.

(4) The holder of a mining lease is not authorised to exercise any rights under the lease on the surface of any part of the mining area unless the amount of any compensation payable to an owner or occupier under subsection (1) (a) in respect of that part of the mining area is the subject of a valid agreement or of an assessment made by a warden.

Compensation arising under mineral claim

266. **(1)** On the granting of a mineral claim:

(a) the owner and occupier of any land over which the claim is registered; and

(b) the owner and any occupier of any other land,

become entitled to compensation for any compensable loss suffered, or likely to be suffered, by them as a result of the exercise of the rights conferred by the claim.

(2) The amount of the compensation payable under this section is such amount:

(a) as may be determined by agreement between the holder of the mineral claim and the owner or occupier, or owner and occupier, concerned; or

(b) if no such agreement is made, as may be assessed by a warden.

(3) The holder of a mineral claim must, before exercising any right conferred by the claim:

(a) serve notice of the holder's intention to exercise the right on any person entitled to compensation under this section; and

(b) pay the amount of compensation payable under this section into a warden's court or to any person so entitled.

Compensation arising under opal prospecting licence

267. (1) On the issue of an opal prospecting licence:

(a) the occupier of any Crown land within the opal prospecting block to which the licence relates; and

(b) the owner and any occupier of any private land, and the occupier of any other Crown land,

become entitled to compensation from the holder of the licence for any compensable loss that they suffer, or are likely to suffer, as a result of the exercise of the rights conferred by the licence.

(2) The amount of the compensation payable under this section is such amount:

(a) as may be determined by agreement between the holder of the opal prospecting licence and the owner or occupier, or owner and occupier, concerned; or

(b) if no such agreement is made, as may be assessed by a warden.

(3) The holder of an opal prospecting licence must, before exercising any right conferred by the licence:

(a) serve notice of the holder's intention to exercise the right on any person entitled to compensation under this section; and

(b) pay the amount of compensation payable under this section into a warden's court or to any person so entitled.

Compensation payable on transfer of certain authorities etc.

268. If an authority or mineral claim over private land is transferred from a person who is an owner or occupier of the land to a person who is not an owner or occupier of the land, the provisions of this Act relating to compensation apply to the person to whom the authority or claim is transferred.

Division 2—Environmental assessment

Definitions

269. In this Division:

"compensable loss" means loss caused, or likely to be caused, by:

(a) interference with the use of land; or

(b) damage to land, to any crops, trees, grasses or other vegetation on the land or to any buildings, structures and works on the land; or

(c) damage consequential on any matter referred to in paragraph (a) or (b),

but does not include loss that is compensable under the Mine Subsidence Compensation Act 1961;

"environmental assessment permit" means a permit granted under section 252.

Compensation arising under environmental assessment permit

270. (1) If the holder of an environmental assessment permit enters any land under the authority of the permit:

(a) in the case of Crown land—the Crown and any occupier of the land; and

(b) in the case of private land—the owner and occupier of the land,

become entitled to compensation from the holder of the permit for any compensable loss they suffer as a result of the exercise of the rights conferred by the permit.

(2) The amount of compensation payable under this section is such amount as may be assessed by a warden on the application of the holder of the environmental assessment permit, the Crown or the owner or occupier concerned.

(3) Nothing in this section affects any remedy available to any person whose lands are entered pursuant to a power conferred by or under Part 12.

Division 3—Procedure for assessing compensation

Definitions

271. In this Division:

"authorisation" means an exploration licence, assessment lease, mining lease, mineral claim, opal prospecting licence or environmental assessment permit;

"compensable loss", in relation to the assessment of compensation payable under Division 1 or 2, has the same meaning as it has in that Division.

Assessment of compensation

272. The assessment of compensation payable under this Part:

(a) must be made in the manner prescribed by the regulations; and

(b) must not be made until notice in the approved form:

(i) has been published in a newspaper circulating generally in the State and in one or more newspapers circulating in the locality in which the land concerned is situated; or

(ii) has been served on each person who appears to a warden to be interested in the assessment; and

(c) must not exceed in amount the market value (for other than mining purposes) of the land and the buildings, structures and works situated on the land.

Payment into court

273. The total amount of compensation assessed under this Division is to be paid into a warden's court at such times, and in respect of such periods, as is specified in the order of assessment.

Payment out of court

274. **(1)** As compensable loss occurs, money held in a warden's court by way of compensation is to be paid out of a warden's court, on the application of any person entitled to the compensation, in accordance with the agreement or order under which it is payable.

(2) If, after the expiration of 6 months, and before the expiration of 12 months, from the date on which the authorisation concerned ceases to have effect, the whole or any part of an amount paid into court under this section has neither been paid out nor ordered to be paid out, the person who paid the amount into court may apply to a warden for payment out to that person of the whole or any part of that amount, and a warden may order the payment to be made.

(3) If, after the expiration of 12 months from the date on which the authorisation concerned ceases to have effect, the whole or any part of an amount paid into court under this section has neither been paid out nor ordered to be paid out, a warden may cause the whole or any part of that amount to be paid into the Treasury for payment into the Consolidated Fund.

Procedure of court in making assessment

275. In making an assessment of compensation under this Division, a warden:

(a) may make the assessment at any time and at any place; and

(b) may make the assessment in the absence of any person who appears to be interested in the assessment, if the warden is satisfied that the person has been served with a notice in accordance with this Part; and

(c) may adjourn the hearing of the matter to any time and any place, subject to such terms as to costs or otherwise as the warden thinks fit; and

(d) has and may exercise the powers of a warden's court.

Additional assessment

276. (1) If, after an assessment of compensation has been made, it is proved to the satisfaction of a warden:

(a) that the whole of the amount paid into court under this Part has been duly paid out; and

(b) that further compensable loss has been caused, or is likely to be caused, in respect of the land to which the assessment relates, or to other land,

the warden must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.

(2) If it is proved to the satisfaction of a warden:

(a) that an access arrangement does not make provision for or with respect to compensation; and

(b) that compensable loss has been caused, or is likely to be caused, in respect of the land to which the arrangement relates,

the warden must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.

(3) If it is proved to the satisfaction of a warden:

(a) that the whole of the amount assessed by or in accordance with an access arrangement determined by an arbitrator as referred to in section 140 (b) has been paid in accordance with the arrangement; and

(b) that further compensable loss has been caused, or is likely to be caused, in respect of the land to which the assessment relates or to other land,

the warden must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.

(4) A warden's decision on such an application has effect as an assessment of compensation under this Division.

(5) In making an assessment of compensation, a warden must have regard to any agreement between the parties concerned as to the compensation payable.

Directions to furnish names and addresses

277. (1) If a warden considers that the owner or occupier of any land may be entitled to compensation under this Part, the warden may, by instrument in writing served on the holder of the authorisation concerned, direct the holder to notify the warden of the name and address of the owner or occupier of the land.

(2) An instrument served under this section must specify a date on or before which compliance with the direction contained in the instrument is required.

Appeals

278. The provisions of Divisions 3 and 4 of Part 15 apply to and in respect of an assessment made by a warden under this Part, and to and in respect of a person dissatisfied with such an assessment, as if the assessment were a decision of a warden's court and the person were a party to a complaint or proceeding dissatisfied with the decision.

Division 4—Consolidated mining leases

Compensation not payable on consolidation

279. (1) Compensation is not payable under this Part in respect of the grant of a consolidated mining lease.

(2) Any compensation to which a person is entitled under this Part in respect of the grant of an existing lease that is consolidated under Part 6 is to be assessed or agreed on and paid as if the existing lease had not been consolidated.

Compensation already due not affected by consolidation

280. (1) Except as provided by this Division, any compensation assessed, agreed on or paid under this Part in respect of an existing lease

that is consolidated under Part 6 is not affected by the consolidation of the existing lease and is to be dealt with as if the existing lease had not been consolidated.

(2) If any compensation is paid into court under this Part in respect of an existing lease that is consolidated under Part 6, the date on which the existing lease ceases to have effect is taken, for the purposes of this Part, to be the date on which the consolidated mining lease ceases to have effect.

Compensation for further loss

281. (1) If:

(a) compensation has been assessed or agreed on under this Part in respect of an existing lease that is consolidated under Part 6; and

(b) the date of expiry of the consolidated mining lease is later than the date on which the existing lease would have expired if it had not been consolidated; and

(c) it is proved to the satisfaction of a warden that:

(i) further loss has been caused in respect of the land to which the assessment or agreement related, or in respect of other land, after the date on which the existing lease would have so expired, being compensable loss within the meaning of Division 1; and

(ii) in the case of an assessment, the whole of the amount paid into court pursuant to this Part has been duly paid out,

a warden is to assess the loss in accordance with Division 3 and order that the amount so assessed be paid by the holder of the consolidated mining lease to which the assessment relates, within the time and to the persons specified in the order.

(2) The provisions of section 276 have effect with respect to a consolidated mining lease even though the assessment referred to in that section relates to an existing lease that has been consolidated under Part 6.

PART 14—ROYALTY

Division 1—Publicly owned minerals

Liability to pay royalty

282. (1) The holder of a mining lease is liable to pay royalty to the Minister on publicly owned minerals recovered under the lease.

(2) Royalty that is payable to the Minister under a condition of a mining lease (being a condition of the kind referred to in section 70 (4)) is payable in addition to, and not instead of, royalty payable under this Division.

Rate of royalty

283. (1) Royalty on a publicly owned mineral is payable under this Division:

(a) at the base rate prescribed by the regulations in respect of that mineral; and

(b) if the regulations so provide—at the additional rate prescribed by the regulations in respect of that mineral.

(2) Royalty under this Division is payable on a publicly owned mineral at the rate or rates applicable as at the time the material from which it is recovered is extracted from the land.

(3) A rate of royalty prescribed for the purposes of this Division may be prescribed:

(a) as a percentage of the value of minerals recovered from the land; or

(b) as an amount payable on the basis of any specified measurement of minerals recovered from the land; or

(c) by reference to such other matters as the Minister determines.

(4) The quantity of minerals recovered is to be calculated (whether by volume or by weight) in the manner prescribed by the regulations.

(5) The value of minerals recovered is to be calculated (whether by volume or by weight) in the manner determined by the Minister.

Division 2—Privately owned minerals

Liability to pay royalty

284. (1) The holder of a mining lease is liable to pay royalty to the Minister on privately owned minerals recovered from the land as if those minerals were publicly owned minerals.

(2) If royalty (including any interest on royalty) is paid to or recovered by the Minister in respect of a privately owned mineral, the Minister is to pay:

(a) seven-eighths of the amount so paid or recovered to the owner of the mineral; and

(b) one-eighth of the amount so paid or recovered to the Treasurer for payment into the Consolidated Fund.

Rate of royalty

285. Royalty is payable under this Division:

(a) except as provided by paragraph (b)—at the base rate prescribed under section 283 (1) (a) in respect of the mineral concerned; or

(b) in the case of a mineral other than coal—at such other rate as may be agreed on between the holder of the mineral claim or authority concerned and the owner of the mineral.

Division 3—Petroleum

Royalty payable on petroleum recovered under mining lease for coal

286. (1) The holder of a mining lease for coal who recovers petroleum from a mining area by virtue of the fact that, under section 78, petroleum is included in the lease is liable to pay royalty to the Minister on the petroleum recovered.

(2) The amount payable as royalty under this Division in respect of petroleum is the rate prescribed for the purposes of this Division by or under the Petroleum Act 1955.

(3) Royalty under this Division is payable on petroleum at the rate or rates applicable as at the time the petroleum is recovered from the land.

Division 4—Miscellaneous

Exemption from royalty

287. (1) If the Minister, on application by the holder of a mining lease, is satisfied that the value of publicly owned minerals recovered as a result of mining operations carried on during a royalty period was less than the appropriate amount, no royalty is payable to the Minister under this Act in respect of those minerals.

(2) In this section:

"appropriate amount", in relation to a royalty period, means:

(a) if the royalty period is 12 months—$2,000; and

(b) if the royalty period is less than 12 months—such amount as bears to $2,000 the same proportion as the number of days in the royalty period bears to 365;

"mining operations" means mining operations carried on:

(a) on a parcel of land subject to a mining lease held by a person who is not the holder of any other mining lease; or

(b) on 2 or more parcels of land subject to 2 or more mining leases, if the holder of each parcel is the same person and if each parcel adjoins the other or another of those parcels;

"royalty period", in relation to a mineral recovered by a person under a mining lease, means:

(a) the period commencing on the day on which the person first became entitled, under the mining lease, to mine the mineral, and ending on the last day of the first period in respect of which the person is required by this Act to pay royalty in respect of the mineral; or

(b) the period commencing on the day after the last day of any period in respect of which the person is required by this Act to pay royalty in respect of the mineral and ending on the last day of the next such period; or

(c) if, during a period referred to in paragraph (b), the person ceases to be entitled to mine the mineral on the land the subject of the mining lease—the period commencing on the day after the last day of the previous royalty period and ending on the day on which the person ceases to be so entitled.

Trust fund etc.

288. The Minister may, by written notice served on the holder of a mining lease, require that person:

(a) to establish a trust fund, in the manner specified in the notice, and to pay into the trust fund (at the time or times so specified) a specified proportion of the money accruing from the sale of minerals (being a proportion that will, in the opinion of the Minister, be sufficient to meet the royalty payable to the Minister under this Act in respect of those minerals); or

(b) to lodge with the Director-General (within such time as is specified in the notice) security, in such amount and in such form as is so specified, for the performance of that person's obligations in respect of the payment of royalty,

and the holder of the mining lease must comply with any such requirement.

Returns

289. (1) The holder of a mining lease is to furnish to the Minister returns in such form, at such intervals, in respect of such periods and containing such information, as may be prescribed by the regulations.

(2) The Minister may authorise the holder of a mining lease to furnish to the Minister returns in a different form, at different intervals or in respect of different periods from the form, intervals or periods so prescribed.

(3) A person must not:

(a) refuse or fail to comply with a requirement under this section to the extent to which the person is capable of complying with it; or

(b) in purported compliance with such a requirement, furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 50 penalty units.

Minister may require information to be furnished etc.

290. (1) The Minister may cause to be served on any person (being a person whom the Minister has reason to believe is capable of giving information or producing or making available books or documents relating to minerals recovered or the value of minerals recovered) written notice requiring the person:

(a) to furnish to the Minister in writing, within the period and in the manner specified in the notice, any such information; or

(b) to attend before the Minister, or before a person specified in the notice, at a time and place so specified, in order to answer questions relating to minerals recovered or the value of minerals recovered; or

(c) to produce to a person specified in the notice, at a time and place so specified, books or documents in that person's custody or control relating to minerals recovered or the value of minerals recovered.

(2) A person is not excused from furnishing information, answering a question or producing books or documents when required to do so merely because the information so furnished, the answer to the question or the production of the books or documents, might tend to incriminate the person.

(3) However, the information, answer, books or documents are not admissible in evidence against the person in proceedings other than proceedings for an offence against this section.

(4) A person to whom books or documents are produced pursuant to a requirement under this section may make copies of, or take extracts from, the books or documents.

(5) A person must not:

(a) refuse or fail to comply with a requirement under this section to the extent to which the person is capable of complying with it; or

(b) in purported compliance with such a requirement, furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 50 penalty units.

Payment of royalty

291. **(1)** Royalty payable to the Minister under this Act is payable:

(a) except in so far as a determination under paragraph (b) has effect—at such times, and in respect of such periods, as may be specified in or determined in accordance with the regulations; or

(b) on demand by the Minister in respect of such periods as the Minister determines.

(2) If an amount of royalty payable to the Minister is not paid:

(a) by the time that it becomes payable in accordance with the regulations; or

(b) within 28 days of the demand for its payment,

interest is, if the Minister so directs, to be added to the amount due at such rate as the Minister determines.

(3) The regulations may make provision for or with respect to the manner in which royalty payable to the Minister under this Act is to be paid and, in particular, may require that payment of any royalty referred to in the regulations is to accompany a return made under this Part.

Recovery of royalty

292. **(1)** Royalty, and any interest on the royalty, payable to the Minister under this Act are debts due to the Crown and are recoverable in a court of competent jurisdiction.

(2) A certificate that is signed by the Minister and that states that on a date, or during a period, specified in the certificate, an amount of royalty or interest so specified was payable to the Minister under this Act by a person so specified is admissible in evidence in all courts and is evidence of the fact or facts so certified.

PART 15—WARDENS AND WARDENS' COURTS

Division 1—Appointment of wardens and establishment of wardens' courts

Appointment of chief warden and wardens

293. (1) The Governor may appoint a chief warden and such other wardens as may be necessary for the administration of this Act.

(2) A person may not be appointed as chief warden or warden unless the person is a Magistrate.

(3) Each warden is a warden for the whole State.

Establishment of wardens' courts

294. (1) The Governor may, by order published in the Gazette, establish wardens' courts which may be held at such places as the Governor may from time to time appoint.

(2) A warden's court is a court of record.

(3) A warden's court is constituted by a warden sitting alone.

Mining registrars to be registrars of wardens' courts

295. The mining registrar for a mining division is to be the registrar of any warden's court established within the division.

Jurisdiction of wardens' courts

296. A warden's court has jurisdiction to hear and determine proceedings relating to any of the following matters:

(a) the area, dimensions or boundaries of land subject to an authority or mineral claim;

(b) the right to the possession or occupation of any land by virtue of an authority or mineral claim;

(c) the right to the use and enjoyment of water for prospecting or mining and any dispute or question relating to such a right;

(d) trespass or encroachment on, or injury to, land subject to an authority or mineral claim, or interference with, or injury to, any mining improvement;

(e) any demand for debt or damages arising out of prospecting or mining; or

(f) any demand for specific performance of any contract relating to any authority or mineral claim;

(g) the right to any mineral in, or to be recovered from, any land subject to an authority or mineral claim, and the rights under, or arising out of, any contract relating to any such mineral;

(h) any transfer or disposition of, or charge on, land subject to an authority or mineral claim;

(i) matters concerning:

(i) any partnership relating to an authority or mineral claim, or to prospecting or mining; or

(ii) the existence, formation and dissolution of any such partnership; or

(iii) the taking of accounts in connection with any such partnership; or

(iv) the contributions of the partners as between themselves; or

(v) the determination of questions arising between the partners;

(j) contributions by or between persons holding joint or several interests in an authority or mineral claim towards rent or other expenses in relation to the authority or claim;

(k) trespass or encroachment on, or injury to, land as a result of prospecting or mining;

(l) trespass or encroachment on, injury to or any matter affecting, roads, railways or other property of whatever kind constructed, held or occupied under this Act;

(m) the partition, sale, disposal or division of any mining improvements, or the proceeds of the sale of any mining improvements, held by 2 or more persons;

(n) any question or dispute arising as to the working or management of land subject to an authority or mineral claim;

(o) all rights claimed in, under or in relation to an authority or mineral claim or purported authority or mineral claim;

(p) any question or dispute as to the validity of the granting of an authority or mineral claim;

(q) any question or dispute in connection with a consolidated mining lease arising under section 109, including any question or dispute concerning the rights and obligations conferred or imposed by an interest referred to in that section or the priority of any such interest;

(r) any question or dispute in connection with an interest (whether legal or equitable) in, or affecting, an authority or mineral claim;

(s) any question or dispute in connection with an assessment or agreement in respect of compensation under Part 13, arising because of the transfer of an authority or mineral claim or of part of such an authority or claim;

(t) the review of an arbitrator's determination under Division 2 of Part 8;

(u) any question or dispute as to the provisions of an access arrangement or as to any matter arising as a consequence of such an arrangement.

Decisions etc. of wardens' courts bind parties

297. A decision or order of a warden's court is, subject to this Act, binding on the parties.

Division 2—Practice and procedure in wardens' courts

Signing of process etc.

298. (1) Any summons, subpoena, order, warrant or other process issued out of a warden's court must be signed by a warden or by the registrar of the warden's court.

(2) A warden or registrar may issue a summons, subpoena, order, warrant or other process returnable before any warden's court.

(3) Any such summons, subpoena, order, warrant or other process has effect throughout the State.

Time for holding warden's court

299. A warden's court may be held before a warden at such times as the warden may, from time to time, appoint.

Register to be kept

300. (1) The registrar of a warden's court must cause to be kept in respect of the court a register, in the form prescribed by the rules:

(a) of the particulars of each complaint and application made to the court under this Act; and

(b) of each decision and order made by the court in relation to each such complaint and application; and

(c) of such further particulars as may be prescribed by the rules.

(2) A copy of an entry in the register of a warden's court of any decision or order of the court must, on demand, be furnished to any party to the complaint or application to which the entry relates.

(3) A document purporting to be a copy of an entry in the register of a warden's court, and certified by a warden or registrar to be a true copy of that entry, is admissible in all courts and is conclusive evidence that the decision or order to which the document relates was made.

Commencement of proceedings by summons

301. **(1)** Proceedings on the hearing of a complaint must be commenced by a summons which, on payment of the fee prescribed by the rules, is to be issued by a warden or by the registrar of a warden's court to the complainant on the complainant's application.

(2) A summons:

(a) must state concisely the facts constituting the complaint to which it relates and, if money is claimed, the amount of the claim; and

(b) must state a day for the appearance of the defendant before the warden's court; and

(c) must be in the form and contain the particulars prescribed by the rules.

(3) A summons must be served on the defendant either personally or by leaving the summons at that person's last known address with any person apparently of or above the age of 16 years.

(4) If it appears to a warden sitting in chambers that any defendant cannot after diligent inquiry be found, or cannot for any cause after reasonable effort be served with the summons in accordance with subsection (3), the warden:

(a) may order that service of the summons, in such manner as the warden may direct, be taken to be good service on the defendant; and

(b) may, if necessary, postpone the hearing to allow service to be effected in the manner specified in the order.

(5) Service of the summons in the manner specified in such an order is taken to be good service for all purposes.

Complaint may be heard without summons

302. **(1)** If all of the parties to a complaint consent in writing, a warden may hear and determine the complaint summarily in the presence of the parties and without requiring formal proceedings to be taken in a warden's court.

(2) A determination made by a warden under subsection (1) is final.

(3) If one or more, but not all, of the parties to a complaint consent in writing and the warden is satisfied that the other parties to the complaint are aware:

(a) of the nature of the complaint; and

(b) of the time and place at which the complaint is to be heard,

the warden may hear and determine the complaint summarily in the presence of the consenting parties and without requiring formal proceedings to be taken in a warden's court.

(4) A determination made by a warden under subsection (3) is taken to be a determination of a warden's court.

(5) A written consent referred to in subsection (1) or (3) must be signed by the party or parties consenting.

(6) For the purpose of hearing and determining a complaint under this section, a warden has and may exercise all the functions of a warden's court.

Warden to hear and determine complaint

303. **(1)** On the day stated in the summons, or on the day to which hearing of the complaint may have been adjourned, the warden's court hearing the complaint may require proof of the service of the summons on such of the parties to the complaint as have not appeared.

(2) In the absence of any of the parties to the complaint who, having been duly served with a summons, do not appear, but in the presence of all of the other parties (or of such of them as appear to the court sufficiently to represent all of the other parties) the warden's court hearing the complaint is to hear and determine the complaint in a summary manner.

Right of appearance

304. A party to proceedings before a warden's court is entitled to appear and be heard personally, or by a solicitor or barrister, or, if the court permits, by an agent.

Complaint not to be dismissed for informality

305. **(1)** A complaint may not be dismissed:

(a) for informality in the summons or in the entry of the summons; or

(b) for a defect or misnomer or inaccurate description of a person or place; or

(c) on the ground that the complainant appears to be entitled to relief differing from that claimed in the summons; or

(d) on the ground that there is any variance between the summons and the evidence adduced at the hearing on the part of the complainant.

(2) If it appears to a warden's court that, because of any circumstances referred to in subsection (1), a complaint should be amended, the court may make the amendment subject to such terms as to costs, adjournment or otherwise as to the court seems just.

Amendment of proceedings

306. (1) A warden's court may adjourn the hearing of a complaint to any other time or place, and may make any amendments to the proceedings necessary to determine the real issues between the parties, even though the summons to which the complaint relates does not show the substance of the facts constituting the complaint.

(2) If it appears that a person who should have been joined as a defendant has not been so joined, a warden's court may, on the application of the complainant, amend the proceedings so as to include that person as a defendant, and may adjourn the hearing of the complaint so as to enable that person to be served with the summons.

(3) If it appears that a person who should have been joined as a complainant has not been so joined, a warden's court may, with the consent of that person and on the application of any party to the proceedings, amend the proceedings so as to include that person as a complainant.

(4) An amendment under this section may be made subject to such terms as to costs, adjournment or otherwise as to the warden's court seems just.

Registrar of warden's court may adjourn court in absence of warden

307. If, on a day appointed for the holding of a warden's court, or on a day to which the holding of a warden's court has been adjourned, the warden by whom the court is constituted does not attend the court, the registrar of the court may adjourn the court for such time or until such day as the registrar may determine.

Defendant may pay money into court

308. (1) A defendant in proceedings before a warden's court in which money is claimed may, at any time not later than 2 days before the hearing, pay into the court:

(a) the amount claimed, together with the complainant's costs up to the time of the payment; or

(b) such lesser amount as the defendant considers a full satisfaction in respect of the matter complained of.

(2) If such an amount is paid into court, the registrar of the court must give notice to the complainant of the payment and must, on demand, pay the amount so paid to the complainant or to the complainant's legal representative.

(3) In the event that:

(a) the full amount claimed by the complainant, together with costs, is paid into court; or

(b) the lesser amount is accepted by the complainant in full satisfaction of the complainant's claim,

no proceedings may subsequently be brought in any court in respect of that claim.

(4) In the event that:

(a) a lesser amount is paid into court; and

(b) the complainant elects to proceed and not to accept the lesser amount; and

(c) the complainant fails to recover any amount in respect of the complainant's claim additional to the lesser amount,

the warden may order the complainant to pay such of the defendant's costs as are incurred after the date of the payment into court.

Instalments may be ordered

309. If a warden's court makes an order for the payment of money, the court may order that the amount be paid at such times and in such instalments as the court may specify in the order.

Complaints for injury to property etc.

310. (1) On the hearing of a complaint for the recovery of possession of, or for an encroachment or trespass on, or for an unlawful interference with or injury to, any land, mining improvement or water, or any share or interest in any land, mining improvement or water, a warden's court may determine the boundaries of that land or the quantity of water to be taken by any party to the complaint.

(2) If the decision of the warden's court is in favour of the complainant, the court must determine whether any sum in the nature of mesne profits or damages should be paid to the complainant by the defendant (and, if so, what sum) and may also order that:

(a) possession of anything sued for be delivered to the complainant; or

(b) the complainant be put into possession of the land or mining improvement; or

(c) any defendant or servant of the defendant, or any building, fixture, implement, matter or thing, be removed from the land or mining improvement; or

(d) any defendant be restrained from using the water.

(3) If the warden's court finds that the complainant has wrongfully encroached or trespassed on, or interfered with, any land, mining improvement or water in respect of which the proceedings were brought, the court may grant to the defendant against the complainant the same relief as the court is empowered to grant to a successful complainant.

(4) If, in any proceedings before a warden's court in respect of the right to divert any water or to remove a mining improvement, the decision of the court is in favour of the complainant, the court:

(a) may declare the complainant to be entitled to divert the water or remove the mining improvement; and

(b) may make an order restraining the defendant from interfering with or preventing the diversion or removal.

Warden may order deposit of mineral etc.

311. **(1)** On application by summons by any party to proceedings in a warden's court, the court may order any other party to the proceedings to deposit, pending its decision, any earth, mineral, money or chattels:

(a) the right to which will, in the opinion of the court, be put in issue in the course of those proceedings; and

(b) which may then be in, or at any time before the termination of the proceedings may come into, the possession or control of that other party.

(2) Such an order must specify the thing to be so deposited and must direct the deposit to be made, at or before a time specified in the order, with a person or at a place so specified, either in the name of the warden or in the name of some other person so specified.

(3) Except where such an order is claimed in the summons referred to in subsection (1), an order under this section must not be made except after 12 hours' notice served by the applicant for the order on the other parties to the proceedings, or on such of them as appear to the warden sufficiently to represent those other parties.

(4) A person against whom an order under this section has been made must not fail to comply with the order.

Maximum penalty: 20 penalty units.

Warden may grant injunction

312. (1) If an application is made to a warden's court by a person claiming to hold a legal or equitable interest in any land subject to an authority or mineral claim, or in any property, the court may, on such terms as to costs or otherwise as it may consider just, grant an injunction restraining any specified person:

(a) from encroaching on, occupying, using or working the land or property; or

(b) from seeking, washing out, extracting or removing any earth or minerals from the land; or

(c) from selling or disposing of or otherwise interfering with the property; or

(d) from doing any act that may affect the interest concerned in the whole, or any part, of the land or property.

(2) An injunction remains in force for the period specified in the injunction, unless it is sooner discharged.

(3) An injunction may be applied for:

(a) on summons claiming an injunction, with or without other relief; or

(b) on application for an injunction.

(4) Notice of an application for an injunction must be served on the persons, and within the period, prescribed by the rules.

(5) The rules of procedure governing the hearing of a summons also govern the hearing of an application for an injunction.

Granting of injunctions in cases of urgency

313. (1) If an applicant for an injunction satisfies a warden's court that there are urgent reasons for granting the injunction, the warden may, in any case in which the warden might otherwise grant an injunction, grant an injunction to have effect for a period of not more than one month (including the day on which the injunction is made) without the requirement of a summons or service of notice of the application.

(2) The warden may not grant a continuance of an injunction granted under this section, and may not grant a further injunction under this section, but application for a further injunction may be made under section 312, either during or after the period of the injunction granted under this section.

(3) An application for an injunction under this section may be heard by a warden at any warden's court.

Orders protecting adjacent authorities and mineral claims

314. (1) The holder of an authority or mineral claim over land which is adjacent to:

(a) land that is the subject of an injunction; or

(b) land on which is located property that is the subject of an injunction,

may apply to the warden by whom the injunction was granted for an order permitting the land or property under injunction to be worked so as to prevent or minimise damage to or depreciation of the land over which the authority or mineral claim is held.

(2) A warden to whom such an application is made:

(a) may order, on such terms as the warden thinks fit, such working of that land or property as in the warden's opinion will be sufficient to prevent that damage or depreciation; and

(b) may make such further order as to the cost of that working as the warden considers just.

(3) An order may not be made under this section unless the applicant shows to the satisfaction of the warden that the authority or mineral claim concerned will sustain damage or be materially depreciated in value by reason of the non-working of the land or property under injunction.

Contravention of injunction

315. A person against whom an injunction has been granted must not contravene the injunction.

Maximum penalty: 50 penalty units.

Court may order payment of money or delivery of mineral

316. (1) If any money or mineral is claimed in a warden's court, the court may order the payment of such money or the delivery of such mineral as it may find to be due or deliverable by one party to another.

(2) If such a claim arises out of a mining partnership, adventure or interest, the warden's court may take accounts in respect of that partnership, adventure or interest, to the extent to which it may be necessary to ascertain what money or mineral (if any) is so due by one party to the other, and may make such further order as it considers just.

(3) If a warden's court orders payment of money in respect of any debt, damages, costs or otherwise, the court may make a further order:

(a) that any mineral in the possession, and being the property, of the party directed to make the payment must (to the extent in value of the payment as estimated by the court) be delivered up to the party entitled to the payment; and

(b) that the mineral to that extent be seized and delivered accordingly.

(4) If such a further order is made, the order for payment of money may only be enforced in respect of any balance remaining due after deducting the value of the mineral so delivered to the party entitled to payment.

Costs may be allowed

317. (1) The costs of all proceedings under this Act before a warden (whether in a warden's court or otherwise) are in the discretion of the warden and the amount of such costs may be determined by the warden or taxed, as the warden may direct.

(2) The reference in subsection (1) to costs includes a reference to an arbitrator's costs in relation to a hearing under Division 2 of Part 8.

Form and service of orders

318. (1) An order made by a warden's court must be in the form prescribed by the rules.

(2) An order must, unless the warden's court otherwise directs, be served by delivering a copy to the person to be bound by the order, and by showing to that person at the same time the original order if that person requires to see it.

(3) If a warden's court so directs, it is sufficient service of any order if a copy of the order is published in such newspaper, and within such time, as the court may direct and a copy of the order is affixed in such conspicuous place at or near the property to which the order relates as the court appoints.

Certain orders may be entered as judgments

319. An order for the payment of money made by a warden's court may be entered as a judgment in any court of competent jurisdiction.

Warden may authorise person or officer to perform any prescribed act

320. If a warden's court is empowered or required by this Act to cause any act to be performed, and the mode of performing that act is not expressly provided for, it is lawful for:

(a) any person verbally authorised by the warden constituting the court and in the presence of the warden; or

(b) any police officer or special constable authorised in writing under the hand of the warden,

to perform that act, and all police officers must, if required by the warden, assist the warden, or a person so authorised, to perform that act.

Division 3—Appeals to the District Court

Right to appeal from warden's court to District Court

321. (1) Any person who is aggrieved by a decision of a warden's court may, in accordance with the rules of the District Court, appeal to the District Court against the decision.

(2) An appeal is to be heard by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence available to the warden's court when the original decision was made, may be admitted in proceedings on the appeal.

(3) In hearing an appeal under this section, the District Court has, in addition to its other functions, the functions of a warden's court.

(4) The District Court may, pending its determination of an appeal, make such interlocutory orders (including orders as to costs) as it considers appropriate.

(5) On hearing an appeal the District Court:

(a) may make an order reversing or varying the decision appealed from; or

(b) may make an order dismissing the appeal; or

(c) may make such other order as it considers just,

and may make such further order with respect to the costs of the appeal, and of the proceedings appealed from, as it may think fit.

Appeal stays decision appealed against

322. The making of an appeal operates to stay the effect of the decision against which the appeal is made except to the extent to which the District Court may otherwise order.

Mode of enforcing decision after appeal

323. The decision of the District Court on an appeal is taken to be the decision of the warden's court and may be enforced accordingly.

Right of appeal under Division 4 abandoned

324. A person who appeals to the District Court under this Division in relation to any proceedings is taken to have abandoned the person's right of appeal to the Supreme Court under Division 4 in relation to those proceedings.

Division 4—Appeals to the Supreme Court

Case stated for opinion of Supreme Court

325. (1) A party to any proceedings in a warden's court who is dissatisfied with the determination or direction of the court in point of law may, in accordance with the rules of the Supreme Court, apply in writing to the warden constituting the warden's court to state and sign a case, setting out the facts and grounds of the determination, for the opinion of the Supreme Court.

(2) Before the warden states a case in accordance with subsection (1), the appellant must lodge with the registrar of the warden's court the fees prescribed by the rules, and must give security to the satisfaction of the warden for the due performance of any order which the Supreme Court may make.

(3) If the warden is of the opinion that an application made under this section is merely frivolous, the warden may then, but not otherwise, refuse to state a case.

(4) If the warden refuses to state a case, the warden must, on the request of the appellant, sign and deliver to the appellant a certificate of refusal.

(5) If the warden refuses to state a case, the Supreme Court may, on application by the appellant, order the warden to state the case subject to the appellant's lodging the fees and giving the security referred to in subsection (2).

(6) Within 7 days after receiving the stated case, the appellant:

(a) must serve notice in writing of the application, and a copy of the case (signed by the warden), on the other parties to the proceedings to which the case relates; and

(b) must transmit the case to the Prothonotary of the Supreme Court or to such other officer of the Supreme Court as may be designated by rules of the Supreme Court.

(7) In this section, a reference to an appellant is a reference to a party who makes an application under subsection (1).

Powers of Supreme Court on hearing a stated case

326. (1) On hearing proceedings on a stated case, the Supreme Court:

(a) may reverse, affirm or amend the determination or direction in respect of which the case was stated; or

(b) may remit the matter to the warden with its opinion on the case; or

(c) may make such other order in relation to the matter as it considers just.

(2) The Supreme Court may cause the case to be sent back to the warden for amendment and, in that event, the order of the Court may be made after the case has been so amended.

(3) The Supreme Court may make such order as to costs as it thinks fit.

(4) A warden who has stated a case under this Division is not liable to any costs in respect of the proceedings on the case.

(5) An order made by the Supreme Court under this section is final and binding on the parties.

(6) The practice and procedure in relation to the stating of cases is to be as prescribed by rules of the Supreme Court.

Mode of enforcing decision after appeal

327. The decision of the Supreme Court on a stated case is taken to be the decision of the warden's court and may be enforced accordingly.

Right of appeal under Division 3 abandoned

328. A person who appeals to the Supreme Court under this Division in relation to any proceedings is taken to have abandoned the person's right of appeal to the District Court under Division 3 in relation to those proceedings.

Division 5—Administrative matters

Documents and affidavits may be in writing or print

329. (1) Documents used in proceedings under this Act, or in relation to those proceedings, may be in writing or in print or partly in writing and partly in print.

(2) An affidavit to be used in proceedings under this Act may be sworn before a Judge of the Supreme Court or a commissioner for that Court for taking affidavits, before a Judge of the District Court, before a warden or before a justice.

Contempt of court and penalties

330. (1) If any person:

(a) is guilty of contempt in the face of a warden's court or of a warden exercising the functions of a warden's court; or

(b) on being summoned, or examined as a witness, in a suit or proceeding in a warden's court, refuses to be sworn or to answer any lawful question or is guilty of wilful prevarication,

the warden's court or warden may, by order, commit that person to prison for any time not exceeding 10 days or impose on that person a penalty not exceeding 5 penalty units.

(2) If the person is in default of payment of the fine, the warden's court or warden may commit the person to prison for any time not exceeding 10 days unless the fine is sooner paid.

(3) For the purpose of enforcing any such order of commitment, the warden's court or warden may issue a warrant in the form prescribed by the rules.

(4) Such a warrant is good and valid in law without any other order, summons or adjudication whatever, and the bailiff or gaoler to whom the warrant is addressed must obey that warrant.

Interpleader

331. (1) If a claim is made:

(a) in respect of goods taken in execution under process issued out of the District Court or a warden's court; or

(b) in respect of the proceeds or value of such goods,

by a person who is not the party against whom the process has issued, the Registrar of the District Court or a warden may, on application of the person charged with the execution of the process, issue a summons calling the person issuing the process and the person making the claim to appear before the District Court or the warden's court.

(2) If a summons has been so issued, any action which may have been brought in the Supreme Court or in the District Court in respect of the claim is stayed, and the court in which the action has been brought:

(a) on proof of the issue of the summons; and

(b) on proof that the goods were so taken in execution,

may order the person bringing the action to pay the costs of all proceedings had on the action after the service on that person of the summons.

(3) On the return of the summons, the District Court or warden's court must determine the claim and make such order between the parties, in respect of the claim and the costs of the proceedings, as it considers just.

(4) Any order so made may be enforced in the same way as any other order made in proceedings before the District Court or a warden's court and the determination and order are final.

Division 6—Rules and practice directions

Practice and procedure etc. of wardens' courts

332. The Governor may make rules in relation to the following matters:

(a) the practice and procedure of wardens' courts;

(b) the execution of the process of wardens' courts;

(c) the fees to be allowed for barristers and solicitors practising in wardens' courts;

(d) the expenses to be paid to witnesses in proceedings before wardens' courts;

(e) the forms to be used for matters or proceedings in wardens' courts;

(f) the forms to be used for the keeping of books, entries and accounts by the registrars of wardens' courts.

Chief warden may issue practice directions

333. The chief warden may issue practice directions, not inconsistent with this Act or the rules made under this Division, for or with respect to the practice and procedure of wardens' courts.

Division 7—Other functions of wardens

Inquiries generally

334. (1) The Minister may direct a warden to hold an inquiry into any matter arising under, or connected with, this Act.

(2) If, by or under this Act, a warden is authorised or required to inquire into any matter, the warden may for that purpose hold an inquiry into that matter and into all reasonably incidental matters.

Mining registrar may request inquiry by warden

335. (1) A mining registrar may refer to a warden for inquiry the question of whether Division 3 of Part 9 has been contravened by the granting of a mineral claim.

(2) After the conclusion of the inquiry, the warden is to furnish the mining registrar with a report on the warden's finding.

Procedure on inquiry

336. Any inquiry held by a warden is to be conducted in public and, in holding the inquiry, the warden has and may exercise the functions of a warden's court.

No appeals against a warden's administrative functions

337. No appeal lies from any decision or determination of a warden on an inquiry or in respect of any other function exercised by the warden acting otherwise than as a warden's court.

Division 8—Miscellaneous

Witness neglecting to appear

338. A person must not, without reasonable cause, fail to comply with a summons or subpoena requiring the person to attend as a witness:

(a) at proceedings before a warden's court; or

(b) at any inquiry before a warden,

if the summons or subpoena has been duly served on the person and if the costs of attendance, as fixed by the rules, have been tendered to the person.

Maximum penalty: 5 penalty units.

Disobedience of order

339. A person against whom an order (other than an order for the payment of money) has been made by a warden's court must not fail to comply with the order.

Maximum penalty: 10 penalty units.

Person removed from land not to retake possession etc.

340. A person must not:

(a) after being removed from any land pursuant to an order of a warden's court—attempt to retain or retake possession of that land; or

(b) after a decision by a warden's court that some other person is entitled to use for mining purposes, or to divert, any water—resist that other person or his or her agents in that use or diversion.

Maximum penalty: 10 penalty units.

PART 16—THE GEOLOGICAL AND MINING MUSEUM

Division 1—Preliminary

Definitions

341. In this Part:

"Director" means the Director of the Museum;

"mineral" includes uranium and petroleum;

"Museum" means the Geological and Mining Museum originally established under the Mining Act 1906;

"Trust" means the Geological and Mining Museum Trust constituted under this Part;

"trustee" means a trustee appointed to the Trust.

Division 2—The Geological and Mining Museum Trust

Constitution of the Trust

342. (1) There is constituted by this Act a corporation under the corporate name of the Geological and Mining Museum Trust.

(2) The Trust is to consist of 9 trustees appointed by the Governor on the recommendation of the Minister, at least 4 of whom are to be persons who are, in the opinion of the Minister, knowledgeable and experienced in geology or mineral resource development.

(3) The Director is eligible (if otherwise qualified) to be appointed as a trustee.

(4) Part 1 of Schedule 3 has effect with respect to the trustees.

(5) Part 2 of Schedule 3 has effect with respect to the procedure of the Trust.

Objects of the Trust

343. The objects of the Trust are to control and manage the Museum in a manner which:

(a) stimulates interest in the sciences and technologies related to the development and use of mineral and energy resources; and

(b) increases and disseminates knowledge of the importance of mining, and of mineral and energy resources, to the socio-economic development of Australia; and

(c) promotes the responsible development and use of mineral and energy resources.

Functions of the Trust

344. (1) The Trust has the functions conferred or imposed on it by or under this or any other Act.

(2) The Trust may:

(a) manage and maintain all Trust property and property in the custody of the Trust; and

(b) construct premises to be used for the Museum; and

(c) acquire specimens, equipment, photographic items, historical publications and other items and scientific data relating to the sciences and technologies associated with the mineral and energy industries; and

(d) provide to any person scientific information concerning those sciences and technologies; and

(e) undertake scientific research in those sciences and technologies; and

(f) promote and provide exhibitions, lectures, films, publications and other educational instruction or materials; and

(g) subject to any conditions the Trust imposes, permit the use of any premises used for the Museum in relation to:

(i) activities of an educational or cultural nature; or

(ii) social functions; or

(iii) State occasions; or

(iv) charitable, commercial or other promotional activities; or

(v) the holding of conferences or meetings; and

(h) subject to any conditions the Trust imposes, permit the use of any premises used for the Museum for the taking of photographs, the making of films or sound recordings and the production of television or radio programs or material; and

(i) provide, or allow the provision of, food or other refreshments on any premises used for the Museum and apply for, hold or dispose of any relevant licence, permit or other authority for that purpose; and

(j) engage, or enter into contracts or arrangements with, artists, entertainers, lecturers and performers:

(i) to appear on any premises used for the Museum; or

(ii) in connection with any service provided in pursuance of the objects of the Trust; and

(k) charge and receive fees or other amounts for, or in connection with, entry into any premises used for the Museum or any advice or service provided, any article sold or any permission given by the Trust.

(3) Subject to this Part and the regulations, the Trust has the control and management of the Museum and of all property vested in the Trust.

(4) The fees and other amounts received by the Trust (as referred to in subsection (2) (k)) and any income earned from them are its property.

(5) The Trust has such functions, in addition to those specified in this section, as are reasonably necessary for the achievement of its objects.

(6) In the exercise of its functions the Trust is subject to the control and direction of the Minister.

Division 3—Trust property

Acquisition of property

345. (1) The Trust may agree to any condition that is not inconsistent with its objects being imposed on its acquisition of any property.

(2) The Trust may acquire, by gift or by devise or bequest, any property for the purposes of this Part and the Trust may agree to and carry out the conditions of the gift, devise or bequest.

(3) The rule of law against remoteness of vesting does not apply to any condition to which the Trust has agreed under this section.

(4) If the Trust acquires any property by gift or by devise or bequest, it may retain the property in the form in which it was acquired, subject to any condition to which the Trust has agreed in relation to the property.

(5) The Stamp Duties Act 1920 does not apply to or in respect of any such acquisition of property by the Trust.

Disposal of property

346. (1) In this section:

"condition" means a condition to which the Trust has agreed under section 345.

(2) The Trust may not sell, mortgage or otherwise dispose of any real property, or any property acquired by gift or by devise or bequest, except:

(a) if the property was acquired without any condition—with the approval of the Governor; or

(b) if the property was acquired subject to a condition—in accordance with the condition or subsection (3).

(3) If the Trust determines that any property acquired by the Trust subject to a condition is not required for the purposes of the Trust, the Trust may, with the approval of the Governor and regardless of the condition:

(a) sell the property and retain the proceeds of the sale; or

(b) exchange the property for other property; or

(c) give the property to any recreational, scientific or educational institution or to a Government Department, Administrative Office or public or local authority; or

(d) if the Trust is of the opinion that the property is of no commercial value—dispose of the property without valuable consideration.

Vesting of certain property

347. (1) The Minister may direct, by notice published in the Gazette, that any property that:

(a) is vested in the Crown and subject to the control and direction of the Minister; and

(b) in the opinion of the Minister:

(i) relates to the sciences and technologies associated with the mineral and energy industries; or

(ii) is necessary for the Trust's achievement of its objects,

is to cease to be vested in the Crown and is to vest in the Trust.

(2) If the Minister gives such a direction, the property described in the direction ceases to vest in the Crown and, without any further conveyance or transfer, vests in the Trust.

Division 4—Administration

Staff of the Trust etc.

348. (1) For the purposes of this Part:

(a) a Director of the Museum; and

(b) such other persons as may be necessary to enable the Trust to exercise its functions,

may be employed under Part 2 of the Public Sector Management Act 1988.

(2) The Trust may, with the approval of the Minister, arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a Government Department, an Administrative Office or a public or local authority.

(3) The Trust may engage such consultants as the Trust requires to exercise its functions.

The Director

349. (1) The Director is the chief executive officer of the Trust.

(2) The Director is responsible for the administration and management of the Museum, and of any services provided in connection with it, subject to and in accordance with any directions of the Trust.

(3) The Director has such other functions as are conferred or imposed on the Director by or under this or any other Act.

Committees

350. (1) The Trust may establish committees to assist it in connection with the exercise of any of its functions.

(2) A person may be appointed to be a member of such a committee whether or not the person is a trustee.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is, subject to the regulations, to be as determined by the Trust or (subject to any determination of the Trust) by the committee.

Division 5—Financial provisions

Financial year

351. (1) The financial year of the Trust is the year commencing on 1 July.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

Funds of the Trust

352. (1) The Trust is to establish at a bank in New South Wales an account to be known as the Geological and Mining Museum Trust Account (in this section referred to as **"the Trust Account"**).

(2) The funds of the Trust are to be paid to the credit of the Trust Account and are to consist of:

(a) any money appropriated by Parliament for the purposes of the Trust; and

(b) all money derived by the Trust from admission fees and from fees and other charges imposed for the hire of the Trust's property or any part of it; and

(c) all money derived by the Trust from the sale, leasing, letting or hire or other disposal by the Trust of any property which the Trust has power to sell, lease, let or hire or otherwise dispose of; and

(d) all money received by the Trust as profit arising out of any investment made by it in the exercise of its powers; and

(e) all money borrowed by the Trust; and

(f) all other money received from any source by the Trust.

(3) A payment of money must not be made to the credit of the Trust Account if the payment would be a breach of a condition affecting the money.

(4) The funds of the Trust are to be applied only:

(a) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the Trust in the exercise of its functions; and

(b) in the payment of any remuneration payable under this Part.

Investment powers

353. (1) The Trust has, in respect of the funds held by the Trust, the investment powers conferred on the Trust by Part 3 of the Public Authorities (Financial Arrangements) Act 1987.

(2) If Part 3 of that Act does not confer investment powers on the Trust in respect of any such funds, the Trust may invest those funds:

(a) in any manner authorised for the investment of trust funds; or

(b) in any other manner approved by the Minister with the concurrence of the Treasurer.

Investment common funds

354. (1) The Trust may establish one or more investment common funds.

(2) The Trust may from time to time, without liability for breach of trust, bring into or withdraw from any such investment common fund the whole or any part of trust funds or other funds held by the Trust.

(3) Subject to subsection (4), the Trust must periodically distribute the income of each investment common fund among the funds participating in the common fund, having regard to the extent of the participation of each fund in the common fund during the relevant accounting period.

(4) The Trust may, if it considers it expedient to do so, from time to time add some portion of the income of an investment common fund to the capital of the common fund or use some portion of the income to establish or augment a fund or funds as a provision against capital depreciation or reduction of income.

(5) If an investment is brought into an investment common fund:

(a) the Trust is taken to hold the investment on behalf of and for the benefit of the common fund instead of the participating trust fund or other fund; and

(b) the participating fund is taken to have contributed to the common fund an amount of money equivalent to the value attributed to the investment by the Trust at the time it is brought into the common fund; and

(c) on the withdrawal of the participating fund from the common fund, the amount of money to be withdrawn is to be the amount equivalent to the value attributed by the Trust to the equity in the common fund of the participating fund at the time of withdrawal.

(6) The inclusion in an investment common fund of trust funds does not affect any trust to which those trust funds (or money attributed to them) are subject.

(7) On the withdrawal of trust funds from an investment common fund, the funds (or money attributed to them) continue to be subject to the trust.

Terms of trust to prevail

355. In respect of the trust funds of the Trust:

(a) the investment powers of the Trust; and

(b) the power of the Trust to bring the trust funds into an investment common fund,

are subject to any express direction in or express condition of the trust.

Division 6—Miscellaneous

Reports to Minister

356. The Trust is required, in addition to any other report required by the Annual Reports (Statutory Bodies) Act 1984, to provide the Minister with such reports on the activities of the Trust as the Minister may from time to time direct.

Delegation by Trust and Director

357. (1) The Trust may delegate any function under this Act (other than this power of delegation) to any person.

(2) The Director may sub-delegate to a person any function delegated to the Director by the Trust, if the Director is authorised in writing to do so by the Trust.

Recovery of charges etc. by Trust

358. Any charge, fee or money due to the Trust may be recovered by the Trust as a debt in a court of competent jurisdiction.

PART 17—ADMINISTRATION

Division 1—Administration

Boards of management

359. (1) The Minister may constitute a board of management for the whole or any part of New South Wales.

(2) A board of management may exercise, in respect of the area for which it is constituted, such of the functions of the Minister or of the Director-General as are delegated to it under this Act.

(3) The regulations may provide for the constitution of a board of management and may regulate, or provide for the regulation of, its procedure.

Mining registrars and other staff

360. Mining registrars and such other staff as may be necessary for the purposes of this Act may be employed under Part 2 of the Public Sector Management Act 1988.

Inspectors

361. The Minister may, by instrument in writing, appoint a person to be an inspector for the purposes of this Act.

Exclusion of personal liability

362. No matter or thing done by a body constituted by or under this Act, by a member of any such body or by any person acting under the direction of any such body subjects any such member or person personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of this or any other Act.

Delegation of functions by Minister or Director-General

363. (1) The Minister may delegate any function under this Act (except this power of delegation) to the holder of any office.

(2) The Director-General may delegate any function under this Act (except this power of delegation or any function delegated to the Director-General by the Minister) to the holder of any office.

(3) A reference in this section to a function under this Act includes a reference to a function under a condition of an authority, a mineral claim or an opal prospecting licence.

Minister etc. not to be holder of an authority, mineral claim or opal prospecting licence

364. (1) Neither the Minister nor any person employed in the Department may be the holder of an authority, a mineral claim or an opal prospecting licence.

(2) This section does not prevent the Director-General from being the holder, on behalf of the Crown, of an exploration licence for an allocated mineral in respect of land within a mineral allocation area.

Disclosure of information etc.

365. (1) A person must not disclose any information obtained in connection with the administration or execution of this Act, unless the disclosure is made:

(a) with the consent of the person from whom the information was obtained; or

(b) in connection with the administration or execution of this Act; or

(c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or

(d) for the purposes of any investigation or inquiry conducted by a warden under this Act; or

(e) with the concurrence of the Minister.

(2) A person employed in the Department must not use for the purposes of personal gain any information obtained in connection with the administration or execution of this Act.

Maximum penalty: 50 penalty units.

Division 2—Classification of lands

Mining divisions

366. **(1)** The Governor may, by order published in the Gazette, constitute any land as a mining division and may, by the same or a subsequent order so published, name the division and fix its boundaries.

(2) A mining registrar is to be appointed for each mining division constituted under this section.

Reserves

367. **(1)** The Governor may, by order published in the Gazette, constitute any land as a reserve and may, by the same or a subsequent order so published, name the reserve and fix its boundaries.

(2) The Governor may, by an order under this section, give any one or more of the following directions:

(a) that no exploration licence is to be granted over land in the reserve;

(b) that no assessment lease is to be granted over land in the reserve;

(c) that no mining lease is to be granted over land in the reserve;

(d) that no mineral claim is to be granted over land in the reserve.

(3) In an order constituting land as a reserve, the Governor may stipulate that the reserve is to extend only to the surface of the land, to the surface of the land and the subsoil below the surface, to the surface of the land and the subsoil to a specified depth below the surface, or to the subsoil below or between any specified depth or depths below the surface of the land.

(4) If:

(a) an application for an exploration licence is made or pending in respect of land that is the subject of a direction under subsection (2) (a); or

(b) an application for an assessment lease is made or pending in respect of land that is the subject of a direction under subsection (2) (b); or

(c) an application for a mining lease is made or pending in respect of land that is the subject of a direction under subsection (2) (c); or

(d) an application for a mineral claim is made or pending in respect of land that is the subject of a direction under subsection (2) (d),

the application is a nullity to the extent to which it is made in respect of the land the subject of the direction, but, if the application is also made in respect of other land, the application is taken to have been made in respect of that other land.

Mineral allocation areas

368. (1) The Governor may, by order published in the Gazette, constitute any land as a mineral allocation area and may, by the same or a subsequent order so published, name the area and fix its boundaries.

(2) A mineral allocation area may be constituted for all minerals, for specified minerals or groups of minerals or for all minerals other than specified minerals or groups of minerals.

(3) More than one mineral allocation area may be constituted in respect of any land.

Notification areas

369. (1) The Dams Safety Committee may, by order published in the Gazette in relation to a prescribed dam, declare that the land described in the order, excluding land under the dam, is the notification area for the dam.

(2) A notification area is an area which surrounds a prescribed dam and in relation to which the Dams Safety Committee is required by this Act to be notified of certain proposals to grant assessment leases or mining leases.

Graticulation of the Earth's surface

370. (1) For the purposes of this Act, the surface of the Earth is taken to be divided into graticular sections:

(a) by the meridian of Greenwich and by the meridians that are at a distance from that meridian of 5 minutes, or a multiple of 5 minutes, of longitude; and

(b) by the equator and by parallels of latitude that are at a distance from the equator of 5 minutes, or a multiple of 5 minutes, of latitude,

each graticular section being bounded:

(c) by portions of 2 of those meridians that are at a distance from each other of 5 minutes of longitude; and

(d) by portions of 2 of those parallels of latitude that are at a distance from each other of 5 minutes of latitude.

(2) For the purposes of this Act, each graticular section is taken to be divided into 25 units, each unit being bounded:

(a) by portions of 2 meridians (being the meridian of Greenwich or the meridians that are at a distance from that meridian of 1 minute, or a multiple of 1 minute, of longitude) that are at a distance from each other of 1 minute of longitude; and

(b) by portions of 2 parallels of latitude (being the equator or parallels of latitude that are at a distance from the equator of 1 minute, or a multiple of 1 minute, of latitude) that are at a distance from each other of 1 minute of latitude.

Points etc. to be ascertained by reference to Australian Geodetic Datum

371. **(1)** If, for the purposes of this Act or for the purposes of an order, instrument or notification under 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 a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6,378,160 metres and a flattening of 100/29825 and by reference to the position of the Johnston Geodetic Station in the Northern Territory.

(2) The Johnston Geodetic Station is taken to be situated at 133 degrees, 12 minutes and 30.0771 seconds of East Longitude and at 25 degrees, 56 minutes and 54.5515 seconds of South Latitude and to have ground level of 571.2 metres above the spheroid referred to in subsection (1).

Division 3—Offences

Obstruction of wardens etc.

372. A person must not, without reasonable excuse, obstruct, hinder or resist a warden, a mining registrar, an inspector or any other person in the exercise of a function under this Act.

Maximum penalty: 20 penalty units.

Obstruction etc. of holder of authority etc.

373. A person must not, without reasonable excuse, obstruct or hinder the holder of an authority, a mineral claim or an opal prospecting licence from doing any act which that holder is authorised by this Act to do.

Maximum penalty: 20 penalty units.

False or misleading information etc.

374. A person must not:

(a) in or in connection with an application under this Act; or

(b) in purported compliance with any requirement under this Act,

furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 10 penalty units.

Proceedings for offences

375. (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a warden's court or before a Local Court constituted by a Magistrate sitting alone.

(2) For the purpose of dealing with such an offence, a warden's court has the functions of, and is taken to be, a Local Court.

Offences by corporations

376. (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under subsection (1) whether or not the corporation has been proceeded against or convicted under the provision concerned.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Division 4—Miscellaneous

Museums and laboratories

377. The Minister may establish and maintain in connection with the Department:

(a) museums for the purpose of providing instruction, by means of displays, classes, lectures or other methods, in geology, mineralogy, chemistry and engineering in their scientific and practical application to mining pursuits; and

(b) laboratories for the assaying and testing of mineral products or for other analytical determination.

Purchase of coal bearing land

378. The Minister may, from funds appropriated by Parliament, purchase on behalf of the Crown land containing seams of coal.

PART 18—SUPPLEMENTARY

Saving of royal prerogative

379. Except as expressly provided by this Act, this Act does not affect any prerogative of the Crown in respect of gold mines and silver mines.

Saving of other Acts etc.

380. Except as expressly provided by this Act, this Act does not affect any other Act or law that prohibits, regulates or restricts, or that has the effect of prohibiting, regulating or restricting:

(a) the grant, renewal or transfer of an authority, a mineral claim or an opal prospecting licence; or

(b) the exercise of any right conferred by or under this Act in respect of an authority, a mineral claim or an opal prospecting licence.

Prospecting unaffected by Environmental Planning and Assessment Act 1979

381. If a person is authorised under this Act to prospect on any land:

(a) nothing in, or done under, the Environmental Planning and Assessment Act 1979 or an environmental planning instrument operates so as to prevent the person from carrying on prospecting operations on that land; and

(b) to the extent to which anything in, or done under, that Act or any such instrument would so operate, it is of no effect in relation to the person.

Applications generally

382. **(1)** An application under this Act must be in or to the effect of the approved form.

(2) An application that is required to be lodged with a person must be so lodged in such manner, and during such times, as may be prescribed by the regulations but may, if the regulations so provide, be lodged with some other person.

Service of documents

383. (1) A document that is authorised or required under this Act to be served on any person may be served:

(a) personally or by post; or

(b) by leaving it with a person apparently of or above the age of 16 years at, or by posting it to, the person's place of business or, in the case of a corporation, the registered office of the corporation.

(2) If an owner or occupier of land on whom a document is authorised or required under this Act to be served is absent from the State or cannot, after diligent inquiry, be found, and that person's place of residence or business cannot, after diligent inquiry, be ascertained, the document may be served by affixing it on some conspicuous part of the land.

(3) If under this Act a document is authorised or required to be served on the holder of an authority or a mineral claim and there is more than one such holder, service on any one such holder of the document, together with copies of the document addressed to the other holders, is taken to be service on all of the holders.

(4) If a person has more than one place of business, service may be effected under this section at any of those places.

(5) Nothing in this section prevents service of a document from being effected by facsimile transmission or other electronic means, or by the use of the facilities of a document exchange, but the burden of establishing that service has been so effected lies on the person asserting that fact.

Defence in proceedings for defamation

384. (1) A person has qualified privilege in any proceedings for defamation arising out of an objection lodged under this Act.

(2) This section does not limit any other right, privilege or immunity that a person has as a defendant in any such proceedings.

Payment of compensation

385. Any amount payable under this Act by way of compensation is to be paid out of money appropriated by Parliament.

Recovery of unpaid fees etc.

386. Any fee or charge imposed by or under this Act may be recovered, as a debt, in any court of competent jurisdiction.

Government agencies

387. The Minister may, by order published in the Gazette, designate a corporation established by an Act as a Government agency for the purposes of the definition of "Government agency" in the Dictionary of words and expressions at the end of this Act.

Regulations

388. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to any matter referred to in Schedule 4.

(2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

Repeals

389. (1) The Mining Act 1973 and the Coal Mining Act 1973 are repealed.

(2) The Mining Regulations 1974 and the Coal Mining Regulations 1974 are repealed.

Amendment of other Acts

390. Each Act mentioned in Schedule 5 is amended in the manner set out in that Schedule.

Savings, transitional and other provisions

391. Schedule 6 has effect.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES

(Secs. 41, 52, 63 and 64)

PART 1—ASSESSMENT LEASES

Notification of Government agencies and councils

1. (1) Before granting an assessment lease, the Minister must cause notice of the proposal to be served on:

(a) each Government agency that, in the opinion of the Minister, would be materially affected by the granting of the lease; and

(b) the Director of Planning; and

(c) each council within whose local government area the land the subject of the proposed lease is situated.

(2) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease (on the grounds that the authority concerned has major proposals for some other use of that land) may be made to the Minister on or before the date specified in the notice.

(3) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

Objections to granting of assessment lease

2. (1) A public authority on which a notice under this Division is served may object to the granting of an assessment lease on the grounds that the person or body has major proposals for some other use of the land.

(2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(3) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the applicant for the assessment lease concerned.

Resolution of objections

3. (1) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with any objection under this Part and, if agreement is not reached concerning the acceptance, modification or withdrawal of the objection, the matter is to be referred to the Premier.

(2) If any matter is so referred, the Premier may give such decision as the Premier considers appropriate.

(3) If required by the Premier to do so, the Minister must refer such a matter to a warden for inquiry and report.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

Granting of assessment lease if objection made

4. An assessment lease in respect of which an objection has been duly made may not be granted unless the objection is withdrawn or otherwise resolved or is rejected by the Premier.

PART 2—MINING LEASES

Division 1—Notification of Government agencies

Notification of Government agencies

5. (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be served on each Government agency that, in the opinion of the Minister, would be materially affected by the granting of the lease.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be served on each Government agency that, in the opinion of the Minister, would be materially affected by the granting of the lease.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

Notification of Director of Planning

6. (1) Before granting a mining lease (whether by way of tender or otherwise), the Minister must cause notice of the proposal to be served on the Director of Planning.

(2) Such a notice:

(a) must state that a tender for the lease or an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

(c) must contain a detailed description of the works to be undertaken if the lease is granted, including works and activities relating to:

(i) the preparation of the land for mining; and

(ii) the rehabilitation of the land either during the carrying on of mining operations or after they have ceased; and

(d) must contain a copy of any environmental impact statement that is required by Part 5 of the Environmental Planning and Assessment Act 1979 to be prepared in relation to the tender or application; and

(e) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(3) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

(4) If, before granting a mining lease, the Minister becomes aware that the detailed description contained in a notice served under this clause requires alteration for any reason, the Minister must, before granting the lease, cause notice of the alteration to be served on the Director of Planning.

Notification of Dams Safety Committee

7. (1) Before inviting tenders for a mining lease for coal in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the Dams Safety Committee.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of the lease on grounds relating to the safety of a prescribed dam, or proposals for the inclusion in the lease of any condition relating to the safety of the prescribed dam, may be made to the Minister on or before the date specified in the notice.

(3) Before granting a mining lease for coal (otherwise than by way of tender) in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the Dams Safety Committee.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease on grounds relating to the safety of a prescribed dam, or proposals for the inclusion in the lease of any condition relating to the safety of the prescribed dam, may be made to the Minister on or before the date specified in the notice.

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

Notification of controlling bodies of exempted areas

8. (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be served on the controlling body of each exempted area to which the invitation will relate.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be served on the controlling body of each exempted area over which the lease is sought.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

Objections to granting of mining lease

9. (1) An authority (other than the Dams Safety Committee) on which a notice under this Division is served:

(a) may object to the granting of a mining lease; or

(b) may propose that specified conditions be included in the lease.

(2) The Dams Safety Committee, in respect of land within a notification area:

(a) may object (on grounds relating to the safety of the prescribed dam) to the granting of a mining lease for coal; or

(b) may propose that specified conditions relating to the safety of the prescribed dam be included in the lease.

(3) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(4) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the tenderer or applicant for the mining lease concerned.

(5) If the Minister does not accept the objections or proposals of the Dams Safety Committee, or if the Dams Safety Committee fails to make any proposals or to inform the Minister that it does not propose to make any proposals, the matter must be dealt with in consultation with the Minister administering the Dams Safety Act 1978.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

Resolution of objections

10. (1) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with any objection or proposal made under this Division and, if agreement is not reached concerning the acceptance, modification or withdrawal of the objection or proposal, the matter is to be referred to the Premier.

(2) If any matter is so referred, the Premier may give such decision as the Premier considers appropriate.

(3) If required by the Premier to do so, the Minister must refer such a matter to a warden for inquiry and report.

Granting of mining lease if objection or proposal made

11. (1) If an objection to the granting of a mining lease is duly made:

(a) in the case of an objection to the invitation of tenders—the invitation must not be made; or

(b) in the case of an objection to the granting of a mining lease—the lease must not be granted,

unless the objection is withdrawn or otherwise resolved or is rejected by the Premier.

(2) A mining lease must include:

(a) any condition proposed under this Division (unless the proposal for the inclusion of the condition is withdrawn or is rejected by the Premier) or, if such a condition is modified, the condition as so modified; and

(b) any condition directed by the Premier to be included in the lease.

(3) The failure to include a condition in a mining lease does not affect the validity of the lease, but the Minister may, by instrument in writing, amend the lease so as to include the condition omitted.

(4) The Minister must cause to be served on the holder of a mining lease amended under this clause a written notice setting out details of the amendment.

(5) Such an amendment takes effect on the date on which the notice is served or on such later date as may be specified in the notice.

Division 2—Notification of councils etc. where development consent required for mining

Application of Division

12. This Division applies to land for which development consent is required before the land may be used for the purpose of obtaining minerals.

Notification of applicant and council

13. (1) Before granting a mining lease (whether by tender or otherwise) over land to which this Division applies, the Minister:

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

(a) must cause a written notice to be served on the applicant or tenderer requiring the applicant or tenderer, on or before the date specified in the notice, to apply to the appropriate consent authority for development consent to the use of the land for the purpose of obtaining minerals; and

(b) must cause a written notice to be served on the consent authority concerned informing the authority:

(i) that the applicant or tenderer has been required to apply for development consent; and

(ii) that proposals for the inclusion in the mining lease of conditions (including special purpose conditions) which the authority wishes to have included in the lease should be lodged with the Director-General on or before such date as is specified in the notice.

(2) This clause does not apply to the granting of a mining lease over land in respect of which a development consent to the use of the land for the purpose of obtaining minerals is in force.

Consent of landowner not necessary in application required by this Division

14. Any requirement of the Environmental Planning and Assessment Act 1979 that an application for development consent be accompanied by the consent of the owner of the land concerned does not apply to an application under this Division.

Definition

15. In this Division:

"special purpose condition" means a condition concerning:

(a) the preparation of land for mining; or

(b) the mining methods to be employed while mining operations are being carried on; or

(c) the rehabilitation of land, either while mining operations are being carried on or after they have ceased; or

(d) the safety measures to be adopted, either before mining operations are commenced, while they are being carried on or after they have ceased; or

(e) the security to be given with regard to the performance of any matter referred to in paragraph (a), (b), (c) or (d).

Division 3—Notification of councils etc. where development consent not required for mining

Application of Division

16. This Division applies to land for which no development consent is required before the land may be used for the purpose of obtaining minerals.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

Notification of councils

17. (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be served on each council within whose local government area is situated the land to which the invitation relates.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be served on each council within whose local government area is situated the land over which the mining lease is proposed to be granted.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

Objections to granting of mining lease

18. (1) A council on which a notice is served under this Division:

(a) may object to the granting of a mining lease; or

(b) may propose that specified conditions be included in the mining lease.

(2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(3) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the tenderer or applicant for the mining lease concerned.

Consideration of objections

19. In deciding whether or not to grant a mining lease, the Minister must take into account any objection or proposal made under this Division.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

Division 4—Notification of owners of private land

Application of Division

20. This Division applies to a mining lease that is proposed to extend to the surface of private land or to the surface of Crown land held under a pastoral lease.

Notification of owners and occupiers of certain land

21. (1) Before inviting tenders for a mining lease to which this Division applies, the Minister must cause notice of the proposal to be served on any owner or occupier of the land concerned.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of the lease on the grounds that the land is agricultural land may be made to the Minister within 28 days after the date on which the notice is served.

(3) An applicant for a mining lease to which this Division applies must (within 21 days after lodging the application) cause notice of the application to be served on any owner or occupier of the land concerned.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description, prepared in the manner prescribed by the regulations, of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease on the grounds that the land is agricultural land may be made to the Minister within 28 days after the date on which the notice is served.

(5) A copy of every notice served in accordance with subclause (3) must be lodged with the Director-General within 21 days after the date on which the notice was served, together with a statutory declaration to the effect that each such notice was served and setting out the name and address of each owner or occupier on whom it was served.

Objections to granting of mining lease

22. (1) An owner or occupier of private land, or of Crown land held under a pastoral lease, may object to the granting of the mining lease concerned on the ground that the land, or any part of the land, over which the lease is sought is agricultural land.

(2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

(3) Subclause (1) does not apply if:

(a) in the case of private land—every owner and occupier of the land; or

(b) in the case of Crown land held under a pastoral lease—every occupier of the land,

consents in writing to the granting of the mining lease over the land or if the applicant for the mining lease consents in writing to the surface of the land being excluded from the application.

(4) A written consent given under this clause is irrevocable.

(5) On receipt of an objection under this clause, the Director-General is to refer the objection to the Director-General of the Department of Agriculture who is to determine the objection in accordance with Schedule 2.

Agricultural land

23. (1) If land is determined to be agricultural land as a consequence of an objection under this Division:

(a) in the case of an objection to the invitation of tenders—the invitation must not be made; or

(b) in the case of an objection to the granting of a mining lease—the lease must not be granted,

except with the written consent of the occupier (and, in the case of private land, the owner) of the land.

(2) A written consent given under this clause is irrevocable.

(3) A mining lease may not be granted beneath the surface of any agricultural land except at such depths, and subject to such conditions, as the Minister considers sufficient to minimise damage to the surface.

(4) A mining lease may nevertheless be granted over any part of land that has been determined to be agricultural land, including the surface of any such land, if the Minister considers that the granting of the lease over that part of the land is necessary to give access to any other part of the land to which the lease applies.

Division 5—Notification of other persons

Notification of the general public

24. (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be published in the Gazette, in a newspaper circulating generally in the State and in one or more newspapers circulating in the locality in which the land is situated.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

(c) must state that objections to the granting of the lease may be made to the Minister by any person (other than a person referred to in clause 28); and

(d) must state that such objections should be made on or before the date specified in the notice.

(3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be published in a newspaper circulating generally in the State and in one or more newspapers circulating in the locality concerned.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease may be made to the Minister by any person (other than a person referred to in clause 28); and

(d) must state that such objections should be made on or before the date specified in the notice.

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of publication of the notice.

Notification of owners of prescribed dams

25. (1) Before inviting tenders for a mining lease for coal in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the owner of the relevant prescribed dam.

(2) Such a notice:

(a) must state that the Minister intends to invite tenders; and

(b) must describe the land to which the invitation will relate; and

(c) must state that objections to the granting of a mining lease may be made to the Minister on or before the date specified in the notice by any owner of the prescribed dam (other than a person referred to in clause 28) and may also be made under Division 1 (on grounds relating to the safety of the prescribed dam) by the Dams Safety Committee.

(3) Before granting a mining lease for coal in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the owner of the relevant prescribed dam.

(4) Such a notice:

(a) must state that an application for the lease has been lodged; and

(b) must contain a description or a plan of the land over which the lease is sought; and

(c) must state that objections to the granting of the lease may be made to the Minister on or before the date specified in the notice by any owner of the prescribed dam (other than a person referred to in clause 28) and may also be made under Division 1 (on grounds relating to the safety of the prescribed dam) by the Dams Safety Committee.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES—*continued*

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

Objections to granting of mining lease

26. (1) Any person (other than a person referred to in clause 28) may object to the granting of a mining lease.

(2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(3) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the tenderer or applicant for the mining lease concerned.

Warden's inquiry and report

27. (1) The Minister may not invite tenders for a mining lease, or grant a mining lease, until a warden has inquired into and reported on any objection under this Division.

(2) At the conclusion of the inquiry, the warden must announce in open court the warden's finding and the purport of the warden's report and must transmit the finding and report to the Minister.

Certain persons not entitled to object

28. An objection may not be made under this Division:

(a) by any public authority that is entitled to object under Division 1 or 3 to the granting of a mining lease; or

(b) by any person who is entitled, under the Environmental Planning and Assessment Act 1979, to make submissions in relation to the granting of any development consent that is required before the land concerned may be used for the purpose of obtaining minerals.

SCHEDULE 2—AGRICULTURAL LAND

(Secs. 179 and 222 and cl. 22, Sch. 1)

Definitions

1. (1) In this Schedule:

"agricultural land" means:

(a) land that has been sown with not less than 2 crops of an annual species during the period of 10 years immediately preceding the relevant date; or

(b) land that has been sown with 1 crop of an annual species during the period of 10 years immediately preceding the relevant date if the relevant authority is satisfied that:

SCHEDULE 2—AGRICULTURAL LAND—*continued*

(i) having regard to the date on which the land was brought under cultivation, it would not be reasonable to expect more than one such crop to have been sown; and

(ii) there was a sufficient reason for not having brought the land under cultivation at an earlier date; or

(c) land on which:

(i) at the relevant date, shade, shelter or windbreak trees are growing; or

(ii) at any time during the period of 10 years immediately preceding the relevant date, edible fruit or nut bearing trees, vines or any other perennial crop approved by the relevant authority have or has been growing; or

(d) pastures:

(i) that are sown with seed of a species and at a rate of application, or treated with fertiliser of a composition and at a rate of application, satisfactory to the relevant authority; and

(ii) that have, as a result of that sowing or treatment, maintained a level of pasture production that is substantially above that which might be expected of natural pastures; or

(e) land that is used, to an extent acceptable to the relevant authority, for the production of grass seed, pasture legume seed, hay or silage; or

(f) land that has a preponderance of improved species of pasture grasses;

"the relevant authority" means the Director-General of the Department of Agriculture or any officer of that Department authorised by the Director-General of that Department to exercise functions under this Schedule;

"the relevant date" means the date or dates with reference to which the relevant authority is required under clause 2 to decide whether or not any land is agricultural land.

(2) For the purposes of paragraphs (a) and (b) of the definition of "agricultural land" in subclause (1), land is not to be treated as having been sown with a crop of an annual species unless, in the opinion of the relevant authority, the crop sown was carried through to a successful use.

Decision by the relevant authority as to whether or not land is agricultural land

2. (1) When the relevant authority is required to decide whether or not any land is agricultural land, the relevant authority must do so:

(a) in the case of a reference under section 179, by deciding whether or not the land was agricultural land on the date on which the application for the mineral claim concerned was lodged; and

SCHEDULE 2—AGRICULTURAL LAND—*continued*

(b) in the case of a reference under section 222, by deciding whether or not the land was agricultural land on the date on which the notice, pursuant to which the objection referred to in that section was made, was served in accordance with section 221; and

(c) in the case of a reference under clause 22 of Schedule 1, by deciding whether or not the land was agricultural land on the date on which the application for the mining lease concerned was lodged.

(2) If the Director-General, when referring a question for decision under clause 22 of Schedule 1, certifies a date pursuant to clause 3 of this Schedule, the relevant authority may not decide, pursuant to subclause (1) (c), that the land concerned is agricultural land unless satisfied that it was agricultural land on the date so certified.

Date to be certified by Director-General

3. When referring a question for decision under clause 22 of Schedule 1, the Director-General, if the applicant for a mining lease over any land was, when the application was lodged, the holder of an exploration licence or mineral claim over that land, must issue to the relevant authority a certificate to that effect and as to the date on which the application for that licence or claim was lodged.

Relevant authority may decide that part only of land is agricultural land

4. If the relevant authority is required to decide whether or not any land is agricultural land, nothing in this Act operates so as to prevent the relevant authority from deciding that a part only of the land is agricultural land.

SCHEDULE 3—THE GEOLOGICAL AND MINING MUSEUM

(Sec. 342)

PART 1—THE TRUSTEES

Chairperson of the Trust

1. (1) Of the trustees, one is to be appointed as Chairperson of the Trust (in and by the trustee's instrument of appointment or by another instrument executed by the Governor).

(2) The Governor may remove a trustee from the office of Chairperson at any time.

(3) A trustee who is Chairperson vacates the office of Chairperson if the trustee:

(a) is removed from that office by the Governor; or

(b) resigns that office by instrument in writing addressed to the Minister; or

(c) ceases to be a trustee.

SCHEDULE 3—THE GEOLOGICAL AND MINING MUSEUM—*continued*

Deputies

2. (1) The Minister may, from time to time, appoint a person to be the deputy of a trustee, and the Minister may revoke any such appointment.

(2) In the absence of a trustee, the trustee's deputy:

(a) is, if available, to act in the place of the trustee; and

(b) while so acting, has all the functions of the trustee and is taken to be the trustee.

(3) The deputy of a trustee who is Chairperson of the Trust does not have the trustee's functions as Chairperson.

(4) A person while acting in the place of a trustee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Term of office

3. (1) Subject to this Schedule, a trustee holds office for such period (not exceeding 3 years) as may be specified in the trustee's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(2) A person may be re-appointed as a trustee but no trustee is to hold office for more than 3 consecutive terms.

Remuneration

4. A trustee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the trustee.

Vacancy in office of a trustee

5. (1) The office of a trustee becomes vacant if the trustee:

(a) dies; or

(b) completes a term of office and is not re-appointed; or

(c) resigns the office by instrument in writing addressed to the Minister; or

(d) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or

(e) is absent from 4 consecutive meetings of the Trust of which reasonable notice has been given to the trustee personally or in the ordinary course of post (unless the trustee is granted leave by the Trust or unless, before the expiration of 6 weeks after the last of those meetings, the trustee is excused by the Trust for being absent from those meetings); or

(f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

(g) becomes a mentally incapacitated person; or

(h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Governor may remove a trustee from office at any time.

(3) Without limiting the generality of subclause (2), the Governor may remove from office a trustee who contravenes the provisions of clause 7.

Filling of vacancy in office of trustee

6. If the office of any trustee becomes vacant, a person is, subject to this Schedule, to be appointed to fill the vacancy.

Disclosure of pecuniary interests

7. (1) If:

(a) a trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Trust; and

(b) the interest appears to raise a conflict with the proper performance of the trustee's duties in relation to the consideration of the matter,

the trustee is required, as soon as possible after the relevant facts have come to the trustee's knowledge, to disclose the nature of the interest at a meeting of the Trust.

(2) A disclosure by a trustee at a meeting of the Trust that the trustee:

(a) is a member, or is in the employment, of a specified company or other body; or

(b) is a partner, or is in the employment, of a specified person; or

(c) has some other specified interest relating to a specified company or other body or a specified person,

is sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded in a book kept for the purpose and that book is required to be open at all reasonable hours to the inspection of any person on payment of the fee determined by the trustees.

(4) After a trustee has disclosed the nature of an interest in any matter or thing, the trustee may not, unless the Minister or the other trustees otherwise determine:

(a) be present during any deliberation of the Trust, or take part in any decision of the Trust, with respect to that matter; or

(b) exercise any function under this Act with respect to that thing.

SCHEDULE 3—THE GEOLOGICAL AND MINING MUSEUM—*continued*

(5) For the purposes of the making of a determination of the trustees under subclause (4), a trustee who has a direct or indirect pecuniary interest in a matter to which the disclosure relates may not:

(a) be present during any deliberation of the other trustees for the purposes of making the determination; or

(b) take part in the making by the other trustees of the determination.

(6) A contravention of this clause does not invalidate any decision of the trustees or the exercise of any function under this Act.

(7) This clause does not apply to or in respect of an interest of a trustee (being the provision of goods or services to the trustee by the Trust) if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

(8) In this clause:

(a) a reference to a meeting of the Trust includes a reference to a meeting of a committee of the Trust; and

(b) a reference to a trustee includes a reference to a member of such a committee.

Effect of certain other Acts

8. (1) The Public Sector Management Act 1988 does not apply to or in respect of the appointment of a trustee and a trustee is not, as a trustee, subject to that Act (except Part 8).

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a trustee or from accepting and retaining any remuneration payable to the person under this Act as a trustee.

(3) The office of a trustee is not, for the purposes of any Act, an office or place of profit under the Crown.

PART 2—THE PROCEDURE OF THE GEOLOGICAL AND MINING MUSEUM TRUST

General procedure

9. The procedure for the calling of meetings of the Trust and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Trust.

SCHEDULE 3—THE GEOLOGICAL AND MINING MUSEUM—*continued*

Quorum

10. The quorum for a meeting of the Trust is 5 trustees.

Presiding trustee

11. (1) The Chairperson of the Trust or, in the absence of the Chairperson, another trustee elected to chair the meeting by the trustees present is to preside at a meeting of the Trust.

(2) The person presiding at any meeting of the Trust has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

12. A decision supported by a majority of the votes cast at a meeting of the Trust at which a quorum is present is the decision of the Trust.

Minutes

13. The Trust must cause full and accurate minutes to be kept of the proceedings of each meeting of the Trust.

The Director

14. The Director, if not a trustee:

(a) is entitled to be heard by the Trust on any matter considered by the Trust and, unless the Trust otherwise directs, is entitled to be present at each meeting of the Trust; and

(b) is an ex officio member of each committee of the Trust.

SCHEDULE 4—REGULATION MAKING POWERS

(Sec. 388)

Prospecting

1. Regulating prospecting and the carrying on of operations for that purpose, the methods which may or may not be used for that purpose and the duties of specified persons in relation to prospecting operations.

Mining

2. Regulating mining and the carrying on of operations for that purpose, the methods which may or may not be used for that purpose and the duties of specified persons in relation to mining operations.

SCHEDULE 4—REGULATION MAKING POWERS—*continued*

Fossicking

3. Regulating fossicking and the carrying on of operations for that purpose and the methods which may or may not be used for that purpose.

Administrative matters

4. Prescribing the qualifications for, and the functions of, wardens, mining registrars, mining inspectors, mining surveyors and other persons acting in the administration of this Act.

Mining improvements

5. Regulating the construction, use and maintenance of mining improvements on Crown lands in cases where a mining lease has not been granted.

Tourist activities

6. Regulating the conduct of tourist activities in mining areas.

Wardens' inquiries

7. Prescribing the procedure to be followed in connection with any inquiry held by a warden under this Act.

Fees, charges and refunds

8. Regulating the imposition of fees and charges and authorising the refund or waiver of fees and charges.

Statistics, records and accounts

9. Providing for:

(a) the compilation of mining statistics; and

(b) the furnishing of information for the purpose of enabling mining statistics to be compiled; and

(c) the keeping of records and books of account; and

(d) the inspection of, and the taking of extracts from, records and books so kept; and

(e) the furnishing of returns and records.

Arbitrators' costs

10. Regulating arbitrators' costs under this Act.

SCHEDULE 4—REGULATION MAKING POWERS—*continued*

The Geological and Mining Museum Trust

11. Providing, in relation to the Geological and Mining Museum Trust, for:

(a) the meetings of the Trust; and

(b) the committees of the Trust; and

(c) the use and custody of the seal of the Trust; and

(d) the use of property or services provided by the Trust; and

(e) the methods to be used in the care of property of the Trust; and

(f) the determination and payment of fees to the Trust; and

(g) the election of a person by the Trust who has rendered any service to the Geological and Mining Museum or who has furthered the objects of the Trust as an honorary associate of the Museum.

Savings and transitional provisions

12. Prescribing provisions of a savings or transitional nature consequent on the consolidation of any existing leases under Part 6 or the transfer of parts of assessment leases or mining leases under Part 7.

SCHEDULE 5—AMENDMENT OF OTHER ACTS

(Sec. 390)

Aboriginal Land Rights Act 1983 No. 42

Section 45 (**Mineral rights and mining on Aboriginal land**):

(a) Omit section 45 (12) (b), insert instead:

(b) in respect of any other mineral, pursuant to any right conferred by or under the Mining Act 1992, or any other law, being a right in force at the time the lands were vested in that Council or a mineral claim or authority referred to in subsection (13) (b), or a renewal or extension of any such right, mineral claim or authority.

(b) From section 45 (13) (a), omit "authority, claim, licence, permit or right", insert instead "right, mineral claim or authority".

(c) From section 45 (13) (b), omit "claim or the granting of an authority pursuant to any rights conferred by section 26E or 50 of the Mining Act 1973", insert instead "mineral claim or the granting of an authority pursuant to an exclusive right conferred by the Mining Act 1992".

Coal Acquisition Act 1981 No. 109

Section 3 (**Definitions**):

From the definition of "coal", omit "Coal Mining Act, 1973,", insert instead "Mining Act 1992".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Coal Mines Regulation Act 1982 No. 67

(1) Section 5 (**Definitions**):

From the definition of "colliery holding" in section 5 (1), omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 124 (**Owners of land on which abandoned mines are situated may be required to close shafts and outlets**):

Omit section 124 (8) (b), insert instead:

(b) a mine the subject of a mining lease granted under the Mining Act 1992 in respect of coal.

(3) Section 139 (**Barriers and protective pillars**):

From section 139 (5) (b), omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

(4) Section 142 (**Definitions**):

(a) From the definition of "prospecting area", omit "authorisation or a concession granted under the Coal Mining Act 1973", insert instead "authority granted under the Mining Act 1992".

(b) From the definition of "registered holder", omit "authorisation or concession granted under the Coal Mining Act 1973", insert instead "authority granted under the Mining Act 1992".

(5) Section 146 (**Definitions**):

From paragraph (a) of the definition of "mine", omit "coal lease under the Coal Mining Act 1973", insert instead "mining lease in respect of coal under the Mining Act 1992".

Coal Ownership (Restitution) Act 1990 No. 19

Section 3 (**Definitions**):

From the definition of "colliery holding", omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

Conveyancing Act 1919 No. 6

(1) Section 6 (**Application of Act to Real Property Act 1900 and other Acts**):

From section 6 (2), omit ", the Mining Act 1973, the Coal Mining Act 1973", insert instead "or the Mining Act 1992".

(2) Schedule 3 (**Conditions of sale**):

From clause 3 (a), omit "Mining Act 1973, or the Coal Mining Act 1973", insert instead "Mining Act 1992".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Crown Lands Act 1989 No. 6

(1) Section 3 (**Definitions**):

From paragraph (b) of the definition of "mineral" in section 3 (1), omit "Mining Act 1973 or the Coal Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 49 (**Licences for removal of certain minerals**):

Omit "Mining Act 1973" wherever occurring, insert instead "Mining Act 1992".

Crown Lands (Continued Tenures) Act 1989 No. 7

Schedule 6 (**Conditions etc.**):

From the definition of "material" in clause 2 (6), omit "Mining Act 1973", insert instead "Mining Act 1992".

Dams Safety Act 1978 No. 96

From sections 8, 16, 18, omit "Mining Act 1973" wherever occurring, insert instead "Mining Act 1992".

Energy Administration Act 1987 No. 103

Section 37 (**Operation of certain other Acts**):

From section 37 (2), omit "Mining Act 1973 or the Coal Mining Act 1973, and the Corporation is bound by each of those Acts", insert instead "Mining Act 1992, and the Corporation is bound by that Act".

Forestry Act 1916 No. 55

(1) Section 21 (**Land subject to mining law**):

From section 21, omit "Mining Act 1973, the Coal Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 27 (**Penalty for unlawfully taking timber, products or forest materials**):

From section 27 (3) (a) (ii), omit "Mining Act 1973 or the Coal Mining Act 1973 or any tenure granted under either of those Acts", insert instead "Mining Act 1992 or any mineral claim or mining lease under that Act".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Irrigation Act 1912 No. 73

From section 25, omit "Mining Act, 1973, or the Coal Mining Act, 1973", insert instead "Mining Act 1992".

Local Government Act 1919 No. 41

(1) Section 4 (**Definitions**):

(a) From the definition of "Lease", omit "claim registered under Part 4 of the Mining Act 1973,", insert instead "mineral claim under the Mining Act 1992".

(b) From the definition of "Lessee", omit "claim under the Mining Act 1973", insert instead "mineral claim under the Mining Act 1992".

(2) Section 531 (**Application and interpretation**):

From section 531 (3), omit "Mining Act, 1973, and the Coal Mining Act, 1973", insert instead "Mining Act 1992".

Maritime Services Act 1935 No. 47

(1) Section 13A, section 13H, section 13JA, section 13JB:

Omit "coal or shale or any substance prescribed as a mineral under the Mining Act, 1973" wherever occurring, insert instead "any mineral within the meaning of the Mining Act 1992".

(2) Section 13C, section 13J, section 13JD, section 13JF, section 13YB, section 13YC, section 13Z:

From sections 13C (2), 13J (3), 13JD (2), 13JF (7), 13YB, 13YC and 13Z, omit "Mining Act 1973 or the Coal Mining Act 1973" wherever occurring, insert instead "Mining Act 1992".

Mine Subsidence Compensation Act 1961 No. 22

(1) Section 4 (**Definitions**):

From the definition of "Colliery holding", omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 14A (**Recovery by Board in the case of unlawful mining operations**):

Omit section 14A (1), insert instead:

(1) In this section, **"unlawful mining operations"** means mining operations, in relation to coal, carried out by a person in contravention of:

(a) Part 2 of the Mining Act 1992; or

(b) any enactment, covenant or stipulation by which the person is bound relating to the method or extent of the extraction of coal.

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Mines Inspection Act 1901 No. 75

From sections 4, 48A, 50 and 54, omit "Mining Act 1973" wherever occurring, insert instead "Mining Act 1992".

Mines Rescue Act 1925 No. 3

Section 6 (**Contribution to rescue stations by proprietor of colliery holding**):

From the definition of "colliery holding" in section 6 (1), omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

National Parks and Wildlife Act 1974 No. 80

(1) Section 39 (**Existing interests**):

From section 39 (4), omit "authorisation, lease or licence under the Mining Act 1973, the Coal Mining Act 1973", insert instead "lease or licence under the Mining Act 1992".

(2) Section 41 (**Mining**):

From section 41 (2), omit "Mining Act 1973, the Coal Mining Act 1973", insert instead "Mining Act 1992".

(3) Section 47C (**Limitations on power to reserve under s. 47B**):

From section 47C (c), omit "or Ministers administering the Mining Act 1973 and the Coal Mining Act 1973", insert instead "or the Minister administering the Mining Act 1992".

(4) Section 47H (**Existing interests**):

From section 47H (4), omit "authorisation, lease or licence under the Mining Act 1973, the Coal Mining Act 1973,", insert instead "lease or licence under the Mining Act 1992".

(5) Section 47J (**Provisions relating to mining**):

(a) Omit section 47J (1) (a) and (b), insert instead:

(a) any mining lease under the Mining Act 1992; or

(b) From section 47J (2) and (4), omit "Mining Act 1973, the Coal Mining Act 1973" wherever occurring, insert instead "Mining Act 1992".

(c) From section 47J (6), omit "claim shall not be registered under Part 4 of the Mining Act 1973,", insert instead "mineral claim must not be registered under the Mining Act 1992".

(d) From section 47J (7), omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Petroleum (Onshore) Act 1991

(1) Section 3 (**Definitions**):

From the definition of "petroleum" in section 3 (1), omit "Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 7 (**Offence of prospecting or mining without authority**):

Omit "Coal Mining Act 1973", insert instead "Mining Act 1992".

(3) Sections 73, 103, 104, 105:

Omit "Mining Act 1973", wherever occurring, insert instead "Mining Act 1992".

(4) Section 73 (**Disputes between holders of petroleum titles and other persons carrying on operations on the land**):

Omit section 73 (1) (b).

(5) Section 105 (**Wardens' courts**):

Omit "Part 9", insert instead "Part 15".

Radiation Control Act 1990 No. 13

Section 38 (**Consultation and co-operation between Ministers**):

From section 38 (a), omit "Mining Act 1973", insert instead "Mining Act 1992".

Stamp Duties Act 1920 No. 47

Section 3 (**Definitions**):

From paragraph (a) of the definition of "Mining company" in section 3 (1), omit "Mining Act 1973", insert instead "Mining Act 1992".

State Coal Mines Act 1912 No. 70

(1) Section 1 (**Short title and definitions**):

From the definition of "Crown lands" in section 1 (2), omit "Crown lands within the meaning of section 6 of the Mining Act, 1973", insert instead "Crown land within the meaning of the Mining Act 1992".

(2) Section 2 (**Crown lands may be set apart**):

From section 2 (2), omit "claim shall not be registered over any such lands under Part IV of the Mining Act, 1973", insert instead "mineral claim must not be registered under Part 9 of the Mining Act 1992 over any such lands".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

(3) Section 7 (**Appeal against valuation**):

From section 7 (3), omit "claim shall not be registered over the land so described under Part IV of the Mining Act, 1973", insert instead "mineral claim must not be registered under Part 9 of the Mining Act 1992 over the land so described".

(4) Section 10 (**Private lands may be set apart**):

(a) From section 10 (1), omit "Parts IV and V of the Mining Act, 1973,", insert instead "Parts 3–9 of the Mining Act 1992".

(b) From section 10 (2), omit "Part VIII of the Coal Mining Act 1973", insert instead "Part 13 of the Mining Act 1992".

(5) Section 15 (**Mine to be vested in authority**):

(a) From section 15 (5), omit "Mining Act, 1973" where firstly and secondly occurring, insert instead "Mining Act 1992".

(b) From section 15 (5), omit "Coal Mining Act, 1973, or the Mining Act, 1973, as the case may be", insert instead "Mining Act 1992".

(6) Section 21A (**Authority may prospect for coal**):

Omit "Coal Mining Act, 1973,", insert instead "Mining Act 1992".

Trustee Act 1925 No. 14

(1) Section 9 (**Vesting**):

From section 9 (3A), omit "Mining Act 1973 or the Coal Mining Act 1973", insert instead "Mining Act 1992".

(2) Section 78 (**Effect of vesting order**):

From section 78 (4), omit "Mining Act 1973", insert instead "Mining Act 1992".

Very Fast Train (Route Investigation) Act 1989 No. 44

(1) Section 19 (**Determination of claim for compensation**):

(a) From section 19 (3), omit "Part 9 of the Mining Act 1973", insert instead "Part 15 of the Mining Act 1992".

(b) From section 19 (6), omit "Section 146 (Costs may be allowed) of the Mining Act 1973", insert instead "Section 317 (Costs may be allowed) of the Mining Act 1992".

(2) Section 20 (**Delegation**):

From section 20 (b), omit "Mining Act 1973", insert instead "Mining Act 1992".

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Western Lands Act 1901 No. 70

(1) Section 3 (**Definitions**):

From section 3 (1), omit the definition of "Minerals", insert instead:

"**Mineral**" means any mineral within the meaning of the Mining Act 1992.

(2) Section 18E (**Subsisting leases: extension**):

Omit section 18E (2) (c) (iii), insert instead:

(iii) within an area over which, by virtue of the provisions of the Mining Act 1992 or any instrument under that Act, an authority or claim, or a particular authority or claim, under that Act cannot be granted or registered—unless the Director-General of the Department of Mineral Resources so approves;

Wills, Probate and Administration Act 1898 No. 13

Section 75A (**Delegation**):

From section 75A (2), omit "Mining Act 1973", insert instead "Mining Act 1992".

Workers Compensation Act 1987 No. 70

Schedule 1 (**Deemed employment of workers**):

From clause 6, omit "Mining Act 1973 or the Coal Mining Act 1973", insert instead "Mining Act 1992".

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 391)

PART 1—REGULATIONS

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Mining Act 1992

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate so as:

(a) to 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 its date of publication; or

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted before the date of its publication.

PART 2—PROVISIONS CONSEQUENT ON THE ENACTMENT OF THE MINING ACT 1992

Definitions

2. (1) In this Part:

"entitlement" means:

(a) an authority, claim or opal prospecting licence granted or deemed to be granted under the Mining Act 1973; or

(b) an authorisation or concession granted or deemed to be granted under the Coal Mining Act 1973;

"the relevant commencement" means:

(a) in relation to a provision of the Mining Act 1973 or the Coal Mining Act 1973—the date on which the provision is repealed; and

(b) in relation to a provision of this Act—the date on which the provision commences.

(2) A reference in this Part to the granting of an entitlement includes, in the case of a claim under the Mining Act 1973, a reference to the registration of the claim.

Mining Act 1973 or the Coal Mining Act 1973 to continue to apply to certain applications

3. (1) This clause applies to an application for, or for the renewal or transfer of:

(a) any authority, claim or opal prospecting licence under the Mining Act 1973; or

(b) any authorisation or concession under the Coal Mining Act 1973.

(2) The provisions of the Mining Act 1973 or the Coal Mining Act 1973 continue to apply to applications and tenders duly lodged before the relevant commencement as if this Act had not been enacted.

(3) Clause 4 applies to:

(a) an authority, claim or opal prospecting licence granted under the Mining Act 1973 by virtue of this clause; and

(b) an authorisation or concession granted under the Coal Mining Act 1973 by virtue of this clause,

as if it had been granted immediately before the relevant commencement.

(4) A reference in this clause to an application or tender that has been duly lodged includes a reference to an application or tender that, although not duly lodged, is an application or tender that could lawfully be dealt with under the Mining Act 1973 or the Coal Mining Act 1973.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Existing mining entitlements

4. (1) An exploration licence granted under the Mining Act 1973 or an exploration permit or authorisation granted under the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to be an exploration licence granted under this Act.

(2) A mining lease or mining purposes lease granted under the Mining Act 1973 or a coal lease granted under the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to be a mining lease granted under this Act.

(3) A claim registered under the Mining Act 1973 and in force immediately before the relevant commencement is taken to be a mineral claim granted under this Act.

(4) An opal prospecting licence granted under the Mining Act 1973 and in force immediately before the relevant commencement is taken to be an opal prospecting licence granted under this Act.

(5) In this clause, a reference to any form of entitlement granted under the Mining Act 1973 or the Coal Mining Act 1973 includes a reference to an entitlement that is deemed to have been granted under either of those Acts.

Directions concerning certain mining leases

5. A direction in force under section 92 of the Mining Act 1973 immediately before the relevant commencement is taken to be a direction under section 77 of this Act.

Directions concerning certain coal leases

6. (1) Any coal lease that is the subject of a direction given under section 72 of the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to have been amended so as to include that mineral as a mineral to which the corresponding mining lease under this Act applies.

(2) Any direction given under section 72A of the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to be a direction in force under section 78 of this Act.

Directions to protect the environment

7. (1) Any condition imposed on an authority, authorisation or concession in accordance with section 118, 119 or 119A of the Mining Act 1973 or section 94, 95 or 95A of the Coal Mining Act 1973 is taken to have been imposed under Division 2 of Part 11 of this Act.

(2) Any direction given under section 120 of the Mining Act 1973 or section 96 of the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to be a direction in force under section 240 of this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(3) Any direction given under section 172 of the Mining Act 1973 or section 115 of the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to be a direction in force under section 245 of this Act.

Environmental planning and assessment matters

8. Sections 65 and 74 of this Act apply to and in respect of a mining lease granted in accordance with section 116 of the Mining Act 1973 or section 91 of the Coal Mining Act 1973 before the relevant commencement in the same way as they apply to and in respect of a mining lease granted in accordance with this Act.

Consolidation of leases

9. (1) Part 5A of the Mining Act 1973 continues to apply to a draft consolidated mining lease prepared under section 111C of that Act before the relevant commencement as if this Act had not been enacted.

(2) Any consolidated mining lease granted under Part 5A of the Mining Act 1973 as a consequence of the operation of subclause (1) is taken to have been granted under Part 6 of this Act.

(3) Part 4A of the Coal Mining Act 1973 continues to apply to a draft consolidated coal lease prepared under section 82C of that Act before the relevant commencement as if this Act had not been enacted.

(4) Any consolidated coal lease granted under Part 4A of the Coal Mining Act 1973 as a consequence of the operation of subclause (3) is taken to have been granted under Part 6 of this Act.

Register of colliery holdings

10. The register of colliery holdings kept under section 115A of the Coal Mining Act 1973 is taken to be the register of colliery holdings kept under section 163 of this Act.

Rights of way

11. Any right of way in force under section 175 of the Mining Act 1973 or 117 of the Coal Mining Act 1973 immediately before the relevant commencement is taken to be a right of way in force under section 164 of this Act.

Suspension of authorities

12. Any suspension of the conditions of an authority made under Part 5 of the Mining Act 1973 and in force immediately before the relevant commencement is taken to be a suspension of the conditions of the corresponding authority under section 168 of this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Caveats

13. Any caveat duly lodged under section 109 of the Mining Act 1973 or section 106 of the Coal Mining Act 1973 before the relevant commencement is taken to be a caveat duly lodged under section 124 of this Act and is to have effect as if this Act had been in force when it was lodged.

Claims

14. (1) Any obligation under the Mining Act 1973 in connection with a claim registered under Part 4 of that Act (being an obligation in existence in force immediately before the relevant commencement) is taken to be an obligation under this Act in connection with the corresponding mineral claim.

(2) Any security given in respect of a claim under Part 4 of the Mining Act 1973 before the relevant commencement is taken to be security given in respect of the corresponding mineral claim under this Act.

(3) Any claim whose registration had been renewed under Part 4 of the Mining Act 1973 before the relevant commencement is taken to be a mineral claim renewed under Part 9 of this Act.

(4) A certificate of registration of a claim or of renewal of registration of a claim issued before the relevant commencement is taken to have been duly issued under this Act.

(5) Any application for the registration of a person on whom the rights of a registered holder of a claim have devolved as the holder of the claim (being an application that had not been finally dealt with before the relevant commencement) is to continue to be dealt with as if this Act had not been enacted.

(6) Any such registration is taken to be a transfer duly effected under this Act.

(7) Any suspension of the conditions of a registered claim under Part 4 of the Mining Act 1973 and in force immediately before the relevant commencement is taken to be a suspension of the conditions of the corresponding mineral claim under section 215 of this Act.

Permits

15. (1) Any permit granted under section 36A of the Mining Act 1973 and in force immediately before the relevant commencement continues to have effect for the purposes for which it was granted.

(2) A permit may be issued under section 254 of this Act in relation to the obligations of the holder of a registered claim under Part 4 of the Mining Act 1973.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Licence to process tailings

16. Any licence in force under section 173 of the Mining Act 1973 immediately before the relevant commencement continues in force for the term for which it was granted as if this Act had not been enacted.

Licence to construct tunnels etc.

17. Any licence in force under section 174 of the Mining Act 1973 immediately before the relevant commencement continues in force for the duration of the mining lease (including any mining purposes lease that is taken to be a mining lease) in relation to which it was granted.

Access arrangements

18. (1) An access arrangement in force under Division 4A of Part 5 of the Mining Act 1973 immediately before the relevant commencement is taken to be an access arrangement in force under Division 2 of Part 8 of this Act.

(2) A person who held office as an arbitrator under section 84E of the Mining Act 1973 immediately before the relevant commencement is taken to have been appointed under section 143 of this Act.

(3) The Arbitration Panel established by section 84B of the Mining Act 1973 is taken to be the Arbitration Panel established under section 139 of this Act.

(4) Any person who was a member of the Arbitration Panel established under section 84B of the Mining Act 1973 immediately before the relevant commencement is taken to be a member of the Arbitration Panel established by section 139 of this Act.

(5) The conditions under which a member of the Arbitration Panel held office under the Mining Act 1973 immediately before the relevant commencement are, until they are duly changed under this Act, to be the conditions under which the member holds office as a member of the Arbitration Panel under this Act.

(6) Any notice served under section 84E or 84F of the Mining Act 1973 before the relevant commencement is taken to have been duly served under section 142 or 143 of this Act.

(7) Any matter done by an arbitrator before the relevant commencement for the purposes of a hearing under Division 4A of Part 5 of the Mining Act 1973 is taken to have been done for the purposes of Division 2 of Part 8 of this Act.

(8) An interim determination in force under section 84K of the Mining Act 1973 immediately before the relevant commencement is taken to be an interim determination under section 149 of this Act.

(9) A final determination in force under section 84M of the Mining Act 1973 immediately before the relevant commencement is taken to be a final determination under section 151 of this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(10) Section 154 of this Act applies to a hearing conducted under Division 4A of Part 5 of the Mining Act 1973 in the same way as it applies to a hearing conducted under Division 2 of Part 8 of this Act.

Compensation

19. Any compensation payable under Part 8 of the Mining Act 1973 or Part 8 of the Coal Mining Act 1973 in respect of the granting of an entitlement under either of those Acts, or the exercise of rights under either of those Acts, before the relevant commencement is taken to be compensation payable under Part 13 of this Act.

Royalty

20. Part 14 of this Act applies to royalty on coal and other minerals recovered pursuant to an instrument in force under the Mining Act 1973 or the Coal Mining Act 1973 before the relevant commencement in the same way as it applies to coal and other minerals recovered after that commencement.

Trust funds

21. Any trust fund duly established under section 99 of the Mining Act 1973 or section 77B of the Coal Mining Act 1973 and in existence immediately before the relevant commencement is taken to have been duly established under section 288 of this Act.

Inspectors

22. Any person who was an inspector under section 183 of the Mining Act 1973 immediately before the relevant commencement is taken to be an inspector under this Act.

Wardens and other officers

23. Any person who held office as chief warden, warden or mining registrar under the Mining Act 1973 immediately before the relevant commencement is taken to have been appointed as chief warden, warden or mining registrar under this Act.

Wardens' courts

24. Any warden's court established under the Mining Act 1973 and in existence immediately before the relevant commencement is taken to have been established under this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Proceedings

25. (1) Any proceedings that had been commenced under the Mining Act 1973 in a warden's court but had not been finally dealt with before the relevant commencement are to continue to be dealt with in accordance with this Act.

(2) Any decision of a warden's court under the Mining Act 1973 and in force immediately before the relevant commencement is taken to be a decision of a warden's court under this Act.

(3) Any order or injunction made or granted by a warden's court, or by a warden, under the Mining Act 1973 and in force immediately before the relevant commencement is taken to be an order or injunction made or granted under this Act.

(4) Any writ of execution issued by a warden's court under the Mining Act 1973 and in force immediately before the relevant commencement is to be enforced as if this Act had not been enacted.

(5) Any authorisation granted by a warden's court, or by a warden, under the Mining Act 1973 or the Coal Mining Act 1973 and in force immediately before the relevant commencement is taken to have been granted under this Act.

(6) Any summons or subpoena issued by a warden's court, or by a warden, under the Mining Act 1973 and in force immediately before the relevant commencement is taken to have been issued under this Act.

Appeals

26. The Mining Act 1973 continues to apply to an appeal, or an application for determination of a stated case, made under that Act before the relevant commencement as if this Act had not been enacted.

Wardens' inquiries

27. Any inquiry conducted by a warden under section 178 or 178A of the Mining Act 1973 before the relevant commencement is taken to be a warden's inquiry under this Act.

Evidentiary certificates

28. A certificate issued under section 26F, 37A or 111 of the Mining Act 1973 or under section 108 of the Coal Mining Act 1973 before the relevant commencement continues to have effect in relation to proceedings under that Act as if this Act had not been enacted.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Certain decisions by the Minister

29. Any decision given by the Minister in respect of a dispute referred to in section 179 of the Mining Act 1973 or section 121 of the Coal Mining Act 1973 before the relevant commencement is taken to be a decision given under the corresponding section of this Act.

Agreements concerning payment by instalments

30. Any agreement in force under section 127 of the Coal Mining Act 1973 immediately before the relevant commencement continues in force as if it were a condition of a mining lease under section 70 (4) of this Act.

Delegations

31. Any delegation in force immediately before the relevant commencement under the Mining Act 1973 or the Coal Mining Act 1973 is taken to have been given under this Act and continues to have effect as if it had been given under this Act.

Disclosure of information

32. Any information obtained by a person in connection with the administration or execution of the Mining Act 1973 or the Coal Mining Act 1973 is taken to have been obtained by the person in connection with the administration or execution of this Act.

Mining divisions

33. Any division of a mining district constituted under the Mining Act 1973 and in existence immediately before the relevant commencement is taken to be a mining division constituted under this Act, with the same name and boundaries as it had immediately before the relevant commencement.

Reserves

34. (1) Any reserve constituted under the Mining Act 1973 (including any reserve that is deemed to have been constituted under that Act) and in existence immediately before the relevant commencement is taken to be a reserve constituted under this Act, with the same name and boundaries as it had immediately before the relevant commencement.

(2) Any order in force under section 24 of the Mining Act 1973 immediately before the relevant commencement, being an order containing a direction prohibiting the granting or registration of a particular entitlement over land in a reserve is taken to be an order prohibiting the granting of the entitlement that, by virtue of clause 4, is the corresponding entitlement over land in the reserve.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

Opal prospecting areas

35. (1) Any opal prospecting area constituted under the Mining Act 1973 and in existence immediately before the relevant commencement is taken to be an opal prospecting area constituted under this Act, with the same name and boundaries as it had immediately before the relevant commencement.

(2) Any notice served in accordance with section 25A (2) of the Mining Act 1973 before the relevant commencement is taken to be a notice duly served under section 221 of this Act.

(3) Any objection duly made under section 25B (1) of the Mining Act 1973 before the relevant commencement is taken to be an objection duly lodged under section 222 of this Act.

(4) Any opal prospecting block constituted under the Mining Act 1973 and in existence immediately before the relevant commencement is taken to be an opal prospecting block constituted under this Act, with the same designation and boundaries as it had immediately before the relevant commencement.

(5) Any map prepared under section 25C of the Mining Act 1973 before the relevant commencement is taken to have been duly prepared under section 225 of this Act.

(6) The particulars depicted on any such map are taken to be the corresponding particulars for the purposes of this Act.

Claims for damages

36. Section 26H of the Mining Act 1973 continues to apply in relation to any injury or loss referred to in that section (being an injury or loss sustained before the relevant commencement) as if this Act had not been enacted.

Notices and instruments

37. Any notice or instrument published or served in accordance with any provision of the Mining Act 1973 or the Coal Mining Act 1973 before the relevant commencement is taken to have been duly served under the corresponding provision of this Act.

Records

38. Any records kept before the relevant commencement under section 105 of the Mining Act 1973 or section 102 of the Coal Mining Act 1973 are to form part of the records kept under section 159 of this Act.

Museums and laboratories

39. Any museum or laboratory established under the Mining Act 1973 and in existence immediately before the relevant commencement is taken to have been established under this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

The Geological and Mining Museum

40. (1) The Geological and Mining Museum constituted by this Act is a continuation of, and the same legal entity as, the Geological and Mining Museum constituted by section 169B of the Mining Act 1973.

(2) The persons holding office as trustees of the Museum immediately before the relevant commencement continue as trustees under this Act as if they had been appointed under this Act.

(3) The person holding office as Director of the Museum immediately before the relevant commencement continues to hold office under this Act as if appointed under this Act.

(4) Any person who was a member of staff of the Museum immediately before the relevant commencement continues to be a member of staff of the Museum.

(5) Any committee established under section 169J of the Mining Act 1973 and in existence immediately before the relevant commencement is taken to have been established under section 350 of this Act.

(6) The Geological and Mining Museum Trust Account established under the Mining Act 1973 is taken to be the account of that name established under this Act.

Geological and Mining Museum Regulation 1990

41. (1) The Geological and Mining Museum Regulation 1990 continues in force as if it had been made under this Act.

(2) Any reference in that regulation to a provision of the Mining Act 1973 is taken to be a reference to the corresponding provision of this Act.

Directions concerning graticular sections

42. A direction in force immediately before the relevant commencement for the purposes of the definition of "block" or "unit" in section 6 (1) of the Mining Act 1973 or section 6 (1) of the Coal Mining Act 1973 is taken to be a direction for the purposes of the corresponding definition in the Dictionary at the end of this Act.

Instruments under sec. 77 of the Mining Act 1973

43. An instrument lodged with the Director-General in accordance with section 77 (1) (c) of the Mining Act 1973 before the relevant commencement is taken to be a notice of intention duly given in accordance with section 8 (1) of this Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

References to provisions of repealed Acts

44. (1) In determining a relevant date in accordance with section 62 (4) of this Act:

(a) a reference to the date on which a notice was published in the Gazette under section 136 of this Act includes a reference to the date on which a notice was published in the Gazette under section 31 of the Coal Mining Act 1973; and

(b) a reference to the date on which an application for an exploration licence was lodged under this Act includes, in the case of an application relating to coal, a reference to the date on which an application for an authorisation or exploration permit was lodged under the Coal Mining Act 1973; and

(c) a reference to the date on which a mineral claim was granted under this Act includes a reference to the date on which a claim was registered under the Mining Act 1973.

(2) A reference in clause 3 of Schedule 2 to the date on which an application for an exploration licence or mineral claim was lodged includes, in the case of an exploration licence, claim, authorisation or concession granted under the Mining Act 1973 or the Coal Mining Act 1973 that is taken to be an exploration licence or mineral claim granted under this Act, a reference to the date on which the application for the exploration licence, claim, authorisation or concession was lodged under the Mining Act 1973 or the Coal Mining Act 1973.

Miscellaneous applications

45. Any application (other than an application referred to in clause 3) that had been made but not dealt with under a provision of the Mining Act 1973 or the Coal Mining Act 1973 before the relevant commencement is taken to be an application under the corresponding provision of this Act and may continue to be dealt with accordingly.

Construction of certain references

46. In any other Act or instrument:

(a) a reference to the Mining Act 1973 or the Coal Mining Act 1973 includes a reference to this Act; and

(b) a reference to a provision of the Mining Act 1973 or the Coal Mining Act 1973 includes a reference to the corresponding provision of this Act; and

(c) a reference to an entitlement granted under the Mining Act 1973 or the Coal Mining Act 1973 includes a reference to the corresponding entitlement granted under this Act.

DICTIONARY OF WORDS AND EXPRESSIONS

(Sec. 4)

"access arrangement" means an access arrangement under Division 2 of Part 8;

"allocated mineral", in relation to a mineral allocation area, means a mineral or group of minerals in respect of which the mineral allocation area is constituted;

"approved" means approved by the Minister;

"Arbitration Panel" means the Arbitration Panel established by section 139;

"arbitrator" means an arbitrator appointed under Division 2 of Part 8;

"assessment area" means land the subject of an assessment lease;

"assessment lease" means an assessment lease granted under Part 4;

"authority" means an exploration licence, an assessment lease or a mining lease;

"block" means a graticular section referred to in section 370 or, if the Minister so directs in a particular case, part of such a graticular section;

"chief inspector of coal mines" means the chief inspector of coal mines appointed under the Coal Mines Regulation Act 1982;

"chief warden" means the chief warden appointed under section 293;

"claim area" means land the subject of a mineral claim;

"colliery holding" means a colliery holding registered in accordance with section 163;

"consent authority" has the same meaning as it has in the Environmental Planning and Assessment Act 1979;

"consolidated mining lease" means a lease granted under Part 6;

"controlling body", in relation to an exempted area, means:

(a) in the case of land referred to in paragraph (a) or (c) of the definition of "exempted area"—the person having the control and management of the land; or

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

(b) in the case of land referred to in paragraph (b) of that definition—the holder of the lease referred to in that paragraph; or

(c) in the case of land referred to in paragraph (d) of that definition—the person prescribed by the regulations as the controlling body for that land for the purposes of this definition;

"council" has the same meaning as it has in the Local Government Act 1919;

"Crown land" means all land within the State that is not private land, and includes the seabed and subsoil beneath the coastal waters of the State;

"Crown Lands Acts" has the same meaning as it has in the Crown Lands Act 1989;

"Crown lease for pastoral purposes" means:

(a) a Crown lease, under the Crown Lands Acts, of land which contains a condition restricting the use of the land to grazing or to grazing and the giving of access to water; or

(b) a Crown lease, under the Crown Lands Acts, of land set apart for grazing, whether or not the whole or any part of the land may, under the lease, be used for agricultural purposes;

"dam" includes the water or other material impounded by the dam;

"Dams Safety Committee" means the Dams Safety Committee constituted by section 7 of the Dams Safety Act 1978;

"Department" means the Department of Mineral Resources;

"development consent" has the same meaning as it has in the Environmental Planning and Assessment Act 1979;

"Director-General" means the Director-General of the Department;

"environmental planning instrument" has the same meaning as it has in the Environmental Planning and Assessment Act 1979;

"exempted area" means an area constituted by land:

(a) reserved, dedicated, appropriated, resumed or acquired for public purposes (except land reserved for a temporary common or a commonage), whether vested in the Crown or in any person as trustee for public purposes; or

(b) held under a lease for water supply by virtue of a special lease or otherwise; or

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

(c) transferred, granted or vested in trust by the Crown for the purpose of a race-course, cricket-ground, recreation reserve, park or permanent common or for any other public purpose; or

(d) prescribed by the regulations for the purposes of this definition;

"exercise a function" includes perform a duty;

"exploration area" means land the subject of an exploration licence;

"exploration licence" means an exploration licence granted under Part 3;

"function" includes power, authority and duty;

"Government agency" means:

(a) a Government Department; or

(b) an Administrative Office; or

(c) a corporation designated by the Minister under section 387;

"group of minerals" means any minerals prescribed by the regulations as a group of minerals for the purposes of this definition;

"inspector" means an inspector appointed under section 361;

"irrigation area" means an irrigation area constituted under the Irrigation Act 1912, the Wentworth Irrigation Act 1890, the Hay Irrigation Act 1902 or the Balranald Irrigation Act 1902;

"land", in relation to the coastal waters of the State, includes the seabed and subsoil beneath those waters;

"local government area" has the same meaning as it has in the Local Government Act 1919;

"mine" means:

(a) when used as a noun—any place, pit, shaft, drive, level or other excavation, drift, gutter, lead, vein, lode, reef or salt-pan (whether occurring naturally or artificially created) in, on or by means of which, any mining operation is carried on; and

(b) when used as a verb—to extract material from land for the purpose of recovering minerals from the material so extracted or to rehabilitate land from which material has been so extracted;

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

"mineral" means any substance prescribed by the regulations as a mineral for the purposes of this definition, and includes coal and oil shale, but does not include uranium or petroleum;

"mineral allocation area" means a mineral allocation area constituted under section 368;

"mineral claim" means a mineral claim granted under Part 9;

"mineral claims district" means a mineral claims district constituted under Division 1 of Part 9;

"mining area" means land the subject of a mining lease;

"mining division" means a mining division constituted under section 366;

"mining improvement" includes:

(a) any machinery used for or in connection with prospecting or mining; and

(b) any race, drain, dam or reservoir so used;

"mining lease" means a mining lease granted under Part 5, and includes a consolidated mining lease;

"mining operations" means operations carried out in the course of mining;

"mining purpose" means any purpose prescribed by the regulations as a mining purpose for the purposes of this definition;

"mining registrar" means:

(a) a mining registrar appointed under section 360; or

(b) in relation to a mining division, a mining registrar exercising and performing in that division the functions of a mining registrar under this Act;

"notification area", in relation to a prescribed dam, means the land for the time being declared under section 369 to be the notification area for the dam;

"occupier" means, in relation to any land, a person entitled to lawful occupation of that land, being a person of a class prescribed by the regulations for the purposes of this definition;

"opal prospecting area" means an opal prospecting area constituted under Division 1 of Part 10;

"opal prospecting block" means an opal prospecting block constituted under Division 1 of Part 10;

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

"opal prospecting licence" means an opal prospecting licence granted under Division 2 of Part 10;

"owner", in relation to private land, includes:

(a) any person to whom the Crown has lawfully contracted to sell that land under the Crown Lands Acts, or to whom the Crown has granted any lease of that land under those Acts; and

(b) the trustee for an owner, the legal representative of a deceased or bankrupt owner, the manager, appointed under the Protected Estates Act 1983, of the estate of an owner who is a protected person within the meaning of that Act, and a mortgagee in possession,

and, in relation to Crown land held under a pastoral lease, includes a holder of the pastoral lease;

"party" means:

(a) in relation to a hearing before an arbitrator—a person who is entitled to appear and be heard at the hearing pursuant to section 146; or

(b) in relation to an access arrangement—the holder of a prospecting title to whom, or an owner or occupier of land to which, the arrangement relates;

"pastoral lease" means:

(a) a Crown lease for pastoral purposes; or

(b) a special lease for pastoral purposes; or

(c) a Western Lands lease for pastoral purposes;

"petroleum" has the same meaning as it has in the Petroleum Act 1955;

"prescribed dam" has the same meaning as it has in the Dams Safety Act 1978;

"private land" means:

(a) land held in fee simple by any person, other than land vested in the Crown or in any person holding the land for or on behalf of the Crown or as trustee for public purposes; or

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

(b) land (other than land held under a pastoral lease) held under any of the tenures continued in force under the Crown Lands (Continued Tenures) Act 1989 or comprised in a folio of the Register kept under the Real Property Act 1900, being a folio created in respect of any such tenure; or

(c) land in the process of alienation from the Crown,

and includes any other land declared by the regulations to be private land, but does not include any land declared by the regulations to be Crown land;

"privately owned mineral" means a mineral that is not owned by, or reserved to, the Crown;

"prospect" means to carry out works on, or to remove samples from, land for the purpose of testing the mineral bearing qualities of the land;

"prospecting operations" means operations carried out in the course of prospecting;

"publicly owned mineral" means a mineral that is owned by, or reserved to, the Crown;

"reserve" means a reserve constituted under section 367;

"special conditions" means:

(a) in relation to a mineral claims district—the conditions specified under section 175 as the conditions to which mineral claims registered over land within the district are to be subject; or

(b) in relation to an opal prospecting block—the conditions specified in respect of the block on the map prepared under section 225;

"special lease for pastoral purposes" means a special lease, under the Crown Lands Acts, which contains a condition restricting the use of the land to grazing or to grazing and the giving of access to water;

"surveyor" means a surveyor registered under the Surveyors Act 1929;

"unit" means a unit into which a block is divided as referred to in section 370 or, if the Minister so directs in a particular case, part of such a unit;

"warden" means any warden appointed under section 293, and includes the chief warden;

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

"warden's court" means a warden's court established under section 294;

"Western lands lease for pastoral purposes" means:

(a) a lease, under the Western Lands Act 1901, of land which contains a condition restricting the use of the land to grazing or to grazing and the giving of access to water; or

(b) a lease, under the Western Lands Act 1901, of land set apart for grazing, whether or not the whole or any part of the land may, under the lease, be used for agricultural purposes.

MINING BILL

SECOND READING

THE HON. VIRGINIA CHADWICK (MINISTER FOR SCHOOL EDUCATION AND YOUTH AFFAIRS):

I MOVE:

THAT THIS BILL BE NOW READ A SECOND TIME.

I SEEK LEAVE TO HAVE MY SECOND READING SPEECH INCORPORATED IN HANSARD.

MINING BILL

SECOND READING

THE HON. VIRGINIA CHADWICK (MINISTER FOR SCHOOL EDUCATION AND YOUTH AFFAIRS):

I MOVE:

THAT THIS BILL BE NOW READ A SECOND TIME.

I SEEK LEAVE TO HAVE MY SECOND READING SPEECH INCORPORATED IN HANSARD.

IT ORIGINALLY HAD BEEN INTENDED THAT THIS BE SIMPLY A BILL WHICH WOULD AMEND THE MINING ACT 1973. THE RESULT WOULD HAVE BEEN SUCH A COMPLEX BILL THAT PARLIAMENTARY COUNSEL RECOMMENDED BRINGING FORTH A NEW BILL. MANY PROVISIONS IN THE BILL, INCLUDING THOSE RELATING TO OPAL PROSPECTING LICENCES, AGRICULTURAL LANDS, ACCESS TO LANDS AND THE MINING MUSEUM ARE UNCHANGED. THE COAL MINING ACT WILL BE REPEALED AND INCORPORATED IN THIS BILL IN SIMPLER FORM. THE AMENDMENTS BROUGHT FORWARD ARE THE RESULTS OF YEARS OF

DELIBERATION BY OFFICERS OF THE NEW SOUTH WALES COAL ASSOCIATION, THE CHAMBER OF MINES, METALS AND EXTRACTIVE INDUSTRIES, THE DEPARTMENT OF PLANNING AND THE DEPARTMENT OF MINERALS AND ENERGY. FEW, IF ANY, PRACTITIONERS INVOLVED IN THE APPLICATION FOR, OR THE PROCESSING OF, MINING AND EXPLORATION TITLES UNDER THE MINING ACT 1973 OR THE COAL MINING ACT 1973 WOULD SAY THE PROCESS IS UNCOMPLICATED. INDEED, MOST WOULD AGREE IT IS UNNECESSARILY VERY COMPLICATED INDEED. THERE ARE CURRENTLY TEN TITLES UNDER THESE ACTS. PROSPECTING

LICENCES, HONORABLE MEMBERS WOULD RECALL, WERE ABOLISHED LAST YEAR.

IT IS PROPOSED TO STREAMLINE ADMINISTRATION BY INTEGRATING THE PROVISIONS OF THE COAL MINING AND MINING ACTS. THE MINING ACT NOW WILL INCLUDE COAL, SHALE AND METHANE - WHERE METHANE IS EXTRACTED AS PART OF A TITLE FOR COAL. THE EXISTING CUMBERSOME SYSTEM OF TEN FORMS OF TITLE IS BEING REPLACED WITH JUST FIVE TITLES: THE OPAL PROSPECTING LICENCE - THIS IS UNCHANGED - MINERAL CLAIM, EXPLORATION LICENCE, ASSESSMENT LEASE AND MINING

LEASE. THESE PROPOSALS ARE AIMED AT IMPROVING AND STREAMLINING THE CURRENT MINING APPROVALS PROCESS. THE EFFECT WILL BE TO REMOVE DUPLICATION BETWEEN MINING LEGISLATION AND PLANNING LEGISLATION. THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT IS NOT BEING CHANGED. IN LINE WITH THIS GOVERNMENT'S COMPREHENSIVE ENVIRONMENTAL POLICIES, CONSIDERABLE EMPHASIS IS BEING PLACED ON THE ENVIRONMENTAL ASPECTS OF MINING. IN FUTURE, IT WILL BE A REQUIREMENT THAT PRIVATE MINING AGREEMENTS BE REGISTERED WITH THE

DEPARTMENT OF MINERAL RESOURCES. ENVIRONMENTAL AND REHABILITATION CONDITIONS, INCLUDING THE LODGEMENT OF A SECURITY DEPOSIT, WILL BE IMPOSED ON REGISTRATION. THIS WILL ENSURE PROPER REHABILITATION OF PRIVATE LANDS USED FOR MINING. EXISTING PROVISIONS OF THE COAL MINING ACT 1973 AND THE MINING ACT 1973 RELATING TO ENVIRONMENTAL PROTECTION AND REHABILITATION ARE BEING BROUGHT ACROSS INTO THE NEW ACT. THE ENVIRONMENT IS GIVEN CAREFUL ATTENTION BOTH BEFORE AND AFTER AN AUTHORITY IS GRANTED.

THE MINING ACT WILL CONTINUE THE MAJOR EMPHASIS ON REHABILITATION OF LAND FOLLOWING MINING ACTIVITIES. ALL MINING PROJECTS WILL CONTINUE TO REQUIRE APPROVAL UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT. THE BILL WILL ENSURE THAT THE PUBLIC IS AWARE OF ALL EXPLORATION AND MINING PROPOSALS. AS SOON AS POSSIBLE AFTER AN AUTHORITY IS APPLIED FOR, GRANTED, RENEWED, TRANSFERRED OR CANCELLED, A NOTICE MUST BE PUBLISHED IN THE GOVERNMENT GAZETTE. THIS WILL ENSURE ACCOUNTABILITY. IN

LINE WITH THE GOVERNMENT'S DEREGULATION POLICY, FOSSICKING LICENCES ARE TO BE ABOLISHED, ALTHOUGH PEOPLE WILL STILL BE ABLE TO FOSSICK. IT IS ALSO PROPOSED TO ABOLISH MINING DISTRICTS, THE PROSPECTING BOARD, LICENSING OF TOURIST ACTIVITIES ON MINING TITLES, LICENCES TO REMOVE TAILINGS AND LICENCES TO CONSTRUCT TUNNELS TOWARDS FURTHER DEREGULATION AND SIMPLIFICATION OF TITLES. EXISTING PROVISIONS WHICH RELATE TO THE PAYMENT OF RENT AND FRONT END CASH PAYMENT ON LEASE GRANT ARE TO BE REPEALED. RENT WILL BECOME

PART OF FUTURE COMPENSATION ARRANGEMENTS.

IT IS PROPOSED TO PROCLAIM MINERAL CLAIM DISTRICTS SIMILAR IN CONCEPT TO AN OPAL PROSPECTING AREA. BEFORE SUCH A DISTRICT IS PROCLAIMED, THE LOCAL COMMUNITY, INCLUDING SMALL SCALE- MINERS, WILL BE CONSULTED. IT WILL ALSO BE NECESSARY TO OBTAIN THE CONCURRENCE OF LOCAL COUNCILS AND RELEVANT GOVERNMENT AUTHORITIES. RULES AND CONDITIONS WILL APPLY TO A MINERALS CLAIMS DISTRICT. IT WILL BE POSSIBLE, AFTER MARKING OUT AN AREA, TO

APPLY TO A MINING REGISTRAR FOR A MINERAL CLAIM IN A MINERAL CLAIM DISTRICT AND HAVE IT REGISTERED WITHOUT DELAY. THE CLAIM WILL BE REGISTERED SUBJECT TO CONDITIONS WHICH MAY INCLUDE REHABILITATION OF THE CLAIM AREA AND THE LODGEMENT OF A SECURITY DEPOSIT. IN THE CASE OF LAND OUTSIDE A MINERAL CLAIM DISTRICT, BEFORE MAKING AN APPLICATION THE LAND MUST BE MARKED OUT AND ADEQUATE NOTICE GIVEN TO THE OCCUPIER OF THE LAND. THE OCCUPIER MAY OBJECT ON THE BASIS THAT THE LAND IS USED FOR AGRICULTURAL PURSUITS. A MINERAL CLAIM WILL

BE REGISTERED, SUBJECT TO CONDITIONS, OVER AN AREA NOT MORE THAN TWO HECTARES AND FOR NOT MORE THAN FIVE YEARS.

BEFORE COMMENCING WORK ON THE CLAIM DEVELOPMENT CONSENT, IF REQUIRED BY PLANNING LEGISLATION, MUST BE OBTAINED. THE CURRENT COMPENSATION PROVISIONS WILL CONTINUE TO APPLY. THEY WILL, HOWEVER, BE EXPANDED TO PROVIDE FOR COMPENSATION TO OWNERS AND OCCUPIERS OF PRIVATE LAND AFFECTED BY CLAIMS. THE NEW EXPLORATION LICENCE IS BASICALLY UNALTERED FROM THE CURRENT EXPLORATION

LICENCE AND COAL AUTHORIZATION. IT WILL AUTHORIZE THE LICENSEE TO CARRY OUT EXPLORATION ACTIVITIES IN AN EXPLORATION AREA FOR AN INITIAL PERIOD OF UP TO FIVE YEARS. AN EXPLORATION LICENCE DOES NOT NECESSARILY GUARANTEE THE GRANT OF AN ASSESSMENT LEASE. THE ASSESSMENT LEASE IS A NEW CONCEPT WHICH WILL SIGNIFICANTLY IMPROVE THE RESPONSIBLE PROGRESSION FROM THE EXPLORATION STAGE TO THE MINING PROCESS. THE MINISTER WILL BE ABLE TO GRANT AN ASSESSMENT LEASE TO COVER THE PERIOD BETWEEN EXPLORATION

AND MINING. THIS WILL ENABLE FURTHER DETAILED PROSPECTING AND FEASIBILITY AND OTHER STUDIES TO BE CARRIED OUT SO AS TO DETERMINE THE ECONOMIC VIABILITY OF THE AREA OF INTEREST AND/OR RETAIN THE AREA UNTIL MARKETS OR OTHER CIRCUMSTANCES ARE APPROPRIATE FOR DEVELOPMENT. INDUSTRY SEES A NEED FOR THIS FORM OF TITLE, WHICH HAS ALREADY BEEN PROVIDED IN SOME OTHER STATES. THE MAXIMUM TERM FOR HOLDING AN ASSESSMENT LEASE WILL BE FIVE YEARS RENEWABLE FOR FURTHER PERIODS OF FIVE YEARS IF THE MINISTER CONSIDERS IT

NECESSARY. BEFORE AN ASSESSMENT LEASE CAN BE GRANTED, NOTICE OF THE APPLICATION FOR SUCH A LEASE IS REQUIRED TO BE GIVEN TO ALL MATERIALLY AFFECTED GOVERNMENT AUTHORITIES AND THE DIRECTOR OF THE DEPARTMENT OF PLANNING. IF THERE IS A DISPUTE WHICH CANNOT SATISFACTORILY BE RESOLVED THE MATTER MUST BE REFERRED TO THE PREMIER WHO WILL ARBITRATE.

ENVIRONMENTAL MATTERS THAT MAY IN SOME CIRCUMSTANCES ARISE, RELATING TO THE DECISION TO GRANT AN ASSESSMENT LEASE

WILL BE CONSIDERED UNDER PART 5 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT. AS IS THE CASE AT PRESENT, THE GRANTING OF A MINING LEASE WILL BE SUBJECT TO THE APPLICANT FULFILLING THE REQUIREMENTS OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AND OF RELEVANT STATUTORY AUTHORITIES. CONSENT IS ALSO REQUIRED FROM LANDHOLDERS WHERE AGRICULTURAL LAND OR IMPROVEMENTS ARE INCLUDED. AT PRESENT THE MINISTER WILL NOT BE ABLE TO GRANT A MINING LEASE WITHOUT THE CONSENT OF MATERIALLY AFFECTED

GOVERNMENT AUTHORITIES AND THE DIRECTOR OF THE DEPARTMENT OF PLANNING. WHERE CONSENT OF RELEVANT AUTHORITIES IS WITHHELD, THE MINISTER WILL REFER THE APPLICATION TO THE PREMIER FOR RESOLUTION. THE AUTOMATIC RIGHT OF OBJECTION TO THE MINING WARDEN BY A LANDHOLDER OBJECTING TO A MINING LEASE WILL BE REMOVED. THIS EXISTING POWER DUPLICATED THE DEVELOPMENT APPLICATION PROCESS UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT. WHERE THIS DOES NOT APPLY THE WARDEN WILL INQUIRE AND REPORT.

NEVERTHELESS, IF REPRESENTATIONS ARE MADE, THE MINISTER STILL HAS THE POWER TO DIRECT THAT THE MINING WARDEN CONDUCT THE INQUIRY. THIS REMOVES DUPLICATION ON ENVIRONMENTAL MATTERS WHICH ARE PROPERLY DEALT WITH DURING THE ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE. MATTERS SUCH AS COMPENSATION AND CONFLICT OF TITLE WILL STILL BE ABLE TO BE DEALT WITH BY THE WARDEN.

THE BILL PROVIDES FOR THE POTENTIAL GRANT OF MINING LEASES FOR LONGER PERIODS THAN THE 21 YEARS PRESENTLY

ALLOWED. IF IT IS PROPOSED TO GRANT A MINING LEASE FOR MORE THAN 21 YEARS IT WILL BE NECESSARY TO OBTAIN THE CONCURRENCE OF THE PREMIER. ONE FACTOR WHICH DISCOURAGES MINING INVESTMENT IN THIS STATE IS A LACK OF SECURITY OF TITLE FOR MINING ACTIVITIES. AT THE REQUEST OF INDUSTRY, IT IS PROPOSED TO PROVIDE THAT TITLE CANNOT BE CHALLENGED IN ANY LEGAL PROCEEDINGS COMMENCED LATER THAN THREE MONTHS AFTER THE NOTIFICATION OF A GRANT IN THE GOVERNMENT GAZETTE. THIS ACCORDS WITH SIMILAR PROVISIONS IN THE STATE'S PLANNING LEGISLATION

RELATING TO DEVELOPMENT. LARGE MINING APPLICATIONS INVOLVE EXPENDITURE OF MANY MILLIONS OF DOLLARS. IT IS UNREALISTIC TO EXPECT COMPANIES TO UNDERTAKE LARGE FINANCIAL COMMITMENTS AND COMMENCE OPERATIONS WHILE IT IS UNCERTAIN THAT THEIR TITLE TO MINE IS VALID. THE PROCEDURE FOR CONSOLIDATING LEASES IS BEING SIMPLIFIED. THIS SHOULD ENABLE THE ISSUE OF CONSOLIDATED LEASES TO BE EXPEDITED TO THE MINING INDUSTRY'S OBVIOUS BENEFIT. IT IS PROPOSED TO PROVIDE THAT ONLY A MAGISTRATE IS ELIGIBLE FOR APPOINTMENT AS A MINING

WARDEN. AT PRESENT THERE IS NO REQUIREMENT THAT A WARDEN BE LEGALLY QUALIFIED. THIS WILL PUT BEYOND DOUBT THE JUDICIAL NATURE AND INDEPENDENCE OF THE POSITION. SPECIFIC RULES WILL BE FORMULATED FOR WARDENS COURTS. IT IS ALSO PROPOSED TO STREAMLINE THE WORKINGS OF THE WARDENS COURTS. FOR EXAMPLE, EVERY WARDEN WILL BE A WARDEN FOR THE WHOLE STATE. THIS WILL MEAN THAT AN INJUNCTION OF EXTRAORDINARY URGENCY WILL BE ABLE TO BE OBTAINED FROM ANY WARDENS COURT. THE DEFINITION OF COMPENSABLE LOSS IS BEING CLARIFIED TO MAKE IT

CLEAR THAT DAMAGE TO CROPS WILL INCLUDE FRUIT AND VEGETABLES, AND INTERFERENCE WITH STOCK ON LAND WILL INCLUDE PRODUCTS OF THAT STOCK, FOR EXAMPLE MILK.

ON 30 MAY 1991, THE NEW SOUTH WALES COURT OF APPEAL HANDED DOWN ITS DECISION IN THE CHIEF MINING WARDEN V THE DISTRICT COURT OF NEW SOUTH WALES AND OTHERS. THE COURT OF APPEAL HELD THAT CERTAIN DECISIONS OF THE MINING WARDEN, WHICH UP TO THEN HAD BEEN CONSIDERED TO BE ADMINISTRATIVE IN NATURE, WERE IN FACT OF JUDICIAL CHARACTER. THIS MEANS, IN

EFFECT, THAT THE DISTRICT COURT WOULD HAVE JURISDICTION TO ENTERTAIN APPEALS FROM WARDENS' COURTS IN PURELY ADMINISTRATIVE MATTERS SUCH AS CANCELLATION OF REGISTRATION OF A CLAIM. IT HAS NEVER BEEN INTENDED THAT THE DISTRICT COURT SHOULD HAVE SUCH AN APPELLATE JURISDICTION IN SUCH MATTERS. CLAUSE 337 OF THE BILL MAKES IT CLEAR THAT THERE IS NO APPEAL AGAINST A WARDEN'S ADMINISTRATIVE FUNCTIONS.

THE BILL HAS BEEN FURTHER REVIEWED BY THE NEW SOUTH WALES COAL ASSOCIATION AND

THE CHAMBER OF MINES METALS AND EXTRACTIVE INDUSTRIES (NSW), AND MANY OF THE SUGGESTIONS OF THOSE INDUSTRY BODIES HAVE NOW BEEN INCORPORATED. THE CHAMBER, ON THE ADVICE OF ITS LEGAL ADVISORS, MALLESONS, SUBMITTED THAT THE BILL SHOULD CONTAIN A PROVISION PRECISELY STATING WHEN PROPERTY IN MINERALS PASSES TO A MINER. SIMILAR PROVISIONS ARE CONTAINED IN RECENT VICTORIAN AND QUEENSLAND LEGISLATION. THE CHAMBER BELIEVES THAT LACK OF SUCH A PROVISION IN THIS BILL COULD CREATE DIFFICULTY IN SOME JOINT VENTURES WHERE

FOREIGN INVESTMENT IS SOUGHT. THE GOVERNMENT IS KEEN TO ENCOURAGE INVESTMENT IN MINING IN THIS STATE AND HAS AGREED TO THE CHAMBER'S REQUEST IN THIS REGARD. CLAUSE 11 OF THE BILL PROPOSES THAT ANY LAWFULLY MINED MINERAL BECOMES THE PROPERTY OF THE MINER WHEN THE MATERIAL FROM WHICH IT IS RECOVERED IS SEVERED FROM THE LAND, AT THE TIME IT IS DUG FROM THE GROUND.

CLAUSE 161 PROPOSES THAT ANY PERSON CLAIMING A LEGAL OR EQUITABLE INTEREST IN AN AUTHORITY MAY APPLY FOR REGISTRATION OF THAT INTEREST.

IN ANY SUBSEQUENT LEGAL PROCEEDINGS, A REGISTERED INTEREST WILL HAVE PRIORITY OVER AN UNREGISTERED INTEREST, AND AN EARLIER REGISTERED INTEREST WILL HAVE PRIORITY OVER A LATER REGISTERED INTEREST. THE PERIOD DURING A CAVEAT CAN REMAIN IN FORCE HAS NOW BEEN EXTENDED FROM 28 DAYS TO THREE MONTHS. ADDITIONALLY THE PERIOD FOR WHICH THE WARDEN CAN ISSUE A PERMIT TO ENTER LANDS TO CARRY OUT ENVIRONMENTAL STUDIES HAS BEEN INCREASED FROM SIX TO 12 MONTHS. THIS WILL REMOVE THE NEED FOR THE WARDEN TO CONDUCT A FRESH HEARING IF AN

ENVIRONMENTAL STUDY, WHICH MAY BE QUITE EXPENSIVE, TAKES LONGER THAN SIX MONTHS. MINING PLAYS AN ESSENTIAL PART IN THIS STATE'S ECONOMIC DEVELOPMENT.

LET ME REMIND ANY SUCH HONORABLE MEMBERS THAT COAL PROVIDES 95 PER CENT OF THIS STATE'S ELECTRICITY, THAT COAL IS THE NATION'S LARGEST EXPORT EARNER AND THAT WE ARE THE WORLD'S LARGEST COAL EXPORTER. MORE THAN 1000 DOLLARS IN EXPORT EARNINGS FOR EACH NEW SOUTH WALES FAMILY EVERY YEAR COMES FROM COAL. THE MINERAL INDUSTRY CONTRIBUTES

SIGNIFICANTLY TO THE WELL BEING OF OUR STATE. IN 1990/91, PRODUCTION WAS VALUED AT ABOUT FOUR BILLION DOLLARS OR 3 PER CENT OF GROSS STATE PRODUCT. COAL IS THE STATE'S LARGEST EXPORT REVENUE ASSET, EARNING NEARLY TWO BILLION DOLLARS. METALLIFEROUS ORES AND METAL SCRAP CONTRIBUTED ANOTHER 300 MILLION DOLLARS. OPEN CUT MINING BY ITS VERY NATURE AFFECTS THE LANDSCAPE. WHAT IS IMPORTANT IS THAT WHEN MINING OPERATIONS CEASE THE LAND IS RESPONSIBLY REHABILITATED FOR OTHER PRODUCTIVE USES. THE ENVIRONMENTAL CONDITIONS

IMPOSED BEFORE AN AUTHORITY OR MINERAL CLAIM IS GRANTED WILL ENSURE FULL REHABILITATION OF THE LAND. IF THE MINING OPERATOR DOES NOT DO THIS HIS SECURITY DEPOSIT WILL BE USED TO ENSURE REHABILITATION. WHEN AUTHORITIES ARE RENEWED THE AMOUNT OF DEPOSIT WILL BE REVIEWED AND INCREASED IF CIRCUMSTANCES INDICATE THIS IS DESIRABLE.

I BELIEVE ECOLOGICALLY SUSTAINABLE DEVELOPMENT IS THE ANSWER TO PROBLEMS IN THIS AREA. WE IN NEW SOUTH WALES HAVE BEEN PRACTISING THIS LONG

BEFORE CANBERRA EVER FOUND OUT ABOUT IT. THIS STATE'S FUTURE PROSPERITY DEPENDS ON OUR MINING INDUSTRY. THIS LEGISLATION WILL ENCOURAGE FUTURE INVESTMENT FOR NEW SOUTH WALES. OF PRIME CONCERN TO THE MINING INDUSTRY HAS BEEN THE LENGTH OF TIME TAKEN TO GAIN AN APPROVAL TO MINE. THE PROPOSALS CONTAINED IN THIS BILL WILL REDUCE THAT TIME TO A MINIMUM WHILST STILL OBSERVING STRINGENT DEVELOPMENT CONTROLS AND RETAINING LEGITIMATE RIGHTS OF OBJECTION. PRODUCTIVITY GAINS WILL BE ACHIEVED BY REMOVING DUPLICATION. WESTERN

AUSTRALIA, QUEENSLAND AND VICTORIA HAVE RECENTLY SIMPLIFIED THEIR MINING LEGISLATION AND THOSE STATES ARE ALREADY REAPING THE BENEFITS.

THE PROPOSALS IN THIS BILL WILL SPEED UP ADMINISTRATIVE PROCEDURES, SIMPLIFY THE VARIOUS MINING AUTHORITIES, REMOVE OVER-REGULATION AND, WITHIN THE BOUNDS OF STRICT ENVIRONMENTAL CONTROLS AND REHABILITATION OF LAND REQUIREMENTS, FREE THE MINING INDUSTRY SO IT CAN GET ON WITH EXPLORATION AND STIMULATE

INVESTMENT IN NEW SOUTH WALES.

I COMMEND THE BILL TO THE HOUSE.