

Queensland



# **MINERAL RESOURCES ACT 1989**

**Reprinted as in force on 30 September 1998  
(includes amendments up to Act No. 27 of 1998)**

**Reprint No. 5**

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- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
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The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

# Queensland



## MINERAL RESOURCES ACT 1989

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# MINERAL RESOURCES ACT 1989

[as amended by all amendments that commenced on or before 30 September 1998]

**An Act to provide for the assessment, development and utilisation of mineral resources to the maximum extent practicable consistent with sound economic and land use management**

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Mineral Resources Act 1989*.

### Objectives of Act

2. The principal objectives of this Act are to—
  - (a) encourage and facilitate prospecting and exploring for and mining of minerals;
  - (b) enhance knowledge of the mineral resources of the State;
  - (c) minimise land use conflict with respect to prospecting, exploring and mining;
  - (d) encourage environmental responsibility in prospecting, exploring and mining;
  - (e) ensure an appropriate financial return to the State from mining;
  - (f) provide an administrative framework to expedite and regulate prospecting and exploring for and mining of minerals;
  - (g) encourage responsible land care management in prospecting, exploring and mining.

### **Application of Act to Commonwealth land and coastal waters of the State**

**3.(1)** To the extent that the Parliament of the Commonwealth shall have from time to time vested in the Crown in right of Queensland jurisdiction to make such laws with respect thereto, this Act applies in respect of the sea bed and subsoil beneath the internal waters of Australia and beneath the baseline waters of the State and to waters above that sea bed as if that sea bed and subsoil were land within Queensland.

**(2)** This Act applies in respect of land of or vested in the Commonwealth to the extent that from time to time the Parliament of the Commonwealth shall determine.

**(3)** Subsections (1) and (2) shall not be construed to authorise prospecting, exploration or mining of the sea bed and subsoil that—

- (a) is within a protected area; or
- (b) by a law of the Commonwealth is excluded from the application of this Act (whether by reference to this Act or to the subject matter of this Act) to the extent of that exclusion.

**(4)** In this section—

**“baseline waters”** means the waters between the mean low water springs level and the inside of the baseline under the *Offshore Minerals Act 1998*, section 16.<sup>1</sup>

### **Effect of change of baseline**

**4.(1)** If—

- (a) an offshore area is covered by an exploration permit, mineral development licence or mining lease; and
- (b) there is a change to the inner limit of the coastal waters of the State as defined in the *Offshore Minerals Act 1998*, section 16(1) and (2); and

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<sup>1</sup> *Offshore Minerals Act 1998*, s 16 (Coastal waters, and effect of change in baseline)

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- (c) as a result of the change, the offshore area comes within those coastal waters;

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

**(2) If—**

- (a) a mining lease takes effect immediately after an exploration permit expires; and
- (b) the holder of the mining lease immediately after it takes effect was the holder of the exploration permit immediately before it expired;

the mining lease is a successor tenure to the exploration permit for subsection (1).

**(3) If—**

- (a) a mineral development licence takes effect immediately after an exploration permit expires; and
- (b) the holder of the mineral development licence immediately after it takes effect was the holder of the exploration permit immediately before it expired;

the mineral development licence is a successor tenure to the exploration permit for subsection (1).

**(4) If—**

- (a) a mining lease takes effect immediately after a mineral development licence expires; and
- (b) the mineral development licence took effect immediately after an exploration permit expired; and
- (c) the holder of the mining lease immediately after it takes effect was the holder of the mineral development licence immediately before it expired; and
- (d) the holder of the mineral development licence immediately after it took effect was the holder of the exploration permit immediately before it expired;

the mining lease is a successor tenement to the exploration permit and the

mineral development licence for subsection (1).

(5) In this section—

**“offshore area”** means an area that comes within paragraph (c) of the definition of **“land”** in section 5.

## **Definitions**

5. In this Act—

**“adjoining lots”** includes lots that would be adjoining lots if they were not separated by a road.

**“aggrieved person”** see—

- section 38
- section 116.

**“At Risk agreement”** means the document called the ‘At Risk’ agreement endorsed by Cabinet on 5 April 1988, and that document as amended and endorsed by Cabinet from time to time.<sup>2</sup>

**“block”** means a block as described in section 126.

**“building”** means a fixed, roofed structure that is completely or partly enclosed by walls.

**“chief executive (planning)”** means the chief executive of the department in which the *Local Government (Planning and Environment) Act 1990* is administered.

**“company”** means the following entities within the meaning of the Corporations Law—

- (a) a company;
- (b) a recognised company;
- (c) a registered foreign company.

**“condition”** includes term.

**“contaminated land”** see section 6.

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<sup>2</sup> A copy of the agreement is available from the department’s offices at 61 Mary Street, Brisbane.

**“credit provider”** see *Consumer Credit (Queensland) Act 1994*.

**“district prospecting permit”** see section 14.

**“educational institution”** means a school, college, university or university college.

**“eligible person”** means—

- (a) an adult; or
- (b) a company; or
- (c) a local government that acquires a mining claim or mining lease under the *Local Government Act 1993*, chapter 10, part 7;<sup>3</sup> or
- (d) an educational institution the Minister treats as an eligible person under section 7.

**“enter”** land includes remain on the land.

**“environment”** has the meaning given by the *Environmental Protection Act 1994*.<sup>4</sup>

**“environmental impact”**, of the use, development or protection of land, includes the following—

- (a) positive or adverse impact on the environment;
- (b) temporary or irreversible impact on the environment;
- (c) cumulative impact on the environment over time or in combination with other impacts because of the scale, intensity, duration or frequency of the impacts;
- (d) potential impact on the environment that—

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<sup>3</sup> Part 7 is about the recovery of rates.

<sup>4</sup> Under the *Environmental Protection Act 1994*, “environment” includes—

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) all natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and
- (d) the social, economic, aesthetic and cultural conditions that affect, or are affected by, matters mentioned in paragraphs (a) to (c).

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- (i) is highly likely to happen; or
- (ii) may be serious or irreversible but is unlikely to happen.

**“environmental impact statement”**, for a proposed mining project, means a document, prepared in accordance with guidelines under this Act, about the environmental impact of the project.

**“exploration permit”** means an exploration permit under part 5.

**“explore”** means take action to determine the existence, quality and quantity of minerals on, in or under land or in the waters or sea above land by—

- (a) prospecting;
- (b) using instruments, equipment and techniques appropriate to determine the existence of any mineral;
- (c) extracting and removing from land for sampling and testing an amount of material, mineral or other substance in each case reasonably necessary to determine its mineral bearing capacity or its properties as an indication of mineralisation;
- (d) doing anything else prescribed under a regulation.

**“fossicking area”** has the meaning given by the *Fossicking Act 1994*.

**“hand mining”** means mining using hand operated tools, including, for example, picks, shovels, hammers, gads, sieves and windlasses, but does not include mining using explosives.

**“hazardous contaminant”** has the meaning given by the *Environmental Protection Act 1994*.<sup>5</sup>

**“holder”**, for a prospecting permit, exploration permit, mining claim,

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<sup>5</sup> The *Environmental Protection Act 1994*, schedule 4 defines **“hazardous contaminant”** as follows—

**“mining authority”** means—

- (a) a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease granted under the *Mineral Resources Act 1989*; or
- (b) a prospecting petroleum permit, authority to prospect, petroleum lease or pipeline licence granted under the *Petroleum Act 1923*; or
- (c) a licence, permit, pipeline licence, primary licence, secondary licence or special prospecting authority granted under the *Petroleum (Submerged Lands) Act 1982*.

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mineral development licence or mining lease, means the person in whose name the permit, claim, licence or lease is recorded, and, for part 3, division 1, includes a person mentioned in section 13, definition “holder”.

**“land”** includes—

- (a) land within the beds and banks of all streams, watercourses and inundated land; and
- (b) land beneath the internal waters of Queensland; and
- (c) the sea bed and subsoil to which this Act applies; and
- (d) waters in, upon and above land;

but, except in sections 8, 9 and 11, does not include a protected area.

**“last objection day”** means the last day fixed by a mining registrar for objection to an application for a mining claim or mining lease.

**“mine”** see section 6A.

**“mineral”** means a substance which normally occurs naturally as part of the earth’s crust or is dissolved or suspended in water within or upon the earth’s crust and includes a substance which may be extracted from such a substance, and includes—

- (a) clay if mined for use for its ceramic properties, kaolin and bentonite;
- (b) foundry sand;
- (c) hydrocarbons and other substances or matter occurring in association with shale or coal and necessarily mined, extracted, produced or released by or in connection with mining for shale or coal or for the purpose of enhancing the safety of current or future mining operations for coal or the extraction or production of mineral oil therefrom;
- (d) limestone if mined for use for its chemical properties;
- (e) marble;
- (f) mineral oil or gas extracted or produced from shale or coal by in situ processes;
- (g) peat;

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- (h) salt including brine;
- (i) shale from which mineral oil may be extracted or produced;
- (j) silica, including silica sand, if mined for use for its chemical properties;
- (k) rock mined in block or slab form for building or monumental purposes;

but does not include—

- (l) living matter;
- (m) petroleum within the meaning of the *Petroleum Act 1923*;
- (n) soil, sand, gravel or rock (other than rock mined in block or slab form for building or monumental purposes) to be used or to be supplied for use as such, whether intact or in broken form;
- (o) water.

**“mineral development licence”** means a mineral development licence under part 6.

**“mining claim”** means a mining claim under part 4.

**“mining lease”** means a mining lease under part 7.

**“mining project”** means mining carried on under 1 or more mining leases as a single integrated undertaking.

**“mining registrar”** means—

- (a) for a mining district—the mining registrar assigned to the district; or
- (b) for land—the mining registrar for the mining district in which the land is situated.<sup>6</sup>

**“mortgage”** includes a charge on any mining claim, mineral development licence or mining lease for securing money or money’s worth.

**“occupied land”** means land (other than land occupied under a permit under the *Land Act 1994*) of which there is an owner, and includes a

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<sup>6</sup> The mining registrar assigned to a particular mining district is the registrar of a Wardens Court convened in the district. See also section 247 (Lodgment of application where land in more than 1 mining district)

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reserve.

**“occupier”** of land means a person (other than the owner) lawfully occupying the land.

**“officer”**, of a company, has the same meaning as officer of a corporation under the Corporations Law.

**“owner”**, of land, means—

- (a) for a reserve (other than land that is a reserve merely because it is in the Wet Tropics Area and land that is rail corridor land)—
  - (i) if the reserve is a road—the entity having control of the road;<sup>7</sup> or
  - (ii) if the reserve is a resources reserve under the *Nature Conservation Act 1992* for which there are trustees—the trustees for the reserve; or
  - (iii) if the reserve is DOGIT land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*—the trustees for the land; or
  - (iv) if the reserve is land held under a lease under the *Local Government (Aboriginal Lands) Act 1978*, section 6—the relevant local government; or
  - (v) if Aboriginal land under the *Aboriginal Land Act 1991* is taken to be a reserve because of section 87(2) or 87(4)(b) of that Act—the grantees of the land; or
  - (vi) if Torres Strait Islander land under the *Torres Strait Islander Land Act 1991* is taken to be a reserve because of section 84(2) or 84(4)(b) of that Act—the grantees of the land; or
  - (vii) if subparagraphs (i) to (vi) do not apply—the Minister responsible for administering the Act under which it is a reserve; or
- (b) for freehold land—the registered owner of the land; or

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<sup>7</sup> Under the *Local Government Act 1993*, a local government has control of all roads in its area. A state-controlled road under the *Transport Infrastructure Act 1994* is excluded from the definition of road in the *Local Government Act 1993*.

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- (c) if a person is, or will on performing conditions, be entitled to a deed of grant in fee simple for the land—the person; or
- (d) if an estate in fee simple of the land is being purchased from the State—the purchaser; or
- (e) for a State forest or timber reserve under the *Forestry Act 1959*—the Primary Industries Corporation; or
- (f) for a person who holds land under a lease from the State under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* for land excised from land granted in trust for Aboriginal or Torres Strait Islander purposes under the *Land Act 1994*—the trustees of the land; or
- (g) for a person who holds land from the State under an Act (other than an Act about mining or petroleum) under another kind of lease or occupancy (other than occupation rights under a permit under the *Land Act 1994*) of the land—the person;

and includes, in addition to an owner mentioned in paragraphs (a) to (g)—

- (h) for a forest entitlement area under the *Forestry Act 1959*—the Primary Industries Corporation; and
- (i) for land in the Wet Tropics Area—the Wet Tropics Management Authority;
- (j) for rail corridor land—the Minister administering chapter 6 of the *Transport Infrastructure Act 1994*.

**“parcel prospecting permit”** see section 14.

**“permanent building”** means a building other than a building of a temporary nature.

**“planning scheme”** has the meaning given by the *Local Government (Planning and Environment) Act 1990*.

**“prospect”** means take action, not being that of hand mining, to determine the existence, quality and quantity of minerals on, in or under land by either or both of the following methods—

- (a) using metal detectors or other like hand held instruments;
- (b) sampling using only hand held implements.

**“prospecting permit”** means a prospecting permit granted under part 3.

**“protected area”** means an area dedicated under the *Nature Conservation Act 1992* as—

- (a) a national park (scientific); or
- (b) a national park; or
- (c) a national park (Aboriginal land); or
- (d) a national park (Torres Strait Islander land); or
- (e) a conservation park.

**“rail corridor land”** means existing rail corridor land or new rail corridor land under the *Transport Infrastructure Act 1994*.

**“rehabilitation”**, of land, includes remediation of contaminated land.

**“relevant local government”**, for land, means the local government for the local government area in which the land is situated.

**“relevant mining district”**, for land, means the mining district in which the land is situated.

**“repealed Acts”** means the Acts repealed by this Act.

**“reserve”** means—

- (a) land that is—
  - (i) a road; or
  - (ii) a State forest or timber reserve under the *Forestry Act 1959*; or
  - (iii) a resources reserve under the *Nature Conservation Act 1992*; or
  - (iv) Aboriginal land under the *Aboriginal Land Act 1991* taken to be a reserve because of section 87(2) or 87(4)(b) of that Act; or
  - (v) Torres Strait Islander land under the *Torres Strait Islander Land Act 1991* taken to be a reserve because of section 84(2) or 84(4)(b) of that Act; or
  - (vi) rail corridor land; or

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(vii) vested in—

- (A) the Minister administering the *Education (General Provisions) Act 1989*; or
- (B) Queensland Rail; or
- (C) the Queensland Housing Commission; or
- (D) the Minister responsible for the construction of public buildings or the chief executive of that Minister's department; or

(viii) held under the *Transport Planning and Coordination Act 1994*; or

(ix) granted in trust or reserved for a community purpose under the *Land Act 1994* or another Act; or

(b) land held under a lease under the *Local Government (Aboriginal Lands) Act 1978*, section 6;<sup>8</sup> or

(c) land within the Wet Tropics Area;

but does not include land (other than a road) reserved as a town or suburb under the *Land Act 1994*.

**“restricted land”** means restricted land (category A) or (category B).

**“restricted land (category A)”** means land within 100 m laterally of a permanent building used—

- (a) mainly as accommodation or for business purposes; or
- (b) for community, sporting or recreational purposes or as a place of worship.

**“restricted land (category B)”** means land within 50 m laterally of any of the following features—

- (a) a principal stockyard;
- (b) a bore or artesian well;
- (c) a dam;
- (d) another artificial water storage connected to a water supply;

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<sup>8</sup> Section 6 (Grant of leases to councils)

(e) a cemetery or burial place.

“road” has the meaning given by the *Land Act 1994*.

“section 65 conference” see section 66.

“section 169 conference” see section 170.

“section 217 conference” see section 218.

“section 254 conference” see section 255.

“sub-block” means a sub-block as described in section 126.

“termination” includes expiry.

“warden”, in relation to a mining district, means a warden appointed for the purposes of this Act and assigned to that district or, in relation to a specific function of a warden, the warden to whom that function has been assigned.

“Wet Tropics Area” means the Wet Tropics Area within the meaning of the *Wet Tropics World Heritage Protection and Management Act 1993*.

### Meaning of “contaminated land”

6. Land, or a building or structure on land, is “contaminated land” under this Act if the Minister considers it is affected by a hazardous contaminant in a way that makes it, or other land, air or water, a hazard to human health or the environment.

### Meaning of “mine”

6A.(1) “Mine” means to carry on an operation with a view to, or for the purpose of—

- (a) winning mineral from a place where it occurs; or
- (b) extracting mineral from its natural state; or
- (c) disposing of mineral in connection with, or waste substances resulting from, the winning or extraction.

(2) For subsection (1), extracting includes the physical, chemical, electrical, magnetic or other way of separation of a mineral.

(3) Extracting includes, for example, crushing, grinding, concentrating, screening, washing, jigging, tabling, electro winning, solvent extraction electro winning (SX–EW), heap leaching, flotation, fluidised bedding, carbon-in-leach (CIL) and carbon-in-pulp (CIP) processing.

(4) However, extracting does not include—

- (a) a process in a smelter, refinery or anywhere else by which mineral is changed to another substance; or
- (b) testing or assaying small quantities of mineral in teaching institutions or laboratories, other than laboratories situated on a mining lease; or
- (c) an activity, prescribed under a regulation, that is not directly associated with winning mineral from a place where it occurs.

(5) For subsection (1), disposing includes, for example, the disposal of tailings and waste rock.

(6) A regulation under subsection (4)(c) may prescribe an activity by reference to the quantities of minerals extracted or to any other specified circumstances.

### **When educational institution is an eligible person**

7. The Minister may treat an educational institution as an eligible person under this Act to enable it to apply for and hold a prospecting permit, mining claim or mining lease only if the Minister is satisfied the activities it intends to carry out under the permit, claim or lease are educational or training activities.

### **Crown's property in minerals**

8.(1) Gold on or below the surface of land is the property of the Crown.

(2) Coal—

- (a) on or below the surface of land that was acquired by the Crown as provided in the *Agricultural Lands Special Purchase Act 1901* and subsequently alienated in fee simple by the Crown is the property of the Crown;
- (b) on or below the surface of land (other than land referred to in

paragraph (a)) is the property of the Crown except where that land was alienated in fee simple by the Crown before 1 March 1910 and the grant of that land did not contain a reservation to the Crown of the property in that coal.

(3) All minerals (other than coal and gold but including minerals dissolved or suspended in water within or upon the earth's crust) on or below the surface of land in Queensland other than land alienated in fee simple by the Crown pursuant to—

- (a) the *Alienation of Crown Lands Act 1860*, section 22; or
- (b) the *Crown Lands Alienation Act 1868*, section 32; or
- (c) the *Mineral Lands Act 1872*, section 21;

are the property of the Crown.

(4) Each deed of grant or lease of unallocated State land must contain a reservation of—

- (a) minerals on and below the surface of the land; and
- (b) the right of access for prospecting, exploring or mining.

(5) Mineral on or below the surface of land that is or becomes road is (to the extent that the mineral, but for this paragraph would not be the property of the Crown) on and from the date the land becomes or became road, the property of the Crown.

(6) Where land to a specified depth only is or becomes road, subsection (5) applies in respect only of mineral in or below the surface of that land to the specified depth.

(7) Nothing in subsections (5) and (6) shall be construed as abrogating any right that the owner of land whose land is compulsorily acquired after the commencement of this Act for the purpose of being used as a road may have under any other Act or law to compensation in respect of that acquisition.

### **Exclusive right of Crown to grant mining leases etc. irrespective of ownership of mineral**

9.(1) A person is not competent to grant a lease or to enter into an agreement or arrangement, whether for valuable consideration or otherwise

(other than an agreement referred to in section 320(2)(a) or (b)) authorising the prospecting or exploring for mineral or the mining of any mineral therefrom notwithstanding that the mineral is not the property of the Crown.

(2) For the purposes of subsection (1) a compensation agreement entered into pursuant to this Act does not authorise prospecting, exploring or mining.

(3) Subject to this Act, a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease may be granted over land even though—

- (a) a deed of grant in fee simple from the State may or may not contain a reservation to the State of the relevant mineral on or below the surface of the land; or
- (b) the relevant mineral is not the property of the State.

(4) Notwithstanding the other provisions of this Act, a person who undertakes any airborne activity to determine the existence of minerals shall notify the Minister after the completion of that activity and shall furnish the Minister such data as the Minister may determine in the particular case.

### **Act does not create estates in land**

10. The grant of a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease under this Act does not create an estate or interest in land.

## **PART 2—MINING DISTRICTS**

### **Mining districts**

11. The Governor in Council may, by regulation—

- (a) constitute any land a mining district and assign to that district a name;
- (b) abolish a mining district;
- (c) vary the boundaries of a mining district;

- (d) alter the name by which a mining district is for the time being called.

### **Identification of mining districts**

**12.(1)** Mining districts may be identified by such means as the Governor in Council considers appropriate including by reference to any local government area for the time being under the *Local Government Act 1993*.

**(2)** Where, under the *Local Government Act 1993* a boundary of a local government area is varied, any mining district identified by reference to that area shall, by virtue of that variation, be varied accordingly.

## **PART 3—PROSPECTING PERMITS**

### *Division 1—Prospecting permit categories and entitlements*

#### **Definitions**

**13.** In this division—

“**holder**”, of a prospecting permit, includes a person who is an officer, employee, contractor or agent of the holder if the person is in actual possession of—

- (a) the permit; or
- (b) the holder’s written permission for the person to do something the holder may do under the permit.

#### **Categories of prospecting permit**

**14.(1)** A prospecting permit may be granted for—

- (a) a mining district; or
- (b) a lot; or

(c) 2 or more adjoining lots<sup>9</sup> owned by the same person.

(2) A prospecting permit under subsection (1)(a) is a “**district prospecting permit**”.

(3) A prospecting permit under subsection (1)(b) or (c) is a “**parcel prospecting permit**”.

### **Area of land covered by parcel prospecting permit**

**15.(1)** A parcel prospecting permit may be granted for all or part of the land of a lot, or 2 or more adjoining lots owned by the same person.

(2) More than 1 parcel prospecting permit may be granted over a lot, or 2 or more adjoining lots owned by the same person.

(3) If an application for a parcel prospecting permit is for only part of the land of a lot, or 2 or more adjoining lots owned by the same person, the permit may be granted for all of the area.

### **Land excluded from prospecting permit**

**16.(1)** Land is excluded from a prospecting permit if it is covered by—

- (a) a mining claim, mineral development licence or mining lease; or
- (b) an application for a mining claim, mineral development licence or mining lease that has not been finally decided.

(2) Also, a prospecting permit may be granted for all or part of a fossicking area only if the application for the permit was made, but not decided, before the land became a fossicking area.

(3) However, if the holder of, or applicant for, the mining claim, mineral development licence or mining lease consents in writing to an application for a prospecting permit for land covered by the claim, licence or lease, this section does not apply to the application to the extent stated in the consent.

(4) In addition, this section does not apply if—

- (a) the prospecting permit holder is the applicant for the mining claim, mineral development licence or mining lease; and

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<sup>9</sup> See section 5 (Interpretation), definition “adjoining lots”.

- (b) there is no other application for a claim, licence or lease for land covered by the prospecting permit.

### **Prospecting permit to be granted to a single person**

**17.** A prospecting permit may only be issued in the name of a single eligible person.

### **Entitlements under prospecting permit**

**18.(1)** A holder of a prospecting permit for land may enter the land for—

- (a) purposes necessary to enable the holder to apply for a mining claim or mining lease over the land; or
- (b) prospecting purposes; or
- (c) hand mining for a mineral other than coal.

**(2)** The holder may—

- (a) enter and leave the land using a reasonable type of transport; and
- (b) enter and leave the land through land the permit states is access land.

### **Consent required to enter certain land**

**19.(1)** A parcel prospecting permit holder may enter the surface of a reserve for prospecting purposes only with the written consent of the owner of the reserve.

**(2)** A district prospecting permit holder may enter the surface of occupied land only with the written consent of the owner of the land.

**(3)** Also, a prospecting permit holder may enter occupied land for hand mining only with the written consent of the owner of the land.

**(4)** In addition, a prospecting permit holder may enter restricted land only with the written consent of the owner of the land where the relevant permanent building, or relevant feature, is situated.

**(5)** Further, a prospecting permit holder may enter land within 50 m

laterally of a place where activities are being carried on under an exploration permit only with the written consent of the exploration permit holder.

### **Provisions about consents to enter land**

**20.(1)** This section applies to consents for a prospecting permit holder to enter land.

**(2)** In the absence of evidence to the contrary, the consent of an owner who is a joint tenant or tenant in common with other owners, is taken to be the consent of all the owners.

**(3)** If the owner of land cannot be easily contacted, a consent may be given for the land by the land's occupier.

*Examples of the owner not being easily contacted—*

1. The owner does not live in Australia and there is no known current overseas address for the owner.

2. The owner is travelling in Australia and there is no known current address for the owner.

**(4)** Consent under this section may be given on conditions.

**(5)** The holder of a consent must comply with the consent's conditions.

Maximum penalty for subsection (5)—10 penalty units.

**(6)** A consent given for land may be amended or withdrawn by the land's owner (or, if given by the occupier, the occupier) by written notice given to the holder and mining registrar.

### ***Division 2—Other provisions about prospecting permits***

#### **Application for prospecting permit**

**21.** An application for a prospecting permit for land must—

- (a) be made in the approved form and lodged with the mining registrar; and
- (b) be accompanied by—
  - (i) proof, to the mining registrar's satisfaction, of the

- applicant's identity; and
- (ii) the fee prescribed under a regulation; and
- (c) state the applicant's name, and address for service of notices; and
- (d) if the application is for a parcel prospecting permit—
- (i) identify, by sketch and description, or in another way acceptable to the mining registrar, the land over which the permit is sought and land proposed to be used as access; and
  - (ii) state the name and address of each owner of occupied land over which the permit is sought; and
  - (iii) state the name and address of each owner of land proposed to be used as access.

### **Reason for rejection of application to be given**

**22.** A mining registrar who rejects an application for the grant of a prospecting permit shall give written notice to the applicant stating the reasons for rejection.

### **Refund upon rejection of application**

**23.** If a mining registrar rejects an application for the grant of a prospecting permit the application fee and any other moneys that accompanied the application for the permit shall be refunded to the applicant.

### **Grant of prospecting permit**

**24.(1)** A mining registrar may grant a prospecting permit for land if the mining registrar is satisfied an eligible person has—

- (a) made a genuine application that complies with this part; and
- (b) deposited the amount of security required to be deposited for the permit.

**(2)** A prospecting permit shall be in the approved form and shall specify—

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- (a) the identification number of the permit; and
- (b) the name of the holder; and
- (c) the address for service of notices on the holder; and
- (d) the description of land in respect of which the permit is granted; and
- (e) the term and date of commencement of the permit; and
- (f) the conditions (other than conditions prescribed by this Act) to which the permit is subject.

(3) A mining registrar, who is of the opinion that an applicant for a prospecting permit had previously contravened or failed to comply with any provision of this Act, the repealed Acts, any other Act about mining or the *Fossicking Act 1994*, may, whether or not that person had been charged or convicted of an offence in respect of that contravention or failure to comply, reject the application.

(4) For subsection (3), a company is taken to have contravened a provision of this Act if the person contravening the provision is—

- (a) an officer or employee of the company; or
- (b) someone else who is in a position to control or substantially influence the company's affairs.

(5) A prospecting permit shall be in the approved form for that category of permit.

**Conditions of prospecting permit**

**25.(1)** A prospecting permit shall be subject to any prescribed conditions and such other conditions as a mining registrar shall from time to time impose.

(2) In imposing conditions upon the grant of a prospecting permit a mining registrar shall take into consideration the possible effect upon the owner of the land of the grant of the permit having regard to the holder's entitlements under that permit and any other subsisting permits.

(3) A mining registrar may from time to time, by notice in writing to the holder of a prospecting permit vary any condition imposed by the mining registrar.

(4) The holder of a prospecting permit and all persons acting under the authority of the permit shall comply with the conditions for the time being of the permit of which notice has been served on the holder.

### **Provision of security**

**26.(1)** A prospecting permit shall not be granted until the applicant for the permit deposits the security (if any) determined by the mining registrar for compliance with the conditions of the prospecting permit and the provisions of this Act and to rectify any actual damage that may be caused by any person whilst purporting to act under the authority of the permit to any land or any improvements situated on or off that land.

(2) If the mining registrar fixes an amount of security under subsection (1), the amount must not be less than the amount prescribed under a regulation.

(3) The owner of any land may apply in writing to the mining registrar to rectify the damage referred to in subsection (1) that has been caused by any activity allegedly authorised under a prospecting permit in respect of that land.

(4) If the mining registrar is satisfied (whether or not upon an application referred to in subsection (3)) that damage referred to in subsection (1) has been caused by any person purporting to act under the authority of a prospecting permit the mining registrar shall require that person to take all action necessary to rectify that damage.

(5) The mining registrar may, at any time (whether before or after the expiry or cancellation of a prospecting permit) use all or part of the security deposited for the permit to rectify actual damage caused by someone acting under the permit.

(6) If, at any time (whether during or within 28 days after the expiration of the term of a prospecting permit) the amount or any part of the amount deposited under this section is utilised as provided by subsection (5) or a mining registrar considers that, in view of the damage caused or likely to be caused by any person purporting to act under the authority of the prospecting permit or for any other reason, a further amount of security should be deposited in respect of that prospecting permit, the mining registrar shall require the holder or former holder of the prospecting permit, within the time specified by the mining registrar, to deposit the further

security.

(7) A mining registrar may accept a bond or a guarantee or indemnity by, or other financial arrangement with, a financial institution, insurance company or another credit provider approved by the mining registrar or other form of security acceptable to the mining registrar as the whole or part of the security to be deposited under this section.

(8) It shall be a condition of a prospecting permit that the holder shall deposit security or further security from time to time in accordance with a requirement made as provided by this section.

(9) Subsection (10) applies if an amount of security deposited by a holder of a prospecting permit has not been used when the permit terminates and—

- (a) for a parcel prospecting permit—the owner of the occupied land covered by the permit—
  - (i) gives the mining registrar written approval to refund the security; or
  - (ii) does not make a claim against the security within—
    - (A) 28 days after the termination; or
    - (B) a longer period (of not more than 3 months) fixed by the mining registrar by written notice given to the permit holder and owner; or
- (b) for a district prospecting permit—an owner of land covered by the permit does not make a claim against the security within—
  - (i) 28 days after the termination; or
  - (ii) a longer period (of not more than 3 months) fixed by the mining registrar by written notice given to the permit holder and owner.

(10) After deducting the amount the mining registrar considers should be held for use under subsection (5), the mining registrar may refund the balance of the security.

(11) The mining registrar must refund the amount to the permit holder or in accordance with any written direction the holder gives the mining registrar.

(12) In the absence of evidence to the contrary, the approval of an owner who is a joint tenant or tenant in common is taken to be the approval of all the owners for subsection (9)(a)(i).

(13) Subsection (10) does not limit the mining registrar's powers under subsection (15).

(14) If—

- (a) a prospecting permit holder applies for a mining claim or mining lease; and
- (b) the application has not been finally decided when the permit is terminated; and
- (c) after the application is decided, an amount held as security under this section is not held as security for the claim or lease;

the amount may be refunded under subsection (9).

(15) If the mining registrar accepts a bond, guarantee or indemnity by, or another financial arrangement with, a financial institution, insurance company or credit provider as security under this section, any amount payable to the holder under subsection (9) or (10) must be refunded to the financial institution, insurance company or credit provider and not to the holder of the prospecting permit to which the security relates.

### **Utilisation of security deposit towards subsequent prospecting permit**

27. If the holder of a prospecting permit or an expired prospecting permit makes application for a further prospecting permit, the mining registrar may, instead of refunding the whole or part of the security deposited in respect of the existing or expired permit, retain that security or part thereof (together with any further security fixed by the mining registrar) as the security (in which case it shall be taken to be or to be part of the security) deposited by the applicant in respect of the application for the further prospecting permit.

## **Compensation**

**28.(1)** Notwithstanding section 26<sup>10</sup> the Crown, or an owner is entitled to recover from time to time, in the Wardens Court compensation in respect of damage or injury suffered or loss incurred by reason of a person acting or purporting to act under the authority of a prospecting permit but any moneys paid under that section in respect of rectification of damage the subject of the proceeding shall be taken into account in assessing any compensation.

**(2)** The holder of a prospecting permit is not liable under this section in respect of damage or injury or loss caused by another person who is not a holder and is not a person authorised by the holder to be upon the land the subject of the prospecting permit.

## **Term of prospecting permit**

**29.(1)** A prospecting permit may be granted for—

- (a) if it is a district prospecting permit—1 or more months but not longer than 1 year; or
- (b) if it is a parcel prospecting permit—3 months.

**(2)** A prospecting permit's term must—

- (a) be stated in the permit; and
- (b) not start before the day the permit is granted.

## **Rights and obligations extended upon application for mining claim etc.**

**30.(1)** The holder of a prospecting permit who, during the term of the prospecting permit, makes application for the grant of—

- (a) a mining claim; or
- (b) a mining lease;

in respect of any land to which the prospecting permit applies, shall, during the period from the expiration of the prospecting permit until the

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<sup>10</sup> Section 26 (Provision of security)

determination of the application, for so long as the provisions of this Act and the terms and conditions that would apply if the permit were current are complied with, have all the responsibilities, powers, authorities and duties that the holder would have had in respect of the land the subject of the application if the prospecting permit was current.

(2) The entitlements of the holder of a prospecting permit are not reduced or limited by reason only of the holder's application for the grant of a mining claim or a mining lease in respect of any land to which the prospecting permit applies.

### **Mining registrar to notify owners of occupied land of grant of parcel prospecting permit**

**31.(1)** Upon granting a parcel prospecting permit, a mining registrar shall advise forthwith the owner of any occupied land specified in the permit including occupied land (other than a reserve for public road) specified as access.

(2) Where advice is not in writing, the advice shall be confirmed in writing as soon as practicable.

### **Notice of entry under parcel prospecting permit**

**32.(1)** A parcel prospecting permit holder must give the owner of the land covered by the permit notice of entry before initial entry is made under the permit.

(2) The notice must be given at least 7 days before the intended entry (or a shorter time acceptable to the owner and endorsed on the notice).

(3) If the owner cannot be easily contacted, the holder may notify the occupier of the land of the intended entry.

*Examples of the owner not being easily contacted—*

1. The owner does not live in Australia and there is no known current address for the owner.

2. The owner is travelling within Australia and there is no known current address for the owner.

(4) If the holder satisfies the mining registrar it is impracticable to give either the owner or occupier notice of the intended entry, the mining

registrar may dispense with the need to give notice.

(5) If the mining registrar dispenses with the need to give notice, the mining registrar must make an appropriate endorsement on the permit.

(6) However, before making the endorsement, the mining registrar may require the holder to take the action the mining registrar considers appropriate to publicise the proposed entry, including, for example, publishing an advertisement in a newspaper or other publication.

### **Prospecting permit not transferable**

33. A prospecting permit is not transferable.

### **Report to mining registrar by owner of land**

34.(1) Where a person purports to enter or be upon land under the authority of a prospecting permit, the owner of that land who considers that that person is not authorised to enter or be upon that land or is not complying with any condition of the prospecting permit or of any provision of this Act may report accordingly to the mining registrar of the mining district in which is situated the land.

(2) The mining registrar shall have the report investigated and shall advise the owner of land who reports under subsection (1) of any action taken upon the report.

### **Penalty for breach of conditions**

35. If the mining registrar considers on reasonable grounds that there has been a breach of any condition of a prospecting permit or of this Act by the holder of the permit or any person purporting to act under the authority of the prospecting permit, the mining registrar may determine that an amount (not exceeding 5 penalty units) fixed by the mining registrar shall be due and owing to the Crown by the holder by way of penalty for that breach.

### **Cancellation of prospecting permit**

36.(1) A mining registrar may at any time, by notice in writing in the approved form served on the holder of a prospecting permit or other person

apparently acting under the authority of the permit, cancel the permit.

(2) A notice cancelling a prospecting permit served pursuant to subsection (1) shall state the reasons for the cancellation.

### **Surrender of prospecting permit**

37. The holder of a prospecting permit may, at any time before the expiration of its term, by notice in writing to the mining registrar surrender the permit.

### **Appeals about prospecting permits**

38.(1) A person whose interests are adversely affected by a decision to which this section applies (the “**aggrieved person**”) may appeal against the decision to the Wardens Court.

(2) This section applies to the following decisions of a mining registrar—

- (a) a decision to refuse to grant a prospecting permit;
- (b) a decision to impose a condition on a prospecting permit;
- (c) a decision to vary a condition imposed on a prospecting permit;
- (d) a decision to require an applicant for, or holder of, a prospecting permit to deposit security;<sup>11</sup>
- (e) a decision about the use of security deposited by a prospecting permit holder towards rectification of damage caused by noncompliance with permit conditions;<sup>12</sup>
- (f) a decision to require a prospecting permit holder to pay an amount to the State by way of penalty for a breach of a permit condition;
- (g) a decision to cancel a prospecting permit.

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<sup>11</sup> See section 26 (Provision of security).

<sup>12</sup> See section 35 (Penalty for breach of conditions).

**How to start an appeal**

**39.(1)** An appeal is started by filing a written notice of appeal with the mining registrar.

**(2)** The notice of appeal must be filed within 28 days after the aggrieved person receives notice of the decision appealed against.

**(3)** However, if—

- (a)** the decision did not state the reasons for the decision; and
- (b)** the person asked for a statement of reasons for the decision within the period mentioned in subsection (2);

the person may make the application within 28 days after the person is given the statement of reasons.

**(4)** In addition, the Wardens Court may extend the period for filing the notice of appeal.

**(5)** The notice of appeal must state the grounds of appeal.

**Stay of operation of decisions**

**40.(1)** The Wardens Court may stay a decision appealed against to secure the effectiveness of the appeal.

**(2)** A stay—

- (a)** may be given on conditions the Wardens Court considers appropriate; and
- (b)** operates for the period fixed by the Wardens Court; and
- (c)** may be revoked or amended by the Wardens Court.

**(3)** The period of a stay fixed by the Wardens Court must not extend past the time when the Wardens Court decides the appeal.

**(4)** A decision, or the carrying out of a decision, is affected by the starting of an appeal against the decision only if the decision is stayed.

**Hearing procedures**

**41.(1)** In deciding an appeal, the Wardens Court—

- (a) is not bound by the rules of evidence; and
  - (b) must observe natural justice; and
  - (c) may hear the appeal in court or chambers.<sup>13</sup>
- (2) An appeal is by way of rehearing.

### **Powers of Wardens Court on appeal**

**42.(1)** In deciding an appeal, the Wardens Court may—

- (a) confirm the decision appealed against; or
- (b) set the decision aside and substitute another decision; or
- (c) set aside the decision and return the issue to the mining registrar with directions the Wardens Court considers appropriate.

(2) In substituting another decision, the Wardens Court has the same powers as the mining registrar.

*Example—*

The Wardens Court may decide that an unsuccessful applicant for a prospecting permit be granted the permit and impose conditions on it.

(3) If the Wardens Court substitutes another decision, the substituted decision is taken to be the decision of the mining registrar.

### **Minerals taken become property of holder of prospecting permit**

**43.** All minerals mined as a result of hand mining activities lawfully carried on under the authority of a prospecting permit cease to be the property of the Crown or the person who had property therein and become the property of the holder of the prospecting permit subject however to the rights to royalty payments under this Act of the Crown or any other person.

### **Royalties in respect of minerals taken under prospecting permit**

**44.** The holder of a prospecting permit shall pay in respect of all minerals

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<sup>13</sup> Under section 367 (Practice and procedure of Wardens Court), if the Act is silent or does not sufficiently state the practice and procedure applying in the Wardens Court, the practice and procedure of Magistrates Courts apply.

mined or purported to be mined under the authority of that prospecting permit, the royalty prescribed pursuant to part 9.

### **Holder of prospecting permit to rehabilitate land**

**45.(1)** The holder of a prospecting permit shall ensure that all excavations are filled in at the conclusion of any activity purported to be carried out on any land under the authority of the prospecting permit.

**(2)** The holder of a prospecting permit, or other person under the authority of a prospecting permit, who applies for a mining claim or a mining lease in respect of land included in the prospecting permit is not obliged to comply with subsection (1) in respect of land the subject of the application unless and until the application is refused.

### **Production of prospecting permit**

**46.(1)** A person purporting to be upon land under the authority of a prospecting permit shall upon demand made by the owner of that land, an agent of the owner or a person authorised in that behalf by the Minister for proof of the person's authority for being on the land, produce or cause to be produced to the person making the demand the prospecting permit or a written authorisation in a form acceptable to the mining registrar from the holder of the prospecting permit authorising the person to enter or be upon that land for prospecting purposes.

**(2)** For so long as a person fails to comply with a demand lawfully made of the person under subsection (1) the person does not have any of the entitlements under this Act.

### **Staying on occupied land**

**47.(1)** A person entitled to enter occupied land under a district prospecting permit must not enter land at night without the written consent of the land's owner.

Maximum penalty—10 penalty units.

**(2)** A person entitled to enter occupied land under a parcel prospecting permit must not enter the land at night without the written consent of the

land's owner or the mining registrar.

Maximum penalty—10 penalty units.

(3) In the absence of evidence to the contrary, the consent of an owner who is a joint tenant or tenant in common is taken to be the consent of all the owners.

(4) If the owner of land cannot be easily contacted, a consent may be given for the land by the land's occupier.

*Examples of the owner not being easily contacted—*

1. The owner does not live in Australia and there is no known current address for the owner.

2. The owner is travelling within Australia and there is no known current address for the owner.

(5) Consent under this section may be given on conditions.

(6) The mining registrar's consent and any consent conditions must be endorsed on the permit.

(7) A person who enters occupied land at night with a consent under this section must comply with conditions imposed by the owner or occupier of the land or the mining registrar.

Maximum penalty—10 penalty units.

(8) A person on occupied land under a prospecting permit must dispose of rubbish and human waste in a safe and sanitary way.

Maximum penalty—10 penalty units.

## **PART 4—MINING CLAIMS**

### **Land subject to mining claim**

**48.(1)** A mining claim may be granted over land comprised in a prospecting permit or prospecting permits to the holder thereof or to the holder thereof and other eligible persons.

(2) A mining claim shall include the whole of the surface of the land within the boundaries of the mining claim.

### **Only eligible persons to hold mining claims**

49. A mining claim shall not be held by a person who is not an eligible person.

### **Entitlements under mining claim**

50.(1) During the currency of a mining claim the holder of the mining claim and any person who actually works the mining claim as agent or employee of the holder—

- (a) may, in, on or under the land comprised in the mining claim—
  - (i) prospect for any mineral to which the mining claim applies; and
  - (ii) hand mine in accordance with the conditions of the mining claim any mineral to which the mining claim applies;
- (b) for the purpose of prospecting or hand mining as provided in paragraph (a) may—
  - (i) enter that land;
  - (ii) use such machinery, mechanical devices or other equipment as are authorised under this Act to be used for that purpose;
  - (iii) erect and maintain a structure (including, where authorised so to do by the mining claim, a temporary residence for a person who is bona fide using the land the subject of the mining claim for a purpose for which it was granted) not being of a permanent nature on that land;
- (c) for the purpose of hand mining as provided in paragraph (a)(ii), may, subject to compliance with the conditions of the mining claim and any other Act or law, make moderate use of explosives where the mining claim specifically authorises that use.

(2) A person who resides on land under or purportedly under the authority of a mining claim shall dispose of any refuse (including human waste) and rubbish in a safe and sanitary manner.

(3) During the currency of a mining claim, a person who delivers goods or substances or provides services to the holder may enter that land for that purpose.

(4) Where any Act provides that water may be diverted or appropriated only under authority granted under that Act, the holder of a mining claim shall not divert or appropriate water unless the holder holds that authority.

### **Land for which mining claim not to be granted**

**51.(1)** A mining claim may not be granted for land covered by—

- (a) an existing mining claim; or
- (b) a mining lease; or
- (c) a mineral development licence; or
- (d) an earlier application for a mining claim, mineral development licence or mining lease that has not been finally decided or withdrawn; or
- (e) an exploration permit or earlier application for an exploration permit unless the applicant for the claim gives the mining registrar the written consent of the holder of, or applicant for, the permit on or before the last objection day.

(2) A mining claim may be granted over the surface of land that is restricted land when the application for the claim was lodged only if—

- (a) the owner of the land where the relevant permanent building, or relevant feature, is situated, consents in writing to the application; and
- (b) the applicant lodges the owner's written consent with the mining registrar before the last objection day ends.

(3) The owner of the land cannot withdraw his or her consent under subsection (2) once it has been lodged with the mining registrar.

### **No mining claim in respect of coal**

**52.** A mining claim may be granted in respect of any specified minerals other than coal.

**Area and shape of mining claim land**

**53.(1)** The land for which a mining claim may be granted—

- (a) must be—
  - (i) rectangular in shape; or
  - (ii) of the dimensions prescribed under a regulation; and
- (b) must be more or less the prescribed area.

**(2)** However, the mining registrar may, for a particular mining claim, accept an application for a mining claim over land of a different shape.

**(3)** The prescribed area of the land over which a mining claim may be granted is—

- (a) 1 ha; or
- (b) where the land is within a mining district or part of a mining district in respect of which, for the purposes of this section, an area is prescribed by regulation, that area;

whichever is the smaller.

**(4)** Where it is found that the land the subject of a mining claim exceeds the prescribed area the mining claim is not thereby invalidated but the following provisions of this subsection shall be complied with.

**(5)** The mining registrar for the mining district in which the land the subject of the mining claim is situated shall notify the holder that the land exceeds the prescribed area.

**(6)** If at the expiration of 28 days after the giving of a notice pursuant to subsection (5)—

- (a) the mining claim has not been varied, by agreement between the mining registrar and the holder, to reduce the area of land to or to less than the prescribed area; or
- (b) the holder has not made application to the Wardens Court to determine whether the subject area exceeds the prescribed area or to determine the variation thereof to reduce the area to the prescribed area;

the mining registrar shall without further notice cancel the mining claim.

**Mining claim over reserve only with consent**

**54.** A mining claim shall not be granted over land that is a reserve except with—

- (a) the consent of the owner of that land; or
- (b) the consent of the Governor in Council.

**Restriction upon number of mining claims**

**55.(1)** A person shall not at any time be the holder of or have an interest, direct or indirect, in more than 2 mining claims.

**(2)** The Minister may call upon a person to show cause why any mining claim or interest held by that person in contravention of subsection (1) should not be cancelled.

**(3)** If the Minister is not satisfied that there is good reason why the Minister should not do so, the Minister may direct that any such mining claim or interest shall be cancelled and the mining registrar shall without further authority cancel that mining claim or interest.

**(4)** Where, pursuant to subsection (3) an interest only in a mining claim is cancelled, each holder of any other interest in the mining claim shall hold an interest in the mining claim in the same proportion that the holder's original interest bears to the aggregate of the remaining interests.

**Marking out land before application for grant of mining claim**

**56.(1)** The holder of a prospecting permit who wishes to apply for the grant of a mining claim shall mark out, in the prescribed manner the boundary of the land proposed to be the subject of the application.

**(2)** The fact that the land marked out pursuant to subsection (1) is not a rectangular shape does not constitute a failure to comply with this section.

**Manner of marking out land proposed to be subject of mining claim**

**57.(1)** Before making an application for the grant of a mining claim, the intending applicant or some person authorised on the intending applicant's behalf shall mark out the land by inserting firmly in the ground at each and

every corner of the land applied for a round post which shall be not less than 10 cm in diameter or a square post each side of which shall be not less than 10 cm in width standing at least 1 m above the surface and sunk not less than 50 cm in the ground.

(2) The part of each post above the surface shall be painted white.

(3) Where posts are of timber construction they shall be barked and dried of sap before use.

(4) One of the posts shall be selected to be the datum post for the purpose of the commencement of the description and from which a surveyor shall commence any survey of the land.

(5) There shall be engraved or in some way durably marked on each post the applicant's initials and surname (or of 1 applicant should there be more than 1) and the numerals indicating the date on which the subject land was marked in accordance with this section and the engraving or marking shall be so maintained until action is taken in accordance with section 64(3)(a) and (b).<sup>14</sup>

(6) Where the applicant is a company the initials of that company (or of any 1 company should there be more than 1) shall be engraved and marked as prescribed herein on the posts.

(7) If a post cannot be inserted in the manner prescribed there shall be erected a cairn of stones at least 50 cm high in the place where the post should have been inserted.

(8) If cairns of stones are erected there shall be engraved or in some way durably marked thereon the particulars which would have been required had a post been inserted.

(9) Where it is not practicable to insert a post or erect a cairn of stones in the manner prescribed at every corner of the land applied for, there may be inserted a datum post only and compass bearings shall be taken and distances measured, as required by section 62.<sup>15</sup>

(10) Where it is impossible to insert a datum post or erect a cairn of stones in the manner prescribed by subsection (1) the land shall be marked

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<sup>14</sup> Section 64 (Certificate of application)

<sup>15</sup> Section 62 (Description of mining claim)

by measuring a distance on a given bearing from a reference post to a point which shall be the nominal position of the starting point and from which any survey of the land shall commence and the reference post shall in all respects comply with the provisions of this Act relating to a datum post, except the provisions relating to position.

### **Consent of mining registrar required to certain marking out of land**

**58.(1)** Where the land the subject of a mining claim is marked out in accordance with section 57(9) or (10) the consent of the mining registrar is required and the mining registrar's consent may be given at any time prior to the issue of the certificate of application.

(2) Where consent is so given the mining registrar shall note the register accordingly.

### **Time for application for grant of mining claim**

**59.** The holder of a prospecting permit who marks out the boundary of land in accordance with this part, may, during the currency of the holder's permit but within 7 days of so marking out, apply in the prescribed manner for the grant of a mining claim over that land.

### **If application for mining claim not made, is rejected or abandoned, posts etc. to be removed**

**60.(1)** A person who marks out the boundary of land for the purpose of making an application for the grant of a mining claim shall remove or cause to be removed forthwith all posts, cairns and other things used by the person to mark out the boundary (not being a survey mark or other thing required by any other Act not to be removed)—

- (a) where the person has not made the application within 7 days of the marking out, upon the expiration of those 7 days; or
- (b) where the person has made the application as prescribed, upon the rejection or abandonment of the application.

(2) For the purpose of removing posts, cairns and other things in compliance with subsection (1) a person may enter the relevant land.

**Application for grant of mining claim**

**61.(1)** An application for the grant of a mining claim shall—

- (a) be in the approved form;
- (b) specify the name of each applicant;
- (c) specify the name and address for service of 1 person upon whom any notice may be served on behalf of the applicant or the applicants;
- (d) describe all parcels of land the whole or part of which are the subject of the application and specify the names and addresses of the owner or owners of the land and of land which is to be used as access thereto;
- (e) identify in the prescribed manner the boundaries of the land applied for;
- (f) describe and identify in the prescribed manner the land proposed to be used as access from a point outside the boundary of the mining claim acceptable to the mining registrar to the land over which the mining claim is sought;
- (g) be accompanied by a sketch, map or other graphic representation acceptable to the mining registrar setting out the boundaries of the land referred to in paragraphs (e) and (f);
- (h) identify the mineral or minerals in respect of which the mining claim is sought;
- (i) be lodged by the applicant personally at the office of the mining registrar for the mining district in which is situated the land in respect of which the mining claim is sought or, if that land is situated in more than 1 such district, at the office of the mining registrar for the district in which the major portion of the land is situated during the hours prescribed for the conduct of business at that office;
- (j) be accompanied by—
  - (i) proof to the satisfaction of the mining registrar of the identity of the applicant; and
  - (ii) such additional copies of the application and other

documents lodged therewith as the mining registrar requires;  
and

- (iii) the prescribed application fee; and
- (iv) an outline, to the mining registrar's satisfaction, of the proposed mining program that—
  - (A) states when operations are expected to start; and
  - (B) briefly describes the measures the applicant plans to take to minimise adverse environmental impact; and
  - (C) includes proposals for the progressive and final rehabilitation of the land.

(2) The mining registrar shall not be satisfied with a mining program referred to in subsection (1)(j)(iv) which is inconsistent with the provisions of this Act.

(3) For the purposes of subsection (1)(i) an application is lodged personally if it is lodged by an individual who is—

- (a) the applicant; or
- (b) a person authorised in writing in that behalf by the applicant.

(4) A person who lodges an application for the grant of a mining claim shall provide the mining registrar with such information and particulars relating to the requirements set out in subsection (1) as the mining registrar requires and on failure to provide that information the mining registrar may reject the application.

(5) A mining registrar may reject an application for a mining claim in respect of land the whole or part of which appears, on the evidence available to the mining registrar, to be the subject of a mining claim, mineral development licence or mining lease or of an application for the grant of a mining claim, mineral development licence or mining lease.

(6) For the purposes of subsection (5) where a mining claim, mineral development licence or mining lease is terminated or an application for a mining claim, mineral development licence or mining lease is abandoned or rejected, the relevant land shall be deemed to continue to be subject to the mining claim, mineral development licence, mining lease or application until the day next following that termination, abandonment or rejection.

**Description of mining claim**

**62.** In an application for the grant of a mining claim—

- (a) the datum post shall be accurately related by measured distances and compass bearings (or other method acceptable to the mining registrar) to a survey mark or other fixed and well defined point acceptable to the mining registrar; and
- (b) the boundaries of the mining claim shall be described by accurately measured distances and compass bearings on the ground or other method acceptable to the mining registrar; and
- (c) the surface access from a point acceptable to the mining registrar to the land over which the mining claim is sought shall be described by measured distances and compass bearings along the centre line of that access together with the width of that access or by some other method acceptable to the mining registrar.

**Priority of applications for grant of mining claims**

**63.(1)** Applications for the grant of mining claims duly made in respect of or including the same land shall take priority for the purpose of consideration and determination of applications according to the order of the time on which they are lodged as prescribed.

(2) If the mining registrar is or, where applications are lodged with different mining registrars, those registrars are of the opinion that the circumstances of the lodgment of some applications for the grant of mining claims made in respect of or including the same land are such that the applications should be treated as having been lodged simultaneously the mining registrar or registrars may treat the applications as having been lodged simultaneously and shall determine their respective priorities by ballot.

(3) The mining registrar shall advise all applicants when and where the ballot is to be held.

**Certificate of application etc.**

**64.(1)** Upon being satisfied that the applicant for the grant of a mining claim is eligible to apply for the mining claim and that the applicant has

complied with the requirements of this Act with respect to that application, the mining registrar shall prepare a certificate of application for a mining claim in the approved form.

(2) The mining registrar must endorse on the certificate of application—

- (a) the number of the proposed mining claim; and
- (b) the date and time the application was lodged; and
- (c) the day the mining registrar fixes, at least 28 days after the day of the certificate's issue, as the last objection day for the application.

(3) The person who lodged the application must sign the certificate.

(4) Upon the signing of a certificate of application for a mining claim, the particulars set forth in the certificate, to the extent of any conflict with particulars set forth in the application for the grant of the mining claim, shall be deemed to be the particulars set forth in the application in place of the conflicting provisions in the application.

(5) The mining registrar shall forthwith post at the mining registrar's office and shall therein keep posted until the last date fixed for the receipt of objections a copy of the certificate of application duly endorsed pursuant to subsection (1).

(6) Within 7 days after the endorsement of the certificate of application pursuant to subsection (1) (or such longer period as the mining registrar in the particular case at any time determines) the applicant shall—

- (a) cause a true copy of the endorsed certificate of application to be posted on the datum post of the land the subject of the application and shall keep a copy thereon posted until the last date fixed for the receipt of objections in respect of the application; and
- (b) engrave or in some way durably mark on the datum post of the land the subject of the application the number of the proposed mining claim; and
- (c) cause a true copy of the endorsed certificate of application to be served on—
  - (i) each owner of land to which the proposed mining claim and access thereto relates; and
  - (ii) the relevant local authority.

(7) An applicant for a mining claim shall, within 7 days or such other period as the mining registrar in the particular case, at any time, allows after the date fixed pursuant to subsection (1) as the last date for the receipt of objections to the applicant's application, lodge with the mining registrar a declaration made under the provisions of the *Oaths Act 1867* as to the applicant's compliance with the provisions of subsection (6).

(8) Until the applicant for the grant of a mining claim lodges the declaration prescribed by subsection (7) with the mining registrar—

- (a) the mining registrar shall not grant the mining claim;
- (b) the Wardens Court shall not make any final determination (other than an instruction to the mining registrar to reject the application);
- (c) the Wardens Court may at any time refuse to hear further any matter in respect of the application.

### **Mining registrar may call conference in some cases**

**65.(1)** This section applies if—

- (a) within 7 days after receiving a copy of a signed certificate of application for a mining claim (or a longer period allowed by the mining registrar) an owner of land affected by the application gives the mining registrar a written request for a conference, stating the things the owner wants to discuss about the application; or
- (b) for another reason, the mining registrar considers it desirable to call a conference to discuss things about a mining claim or an application for a mining claim.

(2) If subsection (1)(a) applies, the mining registrar must call a conference about the application, by written notice given to the owner of the land and the applicant.

(3) If subsection (1)(b) applies, the mining registrar may call a conference about the mining claim or application, by written notice given to—

- (a) the owners of land affected by the mining claim or application; and

- (b) the claim holder or applicant; and
- (c) anyone else the mining registrar considers should be given notice of the conference.

(4) The notice must state when and where the conference will be held, and what is to be discussed at the conference.

(5) If the conference is about an application, the conference must be held before the last objection day ends.

### **Who may attend conference**

**66.(1)** Apart from the mining registrar, anyone given notice of a conference about an application for a mining claim or a mining claim (a “**section 65 conference**”) may attend and take part in the conference.

(2) Also, with the mining registrar’s approval, someone else may be present to help a person attending the conference.

(3) However, a person may not be represented at the conference by a lawyer.

### **What happens if someone does not attend**

**67.** The mining registrar may hold a section 65 conference even though someone given notice of the conference does not attend the conference.

### **Mining registrar’s function at section 65 conference**

**68.** The mining registrar must endeavour to help those attending a section 65 conference to reach an early, inexpensive settlement of the things discussed.

### **Agreements and statements at section 65 conference**

**69.(1)** If parties to a section 65 conference reach agreement about something discussed at the conference, the parties must—

- (a) put the agreement into writing; and
- (b) sign the agreement; and

- (c) if the agreement is about an application for a mining claim—lodge it with the mining registrar on or before the last objection day.

(2) A person attending or present at the conference must not disclose or publish anything said at the conference other than in an agreement mentioned in subsection (1).

(3) Nothing said by a person at the conference is admissible in a proceeding without the person’s consent.

### **Wardens Court may award costs**

**70.(1)** If—

- (a) a person agrees to attend a section 65 conference but does not attend; and
- (b) someone else does attend (the “**attending party**”);

the attending party may apply to the Wardens Court for an order requiring the person who did not attend to pay the attending party’s reasonable costs.

(2) If the Wardens Court orders a person to pay the attending party’s costs, the Wardens Court must decide the amount of the costs of attending.

(3) However, the Wardens Court must not order a person to pay costs if the Wardens Court is satisfied the person had a reasonable excuse for not attending the conference.<sup>16</sup>

### **Objection to application for grant of mining claim**

**71.(1)** An entity may, on or before the last objection day ends, lodge a written objection in the approved form to an application for a mining claim.

(2) An owner of land who attends a conference about an application for a mining claim may, even though the time for objecting to the application has ended, lodge an objection to the application within 7 days after—

- (a) the day the conference ends; or

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<sup>16</sup> Orders of a Wardens Court may be enforced under section 377 (Enforcement of decisions etc. of Wardens Court).

- (b) if the applicant did not attend the conference—the day the owner attended the conference.

(3) An objection referred to in subsection (1) or (2) shall state the grounds of objection and the facts and circumstances relied on by the objector in support of those grounds.

(4) Each objector to an application for the grant of a mining claim shall serve upon the applicant on or before the last date that the objector may lodge an objection to that application a copy of the objection lodged by the objector.

### **Mining registrar to fix hearing date**

72.(1) If an objection to an application for the grant of a mining claim is duly lodged, the mining registrar shall, immediately after the last date that objections may, pursuant to section 71(1) and (2), be lodged, fix a date, being not sooner than 7 days after—

- (a) the last date for the receipt of objections; or  
(b) the conclusion of any conference convened pursuant to section 65;

whichever is the later, for the hearing in the Wardens Court of the application and all objections to that application duly lodged.

(2) The mining registrar shall notify the applicant and all objectors accordingly.

### **Rejection of application for grant of mining claim for noncompliance**

73. An application for the grant of a mining claim may be rejected by the mining registrar if the applicant fails to comply with any of the applicable provisions of this part.

### **Grant of mining claim to which no objection is lodged**

74.(1) This section applies to an application for a mining claim for land if—

- (a) no-one objects to the application on or before the last objection

day; and

- (b) at least 7 days have passed since the end of any section 65 conference about the application.

(2) The mining registrar may grant a mining claim for the land to an applicant for the mining claim only if the mining registrar is satisfied—

- (a) the application complies with this part; and
- (b) any consents needed in relation to the land have been obtained.

(3) The applicant must give written notice of the grant to the owners of land covered by the claim.

(4) The notice must be given within 28 days after the applicant receives notice of the grant.

### **Mining registrar may refer application for grant of mining claim to Wardens Court**

75.(1) Despite section 74, the mining registrar may refer an application for the grant of a mining claim to the Wardens Court for determination and shall set a date therefor being not less than 7 days after that reference.

(2) The mining registrar shall notify forthwith the applicant for the grant of a mining claim of action taken by the mining registrar pursuant to subsection (1).

### **Reference of application to Wardens Court if consent of reserve's owner is not given**

76.(1) If the mining registrar is not satisfied an owner of a reserve consented to an application for a mining claim for the reserve, the mining registrar must fix a day, within 7 days after the later of the following, for consideration by the Wardens Court of the issue of the consent—

- (a) the last objection day for the application;
- (b) the end of any section 65 conference about the application.

(2) The mining registrar must immediately give the applicant for the mining claim and the owner of the reserve notice of the day fixed under subsection (1).

**Wardens Court hearing**

**77.(1)** The Wardens Court must hear and decide all issues in relation to an application for a mining claim and any objections to the application at the same hearing.

(2) The hearing shall be open to the public.

(3) At a hearing pursuant to subsection (1) the Wardens Court shall take such evidence, shall hear such persons and inform itself in such manner as it considers appropriate in order to determine the relative merits of the application, objections and other matters (if any) and shall not be bound by any rule or practice as to evidence.

(4) The Wardens Court shall not entertain an objection to an application or any ground thereof or any evidence in relation to any ground if the objection or ground is not contained in an objection that has been duly lodged in respect of the application.

(5) The Wardens Court may direct an inspection or view of the land the subject of the hearing.

(6) Nothing in subsection (1) shall prevent the adjournment from time to time of a hearing.

(7) Nothing in subsection (1) shall prevent the question of compensation being determined by the Wardens Court pursuant to section 85.<sup>17</sup>

(8) The Minister may require at any time the warden to advise the reasons why a hearing under this section has not been finalised.

**Wardens Court's determination on hearing**

**78.(1)** Upon the hearing by the Wardens Court under this part of all matters in respect of an application for the grant of a mining claim the Wardens Court may—

- (a) instruct the mining registrar to reject the application;
- (b) instruct the mining registrar to grant the mining claim—
  - (i) upon compliance with any terms and conditions imposed by the mining registrar on the applicant with respect to the

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<sup>17</sup> Section 85 (Compensation to be settled before granting of mining claim)

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application or the grant; and

- (ii) in the case where the application relates to land that is a reserve and the consent of the owner of the reserve to the grant has been obtained;
- (c) in the case where the application relates to land that is a reserve and the owner of the reserve does not consent to the grant of the mining claim—
  - (i) make an instruction referred to in paragraph (a); or
  - (ii) recommend to the Minister that the Governor in Council should consent to the grant of the mining claim and, the terms and conditions (if any) to which the mining claim should be subject.

**(2)** The Wardens Court shall not—

- (a) give an instruction to the mining registrar directed towards the grant of a mining claim;
- (b) make a recommendation to the Minister directed towards the giving of consent by the Governor in Council to the grant of a mining claim;

if it is satisfied that—

- (c) the provisions of this part have not been complied with; or
- (d) the public right and interest would be adversely affected by the grant of the mining claim; or
- (e) there is good reason to refuse to grant the mining claim.

**(3)** A Wardens Court may give an instruction or make a recommendation referred to in subsection (2) notwithstanding that the question of compensation has not been determined as provided in section 85.

**(4)** A Wardens Court on the application of an objector or owner may award costs against an applicant for a mining claim who abandons the application or does not pursue the application at a hearing.

**(5)** The Wardens Court on the application of an applicant for a mining claim may award costs against an objector who withdraws the objection or does not pursue the objection at a hearing.

**Consent to grant of mining claim over reserve by Governor in Council**

**79.(1)** After considering a recommendation made pursuant to section 78(1)(c)(ii) by the Wardens Court in respect of the application for the grant of a mining claim, the Minister shall either instruct the mining registrar to reject the application or recommend to the Governor in Council that the Governor in Council consent to the grant.

**(2)** The Governor in Council, upon the recommendation of the Minister may consent (subject to such terms and conditions as the Governor in Council determines) to the grant of a mining claim over land that is reserve.

**Grant of mining claim at instruction of Wardens Court or with consent of Governor in Council**

**80.(1)** Upon the instruction of the Wardens Court so to do or the consent to the grant by the Governor in Council, the mining registrar shall grant and issue the relevant mining claim if the mining registrar is satisfied that—

- (a) all necessary consents to the grant have been obtained; and
- (b) the question of compensation as provided in section 85 has been determined.

**(2)** The applicant for the grant of the mining claim must give written notice of the grant to the owners of land covered by the claim.

**(3)** The notice must be given within 28 days after the applicant receives notice of the grant.

**Conditions of mining claim**

**81.(1)** Each mining claim shall be subject to—

- (a) a condition that the holder shall use the land comprised in the mining claim bona fide for the purpose for which the mining claim was granted and in accordance with this Act and the conditions of the mining claim and for no other purpose;
- (b) a condition that the holder shall not assign or mortgage the mining claim or any part thereof without the consent in writing of the mining registrar;
- (c) a condition that the holder shall furnish at such times and in such

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manner as required by the mining registrar reports, returns, documents and statements and other materials whatever;

- (d) a condition that the holder shall maintain the surface of the land comprised in the mining claim in a tidy state during the term of the mining claim;
- (e) a condition that the holder shall to the satisfaction of the mining registrar provide for the control of the impact on the environment of the operations carried out under the authority of the mining claim;
- (f) a condition that the holder shall undertake rehabilitation of the surface of the land comprised in the mining claim to the satisfaction of the mining registrar;
- (g) a condition that prospecting and mining shall be conducted on the land comprising the mining claim by such method or in such manner as is provided for in or applies in respect of the mining claim;
- (h) a condition that the holder—
  - (i) shall not erect any permanent building or other structure whatever; and
  - (ii) prior to the termination of the mining claim, for whatever cause, shall remove any building or structure erected by the holder and all mining equipment and plant;  
on or in the land comprised in the mining claim;
- (i) a condition that without the prior approval of the mining registrar the holder shall not obstruct or interfere with any right of access had by any person in respect of land the subject of the mining claim;
- (j) where the mining claim is in respect of land that is a reserve, a condition that the holder shall comply with the terms and conditions upon which the consent of the owner or of the Governor in Council to the grant of the mining claim was given;
- (k) a condition that the holder shall make all payments of compensation and comply with all terms of any agreement or determination relating to compensation at the time or times as

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agreed or determined pursuant to section 85 or 86;

- (l) a condition that the holder—
  - (i) shall pay the rental as prescribed; and
  - (ii) shall pay the royalty as prescribed; and
  - (iii) shall pay all local authority rates and charges lawfully chargeable against the holder in respect of the land comprised in the mining claim; and
  - (iv) shall deposit as required by the mining registrar any security from time to time under this Act;
- (m) a condition that the holder shall maintain the marking out of the land the subject of the mining claim including any survey pegs during the term of the claim but that boundary posts or cairns need not be maintained after the land has been surveyed;
- (n) a condition that the holder shall comply with the provisions of this Act;
- (o) such other conditions as are prescribed;
- (p) such other conditions as the mining registrar may impose (including such conditions as the Wardens Court may determine pursuant to this part).

(2) If in any case there is conflict between a condition determined by the Wardens Court and a condition determined by the Governor in Council, then to the extent of the conflict the determination of the Governor in Council shall prevail.

(3) A mining claim shall contain a condition as to the work commitment required of the holder.

(4) Notwithstanding subsection (1), if the applicant for a mining claim satisfies—

- (a) the mining registrar; or
- (b) the Wardens Court when giving an instruction under this part; or
- (c) the Governor in Council when giving consent to the grant of a mining claim under this part;

that any of the conditions prescribed in subsection (1)(f), (h)(ii) and (m)

should not be imposed the mining claim may be granted without the imposition of that condition or those conditions.

(5) Conditions may be imposed that relate to standards and methods to be applied to minimise the effect on the environment (including land degradation and air and water pollution), on or outside the land specified in the mining claim of mining or other activities carried on under the authority of the mining claim.

### **Variation of conditions of mining claim**

**82.(1)** The conditions to which a mining claim is for the time being subject, may be varied by the mining registrar in terms not inconsistent with this Act upon the agreement in writing of the holder of the mining claim.

(2) A mining claim that is duly varied pursuant to subsection (1) shall thereafter until again varied, be subject to its conditions as so varied.

(3) Particulars of every variation of a mining claim shall be endorsed on the certificate of grant of that mining claim.

### **Provision of security**

**83.(1)** Before a mining claim is granted or renewed, the mining registrar taking into consideration the matters outlined in section 61(1)(j)(iv) shall determine the amount of the security to be deposited by the holder of that mining claim as reasonable security for—

- (a) compliance with the conditions of the mining claim; and
- (b) compliance with the provisions of this Act; and
- (c) rectification of any actual damage that may be caused by any person whilst purporting to act under the authority of the mining claim to any land or any improvements situated on or off that land; and
- (d) amounts (other than penalties) payable to the State under this Act.

(2) The Governor in Council, when giving consent to the grant of a mining claim pursuant to section 79, may determine the amount of the security to be deposited by the holder of the mining claim.

(3) The Wardens Court, when instructing the mining registrar to grant an

application for the grant of a mining claim, may determine the amount of the security to be deposited by the holder of the mining claim.

(4) Where, in respect of an application for the grant of a mining claim, an amount of security is determined by the Governor in Council pursuant to subsection (2) or by the Wardens Court pursuant to subsection (3), that amount shall be determined by the mining registrar as the security pursuant to subsection (1) in respect of that mining claim.

(5) In respect of an application for the grant of a mining claim, an amount determined by the Governor in Council shall prevail over an amount determined by the Wardens Court.

(6) A mining claim shall not be granted or renewed until the applicant for the grant or renewal of the mining claim deposits the security as determined under this section.

(7) A mining registrar for the district in which a mining claim is granted who is satisfied that any condition of the mining claim or any provision of this Act has not been complied with or that damage referred to in subsection (1)(c) has been caused by any person purporting to act under the authority of the mining claim or who enters land upon the instruction of the holder may require that person to take all action necessary to rectify that noncompliance or damage and, save where the person was not the holder and was not upon the land with the holder's approval at the time the damage was caused, may utilise for that purpose the whole or part of the amount of the security deposited in respect of that mining claim.

(8) If, at any time (whether during, or within 28 days after the expiration of the term of a mining claim) the amount or any part of the amount deposited under this section is utilised under subsection (7) or the mining registrar considers that, in view of the damage caused or likely to be caused by any person purporting to act under the authority of the mining claim or upon the instruction of the holder or for any other reason, a further amount of security should be deposited in respect of that mining claim, the mining registrar shall require the holder or former holder of the mining claim, within the time specified by the mining registrar to deposit the further security.

(9) A mining registrar may make a requirement referred to in subsection (8) notwithstanding that the amount of the security deposited

was originally determined by the Governor in Council or the Wardens Court.

**(10)** The mining registrar may accept a bond or a guarantee or indemnity by, or other financial arrangement with, a financial institution, insurance company or another credit provider approved by the mining registrar or other form of security acceptable to the mining registrar as the whole or part of the security to be deposited under this section.

**(11)** It shall be a condition of a mining claim that the holder shall deposit security or further security from time to time in accordance with a requirement made as provided by this section.

**(12)** If a mining claim terminates, the mining registrar may, not earlier than 28 days after the termination, refund the amount of security held for the mining claim, after deducting any amount used under subsection (7).

**(13)** The mining registrar must refund the amount to the holder of the claim or in accordance with any written direction the holder gives to the mining registrar.

**(14)** However, before refunding the security, the mining registrar may also deduct the amount the mining registrar considers appropriate to apply in the following order towards—

- (a) rectifying anything caused by noncompliance with—
  - (i) a condition of the mining claim; or
  - (ii) an order given to the holder by the mining registrar;
- (b) amounts (other than penalties) the holder owes to the State under this Act or the conditions of the mining claim (including amounts that became payable before or after the termination of the claim);
- (c) rates and charges (including interest on unpaid rates and charges) owing to a local government for the mining claim by the former holder.

**(15)** Subsection (12) does not limit the mining registrar's powers under subsection (16).

**(16)** If the mining registrar accepts a bond, guarantee or indemnity by, or another financial arrangement with, a financial institution, insurance company or credit provider as security under this section, any amount payable to the holder must be refunded to the financial institution, insurance

company or credit provider and not to the holder of the mining claim to which the security relates.

### **Utilisation of security deposit towards subsequent mining claim**

**84.** If the holder of a mining claim or an expired mining claim makes application for a further mining claim, the mining registrar may, instead of refunding the whole or part of the security deposited in respect of the existing or expired mining claim, retain that security or part thereof (together with any further security fixed by the mining registrar) as the security (in which case it shall be taken to be or to be part of the security) deposited by the applicant in respect of the further mining claim.

### **Compensation to be settled before granting of mining claim**

**85.(1)** A mining claim shall not be granted or renewed unless—

- (a) compensation has been determined (whether by agreement or by determination of the Wardens Court) between the applicant and each person who is the owner of land the subject of the application and of any surface access to that land; or
- (b) there is no person (other than the applicant) who is the owner of any of the land referred to in paragraph (a);

and the conditions of the agreement or determination have been or are being complied with by the applicant.

**(2)** For the purposes of subsection (1)(a), where the Wardens Court makes a determination of an amount of compensation, that compensation is not determined until—

- (a) where no appeal against that determination is lodged within the period prescribed therefor—upon the expiration of that period; or
- (b) where an appeal is duly lodged against that determination—upon the determination of that appeal.

**(3)** An agreement made pursuant to subsection (1)(a) shall not be effective unless and until—

- (a) it is in writing signed by or on behalf of the parties; and
- (b) it is filed in the office of the mining registrar.

(4) If an agreement referred to in subsection (3) is required by any law of Queensland to be stamped, it shall not be filed until it is stamped according to law.

(5) At any time before an agreement is made pursuant to this section, a person who could be a party to such agreement may apply in writing to the mining registrar to have the Wardens Court determine the amount of compensation and the terms, conditions and times of payment thereof.

(6) The Wardens Court is hereby authorised to hear and determine matters referred to in subsection (5).

(7) Upon an application made under subsection (5), a Wardens Court shall settle the amount of compensation an owner of land is entitled to as compensation for—

- (a) deprivation of possession of the surface of land of the owner;
- (b) diminution of the value of the land of the owner or any improvements thereon;
- (c) diminution of the use made or which may be made of the land of the owner or any improvements thereon;
- (d) severance of any part of the land from other parts thereof or from other land of the owner;
- (e) any surface rights of access;
- (f) all loss or expense that arises;

as a consequence of the grant or renewal of the mining claim.

(8) In assessing the amount of compensation payable under subsection (7)—

- (a) where it is necessary for the owner of land to obtain replacement land of a similar productivity, nature and area or resettle himself or herself or relocate his or her livestock and other chattels on other parts of his or her land or on the replacement land, all reasonable costs incurred or likely to be incurred by the owner in obtaining replacement land, the owner's resettlement and the relocation of the owner's livestock or other chattels as at the date of the assessment shall be considered;
- (b) no allowance shall be made for any minerals that are or may be

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on or under the surface of the land concerned;

- (c) if the owner of land proves that the status and use currently being made (prior to the application for the grant of the mining claim) of certain land is such that a premium should be applied, an appropriate amount of compensation may be determined;
- (d) loss that arises may include loss of profits to the owner calculated by comparison of the usage being made of land prior to the lodgment of the relevant application for the grant of a mining claim and the usage that could be made of that land after the grant;
- (e) an additional amount shall be determined to reflect the compulsory nature of action taken under this part which amount, together with any amount determined pursuant to paragraph (c), shall be not less than 10% of the aggregate amount determined under subsection (7).

**(9)** In any case the Wardens Court may determine the amounts and the terms, conditions and times when payments aggregating the total compensation payable shall be payable.

**(10)** The Wardens Courts determination of any matter under this section shall be deemed to be an agreement between the parties and shall be given effect accordingly.

**(11)** The Wardens Court shall give written notice of its determination to all parties and may make such order as to costs between the parties to the determination as it thinks fit.

**(12)** If compensation has not been agreed upon or the question of the amount of compensation earlier referred to the Wardens Court for determination pursuant to the preceding provisions of this section in respect of an application for the grant of a mining claim—

- (a) in the case where no objection to the application is duly lodged—upon the expiration of 3 months from the last date for the receipt of objection to the application; or
- (b) in the case where the Wardens Court instructs the mining registrar to grant the mining claim—upon the expiration of 3 months from the date of giving the instructions; or
- (c) in the case where the Governor in Council consents to the grant of the mining claim—upon the expiration of 3 months from the date

of the giving of that consent;

the mining registrar shall refer the question of the amount of compensation payable to the Wardens Court which shall make a determination in accordance with this section.

(13) An amount of compensation decided by agreement between the parties or the Wardens Court is binding on the parties and the parties' personal representatives, successors and assigns.

### **Appeal against Wardens Court's determination upon compensation**

**86.(1)** A party aggrieved by a determination of a Wardens Court made under section 85 may, within 28 days of the date of that determination or within such further period as the Land Court, on the application of that party in that behalf prior to the lodgment of the appeal, considers appropriate in any particular circumstances, appeal against the determination to the Land Court.

(2) The appeal shall be instituted by, within the time and in the manner prescribed—

- (a) lodging in the Land Court registry, written notice of appeal which shall include the grounds of appeal; and
- (b) serving copies of the notice of appeal on the mining registrar and each other party; and
- (c) giving security (approved by the registrar of that court) for the costs of the appeal.

(3) As soon as practicable after being served with a notice of appeal the mining registrar shall transmit to the registrar of the Land Court the evidence, notes, reasons and proceedings taken in the Wardens Court.

(4) The Land Court shall have jurisdiction to hear and determine an appeal under this section.

(5) Upon hearing an appeal under subsection (1) the Land Court may—

- (a) vary the determination of the Wardens Court in such a way as it thinks just; or
- (b) disallow the appeal and confirm the determination of the Wardens Court;

and may make such order as to costs of the appeal as it thinks fit.

(6) In deciding an appeal, the Land Court must consider the things relevant to the appeal that the Wardens Court was required to consider in making the decision appealed against.

(7) A Land Court shall not admit further evidence upon an appeal from a determination of a Wardens Court under subsection (1) unless—

- (a) it is satisfied that admission of the evidence is necessary to avoid grave injustice and there is sufficient reason that the evidence was not previously adduced; or
- (b) the appellant and respondent agree to its admission.

(8) The determination of the Land Court on appeal shall be final and conclusive.

### **Public Trustee may act in certain circumstances**

**87.(1)** If there is doubt as to the identity of the owner of land or the owner of land cannot be found, the Wardens Court may determine that the public trustee shall represent the owner for the purpose of any negotiation or proceeding under section 85 or 86.

(2) Any action taken or thing done or omitted to be done by the public trustee as representative of the owner of land pursuant to subsection (1) shall be taken for all purposes to be taken, done or omitted by that owner.

(3) Where, pursuant to subsection (2) the public trustee represents an owner of land, for the purposes of this part any moneys paid to the public trustee under any agreement or determination made under section 85 or 86 shall be deemed to have been paid to the owner.

### **Issue of certificate of grant of mining claim**

**88.** A mining registrar who grants a mining claim shall issue to the applicant for the grant a certificate of grant in the approved form which shall bear the number endorsed on the certificate of application for the mining claim.

**Reasons for rejection of application for grant of mining claim**

**89.** A mining registrar who rejects an application for the grant of a mining claim shall give written notice to the applicant stating the reasons for rejection.

**Duty of holder of mining claim to mark boundary posts**

**90.** Unless the land the subject of a mining claim has been surveyed, the holder of a mining claim shall, within 7 days of the date of grant of the mining claim, engrave or in some way durably mark on every boundary post of the land the subject of the mining claim or cairn erected as prescribed in lieu thereof, the number of that claim appearing on the certificate of grant of the mining claim and, until the land is surveyed, shall maintain those posts or cairns duly engraved or marked while the mining claim subsists and the land is not surveyed.

**Initial term of mining claim**

**91.(1)** The initial term of a mining claim shall, unless the mining claim is sooner terminated, be for a period specified in the grant (not exceeding 5 years) commencing on the first day of the month which next follows the day on which the mining claim is granted but shall not be for a term longer than the period in respect of which compensation has been agreed or determined pursuant to section 85 or 86.<sup>18</sup>

**(2)** From the grant of a mining claim to the commencement of the initial term thereof the holder shall have all the entitlements, powers, duties and functions the holder has during the term of the mining claim except section 95<sup>19</sup> shall not apply.

**Mining claim may be specified it is not renewable**

**92.(1)** If it is considered that the land the subject of the application for the grant or renewal of a mining claim is or will be required for some purpose

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<sup>18</sup> Section 85 (Compensation to be settled before granting of mining claim) or 86 (Appeal against Wardens Court's determination upon compensation)

<sup>19</sup> Section 95 (Rental payable on mining claim)

other than mining, the mining claim may be granted or renewed subject to a condition that the holder is not entitled to have the mining claim renewed.

(2) Where a mining claim is granted or renewed subject to a condition referred to in subsection (1), the applicant shall be advised the reasons therefor.

### **Renewal of mining claim**

**93.(1)** The holder of a mining claim, including a mining claim that is subject to a condition referred to in section 92, may, at least 6 months (or such shorter period as the mining registrar in the particular case allows) prior to and not more than 12 months before the expiration of the current term of the mining claim, make application for renewal of the mining claim.

(2) An application for renewal of a mining claim shall—

- (a) be made in the prescribed way to the mining registrar for the mining district in which is situated the land the subject of the mining claim;
- (b) be accompanied by the prescribed application for renewal fee.

(3) If, in respect of an application for renewal of a mining claim, the mining registrar is satisfied that—

- (a) in a case where the mining claim is subject to a condition that the holder is not entitled to have the mining claim renewed, the mining claim should be renewed and, where the condition was imposed by the Governor in Council or the Wardens Court, the Governor in Council or Wardens Court consents to the renewal; and
- (b) the holder has observed and performed all the conditions applicable to that mining claim and on the holder's part to be observed and performed; and
- (c) the holder has complied with all the provisions of this Act applicable to the holder in respect of that mining claim; and
- (d) the land, the subject of the mining claim still contains workable quantities of mineral or mineral bearing ore;

then the mining registrar shall grant a renewal of that mining claim in the

name of the holder for such further term, not exceeding 5 years, as the mining registrar thinks fit subject to the prescribed conditions and such further conditions as the mining registrar determines but the further term shall not include a period that is not covered by an agreement as to or a determination of compensation pursuant to section 85 or 86.

(4) The mining registrar shall not reject an application for renewal of a mining claim until the mining registrar has, by notice in writing in the approved form served on the holder of the mining claim, called upon the holder to show cause within the time specified therein why the application should not be rejected and such cause has not been shown to the satisfaction of the mining registrar.

(5) Where an application for renewal of a mining claim is duly made by the holder but the application has not been granted or rejected by the mining registrar before the date on which the term of the mining claim then current would, but for this subsection have expired, then, subject to payment of the rental prescribed in section 95, royalties and other moneys required by this Act to be paid and compliance with this Act and the conditions of the mining claim, the mining claim shall continue in force until the application is granted unless it is sooner withdrawn, or rejected.

(6) The term of a mining claim that is renewed (whether the renewal is granted before or after the date the mining claim expires or would, but for the operation of subsection (5), have expired) shall commence or be deemed to have commenced on the day following that expiry date but the conditions of the renewed mining claim that differ from conditions of the expired mining claim shall apply from—

- (a) the commencement of that term; or
- (b) the date the renewal is granted;

whichever is the later.

(7) The holder of a renewed mining claim must give written notice of the claim's renewal to the owners of the land covered by the claim.

(8) The notice must be given within 28 days after the holder receives notice of the renewal.

**Reasons for rejection of application for renewal of mining claim**

**94.** A mining registrar who rejects an application for the renewal of a mining claim shall give written notice to the applicant stating the reasons for rejection.

**Rental payable on mining claim**

**95.(1)** Upon the grant of a mining claim rental shall first be payable thereon with respect to the period from the commencement of the term of the mining claim to 31 December of that year (the “**first rental period**”) and shall be paid within 28 days (or such longer period as the mining registrar in the particular case approves) of the grant of the mining claim.

**(2)** The amount of the rental payable in respect of the first rental period shall be an amount that bears to the yearly rental prescribed pursuant to subsection (4) for the year in which the first rental period falls the same proportion that the number of whole calendar months of the first rental period bears to 12.

**(3)** In respect of each year or part thereof of the term of a mining claim (other than the first rental period) a full year’s rental shall be payable in advance not later than 31 December of the previous year.

**(4)** If the full year’s rental is paid in advance as prescribed by subsection (3), the amount of the rental shall be the amount prescribed in respect of the year in which the rental period falls.

**(5)** If rental is not paid in advance as prescribed by subsection (3)—

- (a)** the mining registrar shall, prior to 31 January of that year, notify the holder of and any person holding a recorded interest in the mining claim that the rental has not been paid as prescribed by subsection (3) and of the amount of rental payable as prescribed by paragraph (b); and
- (b)** the amount of the full year’s rental shall be payable before 1 April of that year and shall be an amount equal to the amount prescribed in respect of the year in which the rental period falls plus an amount equal to 25% of that prescribed amount.

**(6)** Upon the renewal of a mining claim, no further rental shall be payable in respect of the period that, if the renewal was a grant of a mining

claim, would be the first rental period except where that period commences on 1 January.

(7) Except as provided in subsection (8), where in any year a mining claim is surrendered or terminated through effluxion of time and is not renewed, there shall be refundable to the last holder of the mining claim an amount that bears to the amount of the rental that was paid in respect of that year the same proportion that the number of whole calendar months from—

- (a) the date of surrender or termination; or
- (b) the date of rejection of the application for renewal;

whichever is the later, to 31 December of that year bears to 12.

(8) No amount shall be refunded pursuant to subsection (7) where a mining claim is surrendered within its first rental period after its original grant.

### **Assignment etc. of mining claim**

**96.(1)** With the approval of the mining registrar a mining claim or an interest therein may be assigned or mortgaged in the prescribed manner and upon payment of the prescribed fee.

(2) The holder of a mining claim desirous of assigning or mortgaging the holder's interest in the mining claim shall apply in writing to the mining registrar for the mining registrar's approval to that exercise and shall furnish to the mining registrar such information with respect thereof as the mining registrar requires.

(3) An application under subsection (2) in respect of an assignment shall be accompanied by the consent in writing of an existing mortgagee.

(4) Upon an application made pursuant to subsection (2) the mining registrar shall cause the applicant to be given notice—

- (a) that, subject to compliance with this Act in respect thereof and with any conditions specified in the notice within 3 months from the date of the notice or such other period as is specified in the notice, the mining registrar will approve the exercise; or
- (b) that the mining registrar does not approve the exercise.

(5) If the mining registrar indicates that the mining registrar will approve

the exercise, then upon receipt within the prescribed time of the appropriate document that gives effect to an assignment or mortgage referred to in the indication, compliance with this Act and all conditions specified in the notice given pursuant to subsection (4)(a) in respect thereof and payment of the prescribed fee, the assignment or mortgage shall be approved and such particulars thereof as are necessary to give effect to or evidence that assignment or mortgage shall be recorded in the appropriate register and endorsed on the certificate of grant of the mining claim.

(6) Notwithstanding that subsections (2) and (4) have not been complied with in a particular case, the mining registrar may approve and record particulars of an assignment or mortgage as provided in subsection (5) if the mining registrar is satisfied that, if subsection (2) had been complied with the mining registrar would have approved the assignment or mortgage and any conditions the mining registrar would have specified under subsection (4) have been complied with.

(7) An assignment or mortgage of a mining claim shall not be in respect of part only of the land the subject of the mining claim.

(8) The mining registrar shall not approve the assignment of a mining claim unless it is accompanied by the approval in writing of any existing mortgagee and a duly completed royalty return prescribed by part 9 together with royalty payable to the Crown or evidence of payment to the person entitled thereto as prescribed in part 9.

(9) A purported assignment or mortgage of a mining claim or of an interest therein shall not be effective unless it is made and approved in accordance with this section and shall take effect on the day next following its approval by the mining registrar under subsection (5) or (6).

(10) Within 28 days of the mining registrar granting approval of an assignment under this section, the assignee shall notify the owners of the relevant land of that approval.

### **Lodgment of caveat**

**97.(1)** Subject to subsection (2), a person who claims a right or interest in or in respect of a mining claim may by a caveat in the approved form forbid the approval of any assignment or mortgage in respect of the mining claim (save any assignment or mortgage the approval of which is excepted in the caveat) either absolutely or until after notice of intention to approve

such an assignment or mortgage is served on the caveator.

(2) A caveat duly lodged pursuant to this section does not apply in respect of—

- (a) an assignment or mortgage duly lodged with the mining registrar before the lodgment of the caveat; or
- (b) an assignment or mortgage the application for approval of which was lodged with the mining registrar before the lodgment of the caveat.

(3) A caveat referred to in subsection (1) shall—

- (a) be in the approved form; and
- (b) specify the name and address for service of 1 person upon whom any notice may be served on behalf of the caveator or caveators; and
- (c) identify the mining claim concerned; and
- (d) specify the nature of the right or interest claimed by the caveator; and
- (e) specify the period during which it is to continue in force; and
- (f) be signed by the caveator, the caveator's solicitor or other person authorised in writing by the caveator; and
- (g) if any person consents to the lodging of the caveat, be endorsed with that person's consent; and
- (h) be lodged at the office of the mining registrar for the mining district in which is situated the land the subject of the mining claim concerned; and
- (i) be accompanied by the prescribed lodgment fee.

### **Mining registrar's functions upon receipt of caveat**

**98.** Upon receipt of a duly lodged caveat referred to in section 97, a mining registrar shall—

- (a) notify the holder or holders of the affected mining claim; and
- (b) notify all other persons who have an interest in the mining claim

recorded in the register including any subsisting prior caveator;  
and

- (c) record the existence of the caveat in the register.

### **Effect of caveat**

**99.(1)** For so long as a caveat remains in force, a mining registrar shall not approve any assignment or mortgage in respect of the mining claim identified in the caveat unless—

- (a) the assignment or mortgage is specifically excepted in the caveat;  
or
- (b) the written consent of the caveator in the approved form to the approval of the assignment or mortgage is lodged with the mining registrar.

**(2)** For the purposes of subsection (1), unless and until a caveat is removed or withdrawn as prescribed, a caveat continues in force—

- (a) in a case where the consent of each holder of the mining claim concerned has been lodged with the caveat, for the term specified in the caveat or, if no term is specified, indefinitely; or
- (b) in a case where the caveat (not being a caveat referred to in paragraph (a)) specifies a period of not more than 3 months during which it is to continue in force, until the expiration of that period; or
- (c) in a case where the Wardens Court or another court of competent jurisdiction so orders for so long as that order remains in force; or
- (d) in any other case, until the expiration of 3 months from the date of lodgment of the caveat.

### **Second caveat not available to same person**

**100.** When a caveat has lapsed or has been removed or withdrawn as prescribed, it shall not be competent to the caveator to lodge in respect of the same mining claim another caveat whereby the caveator claims the same or substantially the same right or interest unless—

- (a) the consent of each holder of the mining claim has been lodged

with the lastmentioned caveat; or

- (b) the Wardens Court or another court of competent jurisdiction so orders.

### **Removal or withdrawal of caveat**

**101.(1)** A caveat lodged pursuant to section 97 that has lapsed shall be removed by the mining registrar and the register noted accordingly.

(2) Upon the plaint of a person who has a right or interest (present or prospective) in a mining claim affected by a caveat or whose right (present or prospective) to deal with a mining claim is affected by a caveat lodged in respect of the mining claim, the caveator may be summonsed to attend the Wardens Court or another court of competent jurisdiction to show cause why the caveat should not be removed.

(3) The Wardens Court or another court of competent jurisdiction may, upon the return of a summons referred to in subsection (2) or at any later time to which the hearing may be adjourned, make such order either ex parte or otherwise as the court deems just.

(4) If the Wardens Court or another court of competent jurisdiction orders that a caveat be removed, the mining registrar shall give effect to the order.

(5) A caveator may withdraw his or her caveat at any time by notifying the mining registrar in writing.

(6) The removal or withdrawal of a caveat shall be effected by the mining registrar recording the removal or withdrawal in the register.

### **Compensation for lodging caveat without reasonable cause**

**102.** A person who lodges a caveat in respect of a mining claim without reasonable cause is liable to pay such damages as may be recovered at law by any person aggrieved.

### **Correction of certificate of grant of mining claim**

**103.(1)** If, at any time, the mining registrar is of the opinion that a certificate of grant of a mining claim should be corrected by reason that—

- (a) the boundaries and area of the land comprised in the mining claim have been more accurately ascertained; or
- (b) facts have appeared or been established since the grant of the mining claim justifying correction of the certificate to more accurately reflect the holder's entitlements under the claim; or
- (c) the certificate is defective owing to error in its preparation;

the mining registrar may correct the certificate and shall record details thereof in the register of mining claims kept by the mining registrar and endorse the certificate accordingly.

(2) Where a certificate of grant of a mining claim is corrected under this section the certificate shall be construed and operate as if it had originally been issued as corrected.

### **Replacement of certificate of grant of mining claim**

**104.(1)** Where the mining registrar is satisfied that a certificate of grant of a mining claim should be cancelled and a replacement certificate issued in its place, the mining registrar shall cancel the certificate in question and cause a replacement certificate to be issued in its place.

(2) A replacement certificate of grant of a mining claim issued under this section—

- (a) shall be the certificate of grant issued in respect of the mining claim concerned in place of the certificate previously issued in respect thereof and cancelled under this section which lastmentioned certificate shall, upon the issue of the fresh certificate, cease to be of any force or effect; and
- (b) may bear a form of endorsement which briefly traces the devolution of the title from the original holder of the mining claim to the person appearing as holder thereof at the time the replacement certificate is issued; and
- (c) shall bear endorsement of all apparently subsisting mortgages affecting the mining claim and endorsed on the certificate so cancelled; and
- (d) shall be delivered to the person who appears to the mining registrar to be lawfully entitled to possession thereof.

(3) The mining registrar shall cause the certificate so cancelled to be suitably endorsed and a suitable recording made in the register that a replacement certificate has been issued in its place.

(4) The cancelled certificate shall be retained by the mining registrar.

### **Mining other minerals**

**105.(1)** The holder of a mining claim may lodge an application in writing with the mining registrar for approval to mine specified minerals, being minerals not specified in the mining claim, in respect of the land the subject of the mining claim.

(2) The application shall be accompanied by the prescribed fee.

(3) An application referred to in subsection (1) and any other application for the grant of a mining lease in respect of the same minerals shall take priority according to the order of the time and date the applications are lodged as prescribed.

(4) Upon the mining registrar approving an application under this section and compliance by the applicant with any conditions imposed by the mining registrar, the relevant mining claim shall be deemed to include the specified minerals and shall be subject to such additional conditions as are prescribed in respect of such mining claim or as the mining registrar considers appropriate.

(5) The mining registrar shall not approve an application under this section that could adversely affect any conditions imposed in respect of the mining claim by the Wardens Court or the Governor in Council.

### **Contravention by holder of mining claim**

**106.(1)** A mining registrar who considers that the holder of a mining claim—

- (a) has carried out activities that are not bona fide for the purposes for which the mining claim was granted; or
- (b) has failed to pay the royalty or any other moneys payable thereunder (other than rental) or in respect thereof by the due date for payment; or

- (c) has failed to comply with any condition that is to be observed and performed by the holder under or in respect of the mining claim, other than a condition with respect to matters referred to in subsection (2)(a) or (b);

may—

- (d) cancel the mining claim; or
- (e) impose on the holder a penalty not exceeding 100 penalty units.

**(2)** A mining registrar who considers that the holder of a mining claim—

- (a) in any year has failed after notice given to the holder in accordance with section 95(5) to pay before 1 April of that year the amount of the rental payable under that section by that date in respect of that mining claim; or
- (b) has failed to pay a penalty imposed on the holder pursuant to subsection (1)(e) within the time allowed for the payment by the mining registrar;

may cancel the mining claim.

**(3)** A mining registrar shall not act pursuant to subsection (1) until the mining registrar has, by notice in writing in the approved form served on the holder of the mining claim, called upon the holder to show cause within the time specified therein why the mining claim should not be cancelled or a penalty imposed and served a copy of the notice on every person who currently holds a recorded interest in respect of the mining claim at the person's address last recorded by the mining registrar and such cause has not been shown to the satisfaction of the mining registrar.

**(4)** A mining registrar who pursuant to this section cancels a mining claim shall notify the holder accordingly stating the reason for the cancellation.

**(5)** The cancellation of a mining claim under this section shall take effect on the day next following the mining registrar's determination to cancel the mining claim.

### **Surrender of mining claim**

**107.(1)** The holder of a mining claim may surrender the mining claim by

lodging with the mining registrar—

- (a) a notice of surrender in the approved form; and
- (b) a duly completed royalty return prescribed by part 9<sup>20</sup> together with the royalty payable to the Crown as prescribed by part 9 or evidence of payment to the person entitled thereto; and
- (c) if land covered by the surrender is not included in an application for a new mining claim or a mining lease—a final rehabilitation report stating how the holder has rehabilitated land affected directly or indirectly by the holder's mining activities under the claim; and
- (d) the fee prescribed under a regulation.

(2) Upon a surrender of a mining claim, all adjustments between the holder and the Crown in respect of the payment of rental, fees and other moneys shall be at the discretion of the mining registrar.

(3) Where any moneys are specified pursuant to subsection (2) as a debt due to the Crown, the mining registrar may utilise the security deposited in accordance with section 83 for payment thereof.

(4) Nothing in this section shall prevent the Crown from recovering moneys from a person specified in subsection (2) as liable to pay and unpaid (whether directly or through utilisation of the security deposit) by action in the Wardens Court.

(5) In an action under subsection (4) for the recovery of a debt due to the Crown, the production to the Wardens Court of a certificate by the mining registrar certifying the amount of that debt shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the debt and the amount thereof.

(6) Where, at the time when the holder of a mining claim purports to surrender the mining claim, the holder duly makes application for a new mining claim or a mining lease in respect of the whole or part of the land comprised in the current mining claim, the purported surrender shall not take effect unless and until the new mining claim or the mining lease is granted.

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<sup>20</sup> Part 9 (Royalties)

(7) Nothing in section 48 or 232<sup>21</sup> shall prevent the holder of a mining claim, at the time the holder surrenders the mining claim, from applying for the grant of a mining claim or mining lease over the whole or part of the land comprised in the surrendered mining claim and the grant of the mining claim or mining lease applied for.

(8) A surrender of a mining claim (other than a surrender referred to in subsection (6)) shall take effect on the day next following its acceptance by the mining registrar.

(9) However, the mining registrar may accept a surrender for land for which a final rehabilitation report is lodged only if the mining registrar is satisfied the holder has satisfactorily rehabilitated the land.

(10) If the mining registrar is not satisfied the holder has satisfactorily rehabilitated land, the mining registrar may, by written notice, give the holder reasonable directions about rehabilitating the land.

(11) The holder must comply with the directions.

Maximum penalty for subsection (11)—300 penalty units.

### **Abandonment of application for mining claim**

**108.(1)** The applicant for the grant of a mining claim may, at any time before the grant of the mining claim, by notice in writing to the mining registrar abandon the application in respect of the whole of the land to which the application relates.

(2) The applicant for the grant of a mining claim who gives a notice referred to in subsection (1) to the mining registrar shall forthwith serve a copy of that notice on all other persons upon whom the applicant was required under this Act to give a copy of the certificate of application for the mining claim.

(3) The abandonment of an application for the grant of a mining claim shall take effect on the day next following its receipt by the mining registrar.

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<sup>21</sup> Section 48 (Land subject to mining claim) or 232 (Land subject to mining lease)

**Rehabilitation of land covered by mining claim**

**109.(1)** Within 28 days after the termination of a mining claim, the holder must give the mining registrar a final rehabilitation report stating how the holder has rehabilitated land affected directly or indirectly by the holder's mining activities under the claim.

(2) After considering the report, the mining registrar may direct the holder to give the mining registrar further information about the rehabilitation.

(3) If the mining registrar is not satisfied the holder has satisfactorily rehabilitated land, the mining registrar may, by written notice, give the holder reasonable directions about rehabilitating the land.

(4) The holder must comply with the directions.

Maximum penalty for subsection (4)—300 penalty units.

(5) The holder and the holder's employees or agents may, to the extent reasonably necessary to comply with the directions—

- (a) enter land stated in the notice; and
- (b) bring onto the land vehicles, vessels, machinery and equipment that are approved by the mining registrar for the purpose.

(6) This section does not apply if—

- (a) a final rehabilitation report is lodged with a notice of surrender of a mining claim; or
- (b) the termination is for granting a new mining claim or a mining lease over the same land.

**Use of machinery on mining claim land**

**110.(1)** The Governor in Council may, by regulation, declare with respect to a particular mining claim, all mining claims, all mining claims situated in a specified area of the State, all mining claims in respect of a specified mineral or all mining claims in respect of a specified mineral in a specified area of the State—

- (a) the types of machinery, mechanical devices or other equipment (if any) that may or may not be used for prospecting or hand mining;

(b) the methods by which prospecting or operations for mining may or may not be carried on.

(2) A person purporting to act under a mining claim to which a declaration under subsection (1) applies must comply with the declaration.

(3) The Crown shall not be civilly liable on account of the effect of any regulation made pursuant to this section or section 111.<sup>22</sup>

### **Declaration of prohibited machinery on mining claim land**

**111.** The Governor in Council may by regulation with respect to any part of the State, declare that certain types of machinery, mechanical devices or other equipment may not be used in, on or under land the subject of any mining claim within that area.

### **Mining registrar may authorise use of prohibited machinery for purposes other than mining etc.**

**112.(1)** Despite section 111, the mining registrar may authorise the use of prohibited machinery for purposes other than prospecting, exploring or mining in, on or under land the subject of a mining claim within an area specified in a declaration under that section.

(2) In subsection (1)—

“**prohibited machinery**” means machinery, mechanical devices and other equipment specified in the declaration under section 111.

### **Prohibited machinery etc. not to be used on mining claim land**

**113.** A person shall not, without the written prior authority of a mining registrar given pursuant to section 112, have or use any machinery, mechanical device or other equipment the use of which has been prohibited by a declaration under section 111 in, on or under land the subject of a mining claim within an area specified in the declaration.

Maximum penalty—

(a) for a first offence—200 penalty units;

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<sup>22</sup> Section 111 (Declaration of prohibited machinery on mining claim land)

- (b) for a second offence—400 penalty units;
- (c) for a third or subsequent offence—1 000 penalty units.

### **Minerals taken become property of holder of mining claim**

**114.** All minerals lawfully mined under the authority of a mining claim cease to be the property of the Crown or person who had property therein and become the property of the holder of the mining claim subject however to the rights to royalty payments under this Act of the Crown or any other person.

### **Royalties in respect of minerals taken under mining claim**

**115.** The holder of a mining claim shall pay in respect of all minerals mined or purported to be mined under the authority of the mining claim, the royalty prescribed pursuant to part 9.

### **Appeals about mining claims**

**116.(1)** An applicant for a mining claim who is dissatisfied with a decision of a mining registrar to refuse to grant the mining claim (the “**aggrieved person**”) may appeal against the decision to the Wardens Court.

**(2)** A holder of a mining claim who is dissatisfied with any of the following decisions of a mining registrar (also an “**aggrieved person**”) may appeal against the decision to the Wardens Court—

- (a) a decision to impose a condition on a mining claim;
- (b) a decision to require an applicant for, or holder of, a mining claim to deposit security;<sup>23</sup>
- (c) a decision to give a direction to a mining claim holder about rehabilitating the land covered by the claim;
- (d) a decision to refuse to renew a mining claim.

**(3)** However, an applicant may not appeal against a decision of a mining

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<sup>23</sup> See section 83 (Provision of security).

registrar made in accordance with a consent of the Governor in Council or decision of a Wardens Court.

### **How to start an appeal**

**117.(1)** An appeal is started by filing a written notice of appeal with the mining registrar.

(2) The notice of appeal must be filed within 28 days after the aggrieved person receives notice of the decision appealed against.

(3) However, if—

- (a) the decision did not state the reasons for the decision; and
- (b) the person asked for a statement of reasons for the decision within the period mentioned in subsection (2);

the person may make the application within 28 days after the person is given the statement of reasons.

(4) In addition, the Wardens Court may extend the period for filing the notice of appeal.

(5) The notice of appeal must state the grounds of appeal.

### **Stay of operation of decisions**

**118.(1)** The Wardens Court may stay a decision appealed against to secure the effectiveness of the appeal.

(2) A stay—

- (a) may be given on conditions the Wardens Court considers appropriate; and
- (b) operates for the period fixed by the Wardens Court; and
- (c) may be revoked or amended by the Wardens Court.

(3) The period of a stay fixed by the Wardens Court must not extend past the time when the Wardens Court decides the appeal.

(4) A decision, or the carrying out of a decision, is affected by the starting of an appeal only if the decision is stayed.

**Hearing procedures**

**119.(1)** In deciding an appeal, the Wardens Court—

- (a) is not bound by the rules of evidence; and
- (b) must observe natural justice; and
- (c) may hear the appeal in court or chambers.<sup>24</sup>

**(2)** An appeal is by way of rehearing.

**Powers of Wardens Court on appeal**

**120.(1)** In deciding an appeal, the Wardens Court may—

- (a) confirm the decision appealed against; or
- (b) set the decision aside and substitute another decision; or
- (c) set aside the decision and return the issue to the mining registrar with directions the Wardens Court considers appropriate.

**(2)** In substituting another decision, the Wardens Court has the same powers as the mining registrar.

*Example—*

The Wardens Court may decide that an unsuccessful applicant for a mining claim be granted the claim and impose conditions on it.

**(3)** If the Wardens Court substitutes another decision, the substituted decision is, for this Act, taken to be the decision of the mining registrar.

**Effect of termination of mining claim**

**121.(1)** This section applies on the termination of a mining claim.

**(2)** However, this section (other than subsection (3)) does not apply to a mining claim if the termination is for granting a new mining claim or a mining lease over the same land to the holder of the terminated mining claim.

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<sup>24</sup> Under section 367 (Practice and procedure of Wardens Court), if the Act is silent or does not sufficiently state the practice and procedure applying in the Wardens Court, the practice and procedure of Magistrates Courts apply.

(3) The person who was the holder of the terminated mining claim immediately before its termination must immediately remove each post or other thing used to mark the land under this Act (other than a survey mark or anything else required under another Act not to be removed).

(4) On the termination of a mining claim, the ownership of all mineral, ore, tailings and other material (“**mineral**”), and structures, machinery and equipment (“**property**”), on the land covered by the terminated mining claim, divests from the owner and vests in the State.

(5) However, subsection (4) applies to property only if it was brought onto the land under the terminated claim.

### **Application may be made for approval to remove mineral and property**

**122.(1)** This section applies to mineral and property that vests in the State on the termination of a mining claim.

(2) Anyone who had an interest in the mineral or property immediately before its ownership vests in the State may apply in writing to the mining registrar for permission to remove the mineral or property from the land.

(3) The application—

- (a) must be made within 28 days after the mineral or property vests in the State (or a longer period, of not more than 3 months, allowed by the mining registrar); and
- (b) may be made even though a subsequent grant of a mining claim, exploration permit, mineral development licence or mining lease has been made over the land.

(4) The mining registrar may approve or refuse to approve the application.

(5) However, the mining registrar must approve the application if the mining registrar is satisfied—

- (a) the person was entitled to the mineral or property immediately before it vested in the State; and
- (b) there is enough security held for the mining claim to meet the

costs for which it was deposited.<sup>25</sup>

(6) The approval may be given on conditions stated in it.

(7) If the application is approved, the person named in the approval may enter the land and remove mineral or property (other than covers, fencing, casings, linings, timbering or other things securing the safety of the land) stated in the application before the time stated in the approval ends.

(8) Anything removed under subsection (7) divests from the State and vests in the person entitled to it immediately before the termination of the mining claim.

(9) However, mineral divests from the State and forms part of the land if it is not removed before the later of—

- (a) the end of the time stated in an approval under this section; or
- (b) 3 months after the termination of the mining claim.

### **Property remaining on former mining claim may be sold etc.**

**123.(1)** This section applies if the mining registrar has not received, or has received but not granted, an application for approval to remove property from land covered by a terminated mining claim within 3 months after the claim's termination.

(2) The mining registrar may—

- (a) sell the property by public auction or in another way; or
- (b) if the property has no commercial value—dispose of or destroy it.

(3) Proceeds of a sale are to be applied in the following order towards—

- (a) the reasonable expenses incurred in the sale;
- (b) the cost of rectifying actual damage for which an amount of security deposited for the mining claim could have been used but was not used, or was inadequate;
- (c) amounts owing to the State under this Act by the former holder;
- (d) rates and charges (including interest on unpaid rates and charges)

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<sup>25</sup> See section 83 (Provision of security).

owing to a local government by the former holder for the mining claim;

- (e) amounts owing to a mortgagee by the former holder under a mortgage registered under this Act over the mining claim.

(4) Any balance must be paid to the former holder.

(5) If the mining registrar cannot decide the identity of, or locate, a person entitled to the proceeds or a part of the proceeds, the mining registrar may pay the amount to the public trustee as unclaimed moneys.

(6) Compensation is not payable for a sale, disposal or destruction under this section.

### **Approval for prospecting on reserve subject of mining claim application**

**124.(1)** The holder of a prospecting permit who makes application for the grant of a mining claim in respect of land that is a reserve and who is unable to obtain the consent of the owner to prospect on that land for the purposes of obtaining information necessary to further the application may apply to the mining registrar for permission to so prospect upon that land.

(2) The mining registrar may reject the application or may recommend to the Minister that, subject to the views of the owner being obtained and taken into account, permission be given to the holder to prospect accordingly.

(3) Where the Minister gives the holder of a prospecting permit permission pursuant to subsection (2), the holder, for as long as the holder complies with any conditions imposed by the Minister, shall be deemed to have the consent of the owner of the relevant land to be on that land for prospecting purposes until the application for the grant of the mining claim is determined or the Minister otherwise determines.

### **Variation of access to mining claim land**

**125.(1)** The holder of a mining claim may apply to the mining registrar in the approved form for a variation of the land used or proposed to be used as access in relation to the land the subject of the mining claim.

(2) An application for a variation of the land used or proposed to be used as access under this section shall be accompanied by—

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- (a) such particulars as are, by sections 61 and 62, required to accompany an application for the grant of a mining claim in so far as those particulars relate to the land used or proposed to be used as access in relation to the land the subject of the mining claim; and
- (b) the prescribed application fee.

(3) Where, in respect of an application for a variation of the land used or proposed to be used as access under this section, the mining registrar is not satisfied that the owner of the land proposed to be used as access consents thereto, the mining registrar shall fix a date for the consideration of the matter by the Wardens Court.

(4) The mining registrar shall notify the owner of the land and the applicant of the date so fixed.

(5) The Wardens Court shall hear and determine the matter by determining—

- (a) that consent to the proposed variation should or should not be given; and
- (b) if consent should be given, the amount (if any) of compensation payable by the holder in respect of the proposed use of that land as access.

(6) Subject to subsection (7), the provisions of section 85(7) to (11)<sup>26</sup> apply in respect of a matter referred to the Wardens Court under this section as if the matter were an application referred to the Wardens Court under section 85(5).

(7) In determining compensation payable under subsection (5), allowance shall be made for compensation agreed or determined to be payable in respect of the current land used as access in respect of the mining claim.

(8) The determination of the Wardens Court of a matter under this section shall be final and conclusive.

(9) In respect of an application made under this section, upon—

- (a) where the proposed access is over land of which there is an

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<sup>26</sup> Section 85 (Compensation to be settled before granting of mining claim)

owner—

- (i) lodgment with the mining registrar of the consent in writing of the owner or owners of that land; or
  - (ii) where the Wardens Court determines that consent should be granted, whether with or without compensation, compliance with any terms and conditions imposed by the Wardens Court to be complied with before consent is given; and
- (b) where the proposed access is over land of which there is no owner, the mining registrar determining that the variation is, in the circumstances, appropriate;

the mining registrar shall record the variation of that access in the register and advise the holder and the owner accordingly.

(10) An agreement made between a holder and an owner of land regarding compensation payable in respect of the proposed use of the land as access in respect of a mining claim as a result of a variation under this section shall not be effective unless and until—

- (a) it is in writing signed by or on behalf of the parties; and
- (b) it is filed in the office of the mining registrar.

(11) If an agreement referred to in this subsection is required by any law of Queensland to be stamped, it shall not be filed until it is stamped according to law.

(12) The mining registrar shall notify the chief executive of full particulars of applications, actions and determinations made under this section.

## **PART 5—EXPLORATION PERMITS**

### **Blocks and sub-blocks of land**

**126.(1)** For the purposes of this Act the surface of the earth shall be deemed to be divided into blocks and sub-blocks.

(2) A block shall be the land contained within 2 meridians 5' of longitude

apart each meridian being a multiple of 5' of longitude from the meridian of Greenwich and within 2 parallels of latitude 5' apart each parallel of latitude being a multiple of 5' of latitude from the equator.

(3) A block shall be divided into 25 sub-blocks each sub-block being bounded by 2 meridians 1' of longitude apart and 2 parallels of latitude and 1' of latitude apart.

(4) Each block and sub-block shall be identified by a means approved for the time being by the chief executive.

### **Land subject to exploration permit**

**127.(1)** An exploration permit authorises entry to sub-blocks of land specified therein.

(2) Subject to subsection (3), an exploration permit shall be granted in respect of specified sub-blocks of land each sub-block to have at least 1 side in common with another sub-block within the subject land.

(3) If the Minister in a particular case is satisfied that the program of work proposed in the application for an exploration permit can be undertaken in accordance with competent and efficient mineral exploration practice, an exploration permit may be granted in respect of sub-blocks of land notwithstanding that those sub-blocks do not have a common boundary.

(4) Unless otherwise approved by the Minister either generally or in a particular case, the area of land in respect of which an exploration permit may be granted shall not exceed the area prescribed in respect of the mineral or minerals concerned.

### **Only eligible persons to hold exploration permits**

**128.** An exploration permit shall not be held by a person who is not an eligible person.

### **Entitlements under exploration permit**

**129.(1)** During the term of an exploration permit—

(a) the holder of the exploration permit and any person who acts for

the purpose of carrying out any activity authorised by the exploration permit, with or by such vehicles, vessels, machinery and equipment as may be necessary or expedient for the purpose of exploring for any mineral to which the exploration permit applies, may, subject to compliance with section 163,<sup>27</sup> enter—

- (i) any part of the land comprised in the exploration permit that is not the surface area of a reserve; and
- (ii) with the consent of the owner, or the consent of the Governor in Council, any part of the land comprised in the exploration permit that is the surface area of a reserve;

for the purposes of facilitating that exploration;

- (b) in respect of any land (or part thereof) to which the exploration permit applies the holder of the exploration permit, subject to compliance with this Act, may have considered for grant, in priority to all other persons, any number of mineral development licences and mining leases relating to any minerals specified in the exploration permit or mining leases for other purposes for which mining leases may be granted and may enter that land for the purpose of doing all acts necessary to comply with this Act relating to an application therefor.

**(2)** Notwithstanding subsection (1)(a) the holder of an exploration permit is not required to obtain consent in respect of the entry or being upon land that is a reserve for public road where the entry of or being upon that land is solely as access in respect of land the subject of the exploration permit.

**(3)** An exploration permit authorises a person to enter the surface of restricted land only if—

- (a) the owner of the land where the relevant permanent building, or relevant feature, is situated consents in writing to entry; and
- (b) the exploration permit holder gives the consent to the chief executive.

**(4)** Consent given pursuant to subsection (3) shall specify the period of the consent and any conditions applicable to the consent and once given that consent cannot be withdrawn.

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<sup>27</sup> Section 163 (Notice of entry to be given)

(5) For the purposes of subsection (1)(a)(ii), the holder of an exploration permit has the consent of an owner of land if that consent in writing has been previously lodged with the chief executive and has not been withdrawn as provided for in subsection (6).

(6) Consent referred to in subsection (1)(a)(ii) can only be withdrawn by the owner of the relevant land giving notice in writing to the chief executive and shall only be effective when the Minister accepts the withdrawal or, if not accepted, after the holder of the exploration permit has been given the opportunity by the Minister to apply for the consent of the Governor in Council in lieu of the owner's consent—

- (a) if, within the time allowed by the Minister for the holder to do so, the holder does not apply for that consent, that time expires; or
- (b) if, within the time allowed by the Minister for the holder to do so, the holder applies for that consent, the Governor in Council gives or refuses to give that consent.

(7) The holder of an exploration permit, and each person who enters or is upon land under the authority of that exploration permit, shall comply with the terms and conditions upon which any consent required to be given under this Act in respect thereof was given by the owner of that land.

(8) If an owner of land that is a reserve refuses or fails within a reasonable time to give a consent required by subsection (1)(a)(ii) or imposes terms and conditions thereon that the holder of the relevant exploration permit considers to be so harsh as to be unreasonable, the holder of the exploration permit may apply in writing to the Minister who may refuse the application or may recommend to the Governor in Council that consent be given.

(9) Upon receipt of an application under subsection (6) or (8), the Minister shall seek the views of the owner of the relevant land on the application.

(10) If the Minister is satisfied that it is unreasonable for an owner of land that is a reserve to refuse to give to the holder of an exploration permit the consent required by subsection (1)(a)(ii), to withdraw consent previously given or to have imposed the terms and conditions upon which that consent was given, the Governor in Council may, upon the recommendation of the Minister—

- (a) subject to such terms and conditions as the Governor in Council thinks appropriate, give that consent in lieu of the consent of the owner; or
- (b) set aside or vary as the Governor in Council thinks fit the terms and conditions upon which the consent is subject;

whereupon the owner of the land shall, subject to compliance by the holder of the exploration permit with any terms and conditions set by the Governor in Council, be deemed to have given the consent or, as the case may be, have set aside or varied the terms and conditions in accordance with the Governor in Council's determination.

(11) The Governor in Council may make a determination under subsection (10) whether or not an owner of land makes any submission to the Minister pursuant to subsection (9).

(12) The chief executive shall notify the holder of an exploration permit and the owner of land that is a reserve of particulars of any relevant determination made by the Governor in Council pursuant to subsection (10) before any entry of that land is made under the authority of the exploration permit except where the entry is in accordance with any consent given by the owner.

(13) Consent given as required by subsection (1)(a)(ii) may be restricted as to time or to a part only of the land in question.

(14) The terms and conditions upon which consent required by subsections (1)(a)(ii) and (3) is given shall be deemed to be part of the terms and conditions of the relevant exploration permit.

(15) For the purpose of exercising his or her entitlements under this part a person who enters or is upon land under the authority of an exploration permit may stay at night thereon and for that purpose may set up temporary accommodation thereon.

(16) A person who stays on land under or purportedly under the authority of an exploration permit shall dispose of any refuse (including human waste) and rubbish in a safe and sanitary manner.

### **Exploration permit to specify minerals sought**

**130.(1)** Except where subsection (2) is applied, an exploration permit

shall be granted in respect of—

- (a) all minerals other than coal; or
- (b) coal.

(2) If, in the exceptional circumstances of a particular case, the Minister considers good reason exists therefor, an exploration permit may be granted in respect of the mineral or minerals specified therein.

(3) Minerals may be specified by indicating other minerals to which the exploration permit does not apply.

### **Restriction on grant of exploration permits over same sub-block**

**131.(1)** An exploration permit shall not be granted in respect of a sub-block over which a current exploration permit authorises the exploration for a mineral in respect of which the exploration permit is sought.

(2) The lodgment of an application for an exploration permit that includes a sub-block over which, pursuant to subsection (1), the exploration permit shall not be granted may be accepted but, except where the application is made by the holder of the current exploration permit, that sub-block shall be excised from the application.

### **Exclusion of land from exploration permit if subject to other authority under Act**

**132.(1)** Where, at the time the lodgment of an application for the grant of an exploration permit is accepted, land is the subject of—

- (a) a mining claim, mineral development licence or mining lease; or
- (b) an application for a mining claim, mineral development licence or mining lease;

that land and the surface of that land shall be taken to be excluded from the land specified in the exploration permit—

- (c) in the case of a mining claim, mineral development licence or mining lease referred to in paragraph (a)—for so long as the land remains subject thereto; and

- (d) in the case of an application referred to in paragraph (b)—
  - (i) for so long as the application is not rejected or abandoned; and
  - (ii) if a mining claim, mineral development licence or mining lease is granted, for so long as the land remains subject thereto;

except where the Minister, in exceptional circumstances in the Minister's absolute discretion otherwise determines.

(2) Upon—

- (a) the termination of a mining claim or mining lease granted; or
- (b) the rejection or abandonment of an application for—
  - (i) a mining claim; or
  - (ii) a mineral development licence; or
  - (iii) a mining lease;

in respect of land within the external boundaries of an exploration permit that land shall become part of the land in respect of which the exploration permit is granted except—

- (c) to the extent that the land is the subject of a current mining claim, mineral development licence or mining lease or application for a mining claim, mineral development licence or mining lease; or
- (d) in the case of a rejection or abandonment of an application for a mineral development licence where the applicant is not the holder of the exploration permit; or
- (e) where the exploration permit provides otherwise.

### **Application for exploration permit**

**133.** An application for an exploration permit may be made by an eligible person and shall—

- (a) be in the approved form; and
- (b) specify the name of each applicant; and
- (c) specify the name and address for service of 1 person upon whom

- any notice may be served on behalf of the applicant or the applicants; and
- (d) identify in the prescribed manner the land in respect of which an exploration permit is sought; and
  - (e) specify the mineral or minerals in respect of which the exploration permit is sought; and
  - (f) be lodged at an office prescribed for the time being for the receipt of applications for exploration permits in respect of the land the subject of the application; and
  - (g) be accompanied by a statement acceptable to the Minister—
    - (i) specifying a description of the program of work proposed to be carried out under the authority of the exploration permit, if granted; and
    - (ii) specifying the estimated human, technical and financial resources proposed to be committed to exploration work during each year of the exploration permit, if granted; and
    - (iii) detailing exploration data captured by the applicant prior to the application in relation to that land; and
  - (h) be accompanied by—
    - (i) a statement, acceptable to the Minister, but separate from the statement mentioned in paragraph (g), detailing the applicant's financial and technical resources; and
    - (ii) proof of the applicant's identity; and
    - (iii) the application fee prescribed under a regulation.

### **Application to be numbered**

**134.** An application for an exploration permit shall be numbered as prescribed which number, if the exploration permit is granted, shall become the number of that permit.

### **Priority of applications for grant of exploration permit**

**134A.(1)** Applications for the grant of exploration permits in respect of

the same mineral, duly made in respect of or including the same land take priority, for the purpose of considering and deciding the applications, according to the day on which they are lodged under section 133(f).

(2) If applications are lodged on the same day, they take the priority the Minister decides, after considering the relative merits of each application.

(3) If an application is lodged by mail, courier service or similar means, it is taken to be lodged on the day the application is received at the prescribed office under section 133(f).

### **No application for exploration permit within 2 months of land ceasing to be subject to exploration permit**

**135.(1)** Upon land, for whatever reason, ceasing to be the subject of an exploration permit, a person is not competent to apply for an exploration permit in respect of any mineral specified in the firstmentioned exploration permit in respect of any of that land until the expiration of 2 calendar months following the end of the month in which that cessation occurs.

(2) Subsection (1) does not apply to a person applying for a new exploration permit in respect of land over which the person held an exploration permit which the person had surrendered for the purpose of being granted a further exploration permit in respect of the whole or part of that land.

(3) Subsection (1) does not apply to applications for an exploration permit in respect of coal or in respect of land that was the subject of an exploration permit in respect of a specified mineral or specified minerals pursuant to section 130(2).

### **Upon rejection of application, application fee or part may be retained**

**136.** If the Minister rejects an application for the grant of an exploration permit the Minister may determine, at the Minister's discretion whether all or part of the application fee that accompanied the application shall be retained.

### **Grant of exploration permit**

**137.(1)** If the Minister is satisfied that—

- (a) the requirements of section 133 have been complied with; and
- (b) the applicant is an eligible person; and
- (c) the application is made bona fide for the purposes of this Act;

the Minister may, subject to compliance by the applicant with the provisions of section 144, grant and issue to the applicant an exploration permit in respect of all the land included in the application or such part or parts of it as the Minister specifies in the permit.

(2) However, the Minister must not grant an exploration permit for land in a fossicking area, or for land that includes the whole or part of a fossicking area, unless the application was made, but not decided, before the land became a fossicking area.

(3) An exploration permit shall be in the approved form and shall specify—

- (a) the identification number of the permit; and
- (b) the name of the holder; and
- (c) the address for service of notices on the holder; and
- (d) the description of land in respect of which the permit is granted; and
- (e) the term and date of commencement of the permit; and
- (f) the conditions (other than conditions prescribed by this Act) to which the permit is subject; and
- (g) the minerals the subject of the permit.

(4) If the Minister is of the opinion on reasonable grounds that an applicant for an exploration permit had previously contravened or failed to comply with any provision of this Act, the repealed Acts, any other Act about mining or the *Fossicking Act 1994*, the Minister may, whether or not that person had been charged or convicted of an offence in respect of that contravention or failure to comply, refuse to grant the exploration permit.

(5) For the purposes of subsection (4) an applicant which is a company is deemed to have contravened or failed to comply with a provision of an Act if a person who is an officer or employee of the company or who, in the opinion of the Minister, is in a position to control or influence

substantially the affairs of the company has contravened or failed to comply with the provision.

### **Rental payable under exploration permit**

**138.** Each year during the currency of an exploration permit the holder shall pay the rental calculated by multiplying the number of sub-blocks in respect of which the permit applies by the amount prescribed for that year for that purpose.

### **Periodic reduction in land covered by exploration permit for mineral other than coal**

**139.(1)** Unless the Minister otherwise decides (whether before the grant of an exploration permit or during its term) the area of an exploration permit for a mineral other than coal must be reduced by 50%—

- (a) at the end of the first 2 years after its grant; and
- (b) at the end of each subsequent year.

**(2)** The area remaining after the reduction must consist of whole sub-blocks.

**(3)** If the Minister so directs on reasonable grounds, the reduction of the area of land in respect of which a particular exploration permit applies may be more or less than that prescribed by subsection (1).

**(4)** At least 28 days (or such shorter period as the Minister in the particular case allows) prior to the date when, pursuant to subsection (1), the area of land is to be reduced in respect of an exploration permit, the holder of the permit shall make a submission to the chief executive identifying the sub-blocks of land to which the holder desires the exploration permit to apply after that reduction.

**(5)** If a submission made in accordance with subsection (4) proposes a reduction of the area of land in respect of which the exploration permit applies which reduction complies with subsection (1), then on and from the date when the area of land is to be reduced, the exploration permit shall apply only in respect of the land specified in the submission.

**(6)** If a submission that is made for the purposes of subsection (4) is not made in accordance with subsection (4) or does not comply with

subsection (1), then the Minister may determine as the Minister considers reasonable that an exploration permit shall apply on and from the date of the Minister's determination or the date when pursuant to subsection (1) the reduction should take effect, whichever is the later in respect of land specified in the Minister's determination, and on and from that date the exploration permit shall apply only in respect of that land.

(7) If the holder of an exploration permit fails to make a submission in accordance with subsection (4) the Minister may proceed as provided in subsection (6) or may cancel the exploration permit.

(8) Compensation is not payable for a reduction in the area covered by an exploration permit under this section.

### **Periodic reduction in land covered by exploration permit for coal**

**140.(1)** The Minister may require the holder of an exploration permit for coal to reduce the area covered by the permit in the way and to the extent the Minister considers reasonable.

(2) However, the Minister may not require the holder to reduce the area covered by the permit to a greater extent than the reduction that must be made for other minerals.<sup>28</sup>

(3) Compensation is not payable for a reduction in the area covered by an exploration permit under this section.

### **Conditions of exploration permit**

**141.(1)** Each exploration permit shall be subject to—

- (a) a condition that the holder shall carry out such programs of work and such studies for the purposes for which the exploration permit was granted and in accordance with this Act and the conditions of the exploration permit and for no other purpose; and
- (b) a condition that the holder shall, to the satisfaction of the Minister, provide for the control of the impact on the environment of any activities carried out under the authority of the exploration permit;

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<sup>28</sup> See section 139 (Periodic reduction in land covered by exploration permit for mineral other than coal).

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and

- (c) a condition that the holder must rehabilitate the surface of the land covered by the permit to the Minister's satisfaction; and
- (d) a condition that the holder prior to the termination for whatever cause of the exploration permit shall remove all equipment and plant on or in the land comprised in the exploration permit unless otherwise authorised by the Minister; and
- (e) a condition that without the prior approval in writing of the Minister the holder shall not obstruct or interfere with any right of access had at any time during the term of the exploration permit by any person in respect of land the subject of the exploration permit for so long as that right of access is exercised; and
- (f) a condition that the holder shall not assign the exploration permit without the consent in writing of the Minister; and
- (g) a condition that the holder must, when and in the way the Minister requires, give to the Minister—
  - (i) progress, relinquishment and final reports, accompanied by maps, sections, charts and other data giving full particulars and results of the exploration program and investigations carried out on the area specified by the Minister, including details of costs incurred for specified periods within the term of the exploration permit; and
  - (ii) materials obtained because of the holder's activities under the exploration permit; and
  - (iii) an environmental management plan for the holder's activities under the exploration permit; and
- (h) a condition that the holder—
  - (i) shall pay the rental as prescribed; and
  - (ii) shall deposit as required by the Minister any security from time to time under this Act; and
- (i) a condition that the holder shall comply with the provisions of this Act; and
- (j) such other conditions as are prescribed; and

(k) such other conditions as are determined by the Minister.

(2) The Minister may from time to time, with the agreement of the holder of an exploration permit vary any condition imposed by the Minister.

(3) The holder of an exploration permit and all persons acting under the authority of the permit shall comply with the conditions for the time being of the permit.

(4) Conditions may be imposed in respect of an exploration permit that relate to action to be taken to minimise the effect of exploring on the environment, including land degradation and air and water pollution.

(5) Conditions may be imposed in respect of an exploration permit that require compliance with specified codes of conduct or practice.

### **Draft guidelines for environmental impact statements**

**142.(1)** This section applies if an exploration permit holder gives written notice to the Minister of the holder's plan to prepare an environmental impact statement about a proposed mining project.

(2) The Minister must issue draft guidelines for the preparation of the statement within 28 days after receiving the notice.

(3) The draft guidelines—

(a) must state the things the environmental impact statement must address; and

(b) may state the way the things may or must be addressed.

(4) The Minister must give a copy of the draft guidelines to the holder and the mining registrar.

(5) The mining registrar must—

(a) immediately display a notice at the mining registrar's office stating that the draft guidelines are available for comment until a stated day, at least 28 days after the day the notice is displayed; and

(b) give a copy of the notice to the holder.

(6) Within 7 days of receiving the notice or a longer period fixed by the mining registrar, the holder must—

- (a) publish a copy of the notice in a newspaper circulating generally in the relevant mining district; and
- (b) give the mining registrar a statutory declaration stating that the holder has published the notice.

(7) Anyone may lodge written comments about the draft guidelines at the mining registrar's office on or before the stated day.

### **Guidelines for environmental impact statements**

**143.(1)** After considering any written comments lodged at the mining registrar's office on or before the day for making written comments about the draft guidelines, the Minister must issue guidelines for the preparation of the environmental impact statement.

(2) The Minister must give a copy of the guidelines to the holder, the relevant local government and the mining registrar within 28 days after the day for lodging written comments about the draft guidelines ends.

### **Provision of security**

**144.(1)** Before an exploration permit is granted or renewed, the Minister, taking into consideration the matters outlined in section 133(g)(i),<sup>29</sup> shall determine the amount of the security to be deposited by the holder of that permit as reasonable security for—

- (a) compliance with the conditions of the exploration permit; and
- (b) compliance with the provisions of this Act; and
- (c) rectification of any actual damage that may be caused by any person whilst purporting to act under the authority of the exploration permit to any land or any improvements situated on or off that land; and
- (d) amounts (other than penalties) payable to the State under this Act.

(2) A person who holds more than 1 exploration permit may elect to deposit a single amount of security for all exploration permits held by the person.

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<sup>29</sup> Section 133 (Application for exploration permit)

(3) The Minister is to decide the amount of security to be deposited under subsection (2).

(4) An exploration permit shall not be granted or renewed until the applicant for the grant or renewal of the exploration permit deposits the security as determined under this section.

(5) If the Minister is satisfied—

- (a) a condition of an exploration permit has not been complied with; or
- (b) a provision of this Act has not been complied with in relation to an exploration permit; or
- (c) someone claiming to act under an exploration permit, or to have entered land on the permit holder's instructions, caused damage mentioned in subsection (1)(c);

the Minister may require the permit holder to take the steps necessary to stop the noncompliance or repair the damage.

(6) Also, the Minister may use any of the security deposited by the holder to stop the noncompliance or repair the damage.

(7) Subsections (5) and (6) do not apply if the holder satisfies the Minister that the person responsible for the noncompliance or damage was not on the land with the holder's approval or on the holder's instructions when the noncompliance or damage happened.

(8) If, at any time (whether during or within 28 days after the expiration of the term of an exploration permit) the amount or any part of the amount deposited under this section is utilised as provided by subsection (5) or (6) or the Minister considers that, in view of the damage caused or likely to be caused by any person purporting to act under the authority of the exploration permit or upon the instruction of the holder or for any other reason, a further amount of security should be deposited in respect of that exploration permit, the Minister shall require the holder or former holder of the exploration permit, within the time specified by the Minister, to deposit the further specified security.

(9) The Minister may accept a bond or a guarantee or indemnity by, or other financial arrangement with, a financial institution, insurance company or another credit provider approved by the Minister or other form of security acceptable to the Minister as the whole or part of the security to be

deposited under this section.

**(10)** It shall be a condition of an exploration permit that the holder shall deposit security or further security from time to time in accordance with a requirement made as provided by this section.

**(11)** Subject to subsections (13) and (14), if an exploration permit terminates, the Minister may, not earlier than 6 months after the termination, refund to the permit holder the amount of security deposited for the permit and not used after deducting the amounts the Minister considers should be kept towards—

- (a) remedying anything caused by noncompliance with the conditions of the permit or an order or direction given by the Minister to the permit holder; and
- (b) amounts (other than penalties) the holder owes to the State under this Act (whether they become owing before or after the termination).

**(12)** Subsection (11) does not prevent the Minister refunding the security within 6 months of the exploration permit's termination if the owner of the land covered by the permit gives the Minister written advice that the land does not need rehabilitation and the owner will not make a claim on the security.

**(13)** If the Minister accepts a bond, guarantee or indemnity by, or another financial arrangement with, a financial institution, insurance company or credit provider as security under this section, any amount payable to the holder under subsection (11) must be refunded to the financial institution, insurance company or credit provider and not to the holder of the exploration permit to which the security relates.

**(14)** Subsection (11) does not apply to a person who elects to deposit security for all exploration permits held by the person if the person continues to hold an exploration permit for which the security is held.

**(15)** However, the Minister may, at the person's written request, reduce the amount of security held for the person's exploration permits to an amount decided by the Minister.

**(16)** If the security deposited was money, an amount equal to the reduction is to be refunded to the person or in accordance with any written direction the holder gives to the mining registrar.

## **Compensation**

**145.(1)** Notwithstanding section 144, the Crown, or an owner is entitled to recover from time to time, in the Wardens Court compensation in respect of damage or injury suffered or loss incurred by reason of a person acting or purporting to act under the authority of an exploration permit but any moneys paid under that section in respect of rectification of damage the subject of the proceeding shall be taken into account in assessing any compensation.

**(2)** The holder of an exploration permit is not liable under this section in respect of damage or injury or loss caused by another person who is not a holder and is not a person authorised by the holder to be upon the land the subject of the exploration permit.

## **Initial term of exploration permit**

**146.** Unless the Minister in the particular case otherwise determines the initial term of an exploration permit shall, unless the permit is sooner surrendered or cancelled, be for a period not exceeding 5 years commencing on the date specified in the permit (being a date not earlier than the date of grant of the permit).

## **Renewal of exploration permit**

**147.(1)** Upon application in writing by the holder of an exploration permit in the prescribed way to the chief executive made at least 28 days (or such shorter period as the Minister in the particular case allows) and not more than 3 months prior to the expiration of the current term of the permit accompanied by the prescribed application fee, the Minister may from time to time renew the exploration permit for a term such that the sum of the term of the original grant and all subsequent terms does not exceed 5 years unless the Minister in a particular case otherwise determines and upon such security deposit and conditions as the Minister may determine.

**(2)** Where an application for renewal of an exploration permit is duly made by the holder but the application has not been disposed of by the Minister before the date on which the term of the permit then current would, but for this subsection, have expired, the exploration permit shall continue and shall be taken not to have expired in respect of the area specified in the

renewal application until the application is disposed of by the Minister.

(3) The term of an exploration permit that is renewed (whether the renewal is granted before or after the date the exploration permit expires or would, but for the operation of subsection (2), have expired) shall commence or be deemed to have commenced on the day following that expiry date but the conditions of the renewed exploration permit shall apply from—

- (a) the commencement of that term; or
- (b) the date the renewal is granted;

whichever is the later.

### **Rights and obligations upon application for mining lease or mineral development licence**

**148.(1)** The holder of an exploration permit who, during the term of the exploration permit, makes application for the grant of—

- (a) a mining lease; or
- (b) a mineral development licence;

in respect of any land to which the exploration permit applies, shall, during the period from the expiration of the exploration permit until the determination of the application, for so long as the provisions of this Act and the terms and conditions that would apply if the permit were current are complied with, have all the responsibilities, powers, authorities and duties that the holder would have had in respect of the land the subject of the application if the exploration permit was current but during that period no rental shall be payable under this part in respect of any whole sub-blocks of land the subject of the application.

(2) The entitlements of the holder of an exploration permit are not reduced or limited by reason only of the holder's application for the grant of a mineral development licence or a mining lease in respect of any land to which the exploration permit applies.

### **Correction of instrument of exploration permit**

**149.** If, at any time, the Minister is of the opinion that the instrument of

an exploration permit should be corrected by reason that—

- (a) facts have appeared or been established since the grant of the exploration permit justifying a correction of the instrument to more accurately reflect the holder's entitlements under the permit; or
- (b) the instrument is defective owing to error in its preparation;

the Minister may correct the instrument and shall record details thereof in the register of exploration permits kept by the chief executive and endorse the instrument which shall take effect accordingly.

### **Replacement of instrument of exploration permit**

**150.(1)** Where the Minister is satisfied that the instrument of an exploration permit should be cancelled and a replacement instrument issued in its place, the Minister shall cancel the instrument and cause a replacement instrument to be issued in its place.

**(2)** A replacement instrument of an exploration permit issued under this section—

- (a) shall be the instrument in place of the instrument previously issued and cancelled under this section which last mentioned instrument shall, upon the issue of the fresh instrument, cease to be of any force or effect; and
- (b) may bear a form of endorsement which briefly traces the devolution of the permit from the original holder of the exploration permit to the person appearing as holder thereof at the time the replacement instrument is issued; and
- (c) shall be delivered to the person who appears to the Minister to be lawfully entitled to possession thereof.

**(3)** The chief executive shall cause the instrument so cancelled to be suitably endorsed and a suitable recording made in the register kept by the chief executive that a replacement instrument has been issued in its place.

**(4)** The cancelled instrument shall be retained by the chief executive.

**Assignment of exploration permit**

**151.(1)** The holder of an exploration permit desirous of assigning the holder's interest in the exploration permit shall apply to the chief executive for the Minister's approval to that exercise and shall furnish to the chief executive such information with respect thereof as the Minister requires.

(2) Where there are 2 or more holders of an exploration permit, an application under subsection (1) shall be made by all the holders.

(3) Upon an application made pursuant to subsection (1) the Minister may cause the applicant to be given notice—

- (a) that, subject to compliance with this Act in respect thereof and with any conditions specified in the notice, within 3 months from the date of the notice or such other period as is specified in the notice the Minister will approve the exercise; or
- (b) that the Minister does not approve the exercise.

(4) Upon receipt within the prescribed time of the prescribed document of assignment that gives effect to an assignment referred to in subsection (1) and upon compliance with this Act and all conditions specified in the notice given pursuant to subsection (3)(a) in respect of that assignment and payment of the prescribed fee, the assignment shall be approved and such particulars as are necessary to give effect to or evidence that assignment shall be recorded in the appropriate register and endorsed on the exploration permit.

(5) The Minister may approve, and record particulars of, the exercise of a power mentioned in subsection (1) even though subsections (1) and (3) have not been complied with if the Minister would have approved the exercise of the power if the subsections had been complied with.

(6) An assignment of an exploration permit shall not be in respect of part only of the land the subject of the exploration permit.

(7) A purported assignment of an exploration permit or of an interest shall not be effective unless it is made in accordance with this section and approved as provided in subsection (4) and shall take effect on the day next following its approval by the Minister under subsection (4).

**Lodgment of caveat**

**152.(1)** A person who claims a right or interest in or in respect of an exploration permit may by a caveat in the approved form forbid the approval of any assignment in respect of the exploration permit (save any assignment the approval of which is excepted in the caveat) either absolutely or until after notice of intention to approve such an assignment is served on the caveator.

(2) A caveat duly lodged pursuant to this section does not apply in respect of an assignment the application for approval of which was lodged with the Minister before the lodgment of the caveat.

(3) A caveat referred to in subsection (1) shall—

- (a) be in the approved form; and
- (b) specify the name and address for service of 1 person upon whom any notice may be served on behalf of the caveator or caveators; and
- (c) identify the exploration permit concerned; and
- (d) specify the nature of the right or interest claimed by the caveator; and
- (e) specify the period during which it is to continue in force; and
- (f) be signed by the caveator, the caveator's solicitor or other person authorised in writing by the caveator; and
- (g) if any person consents to the lodging of the caveat, be endorsed with that person's consent; and
- (h) be lodged with the chief executive; and
- (i) be accompanied by the prescribed lodgment fee.

**Chief executive's functions upon receipt of caveat**

**153.** Upon receipt of a duly lodged caveat referred to in section 152, the chief executive shall—

- (a) notify the holder or holders of the affected exploration permit; and
- (b) notify all other persons who have an interest (other than an interest recorded pursuant to section 158) in the exploration

permit recorded in the register including any subsisting prior caveator; and

- (c) record the existence of the caveat in the register.

### **Effect of caveat**

**154.(1)** For so long as a caveat remains in force, the Minister shall not approve any assignment of the exploration permit identified in the caveat unless—

- (a) the assignment is specifically excepted in the caveat; or
- (b) the written consent of the caveator in the approved form to the approval of the assignment is lodged with the chief executive.

**(2)** For the purposes of subsection (1), unless and until a caveat is removed or withdrawn as prescribed, a caveat continues in force—

- (a) in a case where the consent of each holder of the exploration permit concerned has been lodged with the caveat—for the term specified in the caveat or, if no term is specified, indefinitely; or
- (b) in a case where the caveat (not being a caveat referred to in paragraph (a)) specifies a period of not more than 3 months during which it is to continue in force—until the expiration of that period; or
- (c) in a case where the Wardens Court or another court of competent jurisdiction so orders—for so long as that order remains in force; or
- (d) in any other case—until the expiration of 3 months from the date of lodgment of the caveat.

### **Second caveat not available to same person**

**155.** When a caveat has lapsed or has been removed or withdrawn as prescribed, it shall not be competent to the caveator to lodge in respect of the same exploration permit another caveat whereby the caveator claims the same or substantially the same right or interest unless—

- (a) the consent of each holder of the exploration permit has been lodged with the lastmentioned caveat; or

- (b) the Wardens Court or another court of competent jurisdiction so orders.

### **Removal or withdrawal of caveat**

**156.(1)** A caveat lodged pursuant to section 152 that has lapsed shall be removed by the chief executive and the register noted accordingly.

(2) Upon the plaint of a person who has a right or interest (present or prospective) in an exploration permit affected by a caveat or whose right (present or prospective) to deal with an exploration permit is affected by a caveat lodged in respect of the exploration permit, the caveator may be summonsed to attend the Wardens Court or another court of competent jurisdiction to show cause why the caveat should not be removed.

(3) The Wardens Court or another court of competent jurisdiction may, upon the return of a summons referred to in subsection (2) or at any later time to which the hearing may be adjourned, make such order either ex parte or otherwise as the court deems just.

(4) If the Wardens Court or another court of competent jurisdiction orders that a caveat be removed, the chief executive shall give effect to the order.

(5) A caveator may withdraw his or her caveat at any time by notifying the chief executive in writing.

(6) The removal or withdrawal of a caveat shall be effected by the chief executive recording the removal or withdrawal in the register.

### **Compensation for lodging caveat without reasonable cause**

**157.** A person who lodges a caveat in respect of an exploration permit without reasonable cause is liable to pay such damages as may be recovered at law by any person aggrieved.

### **Recording of agreements, arrangements, dealings or interests**

**158.(1)** Upon application made in the approved form, payment of the prescribed fee, and production of a document purporting to evidence an agreement, arrangement or other dealing or interest (legal or equitable) in or

in relation to an exploration permit (other than an assignment of the exploration permit) to the chief executive, the chief executive shall—

- (a) record in the register maintained by the chief executive, the relevant particulars set out in the application form; and
- (b) retain the document or a copy thereof.

(2) The chief executive shall make the recordings prescribed by subsection (1) in the order of time in which applications are lodged with the chief executive.

(3) The chief executive is not required to examine any document produced under this section or to determine the validity of any agreement, arrangement, dealing or interest alleged in an application made under subsection (1).

(4) An agreement, arrangement, dealing or interest, particulars of which are recorded under this section shall, subject to being otherwise legally enforceable, take priority over any other agreement, arrangement, dealing or interest—

- (a) particulars of which have not been recorded under this section; or
- (b) particulars of which have been recorded under this section after particulars of the firstmentioned agreement, arrangement, dealing or interest had been recorded.

(5) Subsection (4) does not apply in respect of—

- (a) an interest that is a registrable charge under the Corporations Law; or
- (b) an estate or interest in land (whether freehold or leasehold) or a dealing therein which is registered or registrable by the registrar of titles or other like registering authority.

### **Abandonment of application for exploration permit**

**159.(1)** The applicant for an exploration permit may, at any time before the grant of the exploration permit, by notice in writing to the chief executive abandon his or her application.

(2) The abandonment of an application for the grant of an exploration permit shall take effect on the day next following its receipt by the chief

executive.

(3) Upon the abandonment of an application for an exploration permit, the Minister, at the Minister's discretion, may retain the whole or part of the application fee.

### **Contravention by holder of exploration permit**

**160.(1)** If the Minister considers that the holder of an exploration permit—

- (a) has carried out activities that are not bona fide for the purposes for which the exploration permit was granted; or
- (b) has failed to pay any moneys (other than rental) payable thereunder or in respect thereof by the due date for payment; or
- (c) has failed to comply with any condition that is to be observed and performed by the holder under or in respect of the exploration permit, other than a condition with respect to matters referred to in subsection (2)(a) or (b); or
- (d) has failed to report to the Minister upon the discovery of any mineral as required by section 176;

the Minister may—

- (e) cancel the exploration permit; or
- (f) impose on the holder a penalty not exceeding 500 penalty units.

**(2)** If the Minister considers that the holder of an exploration permit—

- (a) has failed to pay the rental payable thereunder by the date due for payment; or
- (b) has failed to pay a penalty imposed on the holder pursuant to subsection (1)(f) within the time allowed for the payment by the Minister;

the Minister may cancel the exploration permit and shall notify the holder of the exploration permit and every person who currently holds a recorded interest in respect of the exploration permit accordingly.

(3) The Minister shall not act pursuant to subsection (1) until the Minister has, by notice in writing in the approved form served on the holder of the

exploration permit, called upon the holder to show cause within the time specified therein why the exploration permit should not be cancelled or a penalty imposed and served a copy of the notice on every person who currently holds a recorded interest in the exploration permit and such cause has not been shown to the satisfaction of the Minister.

(4) When the Minister pursuant to this section cancels an exploration permit the Minister shall notify the holder and every person who holds a recorded interest in the exploration permit accordingly.

(5) For the purposes of this section a recorded interest in an exploration permit does not include an interest recorded pursuant to section 158.

### **Surrender of exploration permit**

**161.(1)** The holder of an exploration permit may, by notice in writing to the chief executive, surrender the permit.

(2) If land covered by the notice of surrender is not included in an application to which subsection (4) applies, the holder must lodge, with the notice, a final rehabilitation report stating how the holder has rehabilitated land affected directly or indirectly by the holder's activities under the exploration permit.

(3) A surrender of an exploration permit shall take effect on the day next following its acceptance by the Minister except in respect of sub-blocks the subject of an application for a new exploration permit made under subsection (4).

(4) Where, at the time when the holder of an exploration permit purports to surrender the permit, the holder duly makes application for a new exploration permit in respect of the whole or part of the land to which the firstmentioned exploration permit applies, the purported surrender shall take effect immediately prior to the grant of the new exploration permit.

(5) However, the Minister may accept a surrender for land for which a final rehabilitation report is lodged only if the Minister is satisfied the holder has satisfactorily rehabilitated the land.

(6) If the Minister is not satisfied the holder has satisfactorily rehabilitated land, the Minister may, by written notice, give the holder reasonable directions about rehabilitating the land.

(7) The holder must comply with the directions.

Maximum penalty for subsection (7)—200 penalty units.

### **Adjustment of rental etc. upon surrender etc. of exploration permit**

**162.(1)** Upon a surrender of an exploration permit or the reduction in the area to which the permit applies such adjustments as the Minister approves shall be made with respect to the rental payable under the exploration permit and security deposited and to the terms and conditions of the permit.

(2) Any moneys payable to the Crown under the adjustments approved by the Minister pursuant to subsection (1) which have not been recovered by utilisation of the security deposit may be recovered as a debt due and owing to the Crown by action in a Wardens Court.

(3) In an action under subsection (2) for recovery of a debt due to the Crown, the production to the Wardens Court of a certificate by the chief executive certifying the amount of that debt shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the debt and the amount thereof.

### **Notice of entry to be given**

**163.(1)** An exploration permit holder must give the owner of the land covered by the permit written notice of entry before initial entry is made under the permit.

(2) The notice must be given at least 7 days before the intended entry (or a shorter period acceptable to the owner and endorsed on the notice).

(3) The notice must—

- (a) describe the activities proposed to be carried out on the land under the exploration permit; and
- (b) state when the activities are to be carried out; and
- (c) be accompanied by a copy of—
  - (i) the codes of conduct or practice applying to activities under the permit; and
  - (ii) any statement given to the Minister about proposals to

protect the environment and rehabilitate the land.

(4) The holder must give the mining registrar a copy of the notice immediately after the notice is given and before entry is made under the permit.

Maximum penalty—10 penalty units.

(5) Contravention of subsection (4) does not affect the validity of the notice.

(6) If the owner cannot easily be contacted, the holder may notify the occupier of the land of the intended entry.

*Examples of owner not being easily contacted—*

1. The owner does not live in Australia and there is no known current address for the owner.

2. The owner is travelling within Australia and there is no known current address for the owner.

(7) If the holder satisfies the mining registrar it is impracticable to give either the owner or occupier notice of the intended entry, the mining registrar may dispense with the need to give notice.

(8) If the mining registrar dispenses with the need to give notice, the mining registrar must make an appropriate endorsement on the permit.

(9) However, before making the endorsement, the mining registrar may require the holder to take the action the mining registrar considers appropriate to publicise the proposed entry, including, for example, publishing an advertisement in a newspaper or other publication.

### **Term and renewal of notice**

**164.(1)** If an exploration permit holder gives notice of initial entry for land, the notice—

- (a) permits entry for 3 months from the day stated in the notice; and
- (b) may permit entry for a longer period if the owner's written consent to the longer period is lodged with the mining registrar.<sup>30</sup>

(2) The notice may be renewed.

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<sup>30</sup> See section 163 (Notice of entry to be given).

(3) A notice of renewal must—

- (a) be given to the owner at least 7 days (or a shorter period acceptable to the owner and endorsed on the notice), but not more than 21 days, before the current notice ends; and
- (b) contain information of the kind mentioned in section 163(3) that is relevant to the period of renewal.

(4) The holder must give the mining registrar a copy of the notice of renewal immediately after the notice is given and before entry is made under the permit.

Maximum penalty—10 penalty units.

(5) Contravention of subsection (4) does not affect the validity of the notice of renewal.

(6) If the owner of the land cannot easily be contacted, the holder may notify the occupier of the land of the intended entry.

*Examples of owner not being easily contacted—*

1. The owner does not live in Australia and there is no known current address for the owner.
2. The owner is travelling within Australia and there is no known current address for the owner.

(7) If the holder satisfies the mining registrar it is impracticable to give either the owner or occupier notice of the intended entry, the mining registrar may dispense with the need to give notice.

(8) If the mining registrar dispenses with the need to give notice, the mining registrar must make an appropriate endorsement on the permit.

(9) However, before making the endorsement, the mining registrar may require the holder to take the action the mining registrar considers appropriate to publicise the proposed entry, including, for example, publishing an advertisement in a newspaper or other publication.

### **Holder of exploration permit to rehabilitate land**

**165.(1)** Unless the Minister otherwise approves, the holder of an exploration permit shall to the satisfaction of the Minister progressively rehabilitate the surface of any disturbed land, as nearly as may be, to its state

and condition prior to the commencement of exploration operations under the exploration permit.

(2) Unless the Minister otherwise approves, the holder of an exploration permit shall ensure that all excavations are filled in at the conclusion of any activity purported to be carried on under the authority of the exploration permit on any land.

(3) Unless the Minister otherwise directs, the holder of an exploration permit, or other person to whom an exploration permit applies, who applies for a mineral development licence or a mining lease in respect of land included in the exploration permit is not obliged to comply with subsections (1) and (2) in respect of land the subject of the application unless and until the application is rejected or abandoned.

### **Rehabilitation of land covered by exploration permits**

**166.(1)** Within 28 days after termination of an exploration permit, the holder must give the Minister a final rehabilitation report stating how the holder has rehabilitated land affected directly or indirectly by the holder's activities under the permit.

(2) After considering the report, the Minister may, by written notice, direct the holder to give the Minister further stated and reasonable information about the rehabilitation.

(3) If the Minister is not satisfied the holder has satisfactorily rehabilitated land, the Minister may, by written notice, give the holder reasonable directions about rehabilitating the land.

(4) The holder must comply with the directions.

Maximum penalty—200 penalty units.

(5) The holder and the holder's employees or agents may, to the extent reasonable and necessary to comply with the directions—

- (a) enter land stated in the notice; and
- (b) bring onto the land vehicles, vessels, machinery and equipment.

(6) This section does not apply if—

- (a) a final rehabilitation report is lodged with a notice of surrender of an exploration permit; or

- (b) the termination is for granting a new exploration permit, a mineral development licence or a mining lease for the same land.

### **Production of exploration permit**

**167.(1)** A person purporting to be upon land under the authority of an exploration permit shall upon demand made by the owner of that land, an agent of the owner or a person authorised in that behalf by the Minister for proof of the person's authority for being on the land, produce or cause to be produced to the person making the demand the exploration permit or a written authorisation in a form acceptable to the Minister from the holder of the exploration permit authorising the person to enter or be upon that land for exploration purposes.

(2) For so long as a person fails to comply with a demand lawfully made of the person under subsection (1) the person does not have any of the entitlements under this part.

(3) This section does not apply to prevent a person entering land for the purpose of delivering goods or substances or providing services ancillary to the purpose for which an exploration permit is granted to a person who is lawfully on that land under this part.

### **Utilisation of security deposit towards subsequent exploration permit**

**168.** Where the holder of an exploration permit makes application for a further exploration permit, the Minister, if satisfied that the whole or part of the security deposited in respect of the existing permit is or will be refundable under section 144, notwithstanding that the period of 6 months after the termination of that permit may not have elapsed, may retain that security or part thereof (together with any further security fixed by the Minister) as the security (in which case it shall be taken to be or to be part of the security) deposited by the applicant in respect of the application for the further exploration permit and not refund that amount to the holder.

### **Mining registrar may call conference in some cases**

**169.(1)** This section applies if—

- (a) an owner of land who is concerned about any of the following

gives the mining registrar for the mining district written notice of the concerns—

- (i) that someone claiming to act under an exploration permit, or to have entered land on the permit holder's instructions, is not authorised to be on the land or is not complying with a provision of this Act or a condition of the permit;
  - (ii) activities being, or proposed to be, carried out on the land apparently under an exploration permit (including when the activities are being, or are to be, carried out);
  - (iii) the conduct on the land of someone apparently acting under an exploration permit; or
- (b) an exploration permit holder who is concerned about something relevant to the permit involving the holder and the owner of land gives the mining registrar written notice of the concerns; or
- (c) for another reason, the mining registrar considers it desirable to call a conference to discuss concerns about an exploration permit.

**(2)** If subsection (1)(a) or (b) applies, the mining registrar—

- (a) must investigate the concerns; and
- (b) may call a conference about the concerns, by written notice given to the owner of the land and the exploration permit holder.

**(3)** If subsection (1)(c) applies, the mining registrar may call a conference about the exploration permit, by written notice given to—

- (a) the owners of land covered by the permit who appear to the mining registrar to be affected by the concerns; and
- (b) the exploration permit holder; and
- (c) anyone else the mining registrar considers should be given notice of the conference.

**(4)** The notice must state when and where the conference will be held and what is to be discussed at the conference.

### **Who may attend conference**

**170.(1)** Apart from the mining registrar, anyone given notice of a

conference about an exploration permit (a “**section 169 conference**”) may attend and take part in the conference.

(2) Also, with the mining registrar’s approval, someone else may be present to help a person attending the conference.

(3) However, a person may not be represented at the conference by a lawyer.

### **What happens if someone does not attend**

**171.** The mining registrar may hold a section 169 conference even though someone given notice of the conference does not attend the conference.

### **Mining registrar’s function at section 169 conference**

**172.** The mining registrar must endeavour to help those attending a section 169 conference to reach an early, inexpensive settlement of the things discussed.

### **Agreements and statements at section 169 conference**

**173.(1)** If parties to a section 169 conference reach agreement about something discussed at the conference, the parties must put it into writing, sign it and lodge it with the mining registrar.

(2) A person attending the conference must not disclose or publish anything said at the conference other than in an agreement mentioned in subsection (1).

(3) Nothing said by a person at the conference is admissible in a proceeding without the person’s consent.

### **Wardens Court may award costs**

**174.(1)** If—

- (a) a person agrees to attend a section 169 conference but does not attend; and
- (b) someone else does attend (the “**attending party**”);

the attending party may apply to the Wardens Court for an order requiring the person who did not attend to pay the attending party's reasonable costs of attending.

(2) If the Wardens Court orders a person to pay the attending party's costs, the Wardens Court must decide the amount of the costs.

(3) However, the Wardens Court must not order a person to pay costs if the Wardens Court is satisfied the person had a reasonable excuse for not attending the conference.<sup>31</sup>

### **Mining registrar may recommend action to ease concerns**

**175.(1)** If the mining registrar considers an exploration permit holder should take action to ease concerns of an owner of land or another exploration permit holder, the mining registrar may recommend the action to the Minister.

(2) The Minister may give the exploration permit holder the directions the Minister considers appropriate about the recommended action.

(3) A failure by the holder to comply with the Minister's directions is taken to be a breach of a condition of the exploration permit.

(4) If the Minister gives a direction under subsection (2), the chief executive must give a copy to the owner.

(5) The mining registrar must give the land's owner and the exploration permit holder written notice of—

- (a) the substance of any recommendation made to the Minister under subsection (1) or, if the mining registrar decides not to make a recommendation, the mining registrar's decision; and
- (b) any other action the mining registrar has taken to ease the concerns of the owner or exploration permit holder.

### **Discovery of minerals to be reported**

**176.(1)** The holder of an exploration permit shall, within 14 days after

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<sup>31</sup> Orders of a Wardens Court may be enforced under section 377 (Enforcement of decisions etc. of Wardens Court).

discovery of any mineral of commercial value in what appears to be payable quantities within the area specified in the exploration permit by any person acting under the authority of the exploration permit, report to the Minister the fact of that discovery and such other particulars as the Minister requires.

(2) The Minister may direct the holder of an exploration permit to apply for a mineral development licence or mining lease over all or part of the land specified in the exploration permit as the Minister directs in respect of any mineral discovered.

(3) If the holder of an exploration permit to whom a notice under subsection (2) is given does not apply for a mineral development licence or a mining lease as directed within the specified time, the Minister may in the Minister's discretion cancel the exploration permit.

(4) Any refund of moneys held in respect of an exploration permit that is cancelled pursuant to subsection (3) (including any security deposited) shall be at the Minister's discretion.

### **Reduction of land under exploration permit upon grant of mineral development licence or mining lease**

177. Upon the grant of a mineral development licence or mining lease consequent upon an application made by the holder of an exploration permit granted in respect of the same land for the same mineral (whether or not at the direction of the Minister) or by an eligible person with the consent of the holder, the land to which the exploration permit applies shall be reduced accordingly and the terms and conditions applying to the exploration permit may be varied as the Minister directs.

### **Discovery etc. of mineral does not vest property**

178. A person who whilst acting under the authority of an exploration permit discovers or takes any mineral does not thereby acquire property therein and shall not dispose of any such mineral except with the consent of the Minister whose consent may be subject to such terms and conditions as the Minister thinks fit (including prescribed conditions as to the payment of royalties).

## **PART 6—MINERAL DEVELOPMENT LICENCES**

### **Mineral development licence**

**179.** Unless otherwise approved by the Minister pursuant to section 226(3), a mineral development licence in respect of a mineral occurrence may be applied for by an eligible person in respect of land which, at the time the application for the grant is made, is comprised in—

- (a) an exploration permit; or
- (b) a mineral development licence;

in respect of the same mineral of which the applicant or, where more than 1 person is the applicant, at least 1 of them is, with or without others, the holder.

### **Only eligible persons to hold mineral development licences**

**180.** A mineral development licence shall not be held by a person who is not an eligible person.

### **Obligations and entitlement under mineral development licence**

**181.(1)** During the currency of a mineral development licence, the holder shall carry out or cause to be carried out such activities as are specified in the licence by the Minister.

**(2)** The Minister may specify in a mineral development licence that no activity need be carried out for the term of the licence or for such period as is specified therein.

**(3)** Without in any way limiting the activities that the Minister may specify in a mineral development licence, activities leading to the evaluation and economic development of an ore body by or on behalf of the holder may include—

- (a) geological, geophysical and geochemical programs and other works as are reasonably necessary to evaluate the potential for development of any mineral occurrence of possible economic potential occurring in or on land comprised in the mineral development licence; and

- (b) mining feasibility studies; and
  - (c) metallurgical testing; and
  - (d) environmental studies; and
  - (e) marketing studies; and
  - (f) engineering and design studies; and
  - (g) such other activities as the Minister considers appropriate.
- (4)** During the currency of a mineral development licence—
- (a) the holder—
    - (i) may carry out or cause to be carried out any activities (including activities referred to in subsection (2)) as are appropriate for the purpose for which the licence is granted; and
    - (ii) may, in relation to the land comprised in the mineral development licence, do all such things as are authorised or were authorised, at the time of the application for the mineral development licence, under the relevant exploration permit then held by the applicant for the mineral development licence; and
  - (b) the holder and any person who acts for the purpose of carrying out any activity authorised by the mineral development licence with or by such vehicles, vessels, machinery and equipment as may be necessary or expedient for the purpose may, subject to compliance with section 211, enter—
    - (i) any part of the land comprised in the mineral development licence that is not the surface area of a reserve; and
    - (ii) with the consent of the owner, or the consent of the Governor in Council, any part of the land comprised in the mineral development licence that is the surface area of a reserve;for any purpose permitted or required under the licence or by this Act; and
  - (c) the holder of the mineral development licence, subject to compliance with this Act, may have considered for grant, in

priority to all other persons, any number of mineral development licences and mining leases relating to any minerals specified in the mineral development licence in respect of any land (or part thereof) to which the mineral development licence applies and may enter that land for the purpose of doing all acts necessary to comply with this Act relating to an application therefor.

(5) For the purposes of subsection (4)(b)(ii), the holder of a mineral development licence has the consent of an owner of land if that consent in writing has been previously lodged with the chief executive and has not been withdrawn as provided for in subsection (11).

(6) Consent given as required by subsection (4)(b)(ii) may be restricted as to time or to a part of the land in question.

(7) Notwithstanding subsection (4)(b) the holder of a mineral development licence is not required to obtain consent in respect of the entry or being upon land that is a reserve for public road where the entry or being upon that land is solely as access in respect of land the subject of the exploration permit.

(8) A mineral development licence authorises a person to enter the surface of land that was restricted land when the application for the licence is lodged only if—

- (a) the owner of the land where the relevant permanent building, or relevant feature, is situated, consents in writing to the application; and
- (b) the applicant gives the consent to the chief executive.

(9) Consent given pursuant to subsection (8) shall specify the period of the consent and any conditions applicable to the consent and once given that consent cannot be withdrawn.

(10) In subsection (8)—

**“building”** or **“dwelling house”** means a fixed structure that is wholly or partly enclosed by walls and is roofed.

(11) Consent referred to in subsection (4)(b)(ii) can only be withdrawn by the owner of the relevant land giving notice in writing to the chief executive and shall only be effective when the Minister accepts the withdrawal or, if not accepted, after the holder of the mineral development licence has been given an opportunity by the Minister to apply for the

consent of the Governor in Council in lieu of the owner's consent—

- (a) if, within the time allowed by the Minister for the holder to do so, the holder does not apply for that consent, that time expires; or
- (b) if, within the time allowed by the Minister for the holder to do so, the holder applies for that consent, the Governor in Council gives or refuses to give that consent.

**(12)** The holder of a mineral development licence, and each person who enters or is upon land under the authority of the licence, shall comply with the terms and conditions upon which any consent required to be given under this Act in respect thereof was given by the owner of that land.

**(13)** If an owner of land that is a reserve refuses or fails within a reasonable time to give a consent required by subsection (4)(b)(ii) or imposes terms and conditions thereon that the holder of the relevant mineral development licence considers to be so harsh as to be unreasonable, the holder of the mineral development licence may apply in writing to the Minister who may refuse the application or may recommend to the Governor in Council that consent be given.

**(14)** Upon receipt of an application under subsection (11) or (13), the Minister shall seek the views of the owner of the relevant land on the application.

**(15)** If the Minister is satisfied that it is unreasonable for an owner of land that is a reserve to refuse to give to the holder of a mineral development licence the consent required by subsection (4)(b)(ii), to withdraw consent previously given or to have imposed the terms and conditions upon which that consent was given, the Governor in Council may, upon the recommendation of the Minister—

- (a) subject to such terms and conditions as the Governor in Council thinks appropriate, give that consent in lieu of the consent of the owner; or
- (b) set aside or vary as the Governor in Council thinks fit the terms and conditions upon which the consent is subject;

whereupon the owner of the land shall, subject to compliance by the holder of the mineral development licence with any terms and conditions set by the Governor in Council, be deemed to have given the consent or, as the case may be, have set aside or varied the terms and conditions in accordance

with the Governor in Council's determination.

(16) The Governor in Council may make a determination under subsection (15) whether or not an owner of land makes any submission to the Minister pursuant to subsection (14).

(17) The chief executive shall notify the holder of a mineral development licence and the owner of land that is a reserve of particulars of any relevant determination made by the Governor in Council pursuant to subsection (15) before any entry of that land is made under the authority of the mineral development licence except where the entry is in accordance with any consent given by the owner.

(18) For the purposes of exercising entitlements under this part a person who enters or is upon land under the authority of a mineral development licence may stay at night thereon and for that purpose may set up temporary accommodation thereon.

(19) A person who stays on land under or purportedly under the authority of a mineral development licence shall dispose of any refuse (including human waste) and rubbish in a safe and sanitary manner.

(20) The terms and conditions upon which consent required by subsections (4)(b)(ii) and (8) is given shall be deemed to be part of the terms and conditions of the relevant mineral development licence.

(21) Consent given as required by subsection (4)(b)(ii) may be restricted as to time or to a part only of the land in question.

### **Land is excluded from mineral development licence if covered by other authority under Act**

**182.(1)** This section applies if—

- (a) the chief executive accepts lodgment of an application for a mineral development licence for particular land; and
- (b) all or some of the land covered by the accepted application is—
  - (i) covered by an existing mining claim or mining lease; or
  - (ii) included in an earlier application for a mining claim or mining lease.

(2) Land mentioned in subsection (1)(b) that is within the boundaries of

the accepted application, and its surface, (“**excluded land**”) is taken to be excluded from the land covered by a mineral development licence granted for the land on the accepted application.

(3) However, the land is excluded land—

- (a) if subsection (1)(b)(i) applies—only while it is covered by an existing mining claim or mining lease; or
- (b) if subsection (1)(b)(ii) applies—
  - (i) until the earlier application is abandoned or rejected; or
  - (ii) while it is covered by a mining claim or mining lease granted on the earlier application.

(4) If excluded land within the boundaries of the mineral development licence ceases to be excluded land, it is taken to be included in the mineral development licence.

### **Application for mineral development licence**

**183.** An application for the grant of a mineral development licence shall—

- (a) be in the approved form; and
- (b) specify the name of each applicant; and
- (c) specify the name and address for service of 1 person upon whom any notice may be served on behalf of the applicant or the applicants; and
- (d) describe all parcels of land the whole or part of which are the subject of the application and specify the current use of the land and the names and addresses of the owner or owners of the land and of land which is to be used as access thereto; and
- (e) identify in the prescribed manner the boundaries of the land applied for; and
- (f) specify the mineral or minerals in respect of which the mineral development licence is sought; and
- (g) give reasons why the mineral development licence should be granted in respect of the area and shape of the land described in

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- the application; and
- (h) be accompanied by a sketch, map or other graphic representation acceptable to the chief executive setting out the boundaries of any land referred to in paragraphs (d) and (i); and
  - (i) describe and identify in the prescribed manner any land proposed to be used as access from a point outside the boundary of the mineral development licence acceptable to the chief executive to any part on the surface of the land sought to be included in the mineral development licence; and
  - (j) nominate the term of the mineral development licence sought and give reasons therefor; and
  - (k) be accompanied by the consent in writing of each person who alone or with others is the holder of the exploration permit or the mineral development licence in respect of the land and the mineral the subject of the application and is not the applicant; and
  - (l) be lodged by the applicant at the office of the chief executive; and
  - (m) if the nature of the activities proposed to be conducted under the mineral development licence may have an environmental impact—be accompanied by a statement containing proposals—
    - (i) to protect the environment while conducting the activities; and
    - (ii) for the progressive and final rehabilitation of the land; and
  - (n) be accompanied by—
    - (i) a statement, acceptable to the Minister—
      - (A) giving a detailed description and technical particulars of the mineral occurrence for which the mineral development licence is sought together with any necessary supporting documents; and
      - (B) stating the activities (if any) proposed to be conducted under the mineral development licence, including, for example, work programs, amounts to be spent and studies to be performed; and
    - (ii) a statement, acceptable to the Minister, separate from the

statement mentioned in subparagraph (i), detailing the applicant's financial and technical resources; and

(iii) the application fee prescribed under a regulation.

### **Description of mineral development licence**

**184.** In an application for the grant of a mineral development licence—

- (a) the commencement point for the description shall be accurately related by measured distances and compass bearings (or other method acceptable to the chief executive) to a survey mark or other fixed and well defined point acceptable to the chief executive; and
- (b) the boundaries of the mineral development licence shall be described by accurately measured distances and compass bearings or other method acceptable to the chief executive; and
- (c) the surface access from a point acceptable to the chief executive to the land over which the mineral development licence is sought shall be described by measured distances and compass bearings along the centre line of that access together with the width of that access or by some other method acceptable to the chief executive; and
- (d) the datum post or commencement point of the description of any land the subject of a mining claim, mineral development licence or mining lease or application for the grant of a mining claim, mineral development licence or mining lease, in any case wholly or partly within the land sought for the mineral development licence shall be related by measured distances and compass bearings (or other method acceptable to the chief executive) to the commencement point of the description of the land the subject of the application.

### **Priority of applications for grant of mineral development licences**

**185.** Applications for the grant of mineral development licences duly made in respect of or including the same land shall take priority according to the Minister's determination.

**Minister may grant or reject application for mineral development licence**

**186.(1)** If, in respect of an application for a mineral development licence, the Minister is satisfied that—

- (a) the applicant has complied with the provisions of this Act with respect to the application; and
- (b) there exists to a high degree of definition on or in the land in respect of which the application is made a significant mineral occurrence of possible economic potential; and
- (c) the area of land in respect of which the application is made is appropriate to further investigation of that occurrence; and
- (d) the financial and technical resources available to the applicant and any activities proposed pursuant to section 183(n)(i) and (ii) are appropriate and acceptable to the Minister;

the Minister may grant and issue to the applicant a mineral development licence over all or part of the land in respect of which the application is made.

**(2)** However, the Minister must not grant a mineral development licence for land in a fossicking area, or for land that includes the whole or part of a fossicking area, unless the application—

- (a) was made, but not decided, before the land became a fossicking area; or
- (b) is for land in an exploration permit.

**(3)** The Minister may reject an application for the grant of a mineral development licence.

**(4)** Where the Minister rejects an application for the grant of a mineral development licence in whole or in part the Minister shall, as soon as practicable after making the decision, notify the applicant in writing of the Minister's reasons.

**(5)** Where the Minister grants a mineral development licence in respect of part only of the land applied for, the application in so far as it relates to the balance of that land shall be taken to be rejected.

**(6)** A mineral development licence shall be in the approved form and

shall specify—

- (a) the identification number of the licence; and
- (b) the name of the holder; and
- (c) the address for service of notices on the holder; and
- (d) the description of land in respect of which the licence is granted; and
- (e) the term and date of commencement of the licence; and
- (f) the conditions (other than conditions prescribed by this Act) to which the licence is subject; and
- (g) the minerals the subject of the licence.

### **Holder to notify owners of land of grant**

**187.** Within 21 days, or such longer period as the Minister shall in the particular case allow, after the grant of a mineral development licence, the holder shall give notice in the approved form to the owners of the parcels of land subject to the licence.

### **Upon rejection of application, application fee or part may be retained**

**188.** If the Minister rejects an application for the grant of a mineral development licence the Minister may determine, at the Minister's discretion whether all or part of the application fee that accompanied the application for the licence shall be retained.

### **Abandonment of application for mineral development licence**

**189.(1)** The applicant for the grant of a mineral development licence may, at any time before the grant of the mineral development licence, by notice in writing to the chief executive abandon the application.

**(2)** The abandonment of an application for the grant of a mineral development licence shall take effect on the day next following its receipt by the chief executive.

**(3)** Upon the abandonment of an application for the grant of a mineral development licence, the Minister, at the Minister's discretion, may retain

the whole or part of the application fee.

(4) Upon the abandonment of an application for the grant of a mineral development licence taking effect the land that ceases to be comprised in that application shall form part of any existing exploration permit or mineral development licence over that land of which the applicant is holder.

### **Provision of security**

**190.(1)** Before a mineral development licence is granted or renewed the Minister, taking into consideration the matters outlined in section 183(n)(i)(A) and (B), shall determine the amount of security to be deposited by the holder of that licence as reasonable security for—

- (a) compliance with the conditions of the licence; and
- (b) compliance with the provisions of this Act; and
- (c) rectification of any actual damage that may be caused by any person whilst purporting to act under the authority of the mineral development licence to any land or any improvements situated on or off that land; and
- (d) amounts (other than penalties) payable to the State under this Act.

(2) A mineral development licence shall not be granted or renewed until the applicant for the grant or renewal of the licence deposits the security as determined under this section.

(3) The Minister, if satisfied that any condition of the mineral development licence or any provision of this Act has not been complied with or that damage referred to in subsection (1)(c) has been caused by any person purporting to act under the authority of a mineral development licence or who enters land upon the instruction of the holder, the Minister may require that person to take all action necessary to rectify that noncompliance or damage and, save where the person was not the holder and was not upon the land with the holder's approval at the time the damage was caused, may utilise for that purpose the whole or part of the amount of the security deposited in respect of that mineral development licence.

(4) If, at any time (whether during or within 28 days after the expiration of the term of a mineral development licence) the amount or any part of the amount deposited under this section is utilised as provided by

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subsection (3) or the Minister considers that, in view of the damage caused or likely to be caused by any person purporting to act under the authority of the mineral development licence or upon the instruction of the holder or for any other reason, a further amount of security should be deposited in respect of that mineral development licence, the Minister shall require the holder or former holder of the mineral development licence, within the time specified by the Minister, to deposit the further security.

(5) The Minister may accept a bond or a guarantee or indemnity by, or other financial arrangement with, a financial institution, insurance company or another credit provider approved by the Minister or other form of security acceptable to the Minister as the whole or part of the security to be deposited under this section.

(6) It shall be a condition of a mineral development licence that the holder shall deposit security or further security from time to time in accordance with a requirement made as provided by this section.

(7) Within 28 days after termination of a mineral development licence, the person who was the holder shall notify all owners of land comprised in the mineral development licence that any claims for rectification of actual damage to land caused under the authority or purported authority of the mineral development licence must be lodged within 6 months of termination with the chief executive.

(8) Where a mineral development licence has expired or been terminated, the Minister—

- (a) in a case where every owner of land the subject of the mineral development licence certifies that there is no actual damage to land that should be rectified—at any time; or
- (b) in any other case—not earlier than 6 months after the expiration or the termination;

shall, subject to subsection (9), refund to the holder of the licence (or as the holder in writing directs) any security deposited and not utilised as provided by subsection (4) less any amount determined by the Minister to be retained towards—

- (c) rectification of any matters caused by the noncompliance with any of the conditions of the mineral development licence or with any order or direction made or given by the Minister under this Act

and directed to the holder; and

- (d) amounts (other than penalties) the holder owes to the State under this Act (whether the amounts became owing before or after the termination).

(9) If the Minister accepts a bond, guarantee or indemnity by, or another financial arrangement with, a financial institution, insurance company or another credit provider as security under this section, any amount payable to the holder under subsection (8) must be refunded to the financial institution, insurance company or credit provider and not to the holder of the mineral development licence to which the security relates.

### **Compensation**

**191.(1)** Notwithstanding section 190, the Crown or an owner is entitled to recover from time to time, in the Wardens Court compensation in respect of damage or injury suffered or loss incurred by reason of a person acting or purporting to act under the authority of a mineral development licence but any moneys paid under that section in respect of rectification of damage the subject of the proceeding shall be taken into account in assessing the compensation.

(2) The holder of a mineral development licence is not liable under this section in respect of damage or injury or loss caused by another person who is not a holder and is not a person authorised by the holder to be upon the land the subject of the mineral development licence.

### **Initial term of mineral development licence**

**192.(1)** The initial term of a mineral development licence shall, unless the licence is sooner terminated, be for a period not exceeding 5 years (or such longer period as the Minister in exceptional circumstances approves) commencing on the first day of the month which next follows the day on which the mineral development licence is granted.

(2) From the grant of a mineral development licence to the commencement of the initial term thereof the holder shall have all the entitlements, powers, duties and functions that the holder has during the term of the licence except section 193 shall not apply.

**Rental payable on mineral development licence**

**193.(1)** Upon the grant of a mineral development licence rental shall first be payable thereon with respect to the period from the commencement of the term of the licence to 31 December of that year (the “**first rental period**”) and shall be paid within 28 days (or such longer period as the Minister in the particular case approves) of the grant of the mineral development licence.

(2) The amount of the rental payable in respect of the first rental period shall be an amount that bears to the yearly rental prescribed pursuant to subsection (4) for the year in which the first rental period falls the same proportion that the number of whole calendar months of the first rental period bears to 12.

(3) In respect of each year or part thereof of the term of a mineral development licence (other than the first rental period) a full year’s rental shall be payable in advance not later than 31 December of the previous year.

(4) If the full year’s rental is paid in advance as prescribed by subsection (3), the amount of the rental shall be the amount prescribed in respect of the year in which the rental period falls.

(5) If rental is not paid in advance as prescribed by subsection (3)—

- (a) the Minister shall, prior to 31 January of that year, notify the holder of and any person holding a recorded interest in the mineral development licence (other than an interest recorded pursuant to section 205) that the rental has not been paid as prescribed by subsection (3) and of the amount of rental as prescribed by paragraph (b); and
- (b) the amount of the full year’s rental shall be payable before 1 April of that year and shall be an amount equal to the amount prescribed in respect of the year in which the rental period falls plus an amount equal to 25% of that prescribed amount.

(6) Upon the renewal of a mineral development licence, no further rental shall be payable in respect of the period that, if the renewal was a grant of a mineral development licence, would be the first rental period, except where that period commences on 1 January.

(7) Except as provided in subsection (8), where in any year a mineral development licence is surrendered or terminated through effluxion of time

and is not renewed there shall be refundable to the last holder of the mineral development licence an amount that bears to the amount of the rental that was paid in respect of that year the same proportion that the number of whole calendar months from—

- (a) the date of surrender or termination; or
- (b) the date of rejection of the application for renewal;

whichever is the later, to 31 December of that year bears to 12.

(8) No amount shall be refunded pursuant to subsection (7) where a mineral development licence is surrendered within its first rental period after its original grant.

### **Conditions of mineral development licence**

**194.(1)** Each mineral development licence shall be subject to—

- (a) a condition that the holder shall carry out such activities (if any) for which the mineral development licence was granted and in accordance with this Act and the conditions of the mineral development licence and for no other purpose; and
- (b) a condition that the holder shall, to the satisfaction of the Minister, provide for the control of the impact on the environment of any activities carried out under the authority of the mineral development licence; and
- (c) a condition that the holder must rehabilitate the surface of the land covered by the mineral development licence to the Minister's satisfaction; and
- (d) a condition that the holder, prior to the termination of the mineral development licence for whatever cause, shall remove all equipment and plant on or in the land comprised in the mineral development licence unless otherwise authorised in writing by the Minister; and
- (e) a condition that without the prior approval in writing of the Minister the holder shall not obstruct or interfere with any right of access had at any time during the term of the mineral development licence by any person in respect of land the subject of the mineral development licence for so long as that right of

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access is exercised; and

- (f) a condition that the holder shall not assign or mortgage the mineral development licence or any part thereof without the consent in writing of the Minister; and
- (g) a condition that the holder must, when, and in the way, the Minister requires, give to the Minister—
  - (i) progress and final reports, accompanied by maps, sections, charts and other data giving full particulars and results of activities carried out on the area specified by the Minister, including details of costs incurred for specified periods within the term of the mineral development licence; and
  - (ii) materials obtained because of the holder's activities under the mineral development licence; and
  - (iii) an environmental management plan for the holder's activities under the mineral development licence; and
- (h) a condition that the holder—
  - (i) shall pay the rental as prescribed; and
  - (ii) shall deposit as required by the Minister any security from time to time under this Act; and
- (i) a condition that the holder shall comply with the provisions of this Act; and
- (j) such other conditions as are prescribed; and
- (k) such other conditions as are determined by the Minister.

(2) The Minister may from time to time, with the agreement of the holder of a mineral development licence vary any condition imposed by the Minister.

(3) The holder of a mineral development licence and all persons acting under the authority of the licence shall comply with the conditions for the time being of the licence.

(4) Conditions may be imposed in respect of a mineral development licence that relate to action to be taken to minimise the effect on the environment (including land degradation and air and water pollution) on or outside the land specified in the mineral development licence of activities

undertaken under the authority of the licence.

(5) Conditions may be imposed in respect of a mineral development licence that require compliance with specified codes of conduct or practice or industry agreements.

(6) A mineral development licence granted after the commencement of the *Mineral Resources Amendment Act 1998* is subject to a condition that the holder comply with the At Risk agreement.

### **Land Court's jurisdiction for At Risk agreement**

**194A.(1)** The Land Court has jurisdiction to hear and decide a proceeding about the following matters under a condition of a mineral development licence requiring compliance with the At Risk agreement—

- (a) whether hardship, as defined under the agreement, exists;
- (b) the fair market value of a property for the purposes of the agreement.

(2) In a proceeding under subsection (1)(a), the Land Court must consider—

- (a) all relevant matters put before the committee in any mediation under the agreement; and
- (b) the final recommendation made by the committee in the mediation.

(3) In a proceeding, a copy of the agreement as at a particular date, certified as a true copy by the chief executive, is admissible as evidence of the agreement at that date until the contrary is proved.

(4) Despite the *Limitations of Actions Act 1974*, a proceeding must start—

- (a) for a matter that arose before the commencement of this section—within 1 year after the commencement; or
- (b) for a matter that arose after the commencement of this section—within 1 year after the committee gives notice of its final recommendation about whether hardship, as defined under the agreement, exists.

(5) In this section—

“**committee**” means the committee mentioned in the At Risk agreement.

### **Draft guidelines for environmental impact statements**

**195.(1)** This section applies if a mineral development licence holder gives written notice to the Minister of the holder’s plans to prepare an environmental impact statement about a proposed mining project.

(2) The Minister must issue draft guidelines for the preparation of the statement within 28 days after receiving the notice.

(3) The draft guidelines—

- (a) must state the things the environmental impact statement must address; and
- (b) may state the way the things may or must be addressed.

(4) The Minister must give a copy of the draft guidelines to the holder and the mining registrar.

(5) The mining registrar must—

- (a) immediately display a notice at the mining registrar’s office stating that the draft guidelines are available for comment until a stated day, at least 28 days after the day the notice is displayed; and
- (b) give a copy of the notice to the holder.

(6) Within 7 days of receiving the notice or a longer period fixed by the mining registrar, the holder must—

- (a) publish a copy of the notice in a newspaper circulating generally in the relevant mining district; and
- (b) give the mining registrar a statutory declaration stating that the holder has published the notice.

(7) Anyone may lodge written comments about the draft guidelines at the mining registrar's office on or before the stated day.

### **Guidelines for environmental impact statements**

**196.(1)** After considering any written comments lodged at the mining registrar's office on or before the day for making written comments about draft guidelines, the Minister must issue guidelines for the preparation of the environmental impact statement.

(2) The Minister must give a copy of the guidelines to the holder, the owner of the land covered by the mineral development licence and the relevant local government within 28 days after the day for lodging written comments about the draft guidelines ends.

### **Renewal of mineral development licence**

**197.(1)** The holder of a mineral development licence may, at least 6 months (or such shorter period as the Minister in a particular case allows) prior to and not more than 12 months before the expiration of the current term of the mineral development licence, make application for renewal of that mineral development licence.

(2) An application for renewal of a mineral development licence shall be made in writing to the chief executive in the prescribed way and shall be accompanied by—

- (a) an analysis of the work and expenditure undertaken (if any) during the term of the licence to the date of the application for renewal, and the results (if any) obtained; and
- (b) the applicant's proposed activities (if any) and expenditure during the proposed renewed term; and
- (c) the applicant's reasons for seeking a renewal of the licence rather than applying for a mining lease; and
- (d) the prescribed application for renewal fee.

(3) The Minister may from time to time grant to the holder of a mineral development licence a renewal of the licence for such further term as the Minister thinks fit not exceeding 5 years or such longer term as the Minister in exceptional circumstances approves subject, in addition to any prescribed

conditions to any such further conditions whatever as the Minister may determine.

(4) Where an application for renewal of a mineral development licence is duly made by the holder but the application has not been disposed of by the Minister before the date on which the term of the mineral development licence then current would, but for the operation of this subsection have expired, then, subject to payment of the prescribed rental and compliance with this Act and the conditions of the mineral development licence, the mineral development licence shall continue in force and shall not be taken to have expired until the application is disposed of by the Minister.

(5) The term of a mineral development licence that is renewed (whether the renewal is granted before or after the date the mineral development licence expires or would, but for the operation of subsection (4), have expired) shall commence or be deemed to have commenced on the day following that expiry date but the conditions of the renewed mineral development licence shall apply from—

- (a) the commencement of that term; or
- (b) the date the renewal is granted;

whichever is the later.

(6) Where an assignment of a mineral development licence is approved and recorded under this Act after the date on which an application for a renewal of that licence is made but before that application is disposed of by the Minister, any renewal granted upon that application shall be in the name of the assignee under the assignment last so approved and recorded before the grant of that renewal.

### **Assignment etc. of mineral development licence**

**198.(1)** With the approval of the Minister, a mineral development licence or an interest therein may be assigned or mortgaged in the prescribed manner and upon payment of the prescribed fee.

(2) Where there are 2 or more holders of a mineral development licence, an application for assignment under subsection (1) shall be made by all the holders and, if a mortgage is recorded in respect of the mineral development licence, shall be accompanied by the mortgagee's consent.

(3) The holder of a mineral development licence desirous of exercising a power referred to in subsection (1) shall apply in writing to the chief executive for the Minister's approval to that exercise and shall furnish to the chief executive such information with respect thereto as the Minister requires.

(4) Upon an application made pursuant to subsection (3) the Minister shall cause the applicant to be given notice—

- (a) that, subject to compliance with this Act in respect thereof and with any conditions specified in the notice within 3 months from the date of the notice or such other period as is specified in the notice, the Minister will approve the exercise; or
- (b) that the Minister does not approve the exercise.

(5) Upon receipt within the prescribed time of the prescribed document of assignment or mortgage that gives effect to an assignment or mortgage referred to in subsection (1) and upon compliance with this Act and all conditions specified in the notice given pursuant to subsection (4)(a) in respect of that assignment or mortgage and payment of the prescribed fee, the assignment or mortgage shall be approved and such particulars as are necessary to give effect to or evidence that assignment or mortgage shall be recorded in the appropriate register and endorsed on the mineral development licence.

(6) The Minister may approve, and record particulars of, the exercise of a power mentioned in subsection (1) even though subsections (3) and (4) have not been complied with if the Minister would have approved the exercise of the power if the subsections had been complied with.

(7) An assignment or mortgage of a mineral development licence shall not be in respect of part only of the land the subject of the mineral development licence.

(8) A purported assignment or mortgage of a mineral development licence or of an interest shall not be effective unless it is made in accordance with this section and approved as provided in subsection (5) and shall take effect on the day next following its approval by the Minister under subsection (5).

(9) Within 28 days of the Minister granting approval of an assignment

under this section, the assignee shall notify the owners of the relevant land of that approval.

### **Lodgment of caveat**

**199.(1)** Subject to subsection (2), a person who claims a right or interest in or in respect of a mineral development licence may by a caveat in the approved form forbid the approval of any assignment or mortgage in respect of the mineral development licence (save any assignment or mortgage the approval of which is excepted in the caveat) either absolutely or until after notice of intention to approve such an assignment or mortgage is served on the caveator.

**(2)** A caveat duly lodged pursuant to this section does not apply in respect of an assignment or mortgage the application for approval of which was lodged with the chief executive before the lodgment of the caveat.

**(3)** A caveat referred to in subsection (1) shall—

- (a) be in the approved form; and
- (b) specify the name and address for service of 1 person upon whom any notice may be served on behalf of the caveator or caveators; and
- (c) identify the mineral development licence concerned; and
- (d) specify the nature of the right or interest claimed by the caveator; and
- (e) specify the period during which it is to continue in force; and
- (f) be signed by the caveator, the caveator's solicitor or other person authorised in writing by the caveator; and
- (g) if any person consents to the lodging of the caveat, be endorsed with that person's consent; and
- (h) be lodged with the chief executive; and
- (i) be accompanied by the prescribed lodgment fee.

### **Chief executive's functions upon receipt of caveat**

**200.** Upon receipt of a duly lodged caveat referred to in section 199, the

chief executive shall—

- (a) notify the holder or holders of the affected mineral development licence; and
- (b) notify all other persons who have an interest (other than an interest recorded pursuant to section 205)<sup>32</sup> in the mineral development licence recorded in the register including any subsisting prior caveator; and
- (c) record the existence of the caveat in the register.

### **Effect of caveat**

**201.(1)** For so long as a caveat remains in force, an assignment or mortgage, in respect of the mineral development licence identified in the caveat shall not be approved unless—

- (a) the assignment or mortgage is specifically excepted in the caveat; or
- (b) the written consent of the caveator in the approved form to the approval of the assignment or mortgage is lodged with the chief executive.

**(2)** For the purposes of subsection (1), unless and until a caveat is removed or withdrawn as prescribed, a caveat continues in force—

- (a) in a case where the consent of each holder of the mineral development licence concerned has been lodged with the caveat—for the term specified in the caveat or, if no term is specified, indefinitely; or
- (b) in a case where the caveat (not being a caveat referred to in paragraph (a)) specifies a period of not more than 3 months during which it is to continue in force—until the expiration of that period; or
- (c) in a case where the Wardens Court or another court of competent jurisdiction so orders—for so long as that order remains in force; or

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<sup>32</sup> Section 205 (Recording of agreements, arrangements, dealings or interests)

- (d) in any other case—until the expiration of 3 months from the date of lodgment of the caveat.

### **Second caveat not available to same person**

**202.** When a caveat has lapsed or has been removed or withdrawn as prescribed, it shall not be competent to the caveator to lodge in respect of the same mineral development licence another caveat whereby the caveator claims the same or substantially the same right or interest unless—

- (a) the consent of each holder of the mineral development licence has been lodged with the lastmentioned caveat; or
- (b) the Wardens Court or another court of competent jurisdiction so orders.

### **Removal or withdrawal of caveat**

**203.(1)** A caveat lodged pursuant to section 199 that has lapsed shall be removed by the chief executive and the register noted accordingly.

**(2)** Upon the plaint of a person who has a right or interest (present or prospective) in a mineral development licence affected by a caveat or whose right (present or prospective) to deal with a mineral development licence is affected by a caveat lodged in respect of the mineral development licence, the caveator may be summonsed to attend the Wardens Court or another court of competent jurisdiction to show cause why the caveat should not be removed.

**(3)** The Wardens Court or another court of competent jurisdiction may, upon the return of a summons referred to in subsection (2) or at any later time to which the hearing may be adjourned, make such order either ex parte or otherwise as the court deems just.

**(4)** If the Wardens Court or another court of competent jurisdiction orders that a caveat be removed, the chief executive shall give effect to the order.

**(5)** A caveator may withdraw his or her caveat at any time by notifying the chief executive in writing.

**(6)** The removal or withdrawal of a caveat shall be effected by the chief executive recording the removal or withdrawal in the register.

**Compensation for lodging caveat without reasonable cause**

**204.** A person who lodges a caveat in respect of a mineral development licence without reasonable cause is liable to pay such damages as may be recovered at law by any person aggrieved.

**Recording of agreements, arrangements, dealings or interests**

**205.(1)** Upon application made in the approved form, payment of the prescribed fee, and production of a document purporting to evidence an agreement, arrangement or other dealing or interest (legal or equitable) in or in relation to a mineral development licence (other than an assignment or mortgage of the mineral development licence) to the chief executive, the chief executive shall—

- (a) record in the register maintained by the chief executive, the relevant particulars set out in the application form; and
- (b) retain the document or a copy thereof.

**(2)** The chief executive shall make the recordings prescribed by subsection (1) in the order of time in which applications are lodged with the chief executive.

**(3)** The chief executive is not required to examine any document produced under this section or to determine the validity of any agreement, arrangement, dealing or interest alleged in an application made under subsection (1).

**(4)** An agreement, arrangement, dealing or interest, particulars of which are recorded under this section shall, subject to being otherwise legally enforceable, take priority over any other agreement, arrangement, dealing or interest—

- (a) particulars of which have not been recorded under this section; or
- (b) particulars of which have been recorded under this section after particulars of the firstmentioned agreement, arrangement, dealing or interest had been recorded.

**(5)** Subsection (4) does not apply in respect of—

- (a) an interest that is a registrable charge under the Corporations Law; or

- (b) an estate or interest in land (whether freehold or leasehold) or a dealing therein which is registered or registrable by the registrar of titles or other like registering authority.

### **Correction of instrument of mineral development licence**

**206.** If, at any time the Minister is of the opinion that the instrument of a mineral development licence should be corrected by reason that—

- (a) the boundaries and area of the land comprised in the mineral development licence have been more accurately ascertained; or
- (b) facts have appeared or been established since the grant of the mineral development licence justifying a correction of the instrument to more accurately reflect the holder's entitlements under the licence; or
- (c) the instrument is defective owing to error in its preparation;

the Minister may correct the instrument and shall record details thereof in the register of mineral development licences kept by the chief executive and endorse the instrument which shall take effect accordingly.

### **Replacement of instrument of mineral development licence**

**207.(1)** Where the Minister is satisfied that the instrument of a mineral development licence should be cancelled and a replacement instrument issued in its place, the Minister shall cancel the instrument and cause a replacement instrument to be issued in its place.

**(2)** A replacement instrument of a mineral development licence issued under this section—

- (a) shall be the instrument in place of the instrument previously issued and cancelled under this section which last mentioned instrument shall, upon the issue of the fresh instrument, cease to be of any force or effect; and
- (b) may bear a form of endorsement which briefly traces the devolution of the licence from the original holder of the mineral development licence to the person appearing as holder thereof at the time the replacement instrument is issued; and

- (c) shall bear endorsement of all apparently subsisting mortgages affecting the mineral development licence and endorsed on the instrument so cancelled; and
- (d) shall be delivered to the person who appears to the Minister to be lawfully entitled to possession thereof.

(3) The chief executive shall cause the instrument so cancelled to be suitably endorsed and a suitable recording made in the register kept by the chief executive that a replacement instrument has been issued in its place.

(4) The cancelled instrument shall be retained by the chief executive.

### **Adding other minerals to licence**

**208.(1)** The holder of a mineral development licence for particular minerals may lodge a written application with the chief executive for the Minister's approval to add stated minerals to the licence.

(2) The application must be accompanied by the application fee prescribed under a regulation.

(3) The Minister may approve or reject the application.

(4) The approval may be given on the conditions the Minister considers appropriate, including conditions requiring the holder to deposit a stated amount of additional security.

(5) If the Minister approves the application, the mineral development licence is taken to include the stated minerals—

- (a) if the Minister requires the holder to deposit additional security—on the day the applicant deposits the additional security; or
- (b) if paragraph (a) does not apply—on the day the Minister approves the application.

(6) Particulars of an approval under this section must be recorded in the appropriate register and endorsed on the holder's licence.

### **Contravention by holder of mineral development licence**

**209.(1)** If the Minister considers that the holder of a mineral

development licence—

- (a) has carried out activities that are not bona fide for the purposes for which the mineral development licence was granted; or
- (b) has failed to pay any moneys (other than rental) payable thereunder or in respect thereof by the due date for payment; or
- (c) has failed to comply with any condition that is to be observed and performed by the holder under or in respect of the mineral development licence, other than a condition with respect to matters referred to in subsection (2)(a) or (b);

the Minister may—

- (d) cancel the mineral development licence; or
- (e) impose on the holder a penalty not exceeding 1 000 penalty units.

**(2)** If the Minister considers that the holder of a mineral development licence—

- (a) in any year has failed after notice given to the holder in accordance with section 193(5) to pay before 1 April of that year the amount of the rental payable under that section by that date in respect of that mineral development licence; or
- (b) has failed to pay a penalty imposed on the holder pursuant to subsection (1)(e) within the time allowed for the payment by the Minister;

the Minister may cancel the mineral development licence and shall notify the holder and each person who currently holds a recorded interest in respect of the mineral development licence accordingly.

**(3)** The Minister shall not act pursuant to subsection (1) until the Minister has, by notice in writing in the approved form served on the holder of the mineral development licence, called upon the holder to show cause within the time specified therein why the mineral development licence should not be cancelled or a penalty imposed and served a copy of the notice on every person who currently holds a recorded interest in respect of the mineral development licence and such cause has not been shown to the satisfaction of the Minister.

**(4)** When the Minister pursuant to this section cancels a mineral development licence the Minister shall notify the holder and every person

who holds a recorded interest in respect of the mineral development licence accordingly.

(5) For the purposes of this section a recorded interest in a mineral development licence does not include an interest recorded pursuant to section 205.<sup>33</sup>

### **Surrender of mineral development licence**

**210.(1)** The holder of a mineral development licence may apply to surrender the mineral development licence or any part of the land comprised therein at any time before the expiration of its term.

(2) The holder of a mineral development licence who desires to surrender a mineral development licence or any part of the land comprised therein shall lodge with the chief executive—

- (a) a notice of surrender in the approved form; and
- (b) in the case of a surrender of part of the land comprised in a mineral development licence—
  - (i) a plan prepared in a manner acceptable to the chief executive of that part of the land to be retained in the mineral development licence; and
  - (ii) identification in the prescribed manner of the boundaries of the land to be retained; and
  - (iii) if land other than land specified in the mineral development licence is required as access from a point outside the boundary of the land to be retained to any part on the surface of that land—a description and identification in the prescribed manner of that land; and
- (c) if land covered by the surrender is not included in an application for a new mineral development licence or a mining lease—a final rehabilitation report stating how the holder has rehabilitated land affected directly or indirectly by the holder's mining activities under the licence; and
- (d) the fee prescribed under a regulation.

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<sup>33</sup> Section 205 ((Recording of agreements, arrangements, dealings or interests))

(3) A purported surrender of a mineral development licence or of any part of the land comprised in a mineral development licence shall not be effective unless—

- (a) the holder has complied with this section; and
- (b) the Minister consents to the surrender;

and shall, except in the case of a surrender referred to in subsection (12), take effect on the day next following the Minister's consent.

(4) The Minister may consent to a surrender under subsection (3) for land for which a final rehabilitation report is lodged only if the Minister is satisfied the holder has satisfactorily rehabilitated the land.

(5) If the Minister is not satisfied the holder has satisfactorily rehabilitated land, the Minister may, by written notice, give the holder reasonable directions about rehabilitating it.

(6) The holder must comply with the directions.

Maximum penalty—500 penalty units.

(7) Where a mineral development licence is surrendered in respect of part only of the land comprised in the mineral development licence, the licence issued in respect thereof shall be corrected by excising that part and taking any other steps required to conform with this Act and thereupon the mineral development licence shall continue in force in respect of the land retained.

(8) Upon a surrender of a mineral development licence, all adjustments between the holder and the Crown in respect of the payment of rental, fees and other moneys shall be at the discretion of the Minister.

(9) Where any moneys are specified pursuant to subsection (8) as a debt due to the Crown, the Minister may direct that the security deposited in accordance with section 190 may be utilised for payment thereof.

(10) Any moneys specified pursuant to subsection (8) by the Minister to be payable or that part thereof not recovered under subsection (9) shall be a debt due by the person specified as liable to pay to the Crown and may be recovered by action in a Wardens Court.

(11) In an action under subsection (10) for recovery of a debt due to the Crown, the production to the Wardens Court of a certificate by the chief executive certifying the amount of that debt shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the debt and the

amount thereof.

(12) Where, at the time when the holder of a mineral development licence purports to surrender the mineral development licence or a part of the land comprised therein, that holder duly makes application for a new mineral development licence in respect of the whole or part of the land comprised in the current mineral development licence the purported surrender shall take effect immediately prior to the grant of the new mineral development licence.

### **Notice of entry to be given**

**211.(1)** A mineral development licence holder must give the owner of the land covered by the licence written notice of entry before initial entry is made under the licence.

(2) The notice must be given at least 7 days before the entry (or a shorter period acceptable to the owner and endorsed on the notice).

(3) The notice must—

- (a) describe the activities proposed to be carried out on the land under the mineral development licence; and
- (b) state when the activities are to be carried out; and
- (c) be accompanied by a copy of—
  - (i) the codes of conduct or practice applying to activities under the licence; and
  - (ii) any statement given to the Minister about proposals to protect the environment and rehabilitate the land.

(4) The holder must give the mining registrar a copy of the notice immediately after the notice is given and before entry is made under the licence.

(5) Contravention of subsection (4) does not affect the validity of the notice.

(6) If the owner cannot easily be contacted, the holder may notify the occupier of the land of the intended entry.

*Examples of owner not being easily contacted—*

1. The owner does not live in Australia and there is no known current address for the owner.

2. The owner is travelling within Australia and there is no known current address for the owner.

(7) If the holder satisfies the mining registrar it is impracticable to give either the owner or occupier notice of the intended entry, the mining registrar may dispense with the need to give notice.

(8) If the mining registrar dispenses with the need to give notice, the mining registrar must make an appropriate endorsement on the notice.

(9) However, before making the endorsement, the mining registrar may require the holder to take the action the mining registrar considers appropriate to publicise the proposed entry, including, for example, publishing an advertisement in a newspaper or other publication.

### **Term and renewal of notice**

**212.(1)** If a mineral development licence holder gives an owner of land notice of initial entry, the notice—

- (a) permits entry for 3 months from the day stated in the notice; and
- (b) may permit entry for a longer period if the owner's written consent to the longer period of entry is lodged with the mining registrar.<sup>34</sup>

(2) The notice may be renewed.

(3) A notice of renewal must—

- (a) be given to the owner at least 7 days (or a shorter period acceptable to the owner and endorsed on the notice), but not more than 21 days, before the earlier notice expires; and
- (b) contain information of the kind mentioned in section 211(3) that is relevant to the period of renewal.

(4) The holder must give the mining registrar a copy of the notice of renewal immediately after the notice is given and before entry is made under the licence.

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<sup>34</sup> See section 211 (Notice of entry to be given).

Maximum penalty—10 penalty units.

(5) Contravention of subsection (4) does not affect the validity of the notice of renewal.

(6) If the owner of the land cannot easily be contacted, the holder may notify the occupier of the land of the intended entry.

*Examples of owner not being easily contacted—*

1. The owner does not live in Australia and there is no known current address for the owner.

2. The owner is travelling within Australia and there is no known current address for the owner.

(7) If the holder satisfies the mining registrar it is impracticable to give either the owner or occupier notice of the intended entry, the mining registrar may dispense with the need to give notice.

(8) If the mining registrar dispenses with the need to give notice, the mining registrar must make an appropriate endorsement on the licence.

(9) However, before making the endorsement, the mining registrar may require the holder to take the action the mining registrar considers appropriate to publicise the proposed entry, including, for example, publishing an advertisement in a newspaper or other publication.

### **Holder of mineral development licence to rehabilitate land**

**213.(1)** Unless the Minister otherwise approves, the holder of a mineral development licence shall to the satisfaction of the Minister progressively rehabilitate the surface of any disturbed land, as nearly as may be, to its state or condition prior to operations under the mineral development licence.

(2) Unless the Minister otherwise approves, the holder of a mineral development licence shall ensure that all excavations are filled in at the conclusion of any activity purported to be carried on under the authority of the mineral development licence on any land.

(3) Unless the Minister otherwise directs, the holder of a mineral development licence, or other person to whom a mineral development licence applies, who applies for a mining lease in respect of land included in the mineral development licence is not obliged to comply with

subsections (1) and (2) in respect of land the subject of the application unless and until the application is rejected or abandoned.

### **Rehabilitation of land covered by mineral development licence**

**214.(1)** Within 28 days after the termination of a mineral development licence, the holder must give the Minister a final rehabilitation report stating how the holder has rehabilitated land affected directly or indirectly by the holder's activities under the licence.

(2) After considering the report, the Minister may, by written notice, direct the holder to give the Minister further stated and reasonable information about the rehabilitation.

(3) If the Minister is not satisfied the holder has satisfactorily rehabilitated land, the Minister may, by written notice, give the holder reasonable directions about rehabilitating the land.

(4) The holder must comply with the directions.

Maximum penalty—500 penalty units.

(5) The holder and the holder's employees or agents may, to the extent reasonable and necessary to comply with the directions—

- (a) enter land stated in the notice; and
- (b) bring onto the land vehicles, vessels, machinery and equipment.

(6) This section does not apply if—

- (a) a final rehabilitation report is lodged with a notice of surrender of a mineral development licence; or
- (b) the termination is for granting a new mineral development licence or a mining lease for the same land.

### **Rights and obligations extended upon application for mining lease**

**215.(1)** The holder of a mineral development licence who, during the term of the licence makes application for the grant of a mining lease in respect of any land to which the licence applies, shall, during the period from the expiration of the licence until the determination of the application, for so long as the provisions of this Act and the terms and conditions that

would apply if the licence were current are complied with, have all the responsibilities, powers, authorities and duties that the holder would have had in respect of the land the subject of the application if the licence was current but during that period no rental shall be payable under this part in respect of the land the subject of the application.

(2) The entitlements of the holder of a mineral development licence are not reduced or limited by reason only of the holder's application for the grant of a mining lease in respect of any land to which a mineral development licence applies.

### **Production of mineral development licence**

**216.(1)** A person purporting to be upon land under the authority of a mineral development licence shall forthwith upon demand by the owner of that land, an agent of the owner or a person authorised in that behalf by the Minister for proof of authority for being on the land, produce or cause to be produced to the person making the demand the mineral development licence or a written authorisation in a form acceptable to the Minister from the holder of the mineral development licence authorising the person to enter or be upon that land for any purposes authorised thereunder.

(2) For so long as a person fails to comply with a demand lawfully made of the person under subsection (1) the person does not have any of the entitlements under this Act.

(3) This section does not apply to prevent a person entering land for the purpose of delivering goods or substances or providing services ancillary to the purpose for which the mineral development licence is granted to a person who is lawfully on that land under this part.

### **Mining registrar may call conference in some cases**

**217.(1)** This section applies if—

- (a) an owner of land who is concerned about any of the following gives the mining registrar written notice of the concerns—
  - (i) that someone claiming to act under a mineral development licence, or to have entered land on the licence holder's instructions, is not authorised to be on the land or is not

complying with a provision of this Act or a condition of the licence;

- (ii) activities being, or proposed to be, carried out on the land apparently under a mineral development licence (including when the activities are being, or are to be, carried out);
  - (iii) the conduct on the land of someone apparently acting under a mineral development licence; or
- (b) a mineral development licence holder who is concerned about something relevant to the licence involving the holder and the owner of land gives the mining registrar written notice of the concerns; or
- (c) for another reason, the mining registrar considers it desirable to call a conference to discuss concerns about a mineral development licence.

**(2)** If subsection (1)(a) or (b) applies, the mining registrar—

- (a) must investigate the concerns; and
- (b) may call a conference about the concerns, by written notice given to the owner of the land and the mineral development licence holder.

**(3)** If subsection (1)(c) applies, the mining registrar may call a conference about the mineral development licence, by written notice given to—

- (a) the owners of land covered by the licence who appear to the mining registrar to be affected by the concerns; and
- (b) the mineral development licence holder; and
- (c) anyone else the mining registrar considers should be given notice of the conference.

**(4)** The notice must state when and where the conference will be held and what is to be discussed at the conference.

### **Who may attend conference**

**218.(1)** Apart from the mining registrar, anyone given notice of a conference about a mineral development licence (a “**section 217**

**conference”)** may attend and take part in the conference.

(2) Also, with the mining registrar’s approval, someone else may be present to help a person attending the conference.

(3) However, a person may not be represented at the conference by a lawyer.

### **What happens if someone does not attend**

**219.** The mining registrar may hold a section 217 conference even though someone given notice of the conference does not attend the conference.

### **Mining registrar’s function at section 217 conference**

**220.** The mining registrar must endeavour to help those attending a section 217 conference to reach an early, inexpensive settlement of the things discussed.

### **Agreements and statements at section 217 conference**

**221.(1)** If parties to a section 217 conference reach agreement about something discussed at the conference, the parties must put the agreement into writing, sign it and lodge it with the mining registrar.

(2) A person attending the conference must not disclose or publish anything said at the conference other than in an agreement mentioned in subsection (1).

(3) Nothing said by a person at the conference is admissible in a proceeding without the person’s consent.

### **Wardens Court may award costs**

**222.(1)** If—

- (a) a person agrees to attend a section 217 conference but does not attend; and
- (b) someone else does attend (the **“attending party”**);

the attending party may apply to the Wardens Court for an order requiring the person who did not attend to pay the attending party's reasonable costs of attending.

(2) If the Wardens Court orders a person to pay the attending party's costs, the Wardens Court must decide the amount of the costs.

(3) However, the Wardens Court must not order a person to pay costs if the Wardens Court is satisfied the person had a reasonable excuse for not attending the conference.<sup>35</sup>

### **Mining registrar may recommend action to ease concerns**

**223.(1)** If the mining registrar considers a mineral development licence holder should take stated action to ease concerns of an owner of land or another mineral development licence holder, the mining registrar may recommend the action to the Minister.

(2) The Minister may give the mineral development licence holder the directions the Minister considers appropriate about the recommended action.

(3) A failure by the holder to comply with the Minister's directions is taken to be a breach of a condition of the mineral development licence.

(4) If the Minister gives a direction under subsection (2), the chief executive must give a copy to the owner.

(5) The mining registrar must give the owner and the other mineral development licence holder written notice of—

- (a) the substance of any recommendation made to the Minister under subsection (1) or, if the mining registrar decides not to make a recommendation, the mining registrar's decision; and
- (b) any other action the mining registrar has taken to ease the concerns of the owner or mineral development licence holder.

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<sup>35</sup> Orders of a Wardens Court may be enforced under section 377 (Enforcement of decisions etc. of Wardens Court).

**Utilisation of security deposit towards subsequent mineral development licence or mining lease**

**224.** Where the holder of a mineral development licence makes application for the grant of a subsequent mineral development licence or a mining lease, the Minister notwithstanding that the period of 6 months after the termination of that licence may not have elapsed may, instead of refunding the whole or part of the security deposited in respect of the current mineral development licence, retain that security or part thereof (together with any further security fixed by the Minister) as the security (in which case it shall be taken to be or to be part of the security) deposited by the applicant in respect of the subsequent mineral development licence or the mining lease.

**Direction to apply for mining lease**

**225.(1)** If, at any time during the currency of a mineral development licence, the Minister is of the opinion that actual mining operations should commence on any land comprised in the licence, the Minister shall give to the holder written notice directing the Minister to indicate, within the time specified in the notice, why the holder should not apply for a mining lease for that purpose.

(2) If the holder of a mineral development licence to whom a notice under subsection (1) has been given does not, within the time specified in the notice, or such longer time as the Minister in writing may approve, reply to the notice, or the Minister, on considering the holder's reply, is not satisfied that the holder should not apply for a mining lease, the Minister may give the holder a further written notice directing the holder, within the time specified in the notice or such extended time as the Minister in writing may approve, to apply for such a mining lease.

(3) If the holder to whom a notice under subsection (2) is given does not apply for a mining lease as directed within the specified time or such extended time, the Minister may in the Minister's discretion cancel the mineral development licence.

(4) Upon the cancellation of a mineral development licence pursuant to subsection (3), the land comprised in the mineral development licence does not become part of the land comprised in any current exploration permit.

(5) Any refund of moneys held in respect of a mineral development

licence that is cancelled pursuant to subsection (3) (including any security deposited) shall be at the Minister's discretion.

### **Minister may determine availability of certain land**

**226.(1)** Where in respect of any land—

- (a) an application for a mineral development licence or for renewal thereof is rejected by the Minister; or
- (b) a mineral development licence expires by effluxion of time and an application to renew the licence is not duly made; or
- (c) a mineral development licence is cancelled pursuant to section 209 or 225; or
- (d) a mineral development licence is surrendered or an application for the grant of a mineral development licence is abandoned in respect of land over which the holder of or the applicant for the grant does not hold an exploration permit that adjoins that land;

that land, shall not be available for any subsequent application for the grant of a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease unless and until approved by the Minister.

(2) An approval of the Minister under subsection (1) may limit the type of application or grant that may be made in respect of the land specified in the approval and may stipulate the conditions under which applications therefor may be made.

(3) An approval of the Minister under subsection (1) may provide that a subsequent application by an eligible person need not be by the holder of a prospecting permit, exploration permit or a mineral development licence.

(4) Notwithstanding subsection (1), where the applicant for a mineral development licence that is rejected is at the time of the rejection the holder of an exploration permit in respect of the same land, that land shall, upon the rejection, be subject to the exploration permit.

**Reduction of land under mineral development licence on grant of mining lease**

**226A.(1)** This section applies if a mining lease is granted because of an application made by—

- (a) the holder of a mineral development licence granted for the same land for the same mineral, whether or not at the Minister's direction; or
- (b) an eligible person with the holder's consent.

(2) The land to which the licence applies is to be reduced by omitting the land to which the mining lease applies.

(3) The terms of the licence may be varied as the Minister directs.

**Discovery etc. of mineral does not vest property**

**227.** A person who whilst acting under the authority of a mineral development licence discovers or takes any mineral does not thereby acquire property therein and shall not dispose of any such mineral except with the consent of the Minister whose consent may be subject to such terms and conditions as the Minister thinks fit (including conditions as to the payment of royalties).

**Effect of termination of mineral development licence**

**228.(1)** This section applies on the termination of a mineral development licence.

(2) However, this section does not apply to a mineral development licence if the termination is for granting a new mineral development licence or a mining lease over the land covered by the terminated licence to the holder of the terminated licence.

(3) On the termination of a mineral development licence, the ownership of machinery, equipment and removable improvements ("**plant**") on the land covered by the terminated licence divests from the owner and vests in the State.

(4) However, subsection (3) applies to plant only if the plant was brought onto the land under the terminated mineral development licence.

**Application may be made for approval to remove plant**

**229.(1)** This section applies to plant that vests in the State on the termination of a mineral development licence.

(2) Anyone who had an interest in the plant immediately before its ownership vested in the State may apply in writing to the Minister for permission to remove the plant from the land.

(3) The application—

- (a) must be made within 28 days after the plant vests in the State (or a longer period, of not more than 3 months, allowed by the Minister); and
- (b) may be made even though a subsequent grant of a mining claim, exploration permit, mineral development licence or mining lease has been made over the land.

(4) The Minister may approve or refuse to approve the application.

(5) However, the Minister must approve the application if the Minister is satisfied—

- (a) the person was entitled to the plant immediately before it vested in the State; and
- (b) there is enough security held for the terminated mineral development licence to meet the costs for which it was deposited.<sup>36</sup>

(6) An approval may be given on conditions stated in it.

(7) If the application is approved, the person named in the approval may enter the land and remove the plant (other than any covers, fencing, casings, linings, timbering or other things securing the safety of the land) stated in the application before the time stated in the approval ends.

(8) Anything lawfully removed under subsection (7) divests from the State and vests in the person entitled to it immediately before the termination of the mineral development licence.

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<sup>36</sup> See section 190 (Provision of security).

**Plant remaining on former mineral development licence may be sold etc.**

**230.(1)** This section applies if the chief executive has not received, or has received but not granted, an application for approval to remove plant from the site of a terminated mineral development licence within 3 months after the licence's termination.

**(2)** The Minister may direct the mining registrar to—

- (a) sell the plant by public auction or in another stated way; or
- (b) if the plant has no commercial value—dispose of or destroy it.

**(3)** Proceeds of a sale are to be applied in the following order towards—

- (a) the reasonable expenses incurred in the sale;
- (b) the cost of rectifying actual damage for which an amount of security deposited for the terminated mineral development licence could have been used but was not used, or was inadequate;
- (c) amounts owing to the State under this Act by the former holder;
- (d) amounts owing to a mortgagee under a mortgage registered under this Act over the mineral development licence.

**(4)** Any balance must be paid to the former holder.

**(5)** If the mining registrar cannot decide the identity of, or locate, a person entitled to the proceeds or part of the proceeds, the mining registrar may pay the amount to the public trustee as unclaimed moneys.

**(6)** Compensation is not payable for a sale, disposal or destruction under this section.

**Variation of access to mineral development licence land**

**231.(1)** The holder of a mineral development licence may apply to the mining registrar in the approved form for a variation of the land used or proposed to be used as access in relation to the land the subject of the mineral development licence.

**(2)** An application for a variation of the land used or to be used as access under this section shall be accompanied by—

- (a) such particulars as are, by sections 183 and 184, required to

accompany an application for the grant of a mineral development licence in so far as those particulars relate to the land used or proposed to be used as access in relation to the land the subject of the mineral development licence; and

(b) the prescribed application fee.

(3) The Minister may grant or reject an application under this section.

(4) Upon the grant of an application under this section the variation shall thereupon become effective.

(5) If an application under this section is rejected, the Minister shall cause the applicant to be advised of the reasons for the rejection.

(6) Within 21 days (or such longer period as the Minister shall in the particular case allow) of the Minister granting an application under this section, the holder of the mineral development licence shall give notice in the approved form to the owner of land directly affected by the variation.

## **PART 7—MINING LEASES**

### **Land subject to mining lease**

**232.(1)** Unless otherwise approved by the Minister pursuant to section 226(3),<sup>37</sup> a mining lease in respect of a mineral or minerals may be applied for by an eligible person in respect of contiguous land comprised in—

- (a) a prospecting permit or prospecting permits; or
- (b) an exploration permit or exploration permits; or
- (c) a mineral development licence or mineral development licences;

in respect of that mineral or those minerals of which the applicant or, where more than 1 person is the applicant, at least 1 of them is, with or without others, the holder.

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<sup>37</sup> Section 226 (Minister may determine availability of certain land)

(2) Where a mining lease may be granted to a person pursuant to subsection (1) a mining lease may also be granted to that person for any purpose for which mining leases may be granted.

### **Only eligible persons to hold mining leases**

**233.** A mining lease shall not be held by a person who is not an eligible person.

### **Governor in Council may grant mining lease**

**234.(1)** The Governor in Council may grant and cause to be issued to an eligible person or persons, a mining lease for all or any of the following purposes—

- (a) to mine the mineral or minerals specified in the lease and for all purposes necessary to effectually carry on that mining;
- (b) such purposes, other than mining, as are specified in the mining lease and that are associated with, arising from or promoting the activity of mining.

(2) However, the Governor in Council must not grant a mining lease for land in a fossicking area, or for land that includes the whole or part of a fossicking area, unless the application—

- (a) was made, but not decided, before the land became a fossicking area; or
- (b) is for land in a prospecting permit, exploration permit or mineral development licence.

### **Entitlements of holder of mining lease**

**235.(1)** During the currency of a mining lease, the holder of the mining lease and any person who acts as agent or employee of the holder (or who delivers goods or substances or provides services to the holder) for a purpose for which the mining lease is granted—

- (a) may enter and be—
  - (i) within the land comprised in the mining lease; and

- (ii) upon the surface area comprised in the mining lease;  
for any purpose for which the mining lease is granted or for any purpose permitted or required under the lease or by this Act;
- (b) may do all such things as are permitted or required under the lease or by this Act.

(2) Where any Act provides that water may be diverted or appropriated only under authority granted under that Act, the holder of a mining lease shall not divert or appropriate water unless the holder holds that authority.

### **Entitlement to use sand, gravel and rock**

**236.(1)** Subject to compliance with any conditions specified in the mining lease and payment of the prescribed royalty to the person having the property in any sand, gravel or rock the holder of the mining lease may utilise, upon the land comprised in the mining lease and for any purpose permitted under the mining lease, sand, gravel and rock occurring in or on the land comprised in the mining lease except to the extent that an authority granted under any other Act prior to the grant of the mining lease or, with the consent of the holder of the mining lease, after the grant of the mining lease for the use or disposal applies thereto.

(2) A provision in any other Act that, but for this subsection, would require a person acting pursuant to subsection (1) to obtain a licence or other authority thereunder to so act or would prohibit that person from so acting unless the person held such a licence or authority does not apply to that person.

(3) For the purposes of part 9, sand, gravel and rock utilised by the holder of a mining lease pursuant to this section shall be deemed to be mineral mined by the holder.

### **Drilling and other activities on land not included in surface area**

**237.(1)** A mining lease holder may apply in writing to the Minister for approval to conduct drilling and other activities on land not included in the surface area covered under the lease.

(2) The application—

- (a) must be lodged with the mining registrar; and

- (b) must describe—
  - (i) the activities proposed to be carried out on the land under the mining lease; and
  - (ii) the area over which the activities are to be carried out on the land; and
  - (iii) the measures the applicant plans to take to protect the environment and rehabilitate land directly or indirectly affected by the activities; and
- (c) must state how long the activities are to be carried out; and
- (d) must be accompanied by—
  - (i) the written consent of the owner of the land; and
  - (ii) if there is an agreement between the holder and the owner about the compensation payable to the owner for the activities—a copy of the agreement; and
  - (iii) the fee prescribed under a regulation.

(3) The Minister may approve or refuse to approve the application.

(4) An approval may be given on conditions stated in it, including conditions about, for example, depositing security and complying with stated codes of conduct or practice.

### **Mining lease over surface of reserve or land near a dwelling house**

**238.(1)** Unless the Governor in Council otherwise approves, a mining lease may be granted over the surface of a reserve only if—

- (a) the owner of the reserve consents in writing to granting the lease; and
- (b) the applicant lodges the consent with the mining registrar before the last objection day ends.

(2) Also, a mining lease may be granted over the surface of land that was restricted land when the application for the lease was lodged only if—

- (a) the owner of the land where the relevant permanent building, or relevant feature, is situated, consents in writing to the application; and

(b) the applicant lodges the consent with the mining registrar before the last objection day ends.

(3) A consent given for subsection (2) cannot be withdrawn.

### **Restriction on mining leases where land freed from exploration permit**

**239.(1)** Upon an area of land, for whatever reason, ceasing to be the subject of an exploration permit, then, for a period of 2 calendar months following the end of the month in which that cessation occurs—

- (a) any application for a mining lease in respect of land within that area that exceeds 50 ha shall be rejected; and
- (b) a person shall not apply for the grant of or hold or have an interest (whether direct or indirect) in mining leases over any of that land the aggregate area of which exceeds 300 ha.

(2) Subsection (1) does not apply where the land was the subject of an exploration permit in respect of coal or of a specified mineral or specified minerals pursuant to section 130(2).

### **Marking out land before application for grant of mining lease**

**240.(1)** An eligible person who wishes to apply for the grant of a mining lease shall mark out, in the prescribed manner, the boundary of the land proposed to be the subject of the application, whether or not the surface of the land is included in the application.

(2) Where an application for a mining lease is for part only of the surface of the land proposed to be the subject of the mining lease a person shall not, in complying with subsection (1), be required to peg the boundary of the surface area which is to be included in the mining lease.

### **Manner of marking out land proposed to be subject of mining lease**

**241.(1)** Before making an application for the grant of a mining lease, the intending applicant or some person authorised on the intending applicant's behalf shall mark out the land by inserting firmly in the ground at each and every corner of the land applied for a round post which shall be not less than 10 cm in diameter or a square post each side of which shall be not less

than 10 cm in width standing at least 1 m above the surface and sunk not less than 50 cm in the ground.

(2) The part of each post above the surface shall be painted white.

(3) Where posts are of timber construction they shall be barked and dried of sap before use.

(4) One of the posts shall be selected to be the datum post for the purpose of the commencement of the description and from which a surveyor shall commence any survey of the land.

(5) There shall be engraved or in some way durably marked on each post the applicant's initials and surname (or of 1 applicant should there be more than 1) and the numerals indicating the date on which the subject land was marked in accordance with this section and the engraving or marking shall be so maintained until action is taken in accordance with section 252(7)(a) and (b).<sup>38</sup>

(6) Where the applicant is a company the initials of that company (or of any 1 company should there be more than 1) shall be engraved and marked as prescribed herein on the posts.

(7) If a post cannot be inserted in the manner prescribed there shall be erected a cairn of stones at least 50 cm high in the place where the post should have been inserted.

(8) If cairns of stones are erected there shall be engraved or in some way durably marked thereon the particulars which would have been required had a post been inserted.

(9) Where it is not practicable to insert a post or erect a cairn of stones in the manner prescribed at every corner of the land applied for, there may be inserted a datum post only and compass bearings shall be taken and distances measured, as required by section 246.

(10) Where it is impossible to insert a datum post or erect a cairn of stones in the manner prescribed by subsection (1) the land shall be marked by measuring a distance on a given bearing from a reference post to a point which shall be the nominal position of the starting point and from which any survey of the land shall commence and the reference post shall in all

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<sup>38</sup> Section 252 (Certificate of application etc)

respects comply with the provisions of this Act relating to a datum post, except the provisions relating to position.

### **Consent of mining registrar required to certain marking out of land**

**242.(1)** Where the land the subject of a mining lease is marked out in accordance with section 241(9) or (10) the consent of the mining registrar is required and the mining registrar's consent may be given at any time prior to the issue of the certificate of application.

**(2)** Where consent is so given, the mining registrar shall note the register accordingly.

### **Time for application for grant of mining lease**

**243.** An eligible person who marks out the boundary of land in accordance with this part, may during the currency of the person's prospecting permit, exploration permit or mineral development licence but within 7 days of so marking out, apply in the prescribed manner for the grant of a mining lease over that land.

### **If application for mining lease not made, is rejected or abandoned, posts etc. to be removed**

**244.(1)** A person who marks out the boundary of land for the purpose of making an application for the grant of a mining lease shall remove or cause to be removed forthwith all posts, cairns and other things used by the person to mark out the boundary (not being a survey mark or other thing required by any other Act not to be removed)—

- (a) where the person has not made the application within 7 days of the marking out, upon the expiration of those 7 days; or
- (b) where the person has made the application as prescribed, upon the rejection or abandonment of the application.

**(2)** For the purpose of removing posts, cairns and other things in compliance with subsection (1), a person may enter the relevant land.

**Application for grant of mining lease**

**245.(1)** An application for the grant of a mining lease shall—

- (a) be in the approved form; and
- (b) specify the name of each applicant; and
- (c) specify the name and address for service of 1 person upon whom any notice may be served on behalf of the applicant or the applicants; and
- (d) describe all parcels of land the whole or part of which are the subject of the application and specify the current use of the land and whether it is subject to erosion control works and the names and addresses of the owner or owners of the land and of land which is to be used as access thereto; and
- (e) identify in the prescribed manner the boundaries of the land applied for; and
- (f) identify in the prescribed manner the boundaries of any surface area of land within the boundaries described pursuant to paragraph (e) to be included in the mining lease and specify the purpose for which that area is to be used; and
- (g) identify any improvements referred to in section 238(2)<sup>39</sup> on land identified in the application as required by paragraph (f); and
- (h) describe and identify in the prescribed manner any land proposed to be used as access from a point outside the boundary of the mining lease acceptable to the mining registrar to land over which the mining lease is sought; and
- (i) give reasons why the mining lease should be granted in respect of the area and shape of the land described in the application; and
- (j) be accompanied by a sketch, map or other graphic representation acceptable to the mining registrar setting out the boundaries of any land referred to in paragraphs (e), (f) and (h); and
- (k) identify the mineral or minerals or purpose in respect of which the mining lease is sought; and

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<sup>39</sup> Section 238 (Mining lease over surface of reserve or land near a dwelling house)  
Section 247 (Lodgment of application where land in more than 1 mining district)

- (l) nominate the term of the mining lease sought and give reasons therefor; and
- (m) subject to section 247, be lodged by the applicant personally at the office of the mining registrar for the mining district in which is situated the land in respect of which the mining lease is sought during the hours prescribed for the conduct of business at that office; and
- (n) subject to section 248,<sup>40</sup> be accompanied by the consent in writing of each exploration permit or mineral development licence holder for the land and mineral who is not an applicant; and
- (o) be accompanied by—
  - (i) proof, to the mining registrar's satisfaction, of the applicant's identity; and
  - (ii) the number of additional copies of the application, and other documents lodged with the application, the mining registrar requires; and
  - (iii) a statement, acceptable to the mining registrar—
    - (A) outlining the mining program proposed, outlining its method of operation, and providing an indication of when operations are expected to start or, if a mining program is not proposed, outlining the use proposed for the land and providing an indication of when the proposed use is to start; and
    - (B) of proposals for infrastructure requirements necessary to enable the mining program to proceed, or additional activities to be carried on to work out the infrastructure requirements;<sup>41</sup> and
  - (iv) a statement, acceptable to the mining registrar and separate from the statement mentioned in subparagraph (iii), detailing the applicant's financial and technical resources; and
  - (v) the application fee prescribed under a regulation; and

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<sup>40</sup> Section 248 (Consent of certain parties with registered interests to be obtained)

<sup>41</sup> Section 315 (Approval of additional activities upon mining lease application)

- (p) be accompanied by an environmental management overview strategy, acceptable to the mining registrar, stating strategies for—
  - (i) protecting the environment and managing environmental impacts on, and in the vicinity of, the land to be covered by the proposed lease; and
  - (ii) progressive and final rehabilitation of the land.

(2) The mining registrar shall not accept a mining program referred to in subsection (1)(o)(iii)(A) which is inconsistent with the provisions of this Act.

(3) For the purposes of subsection (1)(m), an application is lodged personally if it is lodged by an individual who is—

- (a) the applicant; or
- (b) a person authorised in writing in that behalf by the applicant.

(4) The mining registrar may accept an environmental management overview strategy, or a statement mentioned in subsection (1)(o)(iii) or (iv), that is not in its final form if the mining registrar is satisfied that it is sufficient for the application.

(5) In deciding whether or not to accept the environmental management overview strategy or the statement, the mining registrar must have regard to the type of mining activities to be undertaken and their possible impact on the environment.

(6) An environmental management overview strategy may relate to all mining leases in a mining project.

### **Description of mining lease**

**246.** In an application for the grant of a mining lease—

- (a) the datum post shall be accurately related by measured distances and compass bearings (or other method acceptable to the mining registrar) to a survey mark or other fixed and well defined point acceptable to the mining registrar; and
- (b) the boundaries of the mining lease shall be described by accurately measured distances and compass bearings on the ground or other method acceptable to the mining registrar; and

- (c) the boundaries of any surface areas shall be described by accurately measured distances and compass bearings on the ground or other method acceptable to the mining registrar and the description shall be related to a boundary post of the land referred to in the application by accurately measured distances and compass bearings; and
- (d) the surface access (if any) from a point acceptable to the mining registrar to a surface area of land within the boundaries of the mining lease applied for shall be described by measured distances and compass bearings along the centre line of that access together with the width of that access or by some other method acceptable to the mining registrar; and
- (e) the datum post or commencement point of the description of any land the subject of a mining claim, mineral development licence or mining lease or application for the grant of a mining claim, mineral development licence or mining lease, in any case wholly within the land sought for the mining lease shall be related by measured distances and compass bearings on the ground (or other method acceptable to the mining registrar) to the datum post of the land the subject of the application.

### **Lodgment of application where land in more than 1 mining district**

**247.(1)** Where an application for a mining lease relates to land that is situated in more than 1 mining district, the application shall be lodged personally with the mining registrar for the mining district in which the major portion of the land is situated.

**(2)** A mining registrar who accepts the lodgment of an application referred to in subsection (1), shall notify forthwith the mining registrar for each other district in which land the subject of the application is situated.

### **Consent of certain parties with registered interests to be obtained**

**248.(1)** In this section—

“**authority holder**” means the holder of an exploration permit or mineral development licence.

(2) This section applies if an applicant applies for a mining lease over land covered by an exploration permit or mineral development licence held by someone else.

(3) If the application and the authority holder's licence or permit are for the same minerals, the applicant must obtain the authority holder's written consent to the application.

(4) If the application and the authority holder's licence or permit are for different minerals, the applicant must obtain the authority holder's written views on the application.

(5) If the authority holder's consent is not lodged with the mining registrar as required by subsection (3) before the last objection day ends, the mining registrar must recommend to the Minister that the application be rejected.

(6) If the authority holder's views are not lodged with the mining registrar as required by subsection (4) before the last objection day ends, the applicant must lodge with the mining registrar before the last objection day ends a statutory declaration stating why the applicant cannot obtain the views.

### **Consent of certain parties with pending applications to be obtained**

**249.(1)** This section applies if—

- (a) a person (the “**earlier applicant**”) makes an application to the chief executive for an exploration permit or mineral development licence over land; and
- (b) someone else (the “**later applicant**”) makes a later application to the mining registrar for a mining lease over land included in the earlier application.

(2) The later applicant must obtain the earlier applicant's written consent to the later application if both applications are for the same mineral.

(3) The later applicant must obtain the earlier applicant's written views on the later application if the applications are for different minerals.

(4) The earlier applicant's consent or views—

- (a) may be lodged with the mining registrar before the earlier

application is decided; or

- (b) if the earlier application is decided by the grant of an exploration permit or mineral development licence—must be lodged with the mining registrar within 28 days after the grant of the permit or licence.

(5) The mining registrar must not deal with the later application until the earlier application is finally decided.

(6) However, the mining registrar may deal with the later application before the earlier application is finally decided if—

- (a) for applications for the same mineral—the earlier applicant's consent to the later application is lodged with the mining registrar; or
- (b) for applications for different minerals—the earlier applicant's views on the later application are lodged with the mining registrar and the earlier applicant is not opposed to the later application.

### **Rejection of application by mining registrar**

**250.(1)** A person who lodges an application for the grant of a mining lease shall provide the mining registrar with such information and particulars relating to the requirements set out in section 245(1) on behalf of the applicant as the mining registrar requires and on failure to provide that information the mining registrar may reject the application.

(2) The mining registrar may reject an application for a mining lease for all or part of land that appears, on evidence available to the mining registrar, to be covered by a mining claim, mineral development licence (other than the licence held by the applicant) or mining lease, or an application for the grant of a mining claim, mineral development licence or mining lease.

(3) For the purposes of subsection (2) where a mining claim, mineral development licence or mining lease is terminated or an application for a mining claim, mineral development licence or mining lease is abandoned or rejected, the relevant land shall be deemed to continue to be subject to the mining claim, mineral development licence or mining lease, or application until the day next following that termination, abandonment or rejection.

(4) A person whose application for the grant of a mining lease is rejected

by the mining registrar pursuant to subsection (1) or (2) may appeal against the rejection to the Wardens Court by lodging a written notice of appeal with the registrar of the Wardens Court within 28 days of the rejection.

(5) The Wardens Court shall hear and determine the appeal and its determination thereon shall be final.

(6) At a hearing pursuant to this subsection the Wardens Court shall take such evidence, shall hear such persons and inform itself in such manner as it considers appropriate in order to determine the appeal and shall not be bound by any rule or practice as to evidence.

(7) If the Wardens Court does not confirm the rejection by the mining registrar the warden shall direct the mining registrar to proceed with the application and the mining registrar shall do all things necessary to implement that decision.

### **Priority of applications for grant of mining lease**

**251.(1)** Applications for the grant of mining leases duly made in respect of or including the same land shall take priority for the purpose of consideration and determination of applications according to the order of the time on which they are lodged as prescribed.

(2) If the mining registrar is or, where applications are lodged with different mining registrars, those registrars are of the opinion that the circumstances of the lodgment of some applications for the grant of mining leases made in respect of the same land are such that the applications should be treated as having been lodged simultaneously, the mining registrar or registrars may treat the applications as having been lodged simultaneously and shall determine their respective priorities by ballot.

(3) The mining registrar shall advise all applicants when and where the ballot is to be held.

### **Certificate of application etc.**

**252.(1)** Upon being satisfied that the applicant for the grant of a mining lease is eligible to apply for the mining lease and that the applicant has complied with the requirements of this Act with respect to that application the mining registrar shall prepare a certificate of application for a mining

lease in the approved form.

(2) The mining registrar must endorse on the certificate of application—

- (a) the number of the proposed mining lease; and
- (b) the date and time the application was lodged; and
- (c) the day the mining registrar fixes, at least 28 days after the day of the certificate's issue, as the last objection day for the application.

(3) The person lodging the application must sign the certificate.

(4) Upon the signing of a certificate of application for a mining lease as prescribed in subsection (2), the particulars set forth in the certificate, to the extent of any conflict with particulars set forth in the application for the grant of the mining lease, shall be deemed to be the particulars set forth in the application in place of the conflicting provisions in the application.

(5) The mining registrar shall forthwith post at the mining registrar's office and shall therein keep posted until the last date fixed for the receipt of objections a copy of the certificate of application duly endorsed pursuant to subsection (2).

(6) The mining registrar shall forward a copy of each application for the grant of a mining lease lodged with the mining registrar together with a copy of the certificate of application (if any) issued by the mining registrar to the chief executive.

(7) Within 7 days after the endorsement of the certificate of application pursuant to subsection (2) (or such longer period as the mining registrar in the particular case at any time determines) the applicant shall—

- (a) cause a true copy of the endorsed certificate of application to be posted on the datum post of the land the subject of the application and shall keep a copy thereon posted until the last date fixed for the receipt of objections pursuant to subsection (2) in respect of the application; and
- (b) engrave or in some way durably mark on the datum post of the land the subject of the application the number of the proposed mining lease; and
- (c) give a true copy of the application (but not the statement detailing the applicant's financial and technical resources) and the endorsed certificate of application to—

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- (i) each owner of land, including access land, to which the proposed mining lease relates; and
  - (ii) each holder of, or applicant for, an exploration permit over the land for a mineral other than the mineral to which the proposed mining lease relates; and
  - (iii) each holder of, or applicant for, a mineral development licence over the land for a mineral other than the mineral to which the proposed mining lease relates; and
  - (iv) the relevant local government; and
- (d) cause a true copy of the endorsed certificate of application or a notice of the application in the approved form to be advertised in the prescribed manner in a newspaper approved by the mining registrar and circulating in the relevant mining district at least 14 days prior to the last date for the receipt of objections pursuant to subsection (2).

**(8)** An advertisement published pursuant to subsection (7)(d) need not include a copy of a map or plan set forth in the certificate of application for the mining lease, but the mining registrar may direct the applicant to include in the advertisement a sketch plan, approved by the mining registrar, that indicates with reasonable certainty the location of the land to which the application relates.

**(9)** An applicant for a mining lease shall, within 7 days or such longer period as the mining registrar in the particular case, at any time, allows after the date fixed pursuant to subsection (2) as the last date for the receipt of objections to the application, lodge with the mining registrar a declaration made under the provisions of the *Oaths Act 1867* as to the applicant's compliance with subsection (7).

**(10)** Until the applicant for the grant of a mining lease lodges the declaration prescribed by subsection (9) with the mining registrar, the warden—

- (a) shall not make any final recommendation (other than a recommendation to reject the application) to the Minister in respect of that application;
- (b) may at any time refuse to hear further any matter in respect of the application.

**(11)** If an applicant for a mining lease gives the mining registrar additional information about the application, the applicant must also give a copy of the information to each person given a copy of the application under subsection (7)(c).

### **Reissue of certificate of application**

**253.(1)** The mining registrar may reissue a certificate of application if the mining registrar is satisfied it should be reissued—

- (a) because of an error in its preparation; or
- (b) because compliance with the certificate is impracticable.

**(2)** If the mining registrar reissues a certificate of application, the mining registrar may extend the last date for objections to take account of the time between the issue of the original certificate and its reissue.

### **Mining registrar may call conference in some cases**

**254.(1)** This section applies if—

- (a) within 7 days after receiving a signed certificate of application for a mining lease (or a longer period allowed by the mining registrar), an owner of land affected by the application gives the mining registrar a written request for a conference, stating the things the owner wants to discuss about the application; or
- (b) for another reason, the mining registrar considers it desirable to hold a conference about a mining lease or an application for a mining lease.

**(2)** If subsection (1)(a) applies, the mining registrar must call a conference about the application, by written notice given to the owner and the applicant.

**(3)** If subsection (1)(b) applies, the mining registrar may call a conference about the mining lease or application, by written notice given to—

- (a) the owners of land who appear to the mining registrar to be affected by the lease or application; and
- (b) the lease holder or applicant; and

(c) anyone else the mining registrar considers should be given notice of the conference.

(4) The notice must state when and where the conference will be held and what is to be discussed at the conference.

(5) If the conference is about an application, the conference must be held before the last objection day ends.

(6) However, if the conference is about an application and an objection is lodged, the conference between the applicant and the objector must be held before the date fixed for the hearing of the application for the grant of the mining lease.

### **Who may attend conference**

**255.(1)** Apart from the mining registrar, anyone given notice of a conference about a mining lease or an application for a mining lease (a “**section 254 conference**”), may attend and take part in the conference.

(2) Also, with the mining registrar’s approval, someone else may be present to help a person attending the conference.

(3) However, the person may not be represented at the conference by a lawyer.

### **What happens if someone does not attend**

**256.** The mining registrar may hold a section 254 conference even though someone given notice of the conference does not attend the conference.

### **Mining registrar’s function at section 254 conference**

**257.** The mining registrar must endeavour to help those attending a section 254 conference to reach an early, inexpensive settlement of the things discussed.

### **Agreements and statements at section 254 conference**

**258.(1)** If parties to a section 254 conference reach agreement about

something discussed at the conference, the parties must—

- (a) put the agreement into writing; and
- (b) sign the agreement; and
- (c) if the agreement is about an application for a mining lease—lodge it with the mining registrar before the last objection day ends.

(2) A person attending the conference must not disclose or publish anything said in an oral or written statement made or given at the conference other than in an agreement mentioned in subsection (1).

(3) Nothing said by a person at the conference is admissible in a proceeding without the person's consent.

### **Wardens Court may award costs**

**259.(1)** If—

- (a) a person agrees to attend a section 254 conference but does not attend; and
- (b) someone else does attend (the “**attending party**”);

the attending party may apply to the Wardens Court for an order requiring the person who did not attend to pay the attending party's reasonable costs of attending.

(2) If the Wardens Court orders a person to pay the attending party's costs, the Wardens Court must decide the amount of the costs.<sup>42</sup>

(3) However, the Wardens Court must not order a person to pay costs if the court is satisfied the person had a reasonable excuse for not attending the conference.

### **Objection to application for grant of mining lease**

**260.(1)** An entity may on or before—

- (a) the last date fixed for the receipt of objections pursuant to section 252; or

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<sup>42</sup> Orders of a Wardens Court may be enforced under section 377 (Enforcement of decisions etc. of Wardens Court).

- (b) if the Minister, pursuant to section 261, directs a study to be undertaken, the last date fixed for the receipt of objections pursuant to that section;

whichever is the later, lodge with the mining registrar an objection in writing in the approved form.

(2) An owner of land who attends a conference with the applicant for the grant of a mining lease may lodge an objection on or before the expiration of 7 days after the conclusion of that conference or if the applicant for the grant of the mining lease fails to attend the conference after the day upon which the conference was convened, notwithstanding that the period for objection prescribed by subsection (1) has expired.

(3) An objection referred to in subsection (1) or (2) shall state the grounds of objection and the facts and circumstances relied on by the objector in support of those grounds.

(4) Each objector to an application for the grant of a mining lease shall serve upon the applicant on or before the last date that the objector may lodge an objection to that application a copy of the objection lodged by the objector.

### **Minister may require environmental impact statement in some cases**

**261.(1)** Before the last objection day for a mining lease ends, the Minister may require the applicant for the lease to—

- (a) carry out a study of the proposed mining project's environmental impact; and
- (b) prepare an environmental impact statement in accordance with guidelines issued by the Minister.

(2) The Minister must notify the mining registrar and the applicant of the decision to require the applicant to prepare an environmental impact statement.

(3) The mining registrar must—

- (a) immediately display notice of the Minister's decision at the mining registrar's office; and
- (b) give a copy of the notice to—

- (i) the applicant; and
- (ii) each owner of land covered by the proposed mining lease; and
- (iii) the relevant local government; and
- (iv) anyone who has already lodged an objection to the application.

(4) The notice must state that the time for objecting to the application is extended until a time to be fixed by the mining registrar after the applicant completes the environmental impact statement.

(5) Within 7 days after receiving the notice (or a longer period allowed by the mining registrar), the applicant must—

- (a) publish a copy of the notice in a newspaper approved by the mining registrar that circulates in the relevant mining district; and
- (b) give the mining registrar a statutory declaration stating that the applicant has published the notice.

(6) This section applies to a proposed mining project for land covered by an exploration permit or mineral development licence for which an environmental impact statement has been prepared only if the Minister considers that the way the project impacts on the environment is substantially different from the impact indicated in the statement.

### **Draft guidelines for environmental impact statements**

**262.(1)** The Minister must issue draft guidelines for the preparation of an environmental impact statement within 28 days after giving notice to an applicant for a mining lease of any decision to require the applicant to prepare the statement.

(2) The draft guidelines—

- (a) must state the things the environmental impact statement must address; and
- (b) may state the way the things may or must be addressed.

(3) The Minister must give a copy of the draft guidelines to the applicant and the mining registrar.

(4) The mining registrar must—

- (a) immediately display a notice at the mining registrar's office stating that the draft guidelines are available for comment until a day stated in the notice, at least 28 days after the notice is displayed; and
- (b) give a copy of the notice to anyone required to be given notice of the decision to require the preparation of the environmental impact statement.<sup>43</sup>

(5) Anyone may lodge written comments about the draft guidelines at the mining registrar's office on or before the stated day.

### **Guidelines for environmental impact statements**

**263.(1)** After considering any written comments lodged at the mining registrar's office on or before the day for making written comments about the draft guidelines, the Minister must issue guidelines for the preparation of the environmental impact statement.

(2) The Minister must give a copy of the guidelines to—

- (a) the applicant; and
- (b) each owner of land covered by the proposed mining lease; and
- (c) the relevant local government; and
- (d) anyone who has already lodged an objection to the application.

(3) The Minister must give the copy within 28 days after the day for making written comments about the draft guidelines ends.

### **What happens after environmental impact statement is prepared?**

**264.(1)** After completing the environmental impact statement, the applicant must give the chief executive as many copies of the statement as the chief executive requires.

(2) The chief executive must immediately give the mining registrar a copy of the environmental impact statement.

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<sup>43</sup> See section 261(3)(b).

(3) The mining registrar must immediately display a notice at the mining registrar's office, stating the following—

- (a) the environmental impact statement is available for inspection at the mining registrar's office;
- (b) a copy may be obtained from the mining registrar at a stated cost;
- (c) the day, 2 months after the day the notice is displayed, that is the last day anyone wanting to object to the application may make written objection to the mining registrar.

(4) The cost of the copy must be as close as possible to the actual cost of providing the copy.

(5) The mining registrar must give a copy of the notice to each person given notice of the decision to require the preparation of the environmental impact statement.

(6) Within 7 days after receiving the notice (or a longer period allowed by the mining registrar), the applicant must—

- (a) publish a copy of the notice in a newspaper approved by the mining registrar that circulates in the relevant mining district; and
- (b) give the mining registrar a statutory declaration stating that the applicant has published the notice.

(7) The Wardens Court must not hear or continue to hear, and the warden must not make a recommendation about, the application until after the time for making written objections to the application ends.

### **Mining registrar to fix hearing date**

**265.(1)** The mining registrar shall immediately after the last date that objections to an application for the grant of a mining lease may pursuant to section 260(1) be lodged, fix a date, being not sooner than 7 days after—

- (a) the last date for the receipt of objections; or
- (b) the conclusion of any conference convened pursuant to section 254;

whichever is the later, for the hearing by the Wardens Court of the application and any objections to that application duly lodged.

(2) The mining registrar shall notify the applicant and all objectors accordingly.

### **Mining registrar may recommend rejection of application for noncompliance**

**266.** At any time after the issue of a certificate of application, a mining registrar, who is of the opinion that an applicant for the grant of a mining lease has not complied with any requirement placed upon the applicant by or under this Act in respect of the application, may recommend to the Minister that the application be rejected.

### **Minister may reject application at any time**

**267.** The Minister, whether or not the mining registrar has so recommended, may at any time reject an application for the grant of a mining lease notwithstanding that the application has not been the subject of a hearing by the Wardens Court if—

- (a) the Minister is satisfied that the applicant has not complied with any requirement placed upon the applicant by or under this Act in respect of the application; or
- (b) the Minister considers that it is not in the public interest for the mining lease to be granted.

### **Hearing of application for grant of mining lease**

**268.(1)** On the date fixed for the hearing of the application for the grant of the mining lease and objections thereto, the Wardens Court shall hear the application and any objections thereto and all other matters that pursuant to this part are to be heard, considered or determined by the Wardens Court in respect of that application at the one hearing of the Wardens Court.

(2) The hearing shall be open to the public.

(3) At a hearing pursuant to subsection (1) the Wardens Court shall take such evidence, shall hear such persons and inform itself in such manner as it considers appropriate in order to determine the relative merits of the application, objections (if any) and other matters and shall not be bound by any rule or practice as to evidence.

(4) The Wardens Court shall not entertain an objection to an application or any ground thereof or any evidence in relation to any ground if the objection or ground is not contained in an objection that has been duly lodged in respect of the application.

(5) The Wardens Court may direct an inspection or view of the land the subject of the application.

(6) Nothing in subsection (1) shall prevent the adjournment from time to time of a hearing.

(7) Nothing in subsection (1) shall prevent the question of compensation being determined by the Wardens Court pursuant to section 279.

(8) The Minister may require at any time the warden to advise the reasons why a hearing under this section has not been finalised.

(9) The Wardens Court shall not take evidence in a hearing of an application for the grant of a mining lease until the results of any study into the environmental impact of such a grant requested by the Minister are available to the court.

(10) A Wardens Court on the application of an objector or owner may award costs against an applicant for a mining lease who abandons the application or does not pursue the application at a hearing.

(11) A Wardens Court on the application of an applicant for a mining lease may award costs against an objector who withdraws the objection or does not pursue the objection at a hearing.

### **Warden's recommendation on hearing**

**269.(1)** Upon the hearing by the Wardens Court under this part of all matters in respect of an application for the grant of a mining lease, the warden shall forward to the Minister—

- (a) any objections lodged in relation thereto; and
- (b) the evidence adduced at the hearing; and
- (c) any exhibits; and
- (d) the warden's recommendation.

(2) The recommendation of the warden upon an application for the grant of a mining lease shall consist of—

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- (a) a recommendation to the Minister that the application should be granted or rejected in whole or in part; and
- (b) in the case of an application that relates to land that is the surface of a reserve and the owner of that reserve does not consent to the grant of a mining lease over that surface area, a recommendation to the Minister as to whether the Governor in Council should consent to the grant of the mining lease over that surface area and, if so, recommend the conditions (if any) to which the mining lease should be subject.

(3) A recommendation may include a recommendation that the mining lease be granted subject to such conditions as the warden considers appropriate, including a condition that mining shall not be carried on above a specified depth below specified surface area of the land.

(4) The warden, when making a recommendation to the Minister that an application for a mining lease be granted in whole or in part, shall take into account and consider whether—

- (a) the provisions of this Act have been complied with; and
- (b) the area of land applied for is mineralised or the other purposes for which the lease is sought are appropriate; and
- (c) if the land applied for is mineralised there will be an acceptable level of development and utilisation of the mineral resources within the area applied for; and
- (d) the land and the surface area of the land in respect of which the mining lease is sought is of an appropriate size and shape; and
- (e) the term sought is appropriate; and
- (f) the applicant has the necessary financial and technical capabilities to carry on mining operations under the proposed mining lease; and
- (g) the past performance of the applicant has been satisfactory; and
- (h) any disadvantage may result to the rights of—
  - (i) holders of existing exploration permits or mineral development licences; or
  - (ii) existing applicants for exploration permits or mineral

development licences; and

- (i) the operations to be carried on under the authority of the proposed mining lease will conform with sound land use management; and
- (j) there will be any adverse environmental impact caused by those operations and, if so, the extent thereof; and
- (k) the public right and interest will be prejudiced; and
- (l) any good reason has been shown for a refusal to grant the mining lease; and
- (m) taking into consideration the current and prospective uses of that land, the proposed mining operation is an appropriate land use.

(5) Where the warden recommends to the Minister that an application for the grant of a mining lease be rejected in whole or in part the warden shall furnish the Minister with the warden's reasons for that recommendation.

### **Procedure where no objections lodged**

**270.(1)** The warden may, in the warden's discretion, dispense with a hearing of an application for the grant of a mining lease if the warden is satisfied that—

- (a) the provisions of this part (other than the provisions requiring the hearing) have been complied with in respect of the application; and
- (b) no objection to the grant of the mining lease has been duly lodged; and
- (c) where the application relates to land that is the surface of a reserve, the owner thereof consents to the grant of the mining lease; and
- (d) where the application is in respect of land over which, pursuant to section 238(2), a mining lease shall not be granted without the consent of another person or other persons, that person or those persons consent to the grant.

(2) The warden shall indicate in any recommendation for the grant of a mining lease where the hearing of the application therefor has been

dispensed with, that the warden has taken into account and considered all matters in respect thereof set out in section 269(4).

### **Minister to approve environmental management overview strategy**

**270A.(1)** The Minister must approve the final form of the environmental management overview strategy before the Minister recommends to the Governor in Council under section 271 that a mining lease be granted.

**(2)** Subsection (1) applies whether or not an objection to the grant of a mining lease has been lodged.

### **Minister to consider recommendation made in respect of application for grant of mining lease**

**271.(1)** Every recommendation made by a warden in respect of an application for the grant of a mining lease shall be considered by the Minister who after taking into account the matters specified in section 269(4) may—

- (a) recommend to the Governor in Council that a mining lease be granted and an instrument of lease be issued to the applicant with respect to the whole or part of the land the subject of the application and, if necessary, where any surface of the land is reserve, that consent to the grant be given; or
- (b) reject the application; or
- (c) direct the Wardens Court to hold a hearing or further hearing into the application generally or limited to such matter as the Minister specifies.

**(2)** A recommendation by the Minister pursuant to subsection (1)(a) that a mining lease be granted in respect of part only of the land the subject of an application for the grant is a rejection by the Minister pursuant to subsection (1)(b) of the application with respect to that part of the land included in the application that is not included in the recommendation for the grant.

**(3)** Where the Minister rejects an application pursuant to subsection (1)(b) or (2), the Minister shall inform the applicant of the Minister's reason for the rejection.

**Minister may remit to Wardens Court for additional evidence**

**272.(1)** Where, pursuant to section 271(1)(c), the Minister directs that a hearing or further hearing of an application for the grant of a mining lease be held, the mining registrar shall fix a time and date therefor and shall notify at least 7 days before that hearing the applicant and in the case of a further hearing all other persons who appeared or were represented at the original hearing of that application and any other party required to attend.

**(2)** At the conclusion of the hearing under this section the warden shall forward that evidence and any exhibits to the Minister and any recommendation the warden may make in relation to that additional evidence.

**Restriction on grant of mining lease that does not include surface of land**

**273.** A mining lease over land shall not be granted unless—

- (a) it includes such an area of the surface of that land; or
- (b) where it does not include an area of the surface of that land, the applicant is the holder of such an adjoining mining lease;

as will enable the holder to carry out the purposes for which the firstmentioned mining lease is granted.

**Holder of a mining lease to mark boundary posts**

**274.** Unless the land the subject of a mining lease has been surveyed, the holder of the mining lease shall, within 7 days of the date of grant of the mining lease, engrave or in some way durably mark on every boundary post of the land the subject of the mining lease or cairn erected as prescribed in lieu thereof the number of that mining lease and shall maintain those posts or cairns duly engraved or marked while the mining lease subsists and the land is not surveyed.

**Application for inclusion of surface of land in mining lease**

**275.(1)** Notwithstanding section 232, the holder of a mining lease that does not include any portion of the surface of the land to which that mining

lease relates or that includes a portion only of the surface of the land to which that mining lease relates may at any time apply for an additional area of surface of that land to be included in the mining lease.

(2) An application made under this section shall be made and dealt with in the same manner as if it were an application for a mining lease made under this part, and for that purpose—

- (a) the posting of any notice on a conspicuous part of the area applied for shall be sufficient compliance with the provisions of this Act relating to the posting of that notice on the land; and
- (b) the mining registrar shall endorse upon the certificate of application pursuant to section 252(2) as the number of the proposed mining lease the number of the existing lease together with the words ‘addition of surface area’.

### **Conditions of mining lease**

**276.(1)** Each mining lease shall be subject to—

- (a) a condition that the holder shall use the land comprised in the mining lease bona fide for the purpose for which the mining lease was granted and in accordance with this Act and the conditions of the mining lease and for no other purpose; and
- (b) a condition that the holder submit a plan of operations that is consistent with the accepted environmental management overview strategy; and
- (c) a condition that the holder conduct mining activities under the mining lease in accordance with the accepted environmental management overview strategy and current plan of operations; and
- (d) a condition that the holder—
  - (i) conduct an environmental audit for any proposed plan of operations or amendment of a plan of operations; and
  - (ii) submit an environmental audit report with the plan or amendment; and
- (e) a condition that the holder, prior to the termination of the mining

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lease for whatever cause, shall remove any building or structure purported to be erected under the authority of the mining lease and all mining equipment and plant, on or in the land comprised in the mining lease unless otherwise approved by the Minister; and

- (f) a condition that without the prior approval of the Minister the holder shall not obstruct or interfere with any right of access had by any person in respect of land the subject of the mining lease; and
- (g) a condition that the holder shall not assign, sublease, or mortgage the mining lease or any part thereof without the consent in writing of the Minister; and
- (h) a condition that the holder shall furnish as prescribed all prescribed reports, returns, documents and statements whatever; and
- (i) a condition that the holder give materials obtained under the holder's mining operations to the Minister at the times, in the way and in quantities the Minister reasonably requires by written notice to the holder; and
- (j) where the mining lease is in respect of land that is a reserve, a condition that the holder shall comply with the terms and conditions upon which the consent of the owner or the Governor in Council to the grant of the mining lease was given; and
- (k) a condition that the holder shall maintain during the term of the lease the marking out of the land the subject of the mining lease including any survey pegs but that boundary posts or cairns need not be maintained after the land has been surveyed; and
- (l) a condition that the holder shall make all payments of compensation and comply with all terms of any agreement or determination relating to compensation at the time or times as agreed or determined pursuant to section 279, 280, 281 or 282; and
- (m) a condition that the holder—
  - (i) shall pay the rental as prescribed; and
  - (ii) shall pay the royalty as prescribed; and

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- (iii) shall pay all local government rates and charges lawfully chargeable against the holder in respect of the land comprised in the mining lease; and
- (iv) shall deposit as required by the Minister any security from time to time under this Act; and
- (n) a condition that the holder shall comply with the provisions of this Act; and
- (o) such other conditions as are prescribed; and
- (p) such other conditions as the Governor in Council determines.

(2) The Governor in Council may, on the recommendation of the Minister, grant a mining lease without the imposition of the conditions specified in subsection (1)(d), (e) and (k).

(3) A mining lease may be subject to a condition that mining operations under the mining lease shall commence within a specified period after its grant or as otherwise approved in writing by the Minister.

(4) Conditions may be imposed in respect of a mining lease that require compliance with specified codes of conduct or practice or industry agreements.

(5) A mining lease granted after the commencement of the *Mineral Resources Amendment Act 1998* is subject to a condition that the holder comply with the At Risk agreement.

**Provision of security**

**277.(1)** The holder of a mining lease must deposit security for the lease to ensure the holder—

- (a) complies with the conditions of the lease; and
- (b) complies with this Act; and
- (c) rectifies actual damage that may be caused by activities under the lease to land or improvements situated on or off the land covered by the lease; and
- (d) pays amounts (other than penalties) payable under this Act to the State.

(2) The Minister must fix the amount of security to be deposited under subsection (1).

(3) Despite subsection (2), the Minister may, at any time and in the Minister's absolute discretion, decide that the holder must deposit extra security.

(4) If the security is for a mining project, a single amount of security may be deposited for all mining leases in the mining project.

(5) Before the holder of a mining lease starts operations under the lease, the holder must deposit the amount fixed under subsection (2) or, with the Minister's approval, security of a kind mentioned in subsection (10) for the amount.

(6) The Minister, if satisfied that any condition of the mining lease or any provision of this Act has not been complied with or that damage referred to in subsection (1)(c) has been caused by any person purporting to act under the authority of the mining lease or who enters land upon the instruction of the holder, the Minister may require that person to take all action necessary to rectify that noncompliance or damage and, save where the person was not the holder and was not upon the land with the holder's approval at the time the damage was caused, may utilise for that purpose the whole or part of the amount of the security deposited in respect of that mining lease.

(7) If the amount of the security deposited by the holder of a mining lease is not earlier reviewed pursuant to subsection (8), the Minister shall review that amount at the expiration of 5 years from the grant of the mining lease or from the previous review.

(8) Upon the lodgment of each plan of operations in respect of a mining lease and also upon the utilisation pursuant to this section of any part of the security deposited in respect of a mining lease, the Minister may review the amount of the security deposited by the holder in respect of that mining lease.

(9) If, upon that review, the Minister considers that a further amount of security should be deposited in respect of that mining lease, the Minister shall require the holder of the mining lease, within the time specified by the Minister to deposit a further specified security.

(10) The Minister may accept a bond or a guarantee or indemnity by, or other financial arrangement with, a financial institution, insurance company

or another credit provider approved by the Minister or other form of security acceptable to the Minister as the whole or part of the security to be deposited under this section.

(11) It shall be a condition of a mining lease that the holder shall deposit security or further security from time to time in accordance with a requirement made as provided by this section.

(12) Where a mining lease has expired or been terminated, the Minister shall, subject to subsection (14), refund to the holder of the mining lease (or as the holder in writing directs) any security deposited and not utilised as provided by subsection (6) less any amounts determined by the Minister to be retained towards—

- (a) rectification of any matters caused by the noncompliance with any of the conditions of the mining lease or with any order or direction made or given by the Minister under this Act and directed to the holder; and
- (b) amounts (other than penalties) the holder owes to the State under this Act (whether before or after the termination); and
- (c) rates and charges (including interest on unpaid rates and charges) owing to a local government by the former holder for the mining lease.

(13) For matters mentioned in subsection (12), security must be applied to each of the matters in turn.

(14) If the Minister accepts a bond, guarantee or indemnity by, or another financial arrangement with, a financial institution, insurance company or other credit provider as security under this section, any amount payable to the holder under subsection (12) must be refunded to the financial institution, insurance company or credit provider and not to the holder of the mining lease to which the security relates.

### **Utilisation of security deposit towards subsequent mining lease**

**278.** If the holder of a mining lease or an expired mining lease makes application for a further mining lease, the Minister may, instead of refunding the whole or part of the security deposited in respect of the existing or expired mining lease, retain that security or part thereof (together with any further security fixed by the Minister) as the security (in which

case it shall be taken to be or to be part of the security) deposited by the applicant in respect of the further mining lease.

### **Land Court's jurisdiction for At Risk agreement**

**278A.(1)** The Land Court has jurisdiction to hear and decide a proceeding about the following matters under a condition of a mining lease requiring compliance with the At Risk agreement—

- (a) whether hardship, as defined under the agreement, exists;
- (b) the fair market value of a property for the purposes of the agreement.

**(2)** In a proceeding under subsection (1)(a), the Land Court must consider—

- (a) all relevant matters put before the committee in any mediation under the agreement; and
- (b) the final recommendation made by the committee in the mediation.

**(3)** In a proceeding, a copy of the agreement as at a particular date, certified as a true copy by the chief executive, is admissible as evidence of the agreement at that date until the contrary is proved.

**(4)** Despite the *Limitations of Actions Act 1974*, a proceeding must start—

- (a) for a matter that arose before the commencement of this section—within 1 year after the commencement; or
- (b) for a matter that arose after the commencement of this section—within 1 year after the committee gives notice of its final recommendation about whether hardship, as defined under the agreement, exists.

**(5)** In this section—

“**committee**” means the committee mentioned in the At Risk agreement.

### **Compensation to be settled before grant of mining lease**

**279.(1)** A mining lease shall not be granted or renewed unless—

- (a) compensation has been determined (whether by agreement or by determination of the Wardens Court) between the applicant and each person who is the owner of land the surface of which is the subject of the application and of any surface access to the mining lease land; or
- (b) there is no person (other than the applicant) who is the owner of any of the land referred to in paragraph (a);

and the conditions of the agreement or determination have been or are being complied with by the applicant.

**(2)** For the purposes of subsection (1)(a) where the Wardens Court makes a determination of an amount of compensation, that compensation is not determined until—

- (a) where no appeal against that determination is lodged within the period prescribed therefor—upon the expiration of that period; or
- (b) where an appeal is duly lodged against that determination—upon the determination of the appeal.

**(3)** An agreement made pursuant to subsection (1)(a) shall not be effective unless and until—

- (a) it is in writing signed by or on behalf of the parties; and
- (b) it is filed in the office of the mining registrar.

**(4)** If an agreement referred to in subsection (3) is required by any law of Queensland to be stamped, it shall not be filed until it is stamped according to law.

**(5)** If compensation has not been agreed upon or the question of the amount of compensation has not been referred to the Wardens Court for determination pursuant to the proceeding under section 281 in respect of an application for the grant of a mining lease upon the expiration of 3 months from—

- (a) in the case where the land or a part of land the subject of the application is a reserve and the Governor in Council consents to the grant in respect of that land—the date of the consent; or
- (b) in any other case—the date the warden or, as the case may be, the Wardens Court recommends the grant of the mining lease;

whichever is the later, the mining registrar shall refer the question of the amount of compensation payable to the Wardens Court which shall make a determination in accordance with section 281.

### **Compensation for owner of land where surface area not included**

**280.(1)** An owner of land the subject of a mining lease where no part of the surface area of that land is included in the lease may agree with the holder of the mining lease as to compensation for any damage caused to the surface of the land.

**(2)** An agreement made pursuant to subsection (1) shall not be effective unless and until—

- (a) it is in writing signed by or on behalf of the parties; and
- (b) it is filed in the office of the mining registrar.

**(3)** If an agreement referred to in subsection (2) is required by any law of Queensland to be stamped, it shall not be filed until it is stamped according to law.

### **Determination of compensation by Wardens Court**

**281.(1)** At any time before an agreement is made pursuant to section 279 or 280, a person who could be a party to such agreement may apply in writing to the mining registrar to have the Wardens Court determine the amount of compensation and the terms, conditions and times of payment thereof.

**(2)** The Wardens Court is hereby authorised to hear and determine matters referred to in subsection (1).

**(3)** Upon an application made under subsection (1), a Wardens Court shall settle the amount of compensation an owner of land is entitled to as compensation for—

- (a) in the case of compensation referred to in section 279—
  - (i) deprivation of possession of the surface of land of the owner;
  - (ii) diminution of the value of the land of the owner or any improvements thereon;

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- (iii) diminution of the use made or which may be made of the land of the owner or any improvements thereon;
  - (iv) severance of any part of the land from other parts thereof or from other land of the owner;
  - (v) any surface rights of access;
  - (vi) all loss or expense that arises;
- as a consequence of the grant or renewal of the mining lease; and
- (b) in the case of compensation referred to in section 280—
    - (i) diminution of the value of the land of the owner or any improvements thereon;
    - (ii) diminution of the use made or which may be made of the land of the owner or any improvements thereon;
    - (iii) all loss or expense that arises;
- as a consequence of the grant or renewal of the mining lease.
- (4)** In assessing the amount of compensation payable under subsection (3)—
- (a) where it is necessary for the owner of land to obtain replacement land of a similar productivity, nature and area or resettle himself or herself or relocate his or her livestock and other chattels on other parts of his or her land or on the replacement land, all reasonable costs incurred or likely to be incurred by the owner in obtaining replacement land, the owner's resettlement and the relocation of the owner's livestock or other chattels as at the date of the assessment shall be considered;
  - (b) no allowance shall be made for any minerals that are or may be on or under the surface of the land concerned;
  - (c) if the owner of land proves that the status and use currently being made (prior to the application for the grant of the mining lease) of certain land is such that a premium should be applied—an appropriate amount of compensation may be determined;
  - (d) loss that arises may include loss of profits to the owner calculated by comparison of the usage being made of land prior to the lodgment of the relevant application for the grant of a mining

lease and the usage that could be made of that land after the grant;

- (e) an additional amount shall be determined to reflect the compulsory nature of action taken under this part which amount, together with any amount determined pursuant to paragraph (c), shall be not less than 10% of the aggregate amount determined under subsection (3).

(5) In any case the Wardens Court may determine the amounts and the terms, conditions and times when payments aggregating the total compensation payable shall be payable.

(6) An amount of compensation decided by agreement between the parties, or by the Wardens Court or the Land Court on appeal, is binding on the parties and the parties' personal representatives, successors and assigns.

(7) The Wardens Court shall give written notice of its determination to all parties and may make such order as to costs between the parties to the determination as it thinks fit.

### **Appeal against Wardens Court's determination upon compensation**

**282.(1)** A party aggrieved by a determination of a Wardens Court made under section 281 may, within 28 days of the date of that determination or within such further period as the Land Court, on the application of that party in that behalf prior to the lodgment of the appeal, considers appropriate in any particular circumstances, appeal against the determination to the Land Court.

(2) The appeal shall be instituted by, within the time and in the manner prescribed—

- (a) lodging in the Land Court registry, written notice of appeal which shall include the grounds of appeal; and
- (b) serving copies of the notice of appeal on the mining registrar and each other party; and
- (c) giving security (approved by the registrar of that court) for the costs of the appeal.

(3) As soon as practicable after being served with a notice of appeal the mining registrar shall transmit to the registrar of the Land Court the evidence, notes, reasons and proceedings taken in the Wardens Court.

(4) The Land Court shall have jurisdiction to hear and determine an appeal under this section.

(5) In deciding an appeal, the Land Court must consider the things relevant to the appeal that the Wardens Court was required to consider when making the decision appealed against.

(6) Upon hearing an appeal under subsection (1) the Land Court may—

- (a) vary the determination of the Wardens Court in such way as it thinks just; or
- (b) disallow the appeal and confirm the determination of the Wardens Court;

and may make such order as to costs of the appeal as it thinks fit.

(7) A Land Court shall not admit further evidence upon an appeal from a determination of a Wardens Court under subsection (1) unless—

- (a) it is satisfied that admission of the evidence is necessary to avoid grave injustice and there is sufficient reason that the evidence was not previously adduced; or
- (b) the appellant and respondent agree to its admission.

(8) The determination of the Land Court on appeal shall be final and conclusive.

### **Public Trustee may act in certain circumstances**

**283.(1)** If there is doubt as to the identity of the owner of land or the owner of land cannot be found, the Wardens Court may determine that the public trustee shall represent the owner for the purpose of any negotiation or proceeding under section 279, 280, 281 or 282.

(2) Any action taken or thing done or omitted to be done by the public trustee as representative of the owner of land pursuant to subsection (1) shall be taken for all purposes to be taken, done or omitted by that owner.

(3) Where, pursuant to subsection (1) the public trustee represents an owner of land, for the purposes of this part any moneys paid to the public trustee under any agreement or determination made under section 279, 280, 281 or 282 shall be deemed to have been paid to the owner.

**Initial term of mining lease**

**284.(1)** The initial term of a mining lease shall, unless the mining lease is sooner terminated, be for a period approved by the Governor in Council on the recommendation of the Minister, commencing on the first day of the month which next follows the day on which the mining lease is granted but shall not be for a term longer than the period in respect of which compensation has been agreed or determined pursuant to section 279, 281 or 282.

**(2)** From the grant of a mining lease to the commencement of the initial term thereof the holder shall have all the entitlements, powers, duties and functions that the holder has during the term of the lease except section 290 shall not apply.

**Mining lease may be specified it is not renewable**

**285.(1)** Upon the recommendation of the Minister that the land the subject of an application for the grant of a mining lease is (or will be) required for some purpose other than mining, the Governor in Council may grant the mining lease subject to the condition that the holder is not entitled to have the mining lease renewed.

**(2)** If the Minister is satisfied that the land the subject of an application for the renewal of a mining lease is (or will be) required for some purpose other than mining, the Governor in Council may grant a renewal of the mining lease subject to the condition that the holder is not entitled to have the mining lease further renewed.

**(3)** Where a mining lease is granted or renewed subject to a condition referred to in subsection (1) or (2), the applicant shall be advised of the reasons therefor.

**(4)** Where a mining lease is renewed subject to a condition referred to in subsection (2) that condition shall be endorsed on the instrument of lease.

**Renewal of mining lease**

**286.(1)** The holder of a mining lease, including a mining lease that is subject to a condition referred to in section 285, may, at least 6 months (or such shorter period as the Minister in a particular case allows) prior to and

not more than 12 months before the expiration of the current term of the mining lease, make application for renewal of that mining lease.

(2) An application for renewal of a mining lease shall—

- (a) be made in writing in the prescribed way to the mining registrar for the mining district in which is situated the land the subject of the mining lease; and
- (b) be accompanied by—
  - (i) written confirmation that the current environmental management overview strategy is to continue unamended; or
  - (ii) an amended environmental management overview strategy acceptable to the Minister; and
- (c) be accompanied by—
  - (i) written confirmation that the current plan of operations is to continue unamended; or
  - (ii) an amended plan of operations acceptable to the Minister; and
- (d) be accompanied by the renewal fee prescribed under a regulation.

(3) If, in respect of an application for the renewal of a mining lease, the Minister is satisfied that—

- (a) in a case where the mining lease is subject to a condition that the holder is not entitled to have the mining lease renewed or further renewed—the mining lease should be renewed; and
- (b) the holder has observed and performed all the covenants and conditions applicable to the lease and on the holder's part to be observed and performed; and
- (c) the holder has complied with all the provisions of this Act applicable to the holder in respect of that mining lease; and
- (d) the land, the subject of the mining lease still contains workable quantities of mineral or mineral bearing ore or is otherwise required for purposes for which the mining lease was granted;

then the Minister shall recommend to the Governor in Council who may grant a renewal of that mining lease in the name of the holder for such

further term as the Governor in Council specifies subject to any prescribed conditions and such further conditions as the Governor in Council determines but the further term shall not include a period that is not covered by an agreement as to or a determination of compensation pursuant to section 279, 281 or 282.

(4) The Minister's recommendation under subsection (3) in respect of a mining lease referred to in subsection (3)(a) shall specify that the mining lease is such a lease.

(5) The Minister shall not reject an application for renewal of a mining lease until the Minister has, by notice in writing in the approved form served on the holder of the mining lease, called upon the holder to show cause within the time specified therein why the application should not be rejected and such cause has not been shown to the satisfaction of the Minister.

(6) If a mining lease is renewed under this section before or on the day the lease expires under its terms (the "**expiry day**"), the term of the lease starts on the day after the expiry day.

(7) If—

- (a) an application for renewal of a mining lease is properly made by the holder, but is not withdrawn, rejected or granted, before or on the day the lease expires under its terms; and
- (b) after the expiry day, the holder of the lease—
  - (i) continues to pay rental on the lease, and to pay royalties and other amounts, required to be paid under this Act; and
  - (ii) otherwise complies with this Act and the conditions of the lease;

the lease continues in force until the application is withdrawn, rejected or granted.

(8) If the mining lease mentioned in subsection (7) is renewed under this section after the expiry day, the term of the lease is taken to have started on the day after the expiry day.

(9) If a renewed mining lease contains conditions ("**new conditions**") different from, or not included in, the conditions of the expired mining lease, the new conditions apply from the later of—

- (a) the start of the term of the renewed lease; or
- (b) the day the renewal is granted.

(10) However, the holder must pay rental on a mining lease continued in force under subsection (7) from the day after the expiry day at the rate that would have been payable, from time to time, if the lease had been renewed on the day after the expiry day, even though payment of rental may be a condition of the lease.

### **Reasons for rejection of application for renewal of mining lease**

287. Where the Minister rejects an application for renewal of a mining lease the Minister shall give written notice to the applicant stating the reasons for rejection.

### **Holder to notify owner of grant or renewal of mining lease**

288.(1) The holder of a mining lease must notify each owner of land covered by the lease of the grant or renewal of the lease.

(2) The notice must be given within 28 days after the holder receives notice of the grant or renewal.

### **Mining lease where area not surveyed**

289.(1) The Governor in Council may grant or renew a mining lease, and the instrument of lease for the mining lease may be issued, even though the boundaries of the land have not been surveyed.

(2) In an instrument of lease referred to in subsection (1) the area and boundaries of land shall be specified as nearly as may be then ascertained and the lease shall not be avoided by reason only of any defect in the description of that land or those boundaries as specified in the instrument.

### **Rental payable on mining lease**

290.(1) Upon the grant of a mining lease rental shall first be payable thereon with respect to the period from the commencement of the term of the mining lease to 31 December of that year (the “**first rental period**”) and shall be paid within 28 days (or such longer period as the Minister in

the particular case approves) of the grant of the mining lease.

(2) The amount of the rental payable in respect of the first rental period shall be an amount that bears to the yearly rental prescribed pursuant to subsection (4) for the year in which the first rental period falls the same proportion that the number of whole calendar months of the first rental period bears to 12.

(3) In respect of each year or part thereof of the term of a mining lease (other than the first rental period) a full year's rental shall be payable in advance not later than 31 December of the previous year.

(4) If the full year's rental is paid in advance, the amount of the rental shall be the amount prescribed in respect of the year in which the rental period falls.

(5) If rental is not paid in advance—

- (a) the mining registrar shall, prior to 31 January of that year, notify the holder of and any person holding a recorded interest in the mining lease that the rental has not been paid and of the amount of rental payable as prescribed by paragraph (b); and
- (b) the amount of the full year's rental shall be payable before 1 April of that year and shall be an amount equal to the amount prescribed in respect of the year in which the rental period falls plus an amount equal to 25% of that prescribed amount.

(6) Upon the renewal of a mining lease, no further rental shall be payable in respect of the period that, if the renewal was a grant of a mining lease, would be the first rental period, except where that period commences on 1 January.

(7) Except as provided in subsection (9), where in any year a mining lease is surrendered or terminated through effluxion of time and is not renewed there shall be refundable to the last holder of the mining lease an amount that bears to the amount of the rental that was paid in respect of that year the same proportion that the number of whole calendar months from—

- (a) the date of surrender or termination; or
- (b) the date of rejection of the application for renewal;

whichever is the later, to 31 December of that year bears to 12.

(8) Subsections (3) to (7) apply to a mining lease continued in force

under section 286(7), with all necessary changes and with any changes prescribed by regulation, in the same way as they would apply if the lease had been renewed on the last day of its term.

(9) No amount shall be refunded pursuant to subsection (7) where a mining lease is surrendered within its first rental period after its original grant.

### **Plan of operations and environmental audit statement**

**291.(1)** The holder of a mining lease must give to the Minister—

- (a) a plan of operations (the “**plan**”) for mining under the lease; and
- (b) an environmental audit statement (the “**statement**”) about the plan’s consistency with the accepted environmental management overview strategy for the lease.

(2) The initial plan and statement must be given to the Minister at least 2 months before starting operations under the lease (or a shorter period approved by the Minister for the mining lease).

(3) A later plan and statement must be given to the Minister at least 2 months before the current plan expires (or a shorter period approved by the Minister for the mining lease).

(4) The plan and statement may relate to mining under more than 1 mining lease.

(5) Within 28 days of receiving the plan and statement, the Minister may give the mining lease holder written notice that the plan is not acceptable if the Minister is not satisfied—

- (a) the plan properly addresses the way the purpose of the mining lease is to be carried out; or
- (b) the way the purpose is to be carried out is consistent with this Act, the conditions of the lease and the environmental management overview strategy for mining under the lease; or
- (c) the person preparing the statement acted responsibly and honestly when preparing it.

(6) If the Minister gives the holder notice under subsection (5) and there is a current plan of operations, the current plan continues in force until the

Minister is given a plan of operations with which the Minister is satisfied.

(7) The holder of a mining lease and anyone acting under the lease must perform operations under the lease in accordance with the current plan of operations for the lease.

(8) The current plan forms part of the conditions of the mining lease.

### **Amendment of plan of operations**

**292.(1)** A mining lease holder may amend the plan of operations for mining under the lease by giving to the Minister—

- (a) a document stating the way the holder proposes to amend the plan; and
- (b) an environmental audit statement about the plan as amended.

(2) The amendment takes effect 28 days after the document and statement are given to the Minister, unless within the 28 days the Minister gives the holder written notice that the amendment is not acceptable.

(3) The amendment affects the period the plan is in force, only if the amendment provides it is to affect the period.

### **Duration of plan of operations**

**293.(1)** A plan of operations for a mining lease takes effect 28 days after the Minister is given a copy of the plan or, if a later day of effect is stated in the plan, the later day.

(2) However, subsection (1) does not apply if the Minister gives the holder of the lease written notice that the plan is not acceptable within 28 days of being given the plan.

(3) The plan of operations is in force for—

- (a) the period the Governor in Council decides when granting the lease; or
- (b) not more than 5 years from the day it takes effect, (or a shorter period fixed by the Minister by written notice given to the holder), unless earlier replaced by a later plan.

(4) Subsections (1), (2) and (3)(b) also apply to a plan replacing a current plan of operations.

### **Variation of conditions of mining lease**

**294.(1)** The conditions to which a mining lease is for the time being subject, may be varied by the Governor in Council in terms not inconsistent with this Act upon the recommendation of the Minister and the agreement in writing of the holder of the mining lease.

(2) A mining lease that is duly varied pursuant to subsection (1) shall thereafter until again varied, be subject to its conditions as so varied.

(3) Particulars of every variation of a mining lease shall be endorsed on the instrument of lease if the lease has been issued.

### **Variation of mining lease for accuracy etc.**

**295.(1)** Whenever—

- (a) the boundaries and area of a mining lease have been more accurately ascertained and described by survey or some other method acceptable to the Minister; or
- (b) the Governor in Council approves the exchange, pursuant to agreement by the holders of mining leases of contiguous land, of areas abutting upon a part of a boundary common to both mining leases; or
- (c) facts have appeared or been established since the grant of the mining lease that satisfy the Minister that an amendment of the mining lease should be made to more accurately reflect the holder's entitlements under the lease;

the Governor in Council may vary the mining lease or mining leases accordingly.

(2) A variation of a mining lease pursuant to subsection (1) shall take effect from the time indicated in that variation.

(3) Notice of every variation of a mining lease pursuant to subsection (1) shall be given in writing by the Minister to the holder of the mining lease and to all persons holding an interest recorded as provided in this part in the

mining lease.

(4) The notice to the holder shall direct the holder to produce any instrument of lease for endorsement.

(5) The Minister upon receipt of the instrument of lease shall make all endorsements thereon to give effect to the variation.

(6) The Minister shall cause suitable recordings to be made in the register that the mining lease has been varied.

(7) Where, prior to receiving a notice of variation pursuant to subsection (3) the holder of a mining lease has placed any improvements, machinery, plant or equipment on land which, by reason of the variation, has ceased to be part of the land comprised in the mining lease, the holder may within 28 days after receipt by the holder of that notice, apply to the Minister for permission to enter upon that land and to remove the improvements, machinery, plant or equipment or any part thereof.

(8) Upon application duly made to the Minister under subsection (7), the Minister shall grant permission to the applicant in respect thereof for such period and upon such conditions as the Minister thinks fit.

(9) The applicant, together with the applicant's workers and persons delivering goods or substances or providing services ancillary to that purpose and vehicles and equipment, may enter upon land and remove improvements, machinery, plant or equipment or any part thereof in accordance with the permission granted pursuant to subsection (8).

(10) Where a mining lease has been varied pursuant to subsection (1), the holder thereof shall be deemed to hold indemnified the Crown, the Minister and all officers, servants and agents of the Crown and the Minister against all claims arising out of anything done pursuant to this Act or done on or in land which, by reason of that variation, has ceased to be part of the land comprised in the mining lease.

(11) Where the boundaries and area of the land comprised in a mining lease have been varied pursuant to subsection (1)(a)—

- (a) the conditions referred to in section 276(1)(d) and (e) that applied before the variation shall continue to apply after that variation in respect of activities carried on before that variation; and
- (b) the conditions (other than conditions referred to in paragraph (a)) that applied before the variation shall cease to apply after that

variation in respect of activities carried on after that variation;  
in respect of the area of land that has ceased to be part of the land comprised in the mining lease.

**(12)** Where the boundaries and area of the land comprised in a mining lease have been varied pursuant to subsection (1)(a), the conditions of the lease shall from that variation also apply in respect of land that becomes part of the land comprised in the mining lease.

**(13)** Where an exchange of areas of land comprised in mining leases has been effected pursuant to subsection (1)(b), in respect of each mining lease—

- (a) the conditions that applied before the exchange shall continue to apply in respect of the area of land comprised in the mining lease after the exchange; and
- (b) the conditions that applied before the exchange shall cease to apply in respect of the area of land that has ceased to be part of the land comprised in the mining lease.

**(14)** Notwithstanding subsections (11) and (13), the provisions of sections 277 and 308<sup>44</sup> shall continue to apply after a variation of a mining lease pursuant to subsection (1) in respect of any acts done or omitted to be done before that variation.

**(15)** The Minister may direct and authorise the holder of a mining lease to enter upon land that has ceased to be part of the land comprised in the mining lease to comply with any condition referred to in subsection (11) or (13).

**(16)** This section shall not be construed to abrogate or prejudice any right had by the Crown or a person, authority or body in respect of land which by reason of a variation pursuant to subsection (1) has ceased to be part of a mining lease, from proceeding in any court of competent jurisdiction or independently of this Act to recover damages or to obtain any other remedy in respect of damage or injury suffered or loss incurred by reason of a person acting or purporting to act under the authority of that mining lease but any moneys paid under section 277 in respect of damage the subject of

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<sup>44</sup> Sections 277 (Provision of security) and 308 (Contravention by holder of mining lease)

the proceedings shall be taken into account by that court in assessing the loss or damage.

(17) The person who was the holder of a mining lease that is varied pursuant to this section shall pay the prescribed royalty in respect of all mineral mined by the person or on the person's behalf from land that ceases to be comprised in the mining lease as if it had been mined under the authority of that mining lease.

### **Correction of instrument of lease**

**296.(1)** If, at any time, the Minister is of the opinion that an instrument of lease of a mining lease should be corrected by reason that the instrument is defective owing to error in its preparation, the Minister may correct the instrument and shall endorse every copy thereof accordingly.

(2) When an instrument of lease is corrected under this section it shall be construed and operate as if it had been originally issued as corrected.

### **Replacement instrument of lease**

**297.(1)** Where the Minister is satisfied that an instrument of lease of a mining lease should be cancelled and a replacement instrument of lease issued in its place, the Minister shall cancel the instrument in question and cause a replacement instrument of lease to be issued in its place.

(2) A replacement instrument of lease of a mining lease issued under this section—

- (a) shall be the instrument of lease issued in respect of the mining lease concerned in place of the instrument of lease previously issued in respect thereof and cancelled under this section which lastmentioned instrument shall, upon the issue of the fresh instrument, cease to be of any force or effect; and
- (b) may bear a form of endorsement which briefly traces the devolution of the title from the original holder of the mining lease to the person appearing as holder thereof at the time the replacement instrument of lease is issued; and
- (c) shall bear endorsement of all apparently subsisting mortgages affecting the mining lease concerned and endorsed on the

instrument of lease so cancelled; and

- (d) shall be delivered to the person who appears to the Minister to be lawfully entitled to possession thereof.

(3) The Minister shall cause the instrument of lease so cancelled to be suitably endorsed and a suitable recording to be made in the register that a replacement instrument of lease has been issued in its place.

(4) The cancelled instrument of lease shall be retained by the chief executive.

### **Mining other minerals or use for other purposes**

**298.(1)** The holder of a mining lease for the mining of minerals may lodge an application in writing with the mining registrar for the Minister's approval to mine specified minerals, being minerals not specified in the mining lease, in respect of the whole or that part of the land specified in the mining lease that is not currently the subject of a mining lease or mineral development licence (or an application for a mining lease or mineral development licence) in respect of those specified minerals.

(2) The application shall be accompanied by the prescribed application fee.

(3) An application referred to in subsection (1) and any other application for the grant of a mining lease in respect of the same minerals shall take priority according to the order of the time and date the applications are lodged as prescribed.

(4) The holder of a mining lease granted for purposes (other than mining of minerals) may lodge an application in writing with the mining registrar for the Minister's approval for the addition of such purposes not specified in the mining lease (being not those of mining for minerals), which the Minister accepts are appropriate for the mining lease and are not inconsistent with this Act.

(5) The application shall be accompanied by the prescribed fee.

(6) The holder of a mining lease granted for the mining of minerals may apply in writing to the mining registrar for the Minister's approval for the addition of such purposes not specified in the mining lease as are not inconsistent with this Act.

(7) The application shall be accompanied by the prescribed fee.

(8) The Minister may approve or reject an application under this section.

(9) Upon the Minister approving an application under this section and compliance by the applicant with any requirements imposed by the Minister, the relevant mining lease shall be deemed to include the specified minerals or, as the case may be, the additional purposes but the holder of the mining lease shall not be entitled to carry on operations in respect of those minerals or purposes unless the minerals and purposes are incorporated in a plan of operations in respect of that mining lease.

(10) An approval of the Minister under this section may be subject to—

- (a) the imposition of such conditions as the Governor in Council on the recommendation of the Minister determines; and
- (b) the requirement to deposit such security under section 277 as the Minister determines.

(11) Particulars of an approval under this section shall be recorded in the appropriate register and endorsed on the relevant instrument of mining lease.

### **Consolidation of mining leases**

**299.(1)** The holder of mining leases for the mining of minerals in respect of contiguous land may lodge an application in writing with the mining registrar for the mining district in which the major portion of the area of the mining leases is situated for the grant of a mining lease consolidating those mining leases.

(2) The application shall be accompanied by the prescribed fee.

(3) If the mining registrar is not satisfied the land is adjoining, the holder may apply to the Wardens Court for an order declaring the land to be adjoining land for this section.

(4) The Governor in Council may cancel the mining leases referred to in an application lodged pursuant to subsection (1) and grant the mining lease applied for, subject to such conditions as may be imposed by or under this Act.

(5) The relevant instruments of lease shall be cancelled or, as the case

may be, issued to evidence the cancellation and grant of the mining leases.

(6) If, within the proposed area of the consolidated mining lease, there is an area not included in 1 of the leases to be consolidated, the Governor in Council may include the area in the consolidated mining lease.

(7) A consolidated mining lease may be granted only if the Minister is satisfied arrangements for compensation, the deposit of security and the proposed conditions of the mining lease are adequate.

(8) The provisions of sections 232, 238, 240, 241, 243, 245, 251, 252, 254, 260, 265, 266, 268, 269, 270, 271, 272, 274 and 275 and such other provisions as the Governor in Council approves do not apply in respect of an application for and grant of a mining lease under this section.

(9) The provisions of section 312(3) do not apply in respect of a mining lease terminated for the purposes of the grant of a mining lease under this section.

(10) Notwithstanding the provisions of section 277(12), the security that pursuant to that section would have been refunded to the holder of the cancelled mining leases or as the holder directs may, at the request of the applicant, be retained by the Minister towards security required under section 277(1) to be deposited by the holder of the new mining lease issued under subsection (4).

(11) Unless the Minister otherwise approves, mining operations shall not commence or continue under a mining lease granted under subsection (4) until a fresh plan of operations has been submitted in respect of that mining lease in accordance with section 291.

### **Assignment etc. of mining lease or application therefor**

**300.(1)** With the approval of the Minister—

- (a) a mining lease or an interest therein may be assigned or mortgaged; and
- (b) a mining lease may be subleased; and
- (c) an application for a mining lease or an interest therein may be assigned;

in the prescribed manner and upon payment of the prescribed fee.

(2) The holder of a mining lease or an applicant therefor desirous of exercising a power referred to in subsection (1) shall apply in writing to the mining registrar for the Minister's approval to that exercise and shall furnish to the Minister such information with respect thereto as the Minister requires.

(3) An application for assignment or sublease under subsection (2) if a mortgage is recorded in respect of the mining lease, shall be accompanied by the mortgagee's consent.

(4) Upon an application made pursuant to subsection (2) the Minister shall cause the applicant to be given notice—

- (a) that, subject to compliance with this Act in respect thereof and with any conditions specified in the notice within 3 months from the date of the notice or such other period as is specified in the notice, the Minister will approve the exercise; or
- (b) that the Minister does not approve the exercise.

(5) Without in any way limiting the conditions that the Minister may impose under this subsection, the Minister may require the holder of a mining lease desiring to sublease that mining lease or a portion of the land comprised in the lease to have a survey of the lease carried out, in the way approved by the Minister, by a surveyor licensed under the *Surveyors Act 1977*.

(6) If the Minister indicates that the Minister will approve the exercise, then upon receipt by the mining registrar for the district in which the mining lease is recorded within the prescribed time of an appropriate document in the approved form (if any) that gives effect to an exercise of a power referred to in the indication, compliance with this Act and all conditions specified in the notice given pursuant to subsection (4)(a) in respect thereof and payment of the prescribed fee the exercise of the power shall be approved by the Minister and such particulars thereof as are necessary to give effect to or evidence that exercise of power shall be recorded in the appropriate register and endorsed on the instrument of lease.

(7) Notwithstanding that subsections (2) to (5) have not been complied with in a particular case, the Minister may approve and record particulars of an exercise of a power as provided in subsection (6) if the Minister is satisfied that, if subsection (2) had been complied with, the Minister would have approved the exercise of power and any conditions the Minister would

have specified under subsection (4) have been complied with.

(8) An assignment or mortgage of a mining lease shall not be in respect of part only of the land the subject of the mining lease.

(9) The Minister shall not approve the assignment of a mining lease unless it is accompanied by the approval in writing of any existing mortgagees and a duly completed royalty return prescribed by part 9 together with royalty payable to the Crown or evidence of payment to the person entitled thereto as prescribed in part 9.

(10) A purported assignment, sublease or mortgage of a mining lease or an assignment of an application therefor or of any interest therein shall not be effective unless it is made and approved in accordance with this section and shall take effect on the day next following its approval by the Minister under subsection (6).

(11) Within 28 days of the Minister granting approval of an assignment under this section, the assignee shall notify the owners of the relevant land of that approval.

### **Lodgment of caveat**

**301.(1)** Subject to subsection (2), a person who claims a right or interest in or in respect of a mining lease or an application for the grant of a mining lease may by a caveat in the approved form forbid the approval of—

- (a) any assignment, sublease or mortgage in respect of the mining lease; or
- (b) any assignment of the application for the grant of the mining lease;

(save any such dealings the approval of which is excepted in the caveat) either absolutely or until after notice of intention to approve such a dealing is served on the caveator.

(2) A caveat duly lodged pursuant to this section does not apply in respect of—

- (a) an assignment, sublease or mortgage duly lodged with the mining registrar before the lodgment of the caveat; or
- (b) an assignment, sublease or mortgage the application for approval

of which was lodged with the mining registrar before the lodgment of the caveat.

(3) A caveat referred to in subsection (1) shall—

- (a) be in the approved form; and
- (b) specify the name and address for service of 1 person upon whom any notice may be served on behalf of the caveator or caveators; and
- (c) identify the mining lease or application concerned; and
- (d) specify the nature of the right or interest claimed by the caveator; and
- (e) specify the period during which it is to continue in force; and
- (f) be signed by the caveator, the caveator's solicitor or other person authorised in writing by the caveator; and
- (g) if any person consents to the lodging of the caveat—be endorsed with that person's consent; and
- (h) be lodged at the office of the mining registrar for the mining district in which is situated the land the subject of the mining lease or application concerned; and
- (i) be accompanied by the prescribed lodgment fee.

### **Mining registrar's functions upon receipt of caveat**

**302.** Upon receipt of a duly lodged caveat referred to in section 301, a mining registrar shall—

- (a) notify the holder or holders of the affected mining lease or application; and
- (b) notify all other persons who have an interest in the mining lease or application recorded in the register including any subsisting prior caveator; and
- (c) record the existence of the caveat in the register.

**Effect of caveat**

**303.(1)** For so long as a caveat remains in force, the Minister shall not approve—

- (a) any assignment, sublease or mortgage in respect of the mining lease; or
- (b) any assignment of the application for the grant of the mining lease;

identified in the caveat unless—

- (c) the dealing is specifically excepted in the caveat; or
- (d) the written consent of the caveator in the approved form to the approval of the dealing is lodged with the mining registrar.

**(2)** For the purposes of subsection (1), unless and until a caveat is removed or withdrawn as prescribed, a caveat continues in force—

- (a) in a case where the consent of each holder of the mining lease or of the application for the grant of the mining lease concerned has been lodged with the caveat—for the term specified in the caveat or, if no term is specified, indefinitely; or
- (b) in a case where the caveat (not being a caveat referred to in paragraph (a)) specifies a period of not more than 3 months during which it is to continue in force—until the expiration of that period; or
- (c) in a case where the Wardens Court or another court of competent jurisdiction so orders—for so long as that order remains in force; or
- (d) in any other case—until the expiration of 3 months from the date of lodgment of the caveat.

**Second caveat not available to same person**

**304.** When a caveat has lapsed or has been removed or withdrawn as prescribed, it shall not be competent to the caveator to lodge in respect of the same mining lease or application for the grant of the mining lease another caveat whereby the caveator claims the same or substantially the same right or interest unless—

- (a) the consent of each holder of the mining lease or, as the case may be, each applicant has been lodged with the lastmentioned caveat; or
- (b) the Wardens Court or another court of competent jurisdiction so orders.

### **Removal or withdrawal of caveat**

**305.(1)** A caveat lodged pursuant to section 301 that has lapsed shall be removed by the mining registrar and the register noted accordingly.

(2) Upon the complaint of a person who has a right or interest (present or prospective) in a mining lease or in an application for the grant of mining lease affected by a caveat or whose right (present or prospective) to deal with a mining lease or with an application for the grant of a mining lease is affected by a caveat lodged in respect of the mining lease or application, the caveator may be summonsed to attend the Wardens Court or another court of competent jurisdiction to show cause why the caveat should not be removed.

(3) The Wardens Court or another court of competent jurisdiction may, upon the return of a summons referred to in subsection (2) or at any later time to which the hearing may be adjourned, make such order either ex parte or otherwise as the court deems just.

(4) If the Wardens Court or another court of competent jurisdiction orders that a caveat be removed, the mining registrar shall give effect to the order.

(5) A caveator may withdraw his or her caveat at any time by notifying the mining registrar in writing.

(6) The removal or withdrawal of a caveat shall be effected by the mining registrar recording the removal or withdrawal in the register.

### **Compensation for lodging caveat without reasonable cause**

**306.** A person who lodges a caveat in respect of a mining lease or of an application for the grant of a mining lease without reasonable cause is liable to pay such damages as may be recovered at law by any person aggrieved.

**Abandonment of application for the grant of a mining lease**

**307.(1)** The applicant for a mining lease may, at any time before the grant of the mining lease, by notice in writing to the mining registrar abandon the application in respect of the whole or part of the land to which the application relates.

(2) The abandonment shall take effect on the day next following its receipt by the mining registrar.

(3) The applicant for the grant of a mining lease who gives a notice referred to in subsection (1) to the mining registrar shall forthwith serve a copy of that notice on all other persons upon whom the applicant was required under this Act to give a copy of the certificate of application for the mining lease.

(4) Where an application for the grant of a mining lease is abandoned in respect of part only of the land to which the application relates, the application shall be amended to show the area in respect of which the mining lease application is to remain in force in the same manner as is required for an original application and the amended application shall proceed in respect of that area in accordance with this part.

**Contravention by holder of mining lease**

**308.(1)** If the Minister considers that the holder of a mining lease—

- (a) has carried out activities that are not bona fide for the purposes for which the mining lease was granted; or
- (b) has failed to pay the royalty or any other moneys payable thereunder (other than rental) or in respect thereof by the due date for payment; or
- (c) has failed to comply with any condition that is to be observed and performed by the holder under or in respect of the mining lease, other than a condition with respect matters referred to in subsection (2)(a) or (b);

the Minister may—

- (d) cancel the mining lease; or
- (e) impose on the holder a penalty not exceeding 1 500 penalty units.

(2) If the Minister considers that the holder of a mining lease—

- (a) in any year has failed after notice given to the holder in accordance with section 290(5) to pay before 1 April of that year the amount of the rental payable under that section by that date in respect of that mining lease; or
- (b) has failed to pay a penalty imposed on the holder pursuant to subsection (1)(e) within the time allowed for the payment by the Minister;

the Minister may cancel the mining lease.

(3) The Minister shall not act pursuant to subsection (1) until the Minister has, by notice in writing in the approved form served on the holder of the mining lease, called upon the holder to show cause within the time specified therein why the mining lease should not be cancelled or a penalty imposed and served a copy of the notice on every person who currently holds a recorded interest in respect of the mining lease at the person's address last recorded by the mining registrar and such cause has not been shown to the satisfaction of the Minister.

(4) When the Minister pursuant to this section cancels a mining lease the Minister shall notify the holder and every person who holds a recorded interest in respect of the mining lease accordingly stating the reason for the cancellation.

(5) The cancellation of a mining lease under this section shall take effect on the day next following the Minister's determination to cancel the mining lease.

### **Surrender of mining lease**

**309.(1)** The holder of a mining lease may apply to surrender the mining lease or any part of the land comprised therein at any time before the expiration of its term.

(2) The holder of a mining lease who desires to surrender a mining lease or any part of the land comprised therein shall lodge with the mining registrar—

- (a) a notice of surrender in the approved form; and
- (c) in the case of a surrender of the whole of the land comprised in a

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mining lease—a duly completed royalty return prescribed by part 9 together with the royalty payable to the Crown as prescribed by part 9 or evidence of payment to the person entitled thereto; and

- (d) if land covered by the surrender is not included in an application to which subsection (11) applies—a final rehabilitation report stating how the holder has rehabilitated land affected directly or indirectly by mining activities on the mining lease; and
- (e) an environmental audit statement confirming that the holder has met the rehabilitation requirements under the environmental management overview strategy and plan of operations; and
- (f) the fee prescribed under a regulation.

(3) The Minister may, by written notice, give the mining lease holder directions about rehabilitating the land, and require the holder to give the Minister a further rehabilitation report and environmental audit statement on carrying out the directions, if the Minister is not satisfied—

- (a) the holder has rehabilitated the land in accordance with the accepted environmental management overview strategy and plan of operations; and
- (b) the person preparing the statement acted responsibly and honestly when preparing the statement.

(4) A purported surrender of a mining lease or of any part of the land comprised in a mining lease shall not be effective unless—

- (a) the holder has complied with this section; and
- (b) the Minister consents to the surrender.

(5) The Minister may accept a surrender under subsection (4) only if the Minister is satisfied the holder has satisfactorily rehabilitated the land.

(6) Where a mining lease is surrendered in respect of part only of the land comprised in a mining lease, the instrument of lease issued in respect thereof shall be endorsed accordingly and thereupon the mining lease shall continue in force in respect of the land not surrendered.

(7) Upon a surrender of a mining lease, all adjustments between the holder and the Crown in respect of the payment of rental, fees and other moneys shall be at the discretion of the Minister.

(8) Where any moneys are specified pursuant to subsection (7) as a debt due to the Crown, the Minister may direct that the security deposited in accordance with section 277<sup>45</sup> may be utilised for payment thereof.

(9) Nothing in this section shall prevent the Crown from recovering moneys from a person specified in subsection (7) as liable to pay and unpaid (whether directly or through utilisation of the security deposit) by action in the Wardens Court.

(10) In a proceeding for the recovery of an amount owing to the State under this Act, a certificate signed by the chief executive stating the amount of the debt is evidence of the amount of the debt.

(11) Where, at the time when the holder of a mining lease purports to surrender the mining lease or a part of the land comprised therein, that holder duly makes application for a new mining claim or mining lease in respect of the whole or part of the land comprised in the current mining lease, the purported surrender shall take effect immediately prior to the grant of the new mining claim or mining lease.

(12) Nothing in section 232<sup>46</sup> shall prevent a holder of a mining lease, at the time the holder surrenders the mining lease or part of the land comprised in the mining lease, from applying for the grant of a mining lease over the whole or part of the land comprised in the surrendered mining lease and the grant of the mining lease applied for.

(13) A surrender of a mining lease (other than a surrender referred to in subsection (11)) shall take effect on the day next following its acceptance by the Minister.

### **Minerals taken become property of holder of mining lease**

**310.** All minerals lawfully mined under the authority of a mining lease cease to be the property of the Crown or person who had property therein and become the property of the holder of the mining lease subject however to the rights to royalty payments under this Act of the Crown or any other person.

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<sup>45</sup> Section 277 (Provision of security)

<sup>46</sup> Section 232 (Land subject to mining lease)

**Royalties in respect of minerals taken under mining lease**

**311.** The holder of a mining lease shall pay in respect of all minerals mined or purported to be mined under the authority of the mining lease, the royalty prescribed pursuant to part 9.

**Effect of termination of mining lease**

**312.(1)** This section applies on the termination of a mining lease.

(2) However, this section does not apply to a mining lease if the termination is for granting a mining claim or a new mining lease over the land covered by the terminated lease to the holder of the terminated lease.

(3) The person who was the holder of the terminated mining lease immediately before its termination must immediately remove each post or other thing used to mark the land under this Act (other than a survey mark or anything else required under another Act not to be removed).

(4) On the termination of the mining lease, the ownership of all mineral, ore, tailings and other material (“**mineral**”), and any structures, machinery and equipment (“**property**”), on the land covered by the terminated lease divests from the owner and vests in the State.

(5) However, subsection (4) applies to property only if it was brought onto the land under the terminated mining lease.

**Application for approval to remove mineral and property**

**313.(1)** This section applies to mineral and property that vests in the State on the termination of a mining lease.

(2) Anyone who had an interest in the mineral or property immediately before its ownership vests in the State may apply in writing to the mining registrar for the Minister’s permission to remove the mineral or property from the land.

(3) The application—

- (a) must be made within 28 days (or a longer period, of not more than 3 months, allowed by the Minister) after the mineral or property vests in the State; and
- (b) may be made even though a subsequent grant of a mining claim,

exploration permit, mineral development licence or mining lease is made over for the land.

(4) The Minister may approve or refuse to approve the application.

(5) However, the Minister must approve the application if the Minister is satisfied—

- (a) the person was entitled to the mineral or property immediately before it vested in the State; and
- (b) there is enough security to meet the costs for which it was deposited.<sup>47</sup>

(6) The approval may be given on conditions stated in it.

(7) If the application is approved, the person named in the approval may enter the land and remove the mineral or property (other than covers, fencing, casings, linings, timbering or other things securing the safety of the land) stated in the application before the time stated in the approval ends.

(8) Anything removed under subsection (7) divests from the State and vests in the person entitled to it immediately before the termination of the mining lease.

(9) However, mineral divests from the State and forms part of the land if it is not removed before the later of—

- (a) the end of the time stated in an approval under this section; or
- (b) 3 months after the mining lease's termination.

### **Property remaining on former mining lease may be sold**

**314.(1)** This section applies if the mining registrar has not received an application, or has received an application that has not been granted, for approval to remove property from the site of a terminated mining lease within 3 months after the lease's termination.

(2) The Minister may direct the mining registrar to—

- (a) sell the property by public auction or in another stated way; or
- (b) if the property has no commercial value—dispose of or destroy it.

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<sup>47</sup> See section 277 (Provision of security).

(3) Proceeds of a sale are to be applied in the following order towards—

- (a) the reasonable expenses incurred in the sale;
- (b) the cost of rectifying actual damage for which an amount of security deposited for the terminated mining lease could have been used, but was not used, or was inadequate;
- (c) amounts owing to the State under this Act by the former holder;
- (d) rates and charges (including interest on unpaid rates and charges) owing to a local government by the former holder for the lease;
- (e) amounts owing to a mortgagee under a mortgage registered under this Act over the lease.

(4) Any balance must be paid to the former holder.

(5) If the mining registrar cannot decide the identity of, or locate, a person entitled to the proceeds or part of the proceeds, the mining registrar may pay the amount to the public trustee as unclaimed moneys.

(6) Compensation is not payable for a sale, disposal or destruction under this section.

### **Approval of additional activities upon mining lease application**

**315.(1)** This section applies if an applicant for a mining lease holds an existing licence, claim or permit under this Act that does not allow the applicant to do something (other than winning or extracting minerals) someone may do under a mining lease.

(2) The applicant may apply to the Minister for approval to enter land, or a particular part of the land, covered by the application for the lease for a purpose (other than winning or extracting minerals) that is not allowed under the applicant's existing authority.

(3) This section does not limit a person's entitlement as an applicant for a mining lease.

(4) The application shall be accompanied by the prescribed fee.

(5) The Minister's approval may be subject to such conditions as the Minister thinks appropriate and the applicant shall comply with those conditions.

(6) Where an application pursuant to subsection (1) relates to land that is a reserve the Minister, before granting approval shall seek and take into account the views of the owner.

(7) The Minister may impose a condition upon an approval under subsection (1) that the applicant deposit an amount of security for compliance with the approval and rectification of any damage caused to the land or improvements therein or thereon in which case the provisions of section 277 shall apply as if the applicant were a holder of a mining lease and the approval were the mining lease in question.

(8) For so long as any security required is not deposited or kept renewed, the approval is not effective.

(9) An applicant for the grant of a mining lease shall not, without an approval under subsection (1) to do so, enter or be upon land the subject of the application for the mining lease for a purpose for which the applicant is not otherwise entitled to enter or be upon that land.

Maximum penalty—300 penalty units and, if the offence is a continuing one, a further penalty of 20 penalty units for each day during which the offence continues.

(10) Whether or not an applicant for a mining lease is proceeded against for an offence against subsection (9), the Minister may reject the application for the grant of the mining lease if the Minister is of the opinion that the applicant has contravened that subsection.

### **Mining lease for transportation through land**

**316.(1)** This section applies if a person who holds a mining lease for particular land—

- (a) wants a mining lease over land not covered by the person's lease for the transportation of something through, over or under the land by a pipeline, aerial ropeway, conveyor apparatus, transmission line or similar method of transport; and
- (b) does not hold a prospecting permit, exploration permit or mineral development licence for the land.

(2) The Governor in Council may grant to a person a mining lease for the transportation of the thing through, over or under the land covered by the

application for the lease if—

- (a) the Minister is satisfied the proposed lease is for a purpose associated with or arising from activities performed, or to be performed, under the person's mining lease; or
- (b) before the person applied for the lease, the Governor in Council, under a regulation, declared the transportation of the thing through, over or under land not covered by a mining lease by a pipeline, aerial ropeway, conveyor apparatus, transmission line or similar method of transport to be an activity associated with or arising from mining.

(3) An application for a mining lease under this section must be given to the mining registrar for the applicant's current mining lease.

(4) If land included in the application is covered by an exploration permit or mineral development licence, the application does not have to be accompanied by the consent of the permit or licence holder, but the applicant must give written notice of the application to the permit or licence holder within 7 days after lodging the application.

(5) The chief executive may either completely or partly dispense with a requirement under this part for marking out the land included in the application.

### **Variation of access to mining lease land**

**317.(1)** The holder of a mining lease may apply to the mining registrar in the approved form for a variation of the land used or proposed to be used as access in relation to the land the subject of the mining lease.

(2) An application for a variation of the land used or to be used as access under this section shall be accompanied by—

- (a) such particulars as are, by sections 245 and 246, required to accompany an application for the grant of a mining lease in so far as those particulars relate to the land used or proposed to be used as access in relation to surface area of the land the subject of the mining lease; and
- (b) the prescribed application fee.

(3) Where, in respect of an application for a variation of the land used or

proposed to be used as access under this section, the mining registrar is not satisfied that the owner of the land proposed to be used as access consents thereto, the mining registrar shall fix a date for the consideration of the matter by the Wardens Court.

(4) The mining registrar shall notify the owner of the land and the applicant of the date so fixed.

(5) The Wardens Court shall hear and determine the matter by determining—

- (a) that consent to the proposed variation should or should not be given; and
- (b) if consent should be given—the amount (if any) of compensation payable by the holder in respect of the proposed use of that land as access.

(6) Subject to subsection (7), the provisions of section 281(3) to (7) apply in respect of a matter referred to the Wardens Court under this section as if the matter were an application referred to the Wardens Court under section 281(1).

(7) In determining compensation payable under subsection (5), allowance shall be made for compensation agreed or determined to be payable in respect of the current land used as access in respect of the mining lease.

(8) The determination of the Wardens Court of a matter under this section shall be final and conclusive.

(9) In respect of an application made under this section, upon—

- (a) where the proposed access is over land of which there is an owner—
  - (i) lodgment with the mining registrar of the consent in writing of the owner or owners of that land; or
  - (ii) where the Wardens Court determines that consent should be granted, whether with or without compensation, compliance with any terms and conditions imposed by the Wardens Court to be complied with before consent is given; and
- (b) where the proposed access is over land of which there is no owner, the mining registrar determining that the variation is, in

the circumstances, appropriate;

the mining registrar shall record the variation of that access in the register and advise the holder and the owner accordingly.

(10) An agreement made between a holder and an owner of land regarding compensation payable in respect of the proposed use of the land as access in respect of a mining lease as a result of a variation under this section shall not be effective unless and until—

- (a) it is in writing signed by or on behalf of the parties; and
- (b) it is filed in the office of the mining registrar.

(11) If an agreement referred to in subsection (10) is required by any law of Queensland to be stamped, it shall not be filed until it is stamped according to law.

(12) The mining registrar shall notify the chief executive of full particulars of applications, actions and determinations made under this section.

### **Rehabilitation of land covered by mining lease**

**318.(1)** Within 3 months after the termination of a mining lease, the holder must give the Minister—

- (a) a final rehabilitation report—
  - (i) stating that the holder has rehabilitated land affected directly or indirectly by mining activities on the mining lease in accordance with the accepted environmental management overview strategy and plan of operations; and
  - (ii) outlining how the holder has rehabilitated the land; and
- (b) an environmental audit statement confirming that the holder has met the rehabilitation requirements under the environmental management overview strategy and plan of operations.

(2) Within 6 months after receiving the report and statement, the Minister may give the mining lease holder reasonable directions about rehabilitating the land, and require the holder to give the Minister a further rehabilitation report and environmental audit statement within a stated time, if the Minister is not satisfied—

- (a) the holder has rehabilitated the land in accordance with the accepted environmental management overview strategy and plan of operations; or
- (b) the person preparing the environmental audit statement acted responsibly and honestly when preparing it.

(3) The holder must comply with the directions.

Maximum penalty—2 000 penalty units.

(4) The holder and the holder's employees or agents may, to the extent reasonable and necessary to comply with the directions—

- (a) enter land stated in the notice; and
- (b) bring onto the land vehicles, vessels, machinery and equipment.

(5) This section does not apply if—

- (a) a final rehabilitation report is lodged with a notice of surrender of a mining lease; or
- (b) the termination is for granting a mining claim or a new mining lease for the same land.

## **PART 8—EFFECT ON PLANNING PROVISIONS**

### **Effect on planning provisions**

**319.(1)** Where, by or under this Act, a person is authorised to use land for a specified purpose, the use of the land in accordance with that authorisation shall, despite the *Local Government (Planning and Environment) Act 1990*, be a permitted use of that land for the purposes of that Act.

(2) Upon the grant or renewal of a mining claim, mineral development licence or mining lease, the mining registrar for the district in which the claim, licence or lease is recorded shall notify the local government for the area in which the land is situated and the chief executive (planning) of particulars thereof.

(3) Upon receipt of a notification pursuant to subsection (2), a local government and the chief executive (planning) shall by notation in the approved form on planning scheme maps for the local government area or part of the area indicate that the use of land comprised in a mining claim, mineral development licence or mining lease for purposes in accordance with the claim, licence or lease is deemed by this Act to be a permitted use of the land and that interested persons may obtain particulars of the claim, licence or lease granted in the area by contacting the relevant mining registrar in respect of mining claims and mining leases and the chief executive in respect of mineral development licences.

(4) Despite the *Local Government (Planning and Environment) Act 1990* the Governor in Council shall not be competent to amend a planning scheme in relation to land that is comprised in a mining lease or mineral development licence unless the views of the Minister have been obtained in writing and taken into account.

(5) For the purposes of a planning scheme under the *Local Government (Planning and Environment) Act 1990* activities carried on under the authority of a prospecting permit or an exploration permit are not uses of land.

## PART 9—ROYALTIES

### Royalty return and payment

**320.(1)** The holder of a mining claim, mining lease or other authority under this Act or any other Act relating to mining who mines or allows to be mined mineral, whether or not the Crown has the property in the mineral, from land the subject of that mining claim, mining lease or other authority shall pay royalty as prescribed at the rate for the time being prescribed in respect of that mineral.

(2) Subsection (1) does not apply in respect of—

- (a) coal, that is not the property of the Crown, mined under the authority of a mining lease granted or renewed or deemed to be granted or renewed under this Act for as long as there subsists an

agreement made prior to the commencement of the *Mining Act Amendment Act 1976* with the owner of the coal or the owner's predecessor in title as to the royalty to be paid to the owner in respect of the coal mined or where such an agreement has, as provided in that agreement, been renewed, whether before or after the commencement of the *Mining Act Amendment Act 1976* for as long as there subsists a renewal of such an agreement; or

- (b) mineral, that is not the property of the Crown and is not referred to in paragraph (a), mined under the authority of a mining claim or mining lease granted or renewed under this Act for so long as there subsists an agreement made prior to the commencement of this Act with the owner of the mineral or the owner's predecessor in title as to the royalty to be paid to the owner in respect of the mineral mined or where such an agreement has, as provided in that agreement, been renewed, whether before or after the commencement of this Act for so long as there subsists a renewal of such an agreement.

(3) Where mineral is mined under the authority of a mining claim or a mining lease royalty payable under this part shall be payable—

- (a) where the Crown has the property in the mineral—to the Crown; or
- (b) in any other case—to the person who has the property in the mineral.

(4) The holder of a mining claim, mining lease or another authority under this Act or another Act about mining who mines mineral or allows mineral to be mined from land the subject of the mining claim, mining lease or other authority must, whether or not the State has property in the mineral, lodge royalty returns as required under a regulation.

(5) Unless a regulation otherwise provides, the holder of a mining claim or mining lease that authorises the mining of minerals for which royalty is or would be payable must lodge a royalty return whether or not mineral has been mined during the period of the return.

(6) Where, during a period in respect of which a royalty return is required to be lodged, mineral is mined by more than 1 person under a mining claim or mining lease or other authority under this Act or any other Act the holder shall ensure lodgment of the prescribed royalty return and

payment of the prescribed royalty in respect of all mineral mined during the whole of the period under the mining claim, mining lease or other authority.

(7) A person who mines mineral from land other than under a mining claim, mining lease or other authority mentioned in subsection (1) or (2), must, whether or not the State has the property in the mineral—

- (a) lodge the royalty returns as required under a regulation; and
- (b) pay royalty to the State or anyone else who has property in the mineral at the rate required under a regulation.

(8) The Minister may in the Minister's discretion determine that for the purpose of calculating royalty payable under this part, mineral has been mined under the 1 mining operation notwithstanding that that operation may be carried on under more than 1 authority granted under this or any other Act to mine that mineral.

### **Prescription of royalty**

**321.(1)** Regulations made pursuant to section 417, may prescribe the royalties payable in respect of mineral mined from land to the Crown or other person who had the property in the mineral.

(2) Royalty may be prescribed whether the obligation to pay the royalty arises under this Act or under any agreement made with the State of Queensland or under any undertaking given by any person and shall be calculated at such rate or rates, in such manner and on such basis or bases as are prescribed by regulation.

(3) Without limiting the authority of the Governor in Council to regulate with respect to royalty, a rate of royalty and the manner and basis of its calculation—

- (a) may be prescribed by reference to the quantity of mineral-bearing ore removed or by reference to the quantity of mineral mined;
- (b) may be prescribed by reference to a proportion of the profits made from specified operations or from a particular operation or of the gross proceeds of the sale or disposal of the product of specified operations or of a particular operation;
- (c) may vary as between royalties payable in respect of different

minerals;

- (d) may vary as between royalties payable by the same person or by different persons whether—
  - (i) in respect of the same mineral or different minerals;
  - (ii) in respect of mineral mined at the same place or at different places;
  - (iii) in respect of mineral mined at the same point in time or at different points in time;
  - (iv) in respect of mineral mined by the same method of mining or by different methods of mining;
- (e) may be prescribed to apply generally throughout the State or in any prescribed locality of the State;
- (f) may be prescribed in respect of all mining operations in the State or in respect of a particular mining operation or in respect of the mining operations of a particular person.

### **Minister may request audit**

**322.(1)** Without in any way limiting the powers of the Minister or any other person under this Act, in order to ascertain the accuracy of any royalty return document or statement lodged as prescribed by or under this Act for the purposes of this part by a person who is or was the holder of a mining claim or mining lease or who otherwise mines or who, the Minister suspects, may have mined from any land mineral, the Minister may, at any time, request and authorise—

- (a) the auditor-general; or
- (b) with the concurrence of the auditor-general—an officer of the Audit Office;

to examine that person's accounts and accounting records and to compare such records with the return, document or, as the case may be, statement.

**(2)** The auditor-general or officer authorised under subsection (1)—

- (a) shall examine such of that person's accounts and accounting records as the auditor-general or officer considers necessary and forthwith upon completion of the examination and comparison,

shall report to the Minister the result thereof;

- (b) shall have, in respect of that person's accounts and accounting records, the subject of the examination and comparison, such powers as are prescribed;
- (c) if the return, document or statement has been lodged by or for a corporation—may rely on work performed by auditors who have examined the corporation's accounts.

(3) The provisions of the *Financial Administration and Audit Act 1977* that apply in relation to audits of accounts required by any Act to be performed by the auditor-general apply in relation to examinations and reports under this section.

### **Resolving inconsistency between differing royalty provisions**

**323.** Where there is inconsistency between the requirements of the regulations and the provisions of any agreement made with the State of Queensland or of any undertaking given by any person (whether made or given before or after the commencement of the *Mining Royalties Act 1974* and whether or not such provisions have the force of law) as respects the royalty payable to the Crown in respect of mineral mined or mineral-bearing ore removed in any mining operation or as respects the manner or basis of its calculation, the requirements of the regulations shall prevail and the royalty payable and the manner and basis of its calculation shall be as prescribed by regulation, and any amount of royalty paid pursuant to such agreement or undertaking in relation to any period shall be offset against the amount of royalty duly payable pursuant to the regulations in relation to the same period.

### **Utilisation of security deposit towards royalty payments**

**324.(1)** Where royalty is payable under this part by a person in respect of 1 mining operation (as determined by the Minister pursuant to section 320(8)) and is unpaid, that amount may be recovered by the Minister or, as the case may be, the mining registrar by utilisation of security deposited by or on behalf of that person in respect of mining claims or mining leases or any of them under which the mining operation is carried on.

(2) This section shall not be construed to limit the right to utilise a security deposit for any purpose under any other provision of this Act.

### **Royalty return and payment upon assignment or surrender of mining claim or mining lease**

**325.(1)** A person who assigns or surrenders, otherwise than for the purpose of a grant of a new mining claim or mining lease, a mining claim or a mining lease shall lodge with the document of assignment or surrender a royalty return with respect to mineral mined under the authority of the mining claim or mining lease for the current return period up to the last day of the month immediately preceding the lodgment of the assignment or surrender and shall lodge with the return the prescribed royalty in respect of that mineral.

(2) Nothing in subsection (1) shall abrogate the liability of a holder of a mining claim or mining lease at the time that minerals are mined thereunder to pay royalty on the minerals mined during the period from the date up to which the return required under subsection (1) is required up to the date the assignment or surrender thereof takes effect.

### **Maintenance of records**

**326.(1)** A person who is the holder of a mining claim or a mining lease or who otherwise mines mineral from land shall keep accurate and proper accounting records such as are necessary to determine the amount of royalty payable from time to time under this part in respect of mineral mined.

(2) Such records shall be retained by that person for a period of 7 years after the completion of the transactions, acts or operations to which they relate.

### **Minister may require information**

**327.(1)** The Minister may, for the purpose of—

- (a) ascertaining whether there is any liability on a person to pay an amount of royalty under this Act, and if so, the amount of the liability; or
- (b) ascertaining whether a person is required to comply with this part

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or whether this part has been contravened or not complied with by a person in any respect; or

- (c) inquiring into any matter connected with the administration of this part;

require a person—

- (d) to lodge a royalty return as prescribed in respect of a specified period, whether or not any mineral has been mined during that period; or
- (e) to give information of a kind and in a form or manner required or to produce records (or copies thereof) (being information or records believed to be within the knowledge, in the custody or under the control of the person) at a place and within a time specified by the Minister, to the Minister or an officer authorised by the Minister; or
- (f) to attend before the Minister or other officer specified by the Minister at a time and place specified by the Minister and there to give information and to produce records of a kind specified (being information or records believed to be within the knowledge, in the custody or under the control of the person) and to answer questions or to do all or any of those things.

(2) A person appointed for that purpose by the Minister and all other persons acting in aid of the person may enter any place wherein or whereon that person suspects on reasonable grounds that there are accounts, records, documents or other information in respect of which a requirement could be made under subsection (1), may search for and require production at that place, at the mining registrar's office or at any other specified place of such accounts, records, documents and information and may examine, copy and make extracts from any such accounts, records, documents and information.

(3) Before a person referred to in subsection (2) enters a part of any place which part is used exclusively as a dwelling house the person shall, save where the person has the permission of the occupier of that part to the person's entry, obtain from a justice a warrant to enter.

(4) A justice who is satisfied upon the complaint of a person referred to in subsection (2) that there is reasonable cause to suspect that in any place

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there are accounts, records, documents or other information referred to in subsection (2), may issue the justice's warrant directed to the complainant to enter the place named in the warrant for the purpose of exercising therein the powers conferred upon that person under this Act.

(5) A complaint made under subsection (4) shall be made on oath or affirmation and shall set out the grounds on which the suspicion of the person making the same is based.

(6) A justice who is the chief executive or other officer of the department of the Government for the time being administering this Act is not competent to issue a warrant to which subsections (3), (4) and (8) apply.

(7) A justice who issues the justice's warrant pursuant to subsection (4) shall forward a copy of the warrant to the mining registrar for the mining district in which the dwelling house is situated.

(8) A warrant shall be, for the period of 1 month from the date of its issue, sufficient authority for the person named therein and all persons acting in aid of the person—

- (a) to enter the place specified in the warrant; and
- (b) to exercise therein the powers conferred upon the person named therein by or under this Act.

(9) In subsections (3) to (8) premises that are used as a dwelling house do not include the curtilage of those premises.

(10) The Minister or an officer authorised by the Minister pursuant to subsection (1) may require information sought under this section to be given, verbally on oath or in writing by statutory declaration, as the case may be, and for that purpose the Minister, that officer or any justice may administer an oath or take a declaration.

(11) The Minister or an officer authorised by the Minister pursuant to subsection (1) may cause to be made copies of or extracts from the whole or part of the information or accounts, records or documents produced in accordance with subsection (1).

(12) A requirement pursuant to subsection (1) which requires a person to give information to, to attend before or to produce accounts, records or documents to an officer authorised by the Minister pursuant to subsection (1) may specify that officer by name or by the office that the officer holds.

(13) Notwithstanding that a requirement made pursuant to subsection (1) requires a person to give information to, to attend before or to produce accounts, records or documents to an officer whose name or office is specified in the requirement, the Minister may at any time (without notice to the person to whom the notice was given) authorise another officer for that purpose to exercise any power or perform any duty that the officer would be able to exercise or perform if the officer were authorised pursuant to subsection (1).

(14) Any reasonable expenses incurred by a person whose attendance is required under this section which are acceptable to the Minister may be allowed.

### **Offence not to comply with s 327**

**328.(1)** A person shall not fail to comply with a requirement made of the person under section 327.

(2) A person shall not be convicted of an offence defined in subsection (1), if the Wardens Court hearing the charge is satisfied—

- (a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates; or
- (b) that the defendant complied with that requirement to the extent of the defendant's ability to do so.

(3) A person is not excused from complying with a requirement under section 327 to give information or answer a question on the ground that the information or answer might tend to incriminate the person or make the person liable to a penalty.

(4) Information given or an answer made by a person in complying with a requirement under section 327, which might tend to incriminate the person or make the person liable to a penalty, is not admissible against the person in any proceedings brought against the person in a court in Queensland with a view to the person's punishment for an alleged offence except—

- (a) proceedings in respect of an offence under this Act; or
- (b) proceedings in respect of an offence in connection with

verification of the information or answer by oath or affirmation.

(5) Where a person commits an offence defined in subsection (1)—

- (a) the offence shall be a continuing offence and be deemed to continue for as long as the requirement in respect of which the offence was committed is not complied with; and
- (b) the Wardens Court may, upon convicting the person of the offence, in addition to any penalty that it may impose under subsection (1), order the person to pay a penalty of 5 penalty units for each day on which the offence is, pursuant to paragraph (a), deemed to have continued to the date of the person's conviction of the offence.

(6) Subsection (5) applies notwithstanding that the failure or conduct alleged against a defendant related to a particular time by or a particular period in which the requirement was to be complied with.

(7) Where a person has been convicted of an offence against subsection (1), the court may, in addition to imposing a penalty that it may impose under subsection (1) and, where applicable, subsection (5), order the person to comply with the requirement in respect of which the offence was committed.

(8) Where a court makes an order under subsection (7), it shall specify therein a place where and a time or period by or within which the order is to be complied with.

(9) A person shall not fail to comply with an order made by the Wardens Court pursuant to subsection (7).

(10) A person who after conviction of an offence defined in subsection (1) or this subsection (the “**previous conviction**”) continues to fail to comply with the requirement in respect of which the person incurred the previous conviction commits an offence against this Act.

Maximum penalty—10 penalty units for each day on which the person has continued to fail to comply with the requirement from the date of the last occurring previous conviction to the date of the person's conviction for the offence under this subsection last committed by the person.

(11) When a person is convicted of an offence as defined in subsection (1) and the court makes an order under subsection (7), the

person shall not be punished under subsection (10) for continuing to fail to comply with the requirement to which the order relates.

### **False or misleading statements**

**329.(1)** A person shall not give an answer, whether orally or in writing, that is false or misleading in a material particular to a question put to the person under section 327.

**(2)** A person shall not, in providing information in accordance with section 327, make a statement or representation that is false or misleading in a material particular.

**(3)** It is a defence to a charge under subsection (1) or (2) to prove that the defendant believed on reasonable grounds that the answer, statement or representation was neither false nor misleading.

### **Determination of facts by Minister**

**330.** Where, in the opinion of the Minister a person who is required by this Act to lodge a royalty return in respect of a period fails to lodge the return as prescribed or fails to keep adequate records to enable the amount of royalty payable by that person to be determined, or the Minister considers that all relevant information has not been specified or information supplied is inaccurate or inappropriate, the Minister may determine what are the facts relevant to the determination of the royalty payable and the royalty payable shall be calculated and be payable accordingly.

### **Reassessment of royalty**

**331.(1)** If the Minister, at any time, is satisfied that royalty has been assessed upon incorrect or inaccurate facts, the Minister may reassess the royalty payable.

**(2)** Where the royalty payable, upon a reassessment, is greater than any amount paid the person liable to pay the royalty shall pay the difference in the time specified by the Minister.

**(3)** Where the royalty paid, upon a reassessment, is greater than the royalty payable the Minister shall cause the difference to be refunded.

**Interest upon unpaid royalty**

**332.** A person who fails to pay any amount of royalty payable by the person to the Crown under this part by the prescribed time for payment may be liable at the discretion of the Minister to pay to the Crown interest on the amount outstanding at the rate prescribed for the time being which interest shall form part of the royalty payable.

**Recovery of unpaid royalties**

**333.** Without limiting in any way any other means of recovery thereof, the Crown or any other person to whom any royalty is payable under this part may recover in the Wardens Court or other court of competent jurisdiction the royalty or such part as remains unpaid and, in the case where the royalty is payable to the Crown interest at the prescribed rate from the person by whom the royalty is payable as a debt due and owing to the Crown or, as the case may be, that other person.

**Confidentiality of information**

**334.(1)** Except as provided in this section, an officer shall not disclose information or publish a record obtained by that officer or another person in connection with the administration of this part, unless the disclosure or publication is made—

- (a) with the consent (express or implied) of the person to whose affairs the information or record relates; or
- (b) in connection with the administration of this Act; or
- (c) for the purpose of any legal proceedings (including any report thereon) arising out of this Act; or
- (d) with the consent of the Minister.

**(2)** The Minister may, if the Minister is of the opinion that it is necessary to do so for the purpose of enforcing a law which is designed to protect the public revenue of Queensland, disclose information or publish a record referred to in subsection (1) to such persons as necessary for the purpose of enforcing that law so as to enable those persons to exercise or perform a power or duty conferred or imposed on those persons by law.

**(3)** A person shall not disclose information or publish a record

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communicated to the person under subsection (2) unless the disclosure or publication—

- (a) is made with the consent of the Minister; and
- (b) is to enable a person to exercise or perform, for a purpose referred to in subsection (2), a power or duty conferred or imposed on the person by law.

(4) Neither the Minister nor an officer nor a person authorised by the Minister to represent the Minister shall be required to produce in court any return, declaration, statement, assessment, notice or any other document or disclose to a court the fact that the Minister has received any information or the nature thereof or the name of the person who gave such information or any matter or thing coming under the Minister's notice in the performance of the Minister's duties under this part, except when it is necessary to do so for the purposes of the administration of this Act.

(5) In this section—

“**officer**” means an officer of the public service whose duties include the carrying out of duties in the administration of this Act and other persons engaged to carry out such duties.

**Furnishing false particulars etc.**

**335.** A person whether liable to the payment of royalty or not shall not—

- (a) fail or neglect to furnish a royalty return as and when required to do so by this Act; or
- (b) fail or neglect to comply with any requirement of the Minister in regard to a royalty return; or
- (c) make or deliver a false royalty return or supply false information with respect to a royalty return so made or delivered by the person.

## **PART 10—ADMINISTRATION AND JUDICIAL FUNCTIONS**

### *Division 1—Mining registrars and other officers*

#### **Appointment of mining registrars and other officers**

**336.(1)** The mining registrars, field officers and other officers necessary for this Act, and any other Act about mining, are to be employed under the *Public Service Act 1996*.

(2) A mining registrar may from time to time appoint a bailiff or bailiffs to carry out the service and execution of all process, judgments and orders authorised under this Act or any other Act relating to mining and such other duties as may be prescribed.

#### **Acting mining registrar**

**337.** The Minister may appoint an appropriate person to act as a mining registrar during—

- (a) any vacancy, or all vacancies, in the office; or
- (b) any period, or all periods, when the mining registrar is absent from the State or, for another reason, cannot perform the functions of the office.

#### **Disability of mining registrars and field officers**

**338.(1)** A mining registrar or field officer shall not hold or be entitled (directly or indirectly) to the benefits of any interest in any prospecting permit, mining claim, exploration permit, mineral development licence or mining lease.

Maximum penalty—100 penalty units or imprisonment for 6 months.

(2) A mining registrar or field officer who has or acquires an entitlement or expectation of entitlement which, but for the operation of section 410, would be an interest referred to in subsection (1), shall forthwith upon becoming aware of that fact, give notice in writing to the chief executive

giving the prescribed particulars.

(3) If, in relation to carrying out any of his or her functions in respect of a particular matter, a mining registrar or field officer is aware that his or her having an entitlement or expectation of an entitlement (referred to in subsection (2)) could be construed as influencing his or her conduct, the mining registrar or field officer shall inform the parties concerned and, if then requested by a party, shall arrange for another mining registrar or, as the case may be, field officer to attend to the matter.

### **Scope of authority of mining registrars**

**339.(1)** Each mining registrar shall be a mining registrar for the whole State.

(2) The Minister may assign from time to time a mining registrar to a mining district.

(3) The mining registrar assigned to a mining district shall be the registrar for any Wardens Court convened within that district and shall have custody of the records of that court unless, by order of the court, records of a particular matter are transmitted to a registrar of that or another Wardens Court to be convened at another place and to which that matter is adjourned.

### **Scope of authority of field officers**

**340.** A field officer appointed pursuant to section 336 shall be a field officer for the whole State.

### **Establishment of offices of mining registrars**

**341.** The Minister may from time to time appoint or cancel the appointment of a place within a mining district at which the office of the mining registrar for that district shall be established or located.

### **Powers of mining registrars and others**

**342.(1)** At all times—

- (a) a mining registrar; and

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- (b) a field officer; and
- (c) a person of a class prescribed under a regulation; and
- (d) any other person (including an officer appointed pursuant to section 336) who in the particular case is authorised in that behalf by the Minister;

may—

- (e) have full and free access to and enter any land and whilst thereon may—
  - (i) drill, dig, take cores, samples of soil, air, water or rock, make such inspections and carry out such investigations and do such other acts ordinarily connected with prospecting, exploring or mining as the person thinks fit;
  - (ii) if the person is satisfied that a post, cairn or other thing, not being a survey mark or other thing required by any other Act not to be removed, purporting to mark or apparently marking out boundaries of land for the purposes of this Act do not relate to any existing mining claim, mining lease or application for the grant of a mining claim or mining lease duly made under this Act—remove or cause to be removed that post, cairn or other thing;
  - (iii) make such investigation and inquiry as is necessary to ascertain whether the provisions of this Act including the conditions applying to any prospecting permit, mining claim, exploration permit, mineral development licence, mining lease or any other authority granted under this Act are being complied with;
- (f) stop, detain and search any vehicle or vessel used or that the person believes on reasonable grounds is being or is likely to be used for prospecting, exploring or mining;
- (g) subject to subsection (11)—question a person found by the person in any place to ascertain whether this Act is being complied with and require a person so found to answer the questions put;
- (h) require a person found by him or her committing an offence against this Act or who he or she believes on reasonable grounds

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has committed an offence against this Act or whose name and address are in the person's opinion reasonably required to state his or her full name and the address of the person's usual place of residence and, if the person suspects on reasonable grounds that a name or address so stated is false, may require evidence of the correctness thereof;

- (i) require a person to produce to him or her any prospecting permit, exploration permit, certificate of mining claim, mineral development licence, instrument of a mining lease or other authority under this Act granted and issued to that person or alleged by that person to have been granted to the person or any books, accounts, records or documents and may inspect, examine and make copies of or extracts from any permit, certificate, licence, instrument or authority or any book, account, record or document so produced;
- (j) in a case where the person is obstructed or has reasonable grounds to believe that he or she will be obstructed in the exercise of powers or authorities or the discharge of functions or duties—call to the person's aid—
  - (i) a mining registrar, field officer or other officer;
  - (ii) a police officer;

whereupon it shall be the duty of a person so called to assist the person as required and in accordance with this Act and a person so assisting shall have the same powers and authorities as are conferred under this Act upon the person he or she is assisting;

- (k) call to his or her aid a person who the person thinks is competent to assist in the exercise of powers and authorities or the discharge of functions and duties and a person so assisting shall have the same powers and authorities as are conferred under this Act upon the person he or she is assisting;
- (l) use such force as is reasonably necessary in the exercise of the powers and authorities or the discharge of the functions and duties conferred or imposed upon the person by this Act;
- (m) by order in writing—require a person who has failed to comply with this Act to take within such time as is specified such steps as

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are specified and to remedy those matters in respect of which noncompliance has occurred;

- (n) exercise such other powers and authorities and discharge such other functions and duties as are prescribed.

(2) An order pursuant to subsection (1)(m) shall not prejudice or affect in any way any proceeding or action that has been or may be taken for the failure to comply that resulted in the order, save that the person to whom the order is given is not liable for a continuance of the failure to comply during the time specified therein.

(3) Before a mining registrar, field officer or other officer or person enters a part of any place which part is used exclusively as a dwelling house the person shall, save where the person has the permission of the occupier of that part to the entry, obtain from a justice a warrant to enter.

(4) A justice who is satisfied upon the complaint of a mining registrar, field officer or other officer or person authorised by the Minister in that behalf that there is reasonable cause to suspect—

- (a) that in any place an offence against this Act has been, is being or is likely to be committed;
- (b) that there is in any place anything in respect of which an offence against this Act has been, is being or is likely to be committed;

may issue a justice's warrant directed to the complainant to enter the place named in the warrant for the purpose of exercising therein the powers conferred upon a mining registrar, field officer or other officer or person authorised by the Minister in that behalf under this Act.

(5) A complaint made under subsection (4) shall be made on oath or affirmation and shall set out the grounds on which the suspicion of the person making the same is based.

(6) A justice who is the chief executive or other officer of the department of the Government for the time being administering this Act is not competent to issue a warrant to which subsections (3), (4) and (8) apply.

(7) A justice who issues a warrant pursuant to subsection (4) shall forward a copy of the warrant to the mining registrar for the mining district in which the dwelling house is situated.

(8) A warrant shall be, for the period of 1 month from the date of its

issue, sufficient authority for the person named therein and all persons acting in aid of the person—

- (a) to enter the place specified in the warrant; and
- (b) to exercise therein the powers conferred upon the person named therein by or under this Act.

(9) In this subsection premises that are used as a dwelling house do not include the curtilage of those premises.

(10) For the purpose of gaining entry to a place a mining registrar, field officer or other officer or person authorised by the Minister may call to the person's aid such persons as the person thinks necessary and those persons, while acting in aid in the lawful exercise by the person of the person's power of entry, shall have a like power of entry.

(11) Except as provided in section 328, a person is not obliged under this Act to answer any question or give any information or evidence tending to incriminate the person.

### **Seizure of minerals produced by or vehicles, machinery etc. used in unauthorised mining**

**343.(1)** If he or she believes on reasonable grounds that any mineral is being or has been mined without authority by or under this Act or any other Act relating to mining or that any vehicle, machinery, equipment or thing of whatever description is used by any person in contravention of this Act or any authority granted under this Act—

- (a) a mining registrar; or
- (b) a field officer; or
- (c) any other officer appointed pursuant to section 336 who in the particular case is authorised in that behalf by the Minister;

may, without further authority, seize that mineral, vehicle, machinery, equipment or thing (the “**subject property**”) whereupon the subject property shall be taken to be in the custody of the mining registrar, field officer or, as the case may be, other officer.

(2) A mining registrar, field officer or other officer who seizes the subject property may—

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- (a) remove, dismantle and do all such things as the officer thinks necessary to transport the subject property to a place of safe keeping;
- (b) direct that mineral so seized be deposited by the person from whom it is seized at a place of safekeeping set out in the direction;
- (c) if the subject property is not removed to or deposited at a place of safekeeping, do all such things as are prescribed or, if not prescribed, as the officer thinks fit to show that the subject property has been so seized and is in his or her custody.

(3) Upon an application in writing by the owner of the subject property or a person acting on the owner's behalf or claiming a right to possession of the subject property the mining registrar, field officer or other officer who has the custody of the subject property may release the subject property to the applicant.

(4) If, upon the expiration of 3 months from the date of seizure of the subject property, the subject property is not released under subsection (3) and the subject property is not required as evidence in proceedings that have been instituted for a breach of any provision of this Act or of any other Act relating to mining alleged to have been committed by the person from whom the subject property was seized then, as soon as practicable thereafter, the mining registrar, field officer or other officer who seized the subject property shall cause to be served by post upon the owner of the subject property, if the owner can be ascertained, at the owner's last place of address known to the person who seized the subject property notice in writing that the subject property may be collected.

(5) The mining registrar, field officer or other officer who seized the subject property may, if the officer considers it desirable, give public advertisement to the owner in 1 or more newspapers circulating in the locality in which the subject property was seized or in other localities that the subject property may be collected.

(6) If the subject property is required as evidence in any proceedings instituted for a breach of any provision of this Act or any other Act relating to mining and is not forfeited, the mining registrar, field officer or other officer who seized the subject property shall, upon the final determination of those proceedings give the notice or advertisement referred to in subsection (4).

(7) If within 28 days from the date of service or advertisement of the notice, whichever shall last occur, the owner of the subject property or a person acting on the owner's behalf or claiming a right to the possession of the subject property has not obtained possession of the subject property in accordance with the provisions of this section, the mining registrar, field officer or other officer who seized the subject property may—

- (a) by notice published in a newspaper circulating in the locality in which the subject property was seized and, if the officer considers it desirable, in a newspaper circulating in any other locality, advertise that the officer will offer the subject property for sale at the place and time stated in the advertisement;
- (b) at the time on the day stated in the advertisement (which day shall be not earlier than 14 days after the date when the advertisement was first published) and at the place stated in the advertisement, offer the subject property for sale unless the owner thereof or a person acting on the owner's behalf or claiming a right to possession thereof has sooner obtained possession of the subject property in accordance with the provisions of this section.

(8) Subject property sold pursuant to subsection (7) shall be sold by public auction unless the Minister otherwise directs.

(9) The proceeds of the sale or disposal of the subject property shall be applied as follows—

- (a) firstly, in payment of the expenses of the sale or disposal;
- (b) secondly, in payment of the cost of seizure of, removal of and holding the subject property and the service and advertisement of any notice served or advertised under this section;
- (c) thirdly, in payment of the cost of rehabilitation of land required as a result of the use of the subject property in contravention of this Act or any authority granted under this Act or any other Act relating to mining;
- (d) fourthly, in payment of the balance of the proceeds to the owner of the subject property or, if after reasonable inquiry, the owner cannot be ascertained, to the public trustee as unclaimed moneys and the provisions of the *Public Trustee Act 1978* with respect to unclaimed moneys shall apply thereto.

(10) Subject property in the custody of the mining registrar, field officer or other officer who seized it shall not be delivered to the owner thereof, or to another person acting on the owner's behalf or claiming a right to the possession thereof unless—

- (a) the owner or person acting on the owner's behalf or claiming a right to possession of the subject property has applied in writing signed by the owner to the mining registrar, field officer or other officer for the release of the subject property;
- (b) the applicant has furnished proof to the satisfaction of the mining registrar, field officer or other officer of ownership or right to possession of the subject property and, in the case of the applicant being a person acting on behalf of the owner, has furnished proof to the satisfaction of the mining registrar, field officer or other officer, of the person's authority to so act;
- (c) the applicant has paid all expenses incurred by the mining registrar, field officer or other officer and not waived pursuant to the provisions of this subsection in connection with the seizure of, removal of and holding the subject property and the service or advertisement of any notice served or advertised by the mining registrar, field officer or other officer in relation to the availability for collection or intended sale of the subject property;
- (d) the applicant has signed a receipt for the delivery of the subject property to the applicant.

(11) If the mining registrar, field officer or other officer who seized the subject property considers that special circumstances exist, the officer may recommend to the chief executive that the chief executive waive payment of the whole or part of the expenses referred to in subsection (10)(c).

(12) A person who takes delivery, or obtains possession of or removes or attempts to remove from or interferes in any way with subject property which is in the custody of a mining registrar, field officer or other officer who seized the property except in accordance with the provisions of this section commits an offence against this Act.

(13) In this section—

**“subject property”** includes any part of the subject property.

(14) It is the duty of every police officer to assist a mining registrar, field

officer or other officer authorised to do the things permitted or directed to be done by this section, when called upon to do so.

### *Division 2—Wardens Courts*

#### **Qualifications for appointment of wardens**

**344.** A person is qualified to be appointed as a warden if the person is a lawyer of at least 5 years standing.

#### **Appointment of wardens**

**345.(1)** The Governor in Council may appoint the number of wardens necessary for transacting the business of the Wardens Court.

**(2)** A mining warden is to be appointed under this Act, and not under the *Public Service Act 1996*.

#### **Terms and conditions of employment**

**346.(1)** A warden is to be paid—

- (a) salary fixed under the *Judges (Salaries and Allowances) Act 1967*; and
- (b) the allowances decided by the Governor in Council.

**(2)** The Governor in Council is to decide the terms of the appointment (other than salary).

**(3)** Employment of a warden is not subject to an industrial award or agreement, or a decision or rule of an industrial tribunal.

#### **Preservation of rights**

**347.(1)** This section applies if an officer of the public service is appointed as a warden.

**(2)** The person keeps the rights the person has accrued because of employment as an officer of the public service, or that would accrue in the future to the person, as if service as a warden were a continuation of service

as an officer of the public service.

(3) If the person ceases to be a warden on being appointed to an office of the public service, the person's service as a warden is service as an officer of the public service for working out the person's rights as an officer of the public service.

### **Appointment of acting wardens**

**348.(1)** The Governor in Council may appoint anyone qualified to be appointed as a warden to act as a warden.

(2) An acting mining warden is to be appointed under this Act, and not under the *Public Service Act 1996*.

(3) However, if the person is an officer of the public service, the person keeps the rights the person has accrued because of employment as an officer of the public service, or that would accrue in the future to the person because of the employment, as if service as an acting warden were a continuation of service as an officer of the public service.

### **Jurisdiction and powers of wardens**

**349.** A warden may exercise, throughout the State, the jurisdiction, powers and functions conferred on a warden under this or another Act.

### **Oath to be taken by warden**

**350.(1)** A person appointed as a warden may exercise a power or function of a warden only if the person has—

- (a) taken the oath prescribed under a regulation or, if no oath is prescribed, by another Act; or
- (b) made an affirmation in the form of the oath.

(2) An oath or affirmation mentioned in subsection (1) may be taken or made before a Supreme Court judge, District Court judge, magistrate or warden.

(3) The person's appointment ends if the person does not take the oath or make the affirmation within 3 months after appointment as a warden.

**Tenure of office**

**351.(1)** A person ceases to be a warden if—

- (a) the person resigns by signed notice of resignation given to the Minister; or
- (b) the person elects to retire on or after turning 55 by signed notice given to the Minister; or
- (c) the person is removed from office as a warden.

**(2)** A resignation or retirement takes effect on the day the notice of resignation or retirement is given to the Minister or, if a later day of effect is stated in the notice, the later day.

**Continuation of jurisdiction on retirement**

**352.** A person who ceases to be a warden for any reason (other than death or removal from office) is taken to continue to be a warden so far as it is necessary to give a decision in a matter the person has partly heard or not decided.

**Disability of warden**

**353.(1)** A warden shall not hold or be entitled (directly or indirectly) to the benefits of any interest in any prospecting permit, mining claim, exploration permit, mineral development licence or mining lease.

Maximum penalty—100 penalty units or imprisonment for 6 months.

**(2)** A warden who has or acquires an entitlement or expectation of entitlement which, but for the operation of section 410, would be an interest referred to in subsection (1), shall forthwith, upon becoming aware of that fact, give notice in writing to the Minister giving the prescribed particulars.

**(3)** If, in relation to the hearing of any matter, a warden is aware that the warden having an entitlement or expectation of an entitlement (referred to in subsection (2)) could be construed as influencing the warden's conduct, the warden shall inform the parties concerned and, if then requested by a party, shall arrange for another warden to hear the matter.

**(4)** Nothing in subsection (3) shall limit the jurisdiction of a warden to grant an interim injunction.

**Scope of wardens authority**

**354.(1)** Each warden shall be a warden for the whole State.

(2) The Minister may assign from time to time 1 or more than 1 warden to 1 or more than 1 mining district.

(3) The Minister may assign from time to time such functions of a warden as are specified to a warden in respect of the whole of the State or such part thereof as is specified in the assignment.

(4) The exercise or performance by a warden of the powers, authorities and functions of a warden shall have force and effect throughout the State and a summons, warrant or other process issued by the warden shall be enforced and given effect to accordingly.

**Establishment of offices of wardens**

**355.** The Minister may from time to time appoint or cancel the appointment of a place within the State at which an office of a warden shall be established and maintained and assign a warden to attend at that office.

**Power to enter land**

**356.** For the purpose of carrying out or facilitating the carrying out of any of the functions of a warden or a Wardens Court, a warden and all persons authorised in writing by a warden in that behalf may enter any land.

**Constitution of Wardens Courts**

**357.(1)** Each warden sitting alone and in open court shall constitute a Wardens Court which shall be convened by the warden from time to time within each mining district assigned to the warden and in such other places within the State in respect of which the warden's functions as a warden are assigned to the warden pursuant to section 354(3).

(2) Within a mining district, a Wardens Court shall be convened by the warden at such place or places as the warden considers appropriate to the carrying out of the functions of the Wardens Court.

(3) Subject to section 371 a matter to be heard by a Wardens Court shall be heard by a Wardens Court convened at a place within the relevant mining

district unless—

- (a) the parties and the warden agree that the matter shall be heard within another mining district; or
- (b) the warden determines as provided for in this Act that the matter shall not be heard within that district.

(4) Where this Act authorises the warden to determine that a matter shall not be heard by the Wardens Court, the warden is not required to convene a Wardens Court to make that determination.

(5) The person (whether or not the person continues to be a warden) who constitutes a Wardens Court at the time the hearing of a matter is commenced shall continue to constitute that Wardens Court for the purpose of that matter being determined by that court unless—

- (a) as provided in this Act the matter is adjourned to another Wardens Court; or
- (b) the Minister assigns that matter to another Wardens Court.

(6) At any time more than 1 Wardens Court may sit within a mining district.

### **Mining registrar may constitute Wardens Court in some cases**

**358.(1)** A mining registrar may constitute a Wardens Court at a place whenever a warden cannot attend the place to conduct the business of the Wardens Court.

(2) However, the mining registrar may only—

- (a) adjourn a matter before a Wardens Court; or
- (b) set a matter down for hearing by a Wardens Court; or
- (c) enter judgment for an amount not more than the amount specified in the *Magistrates Courts Act 1921*, section 4 (Jurisdiction of Magistrates Courts).<sup>48</sup>

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<sup>48</sup> The amount is currently \$40 000.

**Wardens Court a court of record**

**359.(1)** A Wardens Court shall be a court of record.

(2) Each Wardens Court shall have a seal which shall be kept by the warden and shall be judicially noticed.

**Form of decisions of Wardens Court**

**360.(1)** Every judgment, decision, recommendation and order of a Wardens Court—

- (a) shall be in writing;
- (b) shall set out fully the facts found by it;
- (c) shall set out its decisions on any relevant question of law raised during the hearing of the matter;
- (d) shall be given and published in open court;
- (e) may be given at a place other than where the matter was heard.

(2) Immediately after a Wardens Court gives a judgment, decision, recommendation or order at a place other than where the matter was heard, the Wardens Court, unless the parties otherwise agree, shall adjourn the matter to the next sitting of the Wardens Court at the place where the matter was heard to allow any applications for costs to be made.

(3) The warden shall cause each judgment, decision, recommendation and order published by the Wardens Court to be lodged with and filed by the registrar of the court and retained with the records of the court.

(4) The registrar of a Wardens Court shall transmit a copy of every judgment, decision, recommendation and order of the court or of the warden published in the Wardens Court to the chief executive.

**Right of audience in Wardens Court**

**361.** A party to any matter before a Wardens Court may appear in person and conduct the party's own case by addressing the court and by examining and cross-examining witnesses or be represented by a duly qualified legal practitioner or any person appointed by the party accepted by leave of the

court, who may conduct the case on behalf of the party and address the court, examine and cross-examine witnesses.

### **Rules of evidence**

**362.(1)** Except as otherwise provided in sections 77, 116 and 268 the rules of evidence observed in the Supreme Court shall be applicable to and shall be observed in the hearing of all questions of fact in a Wardens Court.

**(2)** At a hearing before a Wardens Court a document purporting to be the books of any court or tribunal exercising jurisdiction within Queensland and any entries therein and records of that court or tribunal or copies of those books, entries or records under the seal of that court or tribunal and purporting to be signed and certified by the clerk, registrar or other appropriate officer of that court or tribunal shall upon its production and proof of its relevance to the matter in issue be evidence of the contents of the books, entries or records and of the proceedings referred to in them and of the regularity of the proceedings and in the absence of evidence to the contrary conclusive evidence thereof.

**(3)** Relevant affidavits and other processes of a court purporting to be sealed shall be admitted in evidence by a Wardens Court without further proof thereof.

### **Substantive jurisdiction**

**363.(1)** A Wardens Court shall have jurisdiction to hear and determine actions, suits and proceedings arising in relation to prospecting, exploration or mining or to any permit, claim, licence or lease granted or issued under this Act or any other Act relating to mining.

**(2)** Without limiting the generality of subsection (1), a Wardens Court shall have jurisdiction to hear and determine actions, suits and proceedings with respect to—

- (a)** the right to possession of or other interest or share in any mining claim, exploration permit, mineral development licence or mining lease; and
- (b)** the rights and entitlements to minerals mined under any prospecting permit, mining claim, mining lease or other authority

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granted under this Act or any other Act relating to mining and to the products of mining; and

- (c) the area, dimensions and boundaries of land (including the surface area of land) the subject of a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease; and
- (d) any encroachment or trespass upon or interference with or damage to land the subject of a prospecting permit, mining claim, exploration permit, mineral development licence, mining lease or other authority granted under this Act or the buildings, plant, machinery or equipment thereon; and
- (e) any matter arising between applicants or holders in relation to prospecting, exploring or mining, or arising between applicants or holders and owners of land in relation to prospecting, exploring or mining; and
- (f) any determination of compensation as provided for under this Act or any other Act relating to mining; and
- (g) the enforcement of any agreement or determination as to compensation under this Act or any other Act relating to mining; and
- (h) any assessment of damage, injury or loss arising from activities purported to have been carried on under the authority of this Act or any other Act relating to mining; and
- (i) any application required by this Act or any Act relating to mining to be made or heard in a Wardens Court; and
- (j) any other matter prescribed to be heard in a Wardens Court.

**(3)** A Wardens Court also has jurisdiction to hear and determine actions, suits and proceedings with respect to any demand for debt or damages arising out of or made in respect of—

- (a) the carrying on of prospecting, exploring or mining;
- (b) any agreement relating to prospecting, exploring or mining.

**(4)** The jurisdiction of a Wardens Court includes jurisdiction to take cognisance of and determine all claims and interests arising in any proceeding before it, both legal and equitable, and in the exercise of its

jurisdiction a Wardens Court shall have power to grant equitable remedies.

(5) The jurisdiction of a Wardens Court shall not be ousted by reason only of the fact that any proceeding before it relates to claims or interests of an equitable nature or involves the determination of title to land.

(6) In relation to any matter within its jurisdiction (or in relation to any matter which a Wardens Court considers necessary to determine to establish its jurisdiction), a Wardens Court may grant such remedy and relief as it thinks just and as is in accordance with law, including equitable remedy and relief.

(7) This section does not confer jurisdiction on a Wardens Court in relation to the recovery of wages or amounts owing under an industrial award or agreement.

### **Application for interim orders by remote means**

**364.(1)** Where by reason of distance, urgency or other circumstances affecting a particular case, it is impracticable for a party to a cause or matter within the jurisdiction of a Wardens Court to make application to the warden for an order for the detention or preservation of any property or thing, being the subject matter of the litigation or as to which any question may arise therein, the party may make the application to the mining registrar in the mining district in which the property or thing is situated in the same manner that an application could be made to the warden.

(2) Where an application is made pursuant to subsection (1) to a mining registrar, the mining registrar shall forthwith advise the warden (whether by means of telephone, radio, telex, facsimile transmission or other facility for distance communication) of the application and of all relevant details and any supporting evidence produced to the mining registrar in respect of the application.

(3) The warden who receives advice pursuant to subsection (2) may make any order that the warden could have made if the application had been made in the warden's presence.

(4) Upon making an order pursuant to subsection (3) the warden shall forthwith inform the mining registrar by like means referred to in subsection (2) of the order and the mining registrar, as registrar of the Wardens Court, shall publish the order which shall include a statement—

- (a) of the date on which and place at which the warden made the order; and
- (b) of the name of the warden who made the order.

(5) An order issued under this section shall take effect as an order of the warden.

### **Removal of proceedings from Supreme Court or District Court to Wardens Court**

**365.(1)** If proceedings are pending in the Supreme Court or a District Court that might have been brought in a Wardens Court and—

- (a) the parties have not consented to the proceeding being heard in the Supreme Court or, as the case may be, a District Court; or
- (b) the parties consent to the making of the following application;

a party to the proceedings may at any time apply to the Supreme Court or a judge thereof for an order remitting the proceedings to a Wardens Court or the Supreme Court or a judge thereof may of its or the judge's own motion order the party that brought the proceedings to show cause as directed therein why the proceedings should not be so remitted.

(2) If the Supreme Court or a judge thereof makes an order under subsection (1) on its or the judge's own motion, the registrar of that court shall give notice of the order to the party in question and in accordance with the Rules of the Supreme Court.

(3) In a hearing conducted pursuant to subsection (1), unless it is shown to the satisfaction of the Supreme Court or the judge—

- (a) that unnecessary delay would be caused by a trial in a Wardens Court; or
- (b) that either by reason of the probable cost of trial in a Wardens Court, or by reason of the questions of law involved in the proceedings, or because there is reason to believe that a fair trial cannot be had in a Wardens Court, the case ought to be tried in the Supreme Court or, as the case may be, a District Court;

it or the judge may order the proceedings pending in the Supreme Court or, as the case may be, a District Court to be remitted to a Wardens Court

convened in the relevant mining district.

(4) Where the Supreme Court or a judge thereof makes an order under subsection (3) remitting proceedings pending before it or the judge to a Wardens Court, the registrar of the Supreme Court shall transmit to the registrar of that Wardens Court a copy of the order and a copy of the writ, pleadings or other documents filed by the parties in the registry of the Supreme Court in relation to the proceedings.

(5) Where the Supreme Court or a judge thereof makes an order under subsection (3) remitting proceedings pending before a District Court to a Wardens Court, the registrar of the Supreme Court shall transmit to the registrar of the District Court a copy of the order and any document filed by the parties in the registry of the Supreme Court in relation to the application made under subsection (1).

(6) Upon receipt of a copy of an order and other documents transmitted pursuant to subsection (5), the registrar of the District Court shall transmit to the registrar of the Wardens Court a copy of that order and a copy of the writ, pleadings and other documents filed by the parties in the registry of the District Court in relation to the proceedings.

(7) Proceedings remitted to a Wardens Court shall be heard and determined and judgment therein shall be entered as if the proceedings had been commenced in that Wardens Court.

(8) The costs of the parties in respect of proceedings remitted to a Wardens Court by an order made under subsection (3)—

- (a) incurred subsequently to the order shall be determined by the Wardens Court;
- (b) incurred before the order shall be in the discretion of the Supreme Court or a judge thereof.

(9) This section shall not be construed to limit the operation of the *District Courts Act 1967*, sections 77 and 78.

(10) Except as provided by this section, proceedings to which this section may apply are not removable from the Supreme Court or a District Court to the Wardens Court.

**Removal of proceedings from Wardens Court to Supreme Court or District Court**

**366.(1)** If proceedings are pending in a Wardens Court that might have been brought in the Supreme Court or a District Court and—

- (a) the parties have not consented to the proceedings being heard in the Wardens Court; or
- (b) the parties consent to the making of the following application;

a party to the proceedings may apply to the Supreme Court or a judge thereof for an order remitting the proceedings to the Supreme Court or to a District Court or the Supreme Court or a judge thereof may of its or the judge's own motion order the party that brought the proceedings to show cause as directed therein why the proceedings should not be so remitted.

**(2)** If the Supreme Court or a judge thereof makes an order under this subsection on its or the judge's own motion, the registrar of that court shall give notice of the order to the party in question and in accordance with the rules of the Supreme Court.

**(3)** In a hearing conducted pursuant to subsection (1), if it is shown to the satisfaction of the Supreme Court or the judge that by reason of the questions of law involved in the proceedings or because there is reason to believe that a fair trial cannot be had in the Wardens Court, the case ought to be heard in the Supreme Court or a District Court, it or the judge may order the proceedings pending in the Wardens Court to be remitted to the Supreme Court or, as the case may be, a District Court.

**(4)** Where the Supreme Court or a judge thereof makes an order under subsection (3) remitting proceedings to the Supreme Court or a District Court, the registrar of the Supreme Court shall transmit to the registrar of the Wardens Court a copy of the order and, in a case where the proceedings are remitted to a District Court, any documents filed by the parties in the Registry of the Supreme Court in relation to the application made under subsection (1).

**(5)** Upon receipt of a copy of an order transmitted pursuant to subsection (4), the registrar of the Wardens Court shall transmit to the registrar of the court to which the proceedings are remitted a copy of the order and a copy of the plaint, pleadings or other documents filed by the parties in the registry of the Wardens Court in relation to the proceedings.

(6) Proceedings remitted to a court by an order made under subsection (3) shall be heard and determined and judgment therein shall be entered as if the proceedings had been commenced in that court.

(7) The costs of the parties in respect of proceedings remitted to a court by an order made under subsection (3)—

- (a) incurred subsequently to the order shall be allowed according to the scale prescribed in that court;
- (b) incurred before the order shall be in the discretion of the Supreme Court or a judge thereof.

(8) This section shall not be construed to limit the operation of the *District Courts Act 1967*, sections 77 and 78.<sup>49</sup>

(9) Except as provided by this section, proceedings to which this section may apply are not removable from the Wardens Court to the Supreme Court or a District Court.

### **Practice and procedure of Wardens Court**

**367.(1)** The proceedings taken, and manner, time and place of hearing and determining matters within the jurisdiction of a Wardens Court shall be as prescribed.

(2) The Governor in Council may make rules of court for the purpose of regulating practice and procedure in the Wardens Court.

(3) Where in relation to any matter of practice and procedure this Act is silent or does not prescribe sufficiently, such practice and procedure shall be, as nearly as may be, in accordance with the practice and procedure of Magistrates Courts exercising jurisdiction under the *Magistrates Courts Act 1921* the provisions of which Act and the rules made thereunder shall in such case apply, with all necessary adaptations, with respect to proceedings before a Wardens Court and where in relation to any matter of practice or procedure that Act and those rules make no provision or inadequate provision the practice and procedure of a Wardens Court shall be, as nearly as may be, the practice and procedure of the Supreme Court.

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<sup>49</sup> *District Courts Act 1967*, s 77 (Removal of proceedings from Supreme Court to District Court) and s 78 (Removal of proceedings from a District Court to a Magistrates Court)

## **Costs**

**368.(1)** Costs may be awarded by the Wardens Court in respect of any matter (including the hearing of applications and objections under this Act) brought before the Wardens Court.

(2) Costs awarded by the Wardens Court shall be at the discretion of the warden and the amount thereof may be determined by the warden or taxed by the registrar of the Wardens Court or a taxing officer of a District Court or of the Supreme Court as the warden may direct.

(3) A party may apply to a Supreme Court judge for a review of the taxation.

(4) Any order of the Wardens Court striking out any action or matter upon the grounds that the Wardens Court does not have jurisdiction to hear and determine the matter may include any award of costs to the same extent and recoverable in the same manner as if the Wardens Court had jurisdiction and had found against the party bringing the action or matter.

## **Adjournment by registrar of Wardens Court**

**369.** When, by reason of the absence of the warden, a Wardens Court cannot be held at the time appointed and place convened, the registrar of that court at that place shall adjourn the court to such day as the registrar considers convenient and shall record in the appropriate records of the court the cause of the adjournment.

## **Jurisdiction of Supreme Court**

**370.(1)** The Supreme Court has jurisdiction to hear and determine any proceeding challenging or otherwise relating to the validity of any grant that has been made pursuant to this Act or any Act repealed by this Act or any other Act relating to mining and, notwithstanding any other Act or law, that proceeding shall be heard and determined in that court only.

(2) It is immaterial that the Crown is not a party to the proceeding.

(3) If the grant in question is declared by the Supreme Court to be invalid, the declaration binds the Crown and a copy of the judgment or order of the court in respect thereof shall be served by the party who

benefits from that declaration on the chief executive within 21 days from the date of that judgment or order.

### **Wardens Court proceedings**

**371.(1)** The following provisions of this section do not apply in respect of hearings in respect of—

- (a) applications for the grant of mining claims or of mining leases;
- (b) application or references relating to determinations of compensation payable under this Act or any other Act relating to mining;
- (c) proceedings for offences against this Act;
- (d) applications for variation of land used or to be used as access in respect of mining claims or of mining leases.

**(2)** Proceedings before a Wardens Court—

- (a) shall be commenced by plaint in the approved form and manner;
- (b) shall be brought and heard and determined in the Wardens Court convened within the mining district—
  - (i) in which any prospecting permit, mining claim, mineral development licence or mining lease the subject of that proceeding is situated or, in the case of an exploration permit, in which any part of the land subject to that permit is situated; or
  - (ii) in which the cause of action either wholly or in some material point arises; or
  - (iii) in which the defendant or 1 of the defendants resides.

**(3)** However, any proceeding may be heard and determined at any place if the parties thereto so consent in writing and it is acceptable to the warden for the district in which the location is situated.

**(4)** Such consent shall be filed with that warden.

**(5)** Notwithstanding any provision of this Act or any other Act relating to mining—

- (a) where a proceeding before a Wardens Court should have been

brought in another Wardens Court or at another place; or

- (b) it appears to a Wardens Court or the warden appointed to constitute it that a proceeding brought or to be brought before that court at any place could be more conveniently heard and determined in another Wardens Court or at another place;

the court may order or, as the case may be, the warden may arrange that the proceeding—

- (c) be transmitted to that other court at that place which thereupon shall have jurisdiction to hear and determine the proceeding; or
- (d) where the Wardens Court has jurisdiction to hear and determine proceedings at that place, be adjourned to be heard and determined at that place.

### **Attendance of witnesses**

**372.(1)** The following provisions of this section do not apply in respect of hearings in respect of applications for the grant of mining claims or of mining leases.

**(2)** In any proceedings before a Wardens Court—

- (a) each defendant or respondent to the proceedings shall be summonsed by the registrar of the court, in the approved form and manner, to attend and, should the defendant or respondent fail to attend pursuant to that summons, the court may if it thinks fit proceed to hear and determine the plaint *ex parte*; and
- (b) witnesses shall be examined on oath or affirmation; and
- (c) the warden, registrar of the court or bailiff may administer an oath or an affirmation; and
- (d) if any person, being duly summonsed to attend as a witness and to whom the prescribed expenses have been paid or tendered, fails to attend at the time and place named in the summons, refuses to be sworn or make an affirmation, or refuses to answer any lawful question put to the person, the Wardens Court may impose a penalty not exceeding 20 penalty units and order imprisonment until the sum ordered is paid or for 14 days, whichever is the shorter period, unless reasonable cause is shown

to the court's satisfaction for that person's failure or refusal.

(3) Where a person referred to in subsection (2)(d) fails to attend, the Wardens Court concerned irrespective of any other order it may make, may issue its warrant directed to all police officers to bring and have such person at a time and place therein stated before the Wardens Court to testify concerning the proceeding and the hearing thereof may be adjourned to that time and place upon such terms as to costs as the court orders.

(4) A warrant so issued shall be sufficient authority to any police officer to execute the same according to its tenor.

### **Reservation of point of law**

**373.(1)** At any stage of a proceeding before it (not being a hearing in respect of an application for the grant of a mining claim or of a mining lease), the Wardens Court may, with the consent of the parties, reserve a question of law for the opinion of the Supreme Court, and with respect to a question so reserved—

- (a) the warden shall prepare and state a special case setting out the question of law and shall transmit that case to the registrar of the Supreme Court; and
- (b) the registrar of the Supreme Court shall set the special case down for argument before a judge of that court and shall forthwith notify the warden of the time and place appointed therefor; and
- (c) the warden shall give to each party concerned therein who is entitled to be heard in relation thereto notice of the time when and place where the judge shall consider the case; and
- (d) the Supreme Court's opinion on that case shall, when given, be drawn up and transmitted by the registrar of that court to the warden; and
- (e) the costs of the special case shall be at the discretion of the Supreme Court; and
- (f) the Wardens Court shall act in accordance with the opinion received from the Supreme Court and pending receipt of that opinion, no judgment or order of the Wardens Court shall affect the question so reserved.

(2) When reserving a question under this section, the Wardens Court on the application of a party to the proceeding, on such terms as to costs or otherwise as it thinks fit, may make such order for an injunction or the appointment of a receiver, or for payment of money into court or for giving security for any purpose, as appears to it to be desirable in the interests of justice.

(3) The judge, at any stage of the special case, may—

- (a) remit the case to the warden for amendment;
- (b) direct that the case be set down for argument before the Court of Appeal;
- (c) proceed to hear and determine the question;

and the Court of Appeal or judge, as the case may be, may give such direction or opinion on the question submitted, as the Court of Appeal or judge thinks proper.

### **Contempt of court**

**374.(1)** A person who—

- (a) wilfully insults a warden, a mining registrar, bailiff or other officer of a Wardens Court, during its sitting or, as the case may be, attendance in court, or in going to or returning from court; or
- (b) wilfully interrupts the proceedings of a Wardens Court or otherwise misbehaves in court; or
- (c) unlawfully obstructs or assaults any person in attendance in a Wardens Court; or
- (d) without lawful excuse, disobeys a lawful order or direction of a Wardens Court;

commits an offence under this section and may be excluded from the room or other place where the Wardens Court is sitting, by order of the court and, whether or not the person is so excluded, may be dealt with as provided by this section.

(2) A bailiff or other officer of the Wardens Court or a police officer may, by order of the court with the assistance of other persons should the case require it, take the offender under subsection (1) into custody and

detain the offender until the rising of the court.

(3) A person who does any other act or thing which is a contempt of a Wardens Court commits an offence under this section.

(4) At any time before the rising of the court, the Wardens Court may call upon an offender under this section, whether or not the offender is excluded as provided by subsection (1) or taken into custody as provided by subsection (2), to show cause why the offender should not be punished.

(5) A Wardens Court acting under this section may act on its own view and there is no need to take evidence or issue a summons in dealing with an offender under this section.

(6) If an offender under this section does not show cause why the offender should not be punished as called upon pursuant to subsection (4), a Wardens Court may order the offender to be committed to prison for a period not exceeding 14 days or may impose on the offender a fine not exceeding 20 penalty units and in the latter event may also order that in default of immediate payment the offender shall be committed to prison for a period not exceeding 14 days unless the fine is sooner paid.

### **Interpleader proceedings**

**375.** A person may avail himself or herself of interpleader proceedings in a Wardens Court subject to and in accordance with (as nearly as may be) the rules pertaining to interpleader proceedings made under the *Magistrates Courts Act 1921*.

### **Powers of Wardens Court**

**376.(1)** In all matters within its jurisdiction, a Wardens Court shall have power to—

- (a) enforce contracts and award damages; and
- (b) appoint receivers; and
- (c) grant adjournments or time to any party; and
- (d) grant prohibition orders, including, for example, orders requiring a person—
  - (i) not to destroy information the person has obtained while

- performing an investigation for a Wardens Court hearing or inquiry; or
- (ii) not to destroy information in the person's possession because of an investigation for a Wardens Court hearing or inquiry; or
  - (iii) not to disclose information known to the person because of the person's involvement in an investigation performed for a Wardens Court hearing or inquiry; and
- (e) grant injunctions, attachment orders and charging orders; and
  - (f) add, join, substitute and strike out parties; and
  - (g) amend pleadings; and
  - (h) impose penalties; and
  - (i) cause minerals and other chattels to be restored to any person or place from which they have been improperly or unlawfully taken or removed or cause them to be deposited for safe custody with any person or in any place or to be summarily seized; and
  - (j) summon witnesses; and
  - (k) award costs; and
  - (l) generally make such orders, determinations or assessments and give such judgments;

as it thinks fit for the purpose of effectively disposing of any matter before it according to the merits of the case.

(2) If by reason of the exigencies of a particular case, it appears proper to a warden so to do, the warden may, on the application of a party to a proceeding before the Wardens Court, without notice to any other party, grant an interim injunction to be enforced for a period not exceeding 21 days, or until the injunction is sooner discharged.

### **Enforcement of decisions etc. of Wardens Court**

**377.(1)** Every judgment, decision or order of a Wardens Court shall be carried out and enforced in the same manner as if it were a judgment, decision or order of a like nature of the Supreme Court and the provisions of enactments relating to the carrying out and enforcement of judgments,

decisions and orders of the Supreme Court and rules of court made thereunder shall, with all necessary adaptations apply.

(2) Every warrant, order or any other process of a Wardens Court may be directed to and may be served or executed or put into effect by a bailiff or other officer of the Wardens Court or by a bailiff of the Supreme Court or of a District Court or a Magistrates Court, without being specifically named therein, or by any other person to whom it is specifically directed by a warden or registrar of the court in which the judgment, decision or order was given or made.

### **Power to order deposit of mineral etc.**

**378.(1)** At any stage after proceedings before a Wardens Court have been commenced, the warden may, upon an application duly made by a party thereto and subject to such terms as to costs or otherwise as the warden thinks fit, direct a party to that proceeding having possession, custody or control of any money, mineral, chattel, ore or other thing or which may later come into the possession, custody or control of that party to deposit it in accordance with the order with such person at the place and upon the terms specified in the order to abide the determination of the proceeding or in the event of an appeal from that determination, the judgment of the court of appeal.

(2) An application referred to in subsection (1) is not duly made if the warden is not satisfied that the applicant has given at least 12 hours notice that the applicant proposes to make the application to—

- (a) all parties to the proceeding who may wish to oppose the application; or
- (b) such of the parties referred to in paragraph (a) as, in the opinion of the warden, are sufficiently representative of all those parties.

(3) Where an appeal is lodged against a determination of a proceeding determined by the warden or the Wardens Court, for the purposes of subsection (1), that proceeding is not determined until judgment of the court on appeal.

(4) An order made under subsection (1) shall specify—

- (a) the person with whom; and

- (b) the place at which; and
- (c) the time or times within which; and
- (d) the terms upon which, any money, mineral or other substance or thing specified therein shall be deposited.

(5) An order made by a warden under this section shall have the same force and effect and may be enforced as if it were an order of the Wardens Court.

(6) An order may be made under this section by a warden notwithstanding that the warden is not then within the mining district within which the matter is to be heard.

### **Inspection of land etc.**

**379.(1)** At any time before the conclusion of a hearing by a Wardens Court, the warden may, whether or not upon an application of a party, make an inspection of any land or thing the subject of dispute.

(2) If either of the warden's own motion, or upon the application of any party to the proceeding it appears to a warden that for the proper determination of a hearing the Wardens Court should make an inspection of the land or thing the subject of dispute the court may make the inspection and shall cause all parties at the hearing to be given reasonable notice of intention to make the inspection and of the date, time and place of the inspection.

(3) The costs occasioned by or incidental to an inspection shall be costs in the hearing and be paid as the warden or, as the case may be, Wardens Court orders.

### **Wardens Court may order survey**

**380.** If, at any time before or during the hearing by a Wardens Court of a plaint, it appears to the warden that it is necessary for the proper determination of the proceeding that a survey be made of any land, water, stack or other accumulation of ore, buildings or any other thing the Wardens Court may order any party to the proceeding as, to it, appears just to cause the survey to be made and the costs of or incidental to the survey

shall be costs in the proceeding and shall be paid as the Wardens Court orders.

### **Power of Wardens Court to order surrender of minerals**

**381.(1)** A Wardens Court may, upon determining any proceeding before it, order that a person ordered by the court to pay any amount in respect of a debt, damages or costs shall, within the time appointed by the court, deliver to the party to whom payment is ordered to be made or to the court itself for delivery to such party any ore or mineral in the possession of and being the property of that person in satisfaction or part satisfaction of the amount ordered to be paid and for this purpose may fix a value of that which is ordered to be delivered.

**(2)** An order made under subsection (1) shall not prejudice the recovery of the amount ordered to be paid by any other process or, where delivery of ore or mineral is made in part satisfaction of the amount ordered to be paid, the recovery of the balance of that amount.

### **Copies of orders, judgments etc.**

**382.(1)** A person may, on application to the registrar of a Wardens Court and on payment of the prescribed fee, obtain a copy of any order, judgment, determination, decision, recommendation (including the warden's summation and reasons upon which the recommendation is based) or record (including transcripts and documents and evidence) of that court or an entry in a book kept by the court.

**(2)** A document purporting to be a copy of an order, judgment, determination, decision, recommendation or record of a Wardens Court or entry in a book kept by the court, certified by the registrar of that court under the seal of the court shall be admitted in all courts as conclusive evidence of that order, judgment, determination, decision, record, recommendation or entry and of the proceedings referred to in that document and of the regularity thereof.

***Division 3—Appeals from Wardens Court*****Appeals from Wardens Court**

**383.(1)** Save where this Act or any other Act relating to mining prescribes another manner of appeal, any party aggrieved by a determination of a Wardens Court may, within 28 days of the date of that determination or within such further period as a District Court, on the application of that party in that behalf prior to the lodgment of the appeal, considers appropriate in any particular circumstances, appeal against the determination to a District Court.

(2) However, in a case where an amount not exceeding \$5 000 is claimed, and no other relief is sought, an appeal shall not lie unless a District Court or a judge thereof, upon being satisfied that an important principle of law or justice is involved, grants leave.

(3) The appeal shall be instituted by, within the time and in the manner prescribed—

- (a) lodging in the registry of the District Court, written notice of appeal which shall include the grounds of appeal; and
- (b) serving copies of the notice of appeal on the mining registrar and each other party; and
- (c) giving security (approved by the registrar of the District Court) for the costs of the appeal.

(4) As soon as practicable after being served with a notice of appeal the mining registrar shall transmit to the registrar of the District Court the evidence, notes, reasons and proceedings taken in the Wardens Court.

(5) The District Court shall have jurisdiction to hear and determine an appeal under this section.

(6) An appeal shall not be defeated by reason only of a defect in substance or in form in the contents of the notice of appeal.

(7) If at the hearing of an appeal it appears to the judge that there is such a defect the judge shall, upon an objection taken thereto or, in the absence of an objection, may make such order for the amendment of the notice as appears to the judge to be necessary or desirable in the interests of justice and may make such order as to any costs occasioned by the defect and

amendment as to the judge appears just.

(8) An appeal under subsection (1) shall not lie from a determination of a Wardens Court where—

- (a) before the determination is made, all parties to the proceeding in question agree, in writing signed by themselves or by their respective solicitors or representatives, that the determination of the Wardens Court shall be final; or
- (b) the determination consists of a recommendation upon an application before the court, or a finding upon which the Governor in Council or the Minister may exercise a discretion to do or refrain from doing any act or thing; or
- (c) the determination consists of a direction to a mining registrar to reject or grant an application for the grant of a mining claim; or
- (d) the determination is made in respect of an application to vary the land used or to be used as access in respect of a mining claim or a mining lease.

(9) Where the parties to a proceeding have made an agreement in terms of subsection (8)(a) the warden shall make an entry to that effect in the record of the proceeding.

### **Hearing of appeal from Wardens Court**

**384.(1)** An appeal from a determination of a Wardens Court shall be by way of rehearing.

(2) Upon consideration of the record of proceeding before the Wardens Court and, if the District Court (subject to this section) thinks fit, any further evidence admitted by it, the District Court may—

- (a) dismiss the appeal;
- (b) rescind the order made by the Wardens Court;
- (c) make the order which it considers should have been made by the Wardens Court in the first instance;
- (d) make any order as to costs and any incidental order it considers just.

(3) A District Court shall not admit further evidence upon an appeal from

a determination of a Wardens Court unless—

- (a) it is satisfied that admission of the evidence is necessary to avoid grave injustice and there is sufficient reason that the evidence was not previously adduced; or
- (b) the appellant and respondent agree to its admission.

(4) To the extent necessary to enable an appeal from a determination of a Wardens Court to be effectively disposed of, a District Court shall be deemed to possess all the powers, authorities and jurisdiction of the Supreme Court required to determine all questions arising from the proceedings in question including the jurisdiction to grant equitable remedies and to determine entitlements pursuant to this Act and, furthermore, shall have and may exercise all the powers and authorities conferred by law upon a Wardens Court for the purpose of determining matters of plaint before it.

(5) Where upon such an appeal a District Court substitutes its order for that of the Wardens Court, its order shall be of the same force and effect as if it were made by the Wardens Court in the first instance and may be enforced as an order of that court.

(6) The determination of the District Court on appeal shall be final and conclusive.

### **Appeal not to arrest determination**

**385.(1)** The institution of an appeal from a determination of a Wardens Court shall not operate as a stay of execution upon the determination unless the warden having jurisdiction at the place where the determination was made or a judge of the District Court to which the appeal is brought otherwise orders.

(2) Where application is made to the warden or to the judge for an order staying execution the warden or judge may, in addition, make such other order in the nature of an injunction, appointment of a receiver, payment of money to the warden or to the District Court to abide the event of the appeal or otherwise as appears to the warden or judge desirable.

**Special case**

**386.(1)** A judge of a District Court who is hearing an appeal from a determination of a Wardens Court may, of his or her own motion or at the request of any party to the appeal, reserve for the opinion of the Supreme Court any question of law arising on the appeal.

(2) Any question of law reserved pursuant to subsection (1) shall be submitted by way of special case stated by the judge of the District Court to the Supreme Court which shall adjudicate thereon and may make therein any order as to costs as to the court seems just.

(3) The registrar of the Supreme Court shall notify the relevant warden of the time and place appointed for argument of the special case by a judge of a District Court pursuant to subsection (1) and the warden shall cause the parties to the appeal to be notified thereof.

(4) The parties to an appeal from which a special case is reserved for the opinion of the Supreme Court are entitled to be heard in relation to the special case.

**PART 11—GENERAL****Registers to be maintained**

**387.(1)** Within each mining district the mining registrar shall maintain a register in which shall be recorded particulars as prescribed of—

- (a) all prospecting permits, mining claims and mining leases the applications for the grant of which were lodged with the mining registrar; and
- (b) applications for the grant of mining claims and of mining leases the lodgment of which is accepted by the mining registrar; and
- (c) assignments, mortgages and other dealings in respect of mining claims, mining leases and of applications for mining leases duly lodged with the mining registrar and approved as provided for under this Act; and
- (d) caveats duly lodged in respect of mining claims, mining leases

and of applications for mining leases recorded in the register; and

- (e) such other matters and things relating to the mining district as are prescribed to be recorded in the register.

(2) The chief executive shall maintain a register in which shall be recorded particulars of—

- (a) all exploration permits and mineral development licences; and
- (b) applications for the grant of exploration permits and of mineral development licences; and
- (c) assignments of exploration permits and assignments and mortgages of mineral development licences duly lodged and approved as provided for under this Act; and
- (d) caveats duly lodged in respect of exploration permits and of mineral development licences; and
- (e) such other matters and things as are prescribed to be recorded in the register maintained by the chief executive.

### **Notification of change of address etc.**

**388.** A person who pursuant to a provision of this Act supplies the Minister or chief executive or a mining registrar with the person's address or the name and address of another person for service upon the person, in respect of a matter then, for as long as the firstmentioned person has any interest in that matter, the person shall, if the person changes the person's address or the name and address of a person for service upon the person, forthwith notify on the approved form the Minister, chief executive or, as the case may be, mining registrar of particulars thereof.

### **Duplicate permits, leases etc.**

**389.(1)** A holder of a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease who has lost the permit, certificate of grant of mining claim, instrument of permit, licence or lease may apply in writing to the chief executive or mining registrar who maintains the relevant register for a duplicate thereof.

- (2) The application shall be accompanied by the prescribed fee.

(3) If the chief executive or, as the case may be, mining registrar is satisfied that the applicant has lost the applicant's permit, certificate or instrument and is entitled to a duplicate thereof the chief executive or mining registrar may issue a duplicate, endorsed accordingly, and deliver it to the applicant.

(4) For the purposes of this Act a duplicate permit, certificate or instrument issued under this section shall have the same effect as the original.

### **Priority of competing applications**

**390.(1)** The types of grant to which subsection (2) applies are—

- (a) mining claims;
- (b) exploration permits;
- (c) mining leases.

(2) Except as provided in sections 63, 131, 185 and 251, an application for a type of grant that is effectively lodged prior to another application for a different type of grant in respect of the whole or part of the same land being effectively lodged shall take priority over that other application for the purpose of the consideration of the application.

(3) For the purposes of subsection (2), an application is effectively lodged—

- (a) in the case of an application for the grant of a mining claim or a mining lease upon the acceptance of the lodgment of the application;
- (b) in the case of an application for the grant of an exploration permit on the day next following the acceptance of the lodgment of the application.

(4) If the mining registrar is or, where the applications are lodged with different mining registrars, those registrars are of the opinion that the circumstances of the lodgment of an application for the grant of a mining claim and an application for the grant of a mining lease made in respect of or including the same land are such that the applications should be treated as having been lodged simultaneously, the mining registrar or registrars may treat the applications as having been lodged simultaneously and shall

determine their respective priorities by ballot.

(5) The mining registrar shall advise all applicants when and where the ballot is to be held.

### **Restriction on grants etc.**

**391.** The Governor in Council may, by regulation—

- (a) prohibit the grant, or applications for the grant, of prospecting permits, mining claims, exploration permits, mineral development licences or mining leases; or
- (b) determine that a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease must not be granted over an area that exceeds a specified area; or
- (c) provide that a single person must not, at any time, be the holder (whether alone or with others) of more than a specified number of exploration permits, mineral development licences or mining leases; or
- (d) provide that a single person must not, at any time, be the holder (whether alone or with others) of—
  - (i) mining leases the aggregate area of which exceeds a specified area; or
  - (ii) mineral development licences the aggregate area of which exceeds a specified area; or
  - (iii) exploration permits the aggregate area of which exceeds a specified area; or
- (e) determine that an application for the grant of a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease is to be referred to a specified Commonwealth Government department, local government or statutory body, seeking its views on the application.

### **Substantial compliance with Act may be accepted as compliance**

**392.** Where this Act provides that in respect of any matter, the Governor in Council, the Minister, the chief executive, a warden or a mining registrar

may act if anything has been done in the prescribed way, but that thing has not been done in the prescribed way, the Governor in Council, the Minister, the chief executive, a warden or, as the case may be, a mining registrar who is satisfied that there has been substantial compliance with the prescribed way in respect of that thing may record that fact in writing and may so act and the thing shall be deemed to have been done in the prescribed way.

**Applicant or holder excused for neglect or default of mining registrar etc.**

**393.(1)** Where the holder of or an applicant for the grant of a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease is required to do anything to comply with a provision of this Act and the holder or applicant proves to the satisfaction of the Minister that—

- (a) the holder or applicant had been unable to do that thing as prescribed by reason of the neglect or default of the Minister, chief executive, warden, mining registrar, field officer or other officer authorised under this Act or of circumstances over which the holder or applicant did not have any control; and
- (b) the holder or applicant has done all that the holder or applicant could to comply with that provision, whether or not within any time prescribed therefor;

the Minister may determine in writing that the holder or applicant has complied with that provision and the holder or applicant shall be deemed to have complied with that provision accordingly.

**(2)** A determination made under subsection (1) may be conditional upon the holder or applicant complying with any specified conditions.

**Declaration of State forests etc. over land subject to grants**

**394.(1)** For the purposes of setting apart and declaring a State forest, timber reserve or forest entitlement area under the *Forestry Act 1959*, Crown land that is the subject of an exploration permit shall be Crown land within the meaning of that Act.

**(2)** Prior to taking action to set apart and declare Crown land as a State

forest, timber reserve or forest entitlement area under the *Forestry Act 1959* which land is the subject of a mining claim, mineral development licence or mining lease or an application therefor, the views of the Minister shall be obtained and taken into account and, if the Minister agrees, that land shall be Crown land within the meaning of the *Forestry Act 1959*.

(3) The agreement of the Minister may be subject to compliance with specified conditions.

### **Act's application to holder of fossickers licence**

**395.** A holder of a fossickers licence under the *Fossicking Act 1994* does not need a prospecting permit or mining claim to fossick under the licence.

### **Application of other Acts**

**396.** Except as otherwise provided in this Act or any other Act relating to mining, the provisions of the *Recreation Areas Management Act 1988* or of any other Act shall not operate to restrict the entry of persons on land under the authority of any prospecting permit, mining claim, exploration permit, mineral development licence or mining lease or other authority granted under this Act or any other Act relating to mining.

### **Liability of owner restricted**

**397.** Notwithstanding any Act or law, an owner of land is not civilly liable for injury suffered by any person to the extent that the injury was caused by prospecting, exploring or mining carried on by any person, other than by or on behalf of the owner, on that land where the owner has not contributed to that injury.

### **Delegation by Minister**

**398.** The Minister may delegate all or any of the Minister's powers under this Act to an officer or employee of the department.

### **Mode of service of documents**

**399.(1)** A notice or other document required by this Act to be given or

served by a holder of, or applicant for the grant of, a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease to an owner of land shall be duly given or served if—

- (a) it is served personally upon the owner; or
- (b) it is sent by registered post to the place of residence or business of the owner last known to the holder or applicant.

(2) Except as provided in subsection (1), a direction, notice, order or other document required or authorised by this Act to be given or served upon any person by the Minister, warden, mining registrar, field officer or any other officer authorised under this Act or person shall be duly given or served if—

- (a) it is served personally upon the person to whom it is directed; or
- (b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives or serves it; or
- (c) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives or serves it.

(3) Where this Act in respect of a matter requires or authorises a person's name and address to be specified then for the purpose of service of any direction, notice, order or other document in respect of that matter the last address of that person recorded in the register in respect of that matter shall be deemed to be the person's place of residence or business last known to the person so giving or serving.

(4) Where this Act in respect of a matter requires or authorises the name and address for service of a person upon whom any notice may be served on behalf of another person or other persons to be specified, then service upon the person so specified shall be deemed to be service upon the other person or other persons.

### **Acting in aid of mining registrar etc.**

**400.(1)** Whenever a mining registrar, field officer or other authorised officer is empowered or required by this Act to cause any act to be performed it shall be lawful for any person to perform such an act under the

oral authority of the mining registrar, field officer or other authorised officer where the act is performed in his or her presence or under the written authority of the mining registrar, field officer or other authorised officer where the act is performed in his or her absence.

(2) All police officers shall, when required by a mining registrar, field officer or other authorised officer, act in aid of the mining registrar, field officer or other authorised officer in the discharge of duties and in the exercise of powers under this Act.

### **Protection against liability**

**401.** No act, omission, thing or decision done or made by the Minister, the chief executive, warden, mining registrar, field officer, other authorised officer, police officer or other person acting under the authority of any of those persons as provided by this Act—

- (a) for the purpose of giving effect to any provision of this Act; or
- (b) purporting to be for the purpose of giving effect to any provision of this Act and done or made in good faith and without negligence;

shall render the Crown, the Minister, the chief executive, warden, mining registrar, field officer, other authorised officer, police officer or other person liable at the suit of any person.

### **Protection against liability as condition of approval**

**401A.(1)** This section applies if the holder of a tenure, granted after 1 January 1994, applies for an approval under section 96, 151, 198 or 300.<sup>50</sup>

(2) As a condition of the grant of the approval, the Minister or mining registrar may require any or all of the parties for the tenure—

- (a) to waive any right to make a claim against the State because of a

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<sup>50</sup> Section 96 (Assignment etc. of mining claim)  
Section 151 (Assignment of exploration permit)  
Section 198 (Assignment etc. of mineral development licence)  
Section 300 (Assignment etc. of mining lease or application therefor)

relevant matter; or

- (b) to agree to keep the State, Minister or mining registrar harmless against loss arising out of a claim made by anyone because of a relevant matter.

(3) This section is taken to have commenced on 1 January 1994.

(4) In this section—

**“claim”** includes any action, proceeding and demand.

**“holder”** of a tenure that is a mining lease includes an applicant for the mining lease.

**“parties”**, for a tenure, means the following—

- (a) the holder of the tenure;
- (b) for an approval to assign the tenure—the proposed assignee;
- (c) for an approval to mortgage the tenure—the proposed mortgagee;
- (d) for an approval to sublease the tenure—the proposed sublessee;
- (e) if the tenure is subject to a mortgage—the mortgagee.

**“relevant matter”** means—

- (a) the existence of native title; or
- (b) a claim or decision that native title to any land covered by the tenure exists; or
- (c) a claim or decision that the grant of the tenure, or an approval under section 96, 151, 198 or 300, is invalid because of—
  - (i) the existence of native title; or
  - (ii) a claim or decision that native title to any land subject to the tenure exists; or
  - (iii) the *Native Title Act 1993* (Cwlth); or
  - (iv) any other law relating to native title; or
- (d) any action taken under the tenure by the holder of the tenure, or any person acting for or with the authority of the holder, is unlawful or unauthorised because of—
  - (i) the existence of native title; or

- (ii) a claim or decision that native title to any land subject to the tenure exists; or
- (iii) the *Native Title Act 1993* (Cwlth); or
- (iv) any other law relating to native title.

**“tenure”** means—

- (a) a mining claim, exploration permit, mineral development licence or mining lease; or
- (b) an interest in a mining claim, exploration permit, mineral development licence or mining lease.

### **Offences with respect to unauthorised mining etc.**

**402.(1)** A person shall not—

- (a) enter or be upon land to carry on prospecting, exploration or mining unless the person is the holder of the relevant authority granted pursuant to this Act or is otherwise duly authorised under this Act or any other Act relating to mining;
- (b) employ or suffer any other person to enter or be upon land to carry on prospecting, exploration or mining unless that other person is the holder of the relevant authority granted pursuant to this Act or is otherwise duly authorised under this Act or any other Act relating to mining;
- (c) stay upon or erect any structure, including a residence, on land for purposes associated with prospecting, exploring or mining unless the person is duly authorised under this Act or any other Act relating to mining;
- (d) carry on mining operations upon or remove mineral or ore from land unless the person is duly authorised under this Act or any other Act relating to mining;
- (e) in a mining district or part of a mining district the subject of a regulation, use machinery or equipment for the purpose of prospecting, exploring or mining which under a regulation has been declared shall not be used for that purpose.

**(2)** A person found on land contravening any provision of subsection (1)

may, whether or not the person is prosecuted for an offence, be ejected from that land using such force as is necessary for that purpose, by a mining registrar or a field officer, any other officer duly authorised pursuant to this Act, or police officer or other person assisting any of them.

### **Offences regarding land subject to mining claim or mining lease**

**403.(1)** A person shall not—

- (a) enter or be upon land; or
- (b) use or occupy land; or
- (c) erect any building or structure on or make any other improvement to land;

that is the subject of a mining claim or the surface area of a mining lease unless—

- (d) the person is authorised by or under this Act or any other Act relating to mining in that regard; or
- (e) the person is the owner of the land or is authorised in that behalf by the owner and, in either case, the person has the consent of the holder of the mining claim or, as the case may be, mining lease.

**(2)** Subsection (1)(a) shall not operate to prevent a police officer or an inspector or other person appointed or authorised under any Act or law to enter land for the purpose of carrying out duties from so entering and carrying out those duties.

### **Offence to resist warden etc.**

**404.** A person shall not—

- (a) assault, resist, obstruct or attempt to obstruct a warden, bailiff, mining registrar, field officer, police officer or other authorised officer engaged in executing a duty or exercising powers for the purposes of this Act or of any other Act relating to mining;
- (b) forcibly or clandestinely retake or attempt to retake possession of land from which the person has been removed pursuant to this Act or of any part of that land;

- (c) resist or wilfully obstruct any person in the exercise of rights under a determination of a Wardens Court or engaged in putting such a determination into effect;
- (d) assault any person in whose favour a determination of a Wardens Court has been made on account of that determination.

### **Directions to be complied with**

**405.** A person must comply with a direction given to, or a requirement made of, the person by a mining registrar, field officer or other authorised officer under this Act, unless the person has a reasonable excuse.

Maximum penalty—1 500 penalty units.

### **Wardens Court may review lawfulness of directions**

**406.(1)** A person dissatisfied with a direction or requirement given or made by a mining registrar, field officer or other authorised officer may, if no other right of appeal against the direction or requirement is given under this Act, apply in writing to the Wardens Court for a review of the direction or requirement.

**(2)** The application must—

- (a) set out the grounds for review; and
- (b) be filed at the office of the mining registrar for the mining district in which the direction or requirement was given or made.

**(3)** If the registrar is not the person who gave the direction or made the requirement, the registrar must give a copy of the application to the person who gave or made it.

**(4)** The Wardens Court must review the direction or requirement and may make any inquiry the Wardens Court considers appropriate to help the warden reach a decision.

**(5)** The Wardens Court may—

- (a) confirm the direction or requirement; or
- (b) amend the direction or requirement; or
- (c) revoke the direction or requirement.

(6) If the Wardens Court amends the direction or requirement, the warden's decision is taken to be the direction or requirement of the mining registrar, field officer or authorised officer.

(7) The Wardens Court must notify the decision to—

- (a) the person dissatisfied; and
- (b) the mining registrar, field officer or authorised officer who gave or made the direction or requirement.

### **Minister may require survey**

**407.(1)** Upon the request in writing of the Minister given at any time, the applicant for the grant of or holder of a mining claim, exploration permit, mineral development licence or mining lease shall have the land the subject thereof or any part thereof specified by the Minister surveyed or further surveyed as indicated in the request.

(2) The land must be surveyed in the way approved by the Minister by a surveyor licensed under the *Surveyors Act 1977*.

(3) Liability at law shall not attach to the Crown, the Minister or any officer of the department of the Government for the time being administering this Act for any error or inaccuracy in a survey or plan of survey carried out by a licensed surveyor for the purpose of this section or for anything done or omitted to be done on the assumption that the survey or plan was accurate.

(4) The applicant or holder to whom a request is made under subsection (1) shall incur and be liable to pay all costs associated with the work carried out by a licensed surveyor under this section.

### **Surveyor not to have interest**

**408.(1)** A licensed surveyor who holds or is entitled (directly or indirectly) to the benefits of any share or interest in a mining claim, exploration permit, mineral development licence or mining lease or in an application for the grant of any of them shall not carry out a survey of land the subject thereof for the purposes of this Act.

(2) A licensed surveyor who has an entitlement or expectation of entitlement to share in profits of a public company which company is

entitled to the benefits (directly or indirectly) of any share or interest referred to in subsection (1) does not have a share or interest referred to in subsection (1).

### **Removal orders**

**409.(1)** Where a person is alleged to be in occupation of or upon any land, or to have erected or possess or control any building or structure or to have made any other improvement to land that is the subject of a mining claim or the surface area of a mining lease, without any authority that the person is required to have by this Act or any other Act relating to mining or in contravention of this or that Act, upon the plaint of—

- (a) a field officer; or
- (b) any other officer duly authorised pursuant to this Act; or
- (c) a police officer; or
- (d) a person who claims to be entitled to occupy that land; or
- (e) a holder of any authority granted under this Act or any other Act relating to mining in respect of that land (other than a prospecting permit, exploration permit or mineral development licence);

that person may be summonsed to appear before the Wardens Court at a time and place therein named to show cause why the person should not be removed from that land or ordered to remove any building, structure or other improvement.

**(2)** If a person summonsed pursuant to subsection (1) fails to appear at the time and place specified or having appeared fails to show sufficient cause to the satisfaction of the Wardens Court, the warden may order—

- (a) the removal of the person summonsed from the land in question;
- (b) the removal, disposal or destruction of any building, structures or other improvements erected on or made to the land in contravention of this Act or any other Act relating to mining;
- (c) the removal, seizure or disposal of any machinery or equipment upon the land that is or is capable of being used in contravention of this Act or of any other Act relating to mining and is not lawfully upon that land.

(3) An order made pursuant to subsection (2) may direct the person summonsed to appear to—

- (a) remove himself or herself from the land in question; or
- (b) remove, dispose of or destroy buildings, structures or other improvements; or
- (c) remove machinery or equipment;

forthwith or within a time specified in the order and may further direct that if action referred to in paragraph (b) or (c) specified to be taken in the order is not taken in the time specified, the mining registrar and all persons acting under the mining registrar's direction, using such force as is necessary, may enter upon the land and do all things necessary to seize and dispose of buildings, structures, improvements, machinery and equipment specified in the order.

(4) Anything seized by the mining registrar pursuant to subsection (3) shall be forfeited to and becomes the property of the Crown and shall be disposed of in such manner as the Minister determines.

(5) At the time of making an order pursuant to subsection (2) or at any later time, a warden may issue a warrant addressed to the person who commenced proceedings and to all police officers requiring the appropriate action to be taken and the warrant shall be sufficient authority for that person or any police officer to execute the warrant according to its tenor using such force as is necessary for the purpose.

(6) The costs reasonably incurred by the mining registrar in taking any action under this section shall be a debt due and owing to the Crown by the person who failed to take the action ordered by the warden and may be recovered in the Wardens Court.

(7) In an action under subsection (6) for the recovery of a debt due to the Crown, the production to the appropriate court of a certificate by the mining registrar certifying the amount of that debt shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the debt and the amount thereof.

### **Certain interests not interests for certain purposes**

**410.** For the purposes of this Act a person who holds or becomes

entitled (directly or indirectly) to the benefits of any interest in a mining claim, exploration permit, mineral development licence or mining lease by virtue of—

- (a) the person being a beneficiary in a deceased estate; or
- (b) the person entitlement to share in profits of a public company;

does not hold an interest in the mining claim, exploration permit, mineral development licence or mining lease.

### **Indemnity against liability**

**411.(1)** Neither the Crown, a warden, mining registrar, field officer, other authorised officer, police officer nor any other person who acts or purports to act under the authority of section 342(10) or 343 shall be liable to pay damages or compensation for loss or injury suffered on account of anything done or omitted by any person acting pursuant to any provision of section 342(10) or 343 or purporting to act bona fide and without negligence for the purposes of that provision.

**(2)** A warden, mining registrar, field officer, other authorised officer, police officer or any other person who acts or purports to act under the authority of section 342(10) or 343 shall not be criminally liable on account of anything done pursuant to any provision of section 342(10) or 343<sup>51</sup> or purportedly pursuant to any such provision bona fide and without negligence for the purposes of that provision.

### **Offences and recovery of penalties etc.**

**412.(1)** A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act and, save where a specified penalty is otherwise prescribed, is liable to a penalty of 200 penalty units or to imprisonment for 12 months.

**(2)** A proceeding against any person who commits an offence against this Act may be taken before a Wardens Court by way of summary procedure under and in accordance with the *Justices Act 1886* and may be

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<sup>51</sup> Section 342 (Powers of mining registrars and others) or 343 (Seizure of minerals produced by, or vehicles, machinery etc. used in unauthorised mining)

taken within 1 year after the commission of the offence or within 6 months after the offence comes to the knowledge of the complainant, whichever period is the later to expire.

(3) All moneys payable under this Act, other than by way of a penalty (whether for an offence, or for a breach of the conditions of a prospecting permit, mining claim, exploration permit, mineral development licence, mining lease or other authority under this Act, or otherwise) and not recovered by way of utilisation of any security deposit may be recovered by proceedings by way of summary procedure under the *Justices Act 1886* taken before a Wardens Court, or by way of action for debt in a Wardens Court.

(4) For the purposes of proceedings taken before it by way of summary procedure under the *Justices Act 1886*, a Wardens Court shall have and may exercise all the powers of a Magistrates Court subject to and in accordance with that Act.

(5) Where a person convicted of an offence against this Act is a company, every person who at the time of the commission of the offence was a member of the governing authority of that company shall be deemed to have committed a like offence and be liable to the penalty prescribed for the offence unless the person proves—

- (a) that the offence was committed without the person's knowledge; and
- (b) that the person used all due diligence to avoid the contravention of or noncompliance with this Act in question.

### **Evidentiary provision**

**413.(1)** This section applies to a proceeding under this Act.

(2) The appointment or power of the chief executive, a warden, mining registrar, field officer or other authorised officer must be presumed unless a party, by reasonable notice, requires proof of—

- (a) the appointment; or
- (b) the power to do anything under this Act.

(3) A signature purporting to be the signature of the chief executive, a warden, mining registrar, field officer or other authorised officer is evidence

of the signature it purports to be.

(4) A certificate purporting to be signed by a person mentioned in subsection (3), and stating any of the following matters is evidence of the matter—

- (a) a stated document is—
  - (i) an authority or a copy of an authority; or
  - (ii) an order, direction, requirement or decision, or a copy of an order, direction, requirement or decision, given or made under this Act; or
  - (iii) a notice, or a copy of a notice, given under this Act; or
  - (iv) a record, or a copy of a record, kept under this Act;
- (b) on a stated day, or during a stated period, a stated person was or was not the holder of an authority or a stated authority;
- (c) a stated authority was or was not in force on a stated day or during a stated period;
- (d) on a stated day, a stated authority terminated or was surrendered;
- (e) on a stated day, a stated person was given a stated notice, order, requirement or direction under this Act;
- (f) a stated fee or other amount is payable by a stated person to the State and has not been paid;
- (g) anything else prescribed under a regulation.

(5) A certificate purporting to be signed by the chief executive of the department within which the *Land Act 1994* is administered, stating things about stated land that are material to classifying the land as being or not being occupied land, is evidence of the things stated.

(6) In this section—

“**authority**” means—

- (a) a prospecting permit; or
- (b) a mining claim; or
- (c) an exploration permit; or

- (d) a mineral development licence; or
- (e) a mining lease.

### **Failure to supply information constitutes noncompliance with Act**

**414.** Where a provision of this Act relating to an application that may be made under this Act provides for a request that may be made to the applicant to supply any further information, the failure to supply the information within the time provided therefor shall be deemed to be a failure to comply with the requirements of this Act that apply in respect of the application.

### **Copies of decisions to be sent to chief executive**

**415.** Upon the making of any decision or other order by any court or tribunal exercising jurisdiction in Queensland upon any matter relating to prospecting, exploring or mining or to this Act or any other Act relating to mining, the registrar or other proper officer of the court or tribunal performing the duties of a registrar shall forthwith forward a copy of that decision or order to the chief executive.

### **Rights independent of this Act preserved**

**416.** Save in relation to compensation expressed to be payable by sections 85, 86, 125, 281, 282 and 317, the provisions of this Act shall not be construed to abrogate or prejudice any right had by any person independently of this Act to recover damages or obtain any other remedy in respect of damage or injury suffered or loss incurred by the person by reason of prospecting, exploring or mining.

### **Regulations**

**417.(1)** The Governor in Council may make regulations under this Act.

**(2)** A regulation may be made about the following matters—

- (a) the fees to be paid under this Act;
- (b) the amounts or rates or methods of calculation of amounts of the annual rentals payable in respect of mining claims, exploration

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permits, mineral development licences and mining leases which in respect of each such type of grant may vary according to the respective areas of land or upon such other criteria as are specified in the regulations;

- (c) the identification (by pegging, surveying or otherwise) of land the subject of any mining claim, exploration permit, mineral development licence or mining lease, granted or any application therefor under this Act;
- (d) the conditions which shall and conditions which may be imposed in respect of any prospecting permit, mining claim, exploration permit, mineral development licence, mining lease or other authority under this Act;
- (e) the cleaning and keeping clean of land the subject of prospecting permits, mining claims, exploration permits, mineral development licences or mining leases and the prevention or mitigation of any nuisance thereon;
- (f) the prevention of pollution or wastage, due to prospecting, exploring or mining, of water which may be used for domestic purposes; the reservation of any accumulation or potential accumulation of water or of any watercourse, which might otherwise be so polluted or wasted, as a supply for domestic purposes; the prevention, mitigation and remedying of pollution or obstruction of, damage to, or interference with watercourses, lakes and reservoirs and land adjacent thereto caused by the discharge therein or thereon of mineralised or impure water, sludge, or debris;
- (g) the location of mine workings at minimum distances from public or private roads or railways;
- (h) the protection from injury or unlawful removal of any improvements, machinery, plant or equipment situated on any land the subject of a mining claim, mineral development licence or mining lease and of any races, drains, dams, reservoirs, stored water, pegs, posts, fences, notices or other things used in connection with mining; the protection from obstruction of races, drains, dams, reservoirs, channels and watercourses used in connection with mining;

- (i) the powers and duties of wardens, mining registrars and all other persons whatsoever in the discharge of their functions for the purposes of this Act;
- (j) the amount or rates or methods of calculation of royalty to be paid under this Act and the time and manner of its assessment and payment, the collection and enforcement of payment;
- (k) the manner of making and lodging royalty returns, documents and statements and the keeping of records and books of accounts;
- (l) the practice and procedure of Wardens Courts, the jurisdiction thereof and the costs of proceedings therein;
- (m) the furnishing of information, reports, returns, documents and statements for the purposes and by the persons specified in the regulations;
- (n) the medium and format (whether by electronic or digital means or otherwise) by which information shall be supplied;
- (o) the particulars to be recorded in registers and the examination or provision of particulars from registers maintained under this Act and the prescribing of the fees payable in respect thereof;
- (p) penalties for a contravention or failure to comply with any regulation.

**(3)** A regulation may constitute a contravention or failure to comply with a regulation or an order of a court a continuing offence and impose a penalty that it is to be calculated by reference to the length of time the offence continues notwithstanding that the total penalty so calculated would exceed the maximum pecuniary penalty prescribed by section 412.

### **References to repealed Acts**

**418.** A reference in an Act or document to the following Acts is taken to be a reference to this Act—

- Mining Act 1898 62 Vic No. 24
- Mining Act 1968 No. 51.

## **PART 12—FURTHER TRANSITIONAL PROVISIONS**

### **At Risk agreement conditions**

**419.(1)** This section applies to the following—

- (a) a mining lease granted under the repealed *Mining Act 1968*, No. 51;
- (b) a mineral development licence or mining lease granted before the commencement of the *Mineral Resources Amendment Act 1998*.

**(2)** To remove doubt, a condition contained in the licence or lease requiring the holder to comply with the At Risk agreement is and always was a valid condition.

### **Application of Mineral Resources Amendment Act 1998**

**420.(1)** This section applies to the following if they were subject to a condition requiring the holder to comply with the At Risk agreement—

- (a) a mining lease granted under the repealed *Mining Act 1968*;
- (b) a mineral development licence or mining lease granted before the commencement of the *Mineral Resources Amendment Act 1998*.

**(2)** To remove doubt, sections 194A and 278A, inserted by the *Mineral Resources Amendment Act 1998*, apply to the lease or licence.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 30 September 1998. Future amendments of the Mineral Resources Act 1989 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 68 of 1992	1 June 1993
2	to Act No. 18 of 1994	13 May 1994
3	to Act No. 21 of 1995	19 June 1995
4	to Act No. 58 of 1995	22 December 1995
4A	to Act No. 37 of 1996	10 January 1997
4B	to Act No. 17 of 1997	26 September 1997
4C	to Act No. 27 of 1998	16 June 1998

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	2
Changed names and titles	2, 3, 4
Corrected minor errors	1, 2, 3
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## 6 List of legislation

### **Mineral Resources Act 1989 No. 110**

date of assent 25 October 1989

ss 1–1.2 commenced on date of assent

remaining provisions commenced 1 September 1990 (proc pubd gaz 14 July 1990 p 1647)

as amended by—

### **Mineral Resources Act Amendment Act 1990 No. 30**

date of assent 15 June 1990

commenced on date of assent

### **Supreme Court of Queensland Act 1991 No. 68 ss 1–2, 111 sch 2**

date of assent 24 October 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 14 December 1991 (1991 SL No. 173)

### **Statute Law (Miscellaneous Provisions) Act 1991 No. 97 ss 1–3 sch 2**

date of assent 17 December 1991

commenced on date of assent

### **Primary Industries Corporation Act 1992 No. 15 ss 1–2, 13 sch**

date of assent 13 May 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 30 September 1992 (1992 SL No. 271)

### **Nature Conservation Act 1992 No. 20 ss 1–2, 159 sch 2**

date of assent 22 May 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 19 December 1994 (1994 SL No. 472)

### **Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 ss 1–3 sch 1**

date of assent 7 December 1992

commenced on date of assent

**Wet Tropics World Heritage Protection and Management Act 1993 No. 50  
ss 1–2, 86 sch 3**

date of assent 30 September 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 1 November 1993 (1993 SL No. 396)

**Local Government Act 1993 No. 70 ss 1–2, 804 sch**

date of assent 7 December 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 26 March 1994 (see s 2(5))

**Mineral Resources Amendment Act 1994 No. 18**

date of assent 10 May 1994

ss 4, 6 and 7 commenced 1 September 1990 (see s 2)

remaining provisions commenced on date of assent

**Fossicking Act 1994 No. 63 ss 1–2, 110(2) sch**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 1995 (1994 SL No. 465)

**Mineral Resources Amendment Act 1995 No. 21**

date of assent 11 April 1995

s 106(1), (3), (4) commenced 1 September 1990 (see s 2(2))

remaining provisions commenced 1 May 1995 (1995 SL No. 117)

**Statute Law (Minor Amendments) Act 1995 No. 50 ss 1, 3 sch**

date of assent 22 November 1995

commenced on date of assent

**Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2**

date of assent 28 November 1995

commenced on date of assent

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Mineral Resources Amendment Act 1997 No. 14**

date of assent 15 May 1997

commenced on date of assent

**Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997  
No. 17 ss 1–2, 74 sch**

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 163)

**Environmental and Other Legislation Amendment Act 1997 No. 80 pts 1, 3**

date of assent 5 December 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 6 July 1998 (1998 SL No. 52)

**Offshore Minerals Act 1998 No. 10 ss 1–2, 446 sch 4**

date of assent 12 March 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 14 April 1998 (1998 SL No. 80)

**Mineral Resources Amendment Act 1998 No. 27**

date of assent 18 May 1998

commenced on date of assent

**7 List of annotations****Commencement**

s 1.2 om R3 (see RA s 37)

**Objectives of Act**

s 2 amd 1990 No. 30 s 2

**Application of Act to Commonwealth land and coastal waters of the State**

prov hdg amd 1995 No. 21 s 4(1)

s 3 amd 1992 No. 20 s 159 sch 2; 1995 No. 21 s 4(2); 1998 No. 10 s 446 sch 4

**Repeals**

s 1.5 om R1 (see RA s 40)

**Amendment of Oaths Act 1867**

s 1.6 om R1 (see RA s 40)

**Effect of change of baseline**

s 4 amd 1997 No. 14 s 3

sub 1998 No. 10 s 446 sch 4

**Definitions**

prov hdg sub 1997 No. 14 s 4(1)

s 5 amd 1991 No. 97 s 3 sch 2

def “**Act relating to mining**” om 1995 No. 21 s 5(1)def “**adjoining lots**” ins 1995 No. 21 s 5(2)def “**aggrieved person**” ins 1995 No. 21 s 5(2)def “**area**” om 1993 No. 70 s 804 schdef “**At Risk agreement**” ins 1998 No. 27 s 3def “**building**” ins 1995 No. 21 s 5(2)def “**chief executive (planning)**” ins 1993 No. 70 s 804 schdef “**company**” sub 1995 No. 21 s 5(1)–(2)def “**condition**” ins 1995 No. 21 s 5(2)def “**contaminated land**” ins 1995 No. 21 s 5(2)def “**credit provider**” ins 1997 No. 17 s 74 sch

- def “**Director-General**” sub 1991 No. 97 s 3 sch 2  
om 1995 No. 21 s 5(1)
- def “**district prospecting permit**” ins 1995 No. 21 s 5(2)
- def “**educational institution**” ins 1995 No. 21 s 5(2)
- def “**eligible person**” sub 1995 No. 21 s 5(1)–(2)
- def “**enter**” ins 1995 No. 21 s 5(2)
- def “**environment**” ins 1995 No. 21 s 5(2)
- def “**environmental impact**” ins 1995 No. 21 s 5(2)
- def “**environmental impact statement**” ins 1995 No. 21 s 5(2)
- def “**exploration permit**” ins 1995 No. 21 s 5(2)
- def “**explore**” amd 1995 No. 21 s 5(3)
- def “**fossicking area**” ins 1994 No. 63 s 110(2) sch
- def “**hand mining**” sub 1995 No. 21 s 5(1)–(2)
- def “**hazardous contaminant**” ins 1997 No. 80 s 41
- def “**hazardous substance**” ins 1995 No. 21 s 5(2)  
om 1997 No. 80 s 41
- def “**holder**” sub 1995 No. 21 s 5(1)–(2)  
amd 1997 No. 14 s 4(4)
- def “**land**” amd 1992 No. 20 s 159 sch 2
- def “**last objection day**” ins 1995 No. 21 s 5(2)
- def “**local authority**” om 1993 No. 70 s 804 sch
- def “**member of the family**” om 1995 No. 21 s 5(1)
- def “**mine**” sub 1997 No. 14 s 4(2)–(3)
- def “**mineral**” amd 1995 No. 21 s 5(4)–(5)
- def “**mineral development licence**” ins 1995 No. 21 s 5(2)
- def “**mining claim**” ins 1995 No. 21 s 5(2)
- def “**mining lease**” ins 1995 No. 21 s 5(2)
- def “**mining project**” ins 1995 No. 21 s 5(2)
- def “**mining registrar**” sub 1995 No. 21 s 5(1)–(2)
- def “**Minister**” om 1991 No. 97 s 3 sch 2
- def “**occupied land**” sub 1995 No. 21 s 5(1)–(2)
- def “**occupier**” ins 1995 No. 21 s 5(2)
- def “**officer**” sub 1995 No. 21 s 5(1)–(2)
- def “**owner**” amd 1990 No. 30 s 3(a); 1992 No. 15 s 13 sch; 1993 No. 50  
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- def “**parcel prospecting permit**” ins 1995 No. 21 s 5(2)
- def “**permanent building**” ins 1995 No. 21 s 5(2)
- def “**planning scheme**” ins 1993 No. 70 s 804 sch
- def “**prospecting permit**” ins 1995 No. 21 s 5(2)
- def “**protected area**” ins 1992 No. 20 s 159 sch 2
- def “**rail corridor land**” ins 1997 No. 14 s 4(3)
- def “**rehabilitation**” ins 1995 No. 21 s 5(2)
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 def “**restricted land (category B)**” ins 1995 No. 21 s 5(2)  
 def “**road**” sub 1995 No. 21 s 5(1)–(2)  
 def “**section 65 conference**” ins 1995 No. 21 s 5(2)  
 def “**section 169 conference**” ins 1995 No. 21 s 5(2)  
 def “**section 217 conference**” ins 1995 No. 21 s 5(2)  
 def “**section 254 conference**” ins 1995 No. 21 s 5(2)  
 def “**termination**” ins 1995 No. 21 s 5(2)  
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s 160 amd 1995 No. 21 s 3 sch

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s 187 amd 1995 No. 21 s 3 sch

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s 209      amd 1995 No. 21 s 3 sch

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s 210      amd 1995 No. 21 ss 60, 3 sch

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s 211      amd 1990 No. 30 s 24  
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s 228 sub 1995 No. 21 s 64

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s 229 ins 1995 No. 21 s 64

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s 230 ins 1995 No. 21 s 64  
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s 231 ins 1990 No. 30 s 26  
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s 234 amd 1994 No. 63 s 110(2) sch

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s 237 ins 1995 No. 21 s 65

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s 240 amd 1990 No. 30 s 27

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s 244 amd 1995 No. 21 s 3 sch

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s 245 amd 1995 No. 21 ss 67, 3 sch; 1997 No. 14 s 14

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s 248 ins 1995 No. 21 s 68  
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s 250 amd 1995 No. 21 s 69

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s 252 amd 1995 No. 21 ss 70, 3 sch; 1997 No. 14 s 16

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s 290 amd 1994 No. 18 s 6; 1995 No. 21 s 84

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s 299 amd 1995 No. 21 s 87; 1995 No. 57 s 4 sch 2

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s 300 amd 1995 No. 21 s 3 sch; 1995 No. 58 s 4 sch 1

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s 301 amd 1990 No. 30 s 33; 1995 No. 21 s 3 sch

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new s 7 (prev s 14) om 1998 No. 10 s 446 sch 4

**Caveats**

**s 8** orig s 8 om 1995 No. 21 s 3 sch  
new s 8 (prev s 16) om 1998 No. 10 s 446 sch 4

**Entitlements other than previously provided for**

**s 9** orig s 9 om 1995 No. 21 s 3 sch  
new s 9 (prev s 17) amd 1990 No. 30 s 46  
om 1998 No. 10 s 446 sch 4

**Prior acts etc. to continue under this Act**

- s 10** orig s 10 om 1995 No. 21 s 3 sch  
new s 10 (prev s 18) om 1998 No. 10 s 446 sch 4

**Royalties**

- s 11** new s 11 (prev s 20) om 1998 No. 10 s 446 sch 4

**Royalties on rock in block or slab for etc.**

- s 12** orig s 12 amd 1990 No. 30 s 46  
om 1995 No. 21 s 3 sch  
new s 12 (prev s 21) om 1998 No. 10 s 446 sch 4

**Consents and agreements**

- s 13** orig s 13 om 1995 No. 21 s 3 sch  
new s 13 ins 1997 No. 14 s 20  
om 1998 No. 10 s 446 sch 4

**Grant of mining lease**

- s 14** ins 1997 No. 14 s 20  
om 1998 No. 10 s 446 sch 4

**Application for mining lease over restricted land**

- s 15** orig s 15 om 1995 No. 21 s 3 sch  
new s 15 ins 1997 No. 14 s 20  
om 1998 No. 10 s 446 sch 4

**Grant of mining lease over restricted land**

- s 16** ins 1997 No. 14 s 20  
om 1998 No. 10 s 446 sch 4

**Unforeseen circumstances**

- s 19** om 1992 No. 68 s 3 sch 1

**Transfer of registers, records, security deposits etc.**

- s 21** om 1995 No. 21 s 3 sch

**Existing registers to form part of registers under this Act**

- s 22** om 1995 No. 21 s 3 sch

**8 Table of renumbered provisions**

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under the Reprints Act 1992 s 43 as required by the Mineral Resources Act 1989  
s 11.35

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1.8, def “protected area”, (i) . . . . .	5, def “protected area”, (a)
1.8, def “protected area”, (ii) . . . . .	5, def “protected area”, (b)
1.8, def “protected area”, (iii) . . . . .	5, def “protected area”, (c)
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