

Version No. 080

**Mineral Resources (Sustainable
Development) Act 1990**

No. 92 of 1990

Version incorporating amendments as at 14 October 2010

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**Mineral Resources (Sustainable
Development) Act 1990**
No. 92 of 1990

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The Parliament of Victoria enacts as follows:

PART 1—INTRODUCTION

1 Purpose

The purpose of this Act is to encourage economically viable mining and extractive industries which make the best use of resources in a way that is compatible with the economic, social and environmental objectives of the State.

**S. 1
substituted by
No. 6/2009
s. 4.**

2 Objectives

(1) The objectives of this Act are—

- (a) to encourage and facilitate exploration for minerals and foster the establishment and continuation of mining operations by providing for—
 - (i) an efficient and effective system for the granting of licences and other approvals; and
 - (ii) a process for co-ordinating applications for related approvals; and
 - (iii) an effective administrative structure for making decisions concerning the allocation of mineral resources for the benefit of the general public; and

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s. 2

- (iv) an economically efficient system of royalties, rentals, fees and charges; and
- (b) to establish a legal framework aimed at ensuring that—
 - (i) mineral and stone resources are developed in ways that minimise adverse impacts on the environment and the community; and
 - (ii) consultation mechanisms are effective and appropriate access to information is provided; and
 - (iii) land which has been mined or from which stone has been extracted or removed is rehabilitated; and
 - (iv) just compensation is paid for the use of private land for exploration or mining; and
 - (v) conditions in licences and approvals are enforced; and
 - (vi) dispute resolution procedures are effective; and
 - (vii) the health and safety of the public is protected in relation to work being done under a licence; and

S. 2(1)(b)(i)
substituted by
No. 6/2009
s. 5(1)(a).

S. 2(1)(b)(iii)
substituted by
No. 6/2009
s. 5(1)(b).

S. 2(1)(b)(iv)
amended by
No. 6/2009
s. 5(1)(c).

S. 2(1)(b)(vi)
amended by
No. 86/1993
s. 4.

S. 2(1)(b)(vii)
inserted by
No. 86/1993
s. 4,
amended by
Nos 82/2000
s. 3, 55/2010
s. 47.

- (c) to recognise that the exploration for, and mining or extraction of, mineral resources and stone must be carried out in a way that is not inconsistent with the Native Title Act 1993 of the Commonwealth and the **Land Titles Validation Act 1994**.

S. 2(1)(c) inserted by No. 82/2000 s. 3, amended by No. 6/2009 s. 5(2).

* * * * *

S. 2(2) repealed by No. 6/2009 s. 5(3).

2A Principles of sustainable development

S. 2A inserted by No. 63/2006 s. 5.

- (1) It is the intention of Parliament that in the administration of this Act regard should be given to the principles of sustainable development.
- (2) For the purposes of this Act, the principles of sustainable development are—
 - (a) community wellbeing and welfare should be enhanced by following a path of economic development that safeguards the welfare of future generations;
 - (b) there should be equity within and between generations;
 - (c) biological diversity should be protected and ecological integrity maintained;
 - (d) there should be recognition of the need to develop a strong, growing, diversified and internationally competitive economy that can enhance the capacity for environment protection;
 - (e) measures to be adopted should be cost effective and flexible, not disproportionate to the issues being addressed, including improved valuation, pricing and incentive mechanisms;

- (f) both long and short term economic, environmental, social and equity considerations should be effectively integrated into decision-making;
- (g) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation and decision-making should be guided by—
 - (i) a careful evaluation to avoid serious or irreversible damage to the environment wherever practicable; and
 - (ii) an assessment of the risk-weighted consequences of various options;
- (h) development should make a positive contribution to regional development and respect the aspirations of the community and of Indigenous peoples;
- (i) decisions and actions should provide for community involvement in issues that affect them.

3 Commencement

- (1) Sections 1 to 125 and section 127 come into operation on a day to be proclaimed.
- (2) The remaining provisions of this Act, other than section 126(2) and item 18 of Schedule 1, come into operation on a day or days to be proclaimed.
- (3) Section 126(2) must be taken to have come into operation on 1 November 1990.
- (4) Item 18 of Schedule 1 must be taken to have come into operation on 1 December 1987.

4 Definitions

(1) In this Act—

*	*	*	*	*	S. 4(1) def. of <i>Aboriginal object</i> repealed by No. 16/2006 s. 198(Sch. 2 item 5(1)(a)).
*	*	*	*	*	S. 4(1) def. of <i>Aboriginal place</i> amended by No. 82/2000 s. 4(b), repealed by No. 16/2006 s. 198(Sch. 2 item 5(1)(a)).
*	*	*	*	*	S. 4(1) def. of <i>accident</i> amended by No. 82/2000 s. 4(c)(i)–(iii), repealed by No. 55/2010 s. 48.

agricultural land means private land that is used primarily for—

- (a) cultivation for the purpose of selling the produce of the cultivation; or
- (b) keeping animals or poultry for the purpose of selling them or produce derived from them; or
- (c) keeping bees for the purpose of selling their honey; or
- (d) commercial fishing; or
- (e) the cultivation or propagation for sale of plants;

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S. 4(1) def. of
*area work
plan schedule*
inserted by
No. 57/2009
s. 23.

area work plan schedule means an area work plan
schedule submitted under section 41AD;

S. 4(1) def. of
*authority to
commence
work*
repealed by
No. 82/2000
s. 4(d).

* * * *

S. 4(1) def. of
*chief
administrator*
amended by
No. 86/1993
s. 5(1)(b),
repealed by
No. 76/1998
s. 31(a)(i).

* * * *

S. 4(1) def. of
*Chief
Inspector*
inserted by
No. 6/2009
s. 6(1).

Chief Inspector means the Chief Inspector
employed under section 90(1)(a);

S. 4(1) def. of
*chief mining
inspector*
amended by
No. 46/1998
s. 7(Sch. 1),
repealed by
No. 82/2000
s. 4(d).

* * * *

S. 4(1) def. of
*Code of
practice*
repealed by
No. 86/1993
s. 5(1)(a),
new def. of
*Code of
Practice*
inserted by
No. 63/2006
s. 6(1)(c).

Code of Practice means a Code of Practice made
under Part 8A as amended and in force for
the time being;

community engagement plan has the meaning set out in sections 40(3)(b)(ii) and 77G(3)(c);

S. 4(1) def. of *community engagement plan* inserted by No. 63/2006 s. 6(1), amended by No. 6/2009 s. 6(2)(a).

Crown land means land that is, or that is by any Act deemed to be, unalienated land of the Crown, and includes—

S. 4(1) def. of *Crown land* amended by No. 35/1998 s. 18(a).

- (a) land of the Crown that is reserved permanently or temporarily by or under any Act; and
- (b) land of the Crown occupied by a person under a lease, licence or other right under this or any other Act—

but does not include land which is the subject of a licence granted under Part 3A of the **Victorian Plantations Corporation Act 1993**;

Crown land Minister in relation to Crown land, means the Minister responsible for administering the Act under which the land is controlled or managed;

S. 4(1) def. of *Crown land Minister* inserted by No. 63/2006 s. 6(1)(c).

declared mine means a mine specified in an Order under section 7C;

S. 4(1) def. of *declared mine* inserted by No. 57/2009 s. 23.

declared quarry means a quarry specified in an Order under section 7C;

S. 4(1) def. of *declared quarry* inserted by No. 57/2009 s. 23.

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S. 4(1) def. of
Department
substituted by
No. 86/1993
s. 5(1)(c),
amended by
Nos 46/1998
s. 7(Sch. 1),
56/2003
s. 11(Sch.
item 12.1).

Department means the Department of Primary
Industries;

S. 4(1) def. of
*Department
Head*
inserted by
No. 76/1998
s. 31(a)(iv),
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 134.1).

Department Head means the Department Head
(within the meaning of the **Public
Administration Act 2004**) of the
Department;

S. 4(1) def. of
*Director of
Mines*
inserted by
No. 82/2000
s. 4(a),
repealed by
No. 6/2009
s. 6(3)(a).

* * * * *

S. 4(1) def. of
dispute
amended by
Nos 46/1998
s. 7(Sch. 1),
76/1998
s. 31(a)(iii),
82/2000
s. 4(e)(i)(ii),
59/2010
s. 42(1)(a).

dispute means a dispute arising under this Act
between—

- (a) a licensee or an applicant and the
Department Head or an employee of the
Department; or
- (b) a licensee or an applicant and the
holder of a miner's right; or
- (c) a licensee or an applicant and the owner
or occupier of land; or
- (d) a licensee and another licensee or an
applicant for a licence; or
- (e) an applicant and another applicant; or

- (ea) a member of the public and the Department Head (or an employee of the Department) in relation to work under a licence that directly and substantially affects, or is likely to affect, the member of the public—

and includes a dispute—

- (f) about the existence of a licence, miner's right or tourist fossicking authority; or
- (g) about the boundaries of land covered by a licence or an application—

but does not include a dispute for which recourse to a court, a tribunal or an expert (other than a mining warden) is expressly provided under this Act;

exploration means exploration for minerals and includes—

- (a) conducting geological, geophysical and geochemical surveys; and
- (b) drilling; and
- (c) taking samples for the purposes of chemical or other analysis; and
- (d) extracting minerals from land, other than for the purpose of producing them commercially; and
- (e) in relation to an exploration licence, anything else (except mining) that is specified in the licence;

extractive industry means the extraction or removal of stone from land if a primary purpose of the extraction or removal is the sale or commercial use of the stone or the use of the stone in construction, building, road or manufacturing works and includes—

S. 4(1) def. of ***extractive industry*** inserted by No. 6/2009 s. 6(1).

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- (a) the treatment of stone or the manufacture of bricks, tiles, pottery or cement products on or adjacent to land from which the stone is extracted; and
- (b) any place, operation or class of operation involving the extraction or removal of stone from land, declared by the Minister, by notice published in the Government Gazette, to be an extractive industry for the purposes of this Act;

S. 4(1) def. of *extractive industry work authority* inserted by No. 6/2009 s. 6(1).

extractive industry work authority means a work authority relating to an extractive industry granted under section 77I;

S. 4(1) def. of *graticular section* substituted by No. 82/2000 s. 4(f).

graticular section—

- (a) means the 1000 metre interval block based on the Australian Geodetic Datum 1966, as shown on the National Topographic Map Series published by the National Mapping Council; or
- (b) if a notice under section 7A applies, has the meaning it has as specified by, or under, that notice;

S. 4(1) def. of *infringement* repealed by No. 6/2009 s. 6(3)(b).

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S. 4(1) def. of *inspector* amended by No. 46/1998 s. 7(Sch. 1), substituted by No. 6/2009 s. 6(2)(b).

inspector means an inspector employed under section 90(1)(b);

land affected, in relation to work under a licence, means land to which entry is required during the work and includes the surface of the land and the land to a depth of 100 metres;

S. 4(1) def. of *land affected* amended by No. 82/2000 s. 4(g).

licence means an exploration licence or a mining licence under Part 2;

licensee means the holder of a licence;

low impact exploration means—

S. 4(1) def. of *low impact exploration* inserted by No. 82/2000 s. 4(a), amended by No. 16/2006 s. 198(Sch. 2 item 5(1)(b)).

(a) exploring for minerals on land—

- (i) without using equipment (other than non-mechanical hand tools) to excavate on the land; and
- (ii) without using explosives on the land; and
- (iii) without removing or damaging any tree or shrub on the land; and
- (iv) without disturbing any Aboriginal cultural heritage within the meaning of the **Aboriginal Heritage Act 2006** that is recorded in the Victorian Aboriginal Heritage Register under that Act; and
- (v) without disturbing any place or object on the Victorian Heritage Register, or any archaeological site or relic included on the Heritage Inventory, under the **Heritage Act 1995**; or

(b) undertaking any other exploration activity that is declared to be low impact exploration under section 7B;

mine means any land on which mining is taking place under a licence;

S. 4(1) def. of
mineral
amended by
Nos 7/1994
s. 4, 71/2001
s. 3(1)(a).

miner's right means a miner's right under Part 5;

mineral means any substance which occurs naturally as part of the earth's crust—

(a) including—

(i) oil shale and coal; and

(ii) hydrocarbons and mineral oils contained in oil shale or coal or extracted from oil shale or coal by chemical or industrial processes; and

(iii) any substance specified in Schedule 4;

(b) excluding water, stone, peat or petroleum;

minerals exemption means an exemption that was granted under section 293 or 293A of the **Mines Act 1958** and that was current immediately before the commencement of this section;

mining means extracting minerals from land for the purpose of producing them commercially, and includes processing and treating ore;

S. 4(1) def. of
mining infringement
repealed by
No. 6/2009
s. 6(3)(c).

* * * *

mining register means the register kept under Part 6;

S. 4(1) def. of
occupier
amended by
No. 76/1998
s. 31(a)(ii).

occupier means—

(a) in relation to private land, any person lawfully in possession of the land; and

- (b) in relation to Crown land, the Secretary
(as defined in the **Conservation,
Forests and Lands Act 1987**);

owner means—

- (a) in relation to Crown land, means the
Crown land Minister; and
- * * * * *
- (d) in relation to private land under the
Transfer of Land Act 1958 (other than
land in an identified folio under that
Act), the person who is registered or
entitled to be registered as the
proprietor of the land; and
- (e) in relation to other private land—
- (i) if the land is mortgaged, the
mortgagor; and
- (ia) if the land is subject to a licence
granted under Part 3A of the
**Victorian Plantations
Corporation Act 1993**, the
licensee, under that Part, of the
land; and
- (ii) in any other case, the person who
has the fee in the land;

S. 4(1) def. of
owner
amended by
Nos 86/1993
s. 5(1)(d),
35/1998
s. 18(b),
85/1998
s. 24(Sch.
item 42) (as
amended by
No. 74/2000
s. 3(Sch. 1
item 129.2)),
63/2006
s. 6(1)(a).

petroleum means¹—

- (a) any naturally occurring hydrocarbon,
whether in a gaseous, liquid or solid
state; or
- (b) any naturally occurring mixture of
hydrocarbons, whether in a gaseous,
liquid or solid state; or
- (c) any naturally occurring mixture of one
or more hydrocarbons, whether in a
gaseous, liquid or solid state, and one

or more of the following, that is to say,
hydrocarbon sulphide, nitrogen, helium
and carbon dioxide—

and includes any petroleum as defined by
paragraph (a), (b) or (c) or any prescribed
petroleum product that has been returned to a
natural reservoir in Victoria, but excludes
any naturally occurring hydrocarbon or
mixture of hydrocarbons within a deposit of
coal or oil shale;

S. 4(1) def. of
*planned
improvement*
amended by
No. 126/1993
s. 264(Sch. 5
item 16).

planned improvement, in relation to land, means
an improvement on the land in respect of
which the owner or occupier had, before an
application for a licence covering that land
was made—

- (a) applied for or been granted a building
permit or a planning permit; or
- (b) otherwise demonstrated a genuine
intention to proceed;

S. 4(1) def. of
*planning
permit*
inserted by
No. 6/2009
s. 6(1).

planning permit means a planning permit issued
under the **Planning and Environment Act
1987**;

S. 4(1) def. of
*planning
scheme*
inserted by
No. 6/2009
s. 6(1).

planning scheme means a planning scheme made
under the **Planning and Environment Act
1987**;

S. 4(1) def. of
plant
substituted by
No. 6/2009
s. 6(2)(c).

plant means buildings, structures, works or other
machinery (whether fixed or mobile) and all
other installations or equipment used in the
doing of work under a licence or an
extractive industry work authority;

private land means any land that is not Crown
land;

quarry means—

S. 4(1) def. of
quarry
inserted by
No. 6/2009
s. 6(1).

- (a) a pit or excavation made in land below the natural surface for the purpose of extracting or removing stone if a primary purpose of the extraction or removal is the sale or commercial use of the stone or the use of the stone in construction, building, road or manufacturing works; or
- (b) any place or operation involving the removal of stone from land, declared by the Minister by notice published in the Government Gazette to be a quarry—

and includes access ways on private land and the works, machinery, plant, equipment, buildings and structures above or below ground used for or in connection with—

- (c) making, enlarging or deepening the pit or excavation; or
- (d) carrying on the operation; or
- (e) the extraction or removal of stone from the pit or excavation; or
- (f) the treatment on or adjacent to the land in which the pit or excavation is made of stone extracted or removed from the land or the manufacture on or adjacent to that land of bricks, tiles, pottery or cement products substantially from stone so extracted or removed;

register means the mining register kept under Part 6;

registered means registered in the mining register;

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S. 4(1) def. of
registrar
amended by
No. 46/1998
s. 7(Sch. 1),
repealed by
No. 82/2000
s. 4(h).

* * * *

S. 4(1) def. of
*rehabilitation
bond*
inserted by
No. 63/2006
s. 6(1)(c).

rehabilitation bond means a rehabilitation bond
referred to in section 80;

S. 4(1) def. of
*rehabilitation
plan*
inserted by
No. 63/2006
s. 6(1)(c).

rehabilitation plan means a rehabilitation plan
referred to in section 79;

S. 4(1) def. of
*responsible
authority*
inserted by
No. 6/2009
s. 6(1).

responsible authority in relation to a planning
scheme has the same meaning as in the
Planning and Environment Act 1987;

S. 4(1) def. of
*restricted
Crown land*
inserted by
No. 86/1993
s. 5(1)(e).

restricted Crown land means any land specified in
Schedule 3;

search means search for minerals using no
equipment for the purposes of excavation
other than non-mechanical hand tools;

S. 4(1) def. of
stone
amended by
No. 71/2001
s. 3(1)(b).

stone means—

- (a) sandstone, freestone or other building
stone; or
- (b) basalt, granite, limestone or rock of any
kind ordinarily used for building,
manufacturing or construction
purposes; or

- (c) quartz (other than quartz crystals); or
- (d) slate or gravel; or
- (e) clay (other than fine clay, bentonite or kaolin); or
- (ea) peat; or
- (f) sand, earth or soil; or
- (g) other similar materials;

stratum of land means a part of land consisting of a space of any shape below, on or above the surface of the land or partly below and partly above the surface of the land, all of the dimensions of which are limited;

S. 4(1) def. of *stratum of land* inserted by No. 86/1993 s. 5(1)(f).

tailings means any waste mineral, stone or other material that was produced during the course of mining (whether before or after 6 November 1991), and includes any mineral, stone or material that is or was discarded from plant or machinery used for extracting minerals;

S. 4(1) def. of *tailings* amended by No. 86/1993 s. 5(1)(g)(i)(ii), substituted by No. 82/2000 s. 4(i).

* * * * *

S. 4(1) def. of *tourist mine* repealed by No. 59/2010 s. 42(1)(c).

Tribunal means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

S. 4(1) def. of *Tribunal* inserted by No. 52/1998 s. 311(Sch. 1 item 64.1).

unrestricted Crown land means any Crown land (whether reserved or not) other than—

- (a) land to which paragraph (a) or (b) of section 6 applies; or
- (b) restricted Crown land;

S. 4(1) def. of *unrestricted Crown land* inserted by No. 86/1993 s. 5(1)(h).

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S. 4(1) def. of
work
repealed by
No. 82/2000
s. 4(j).

* * * *

S. 4(1) def. of
work authority
inserted by
No. 82/2000
s. 4(a).

work authority means an authority granted under
section 42 to the holder of a mining licence;

S. 4(1) def. of
work plan
substituted by
No. 6/2009
s. 6(2)(d).

work plan means a work plan lodged under
section 40 or section 77G;

S. 4(1) def. of
worksite
inserted by
No. 86/1993
s. 5(1)(i),
substituted by
No. 82/2000
s. 4(k),
amended by
Nos 63/2006
s. 6(1)(b),
6/2009
s. 6(2)(e),
59/2010
s. 42(1)(b).

worksite means any place where work is being
done under a licence, an extractive industry
work authority, a miner's right or tourist
fossicking authority or where rehabilitation
work is being done, or required to be done,
under Part 7.

S. 4(2)
substituted by
No. 86/1993
s. 5(2),
amended by
Nos 46/1998
s. 7(Sch. 1),
56/2003
s. 11(Sch.
item 12.2),
108/2004
s. 117(1)
(Sch. 3
item 134.2).

- (2) If under the **Public Administration Act 2004** the
name of the Department is changed, a reference in
the definition of *Department* in subsection (1) to
the "Department of Primary Industries" must,
from the date when the name is changed, be
treated as a reference to the Department by its new
name.

S. 4(3)
inserted by
No. 86/1993
s. 5(2),
repealed by
No. 63/2006
s. 6(3).

* * * *

5 Act to bind the Crown

- (1) This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- (2) Nothing in this Act makes the Crown in any of its capacities liable to be prosecuted for an offence.

5AA Application of this Act

S. 5AA
inserted by
No. 6/2009
s. 8.

- (1) The provisions of this Act do not apply to or with respect to any extractive industry exempted by notice published in the Government Gazette by the Minister from compliance with any of those provisions of this Act relating to extractive industries whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.
- (2) Despite any contrary provision in any other Act administered by the Minister administering the **Conservation, Forests and Lands Act 1987** if there is provision under any of those Acts to issue or grant a lease, licence, permit or authority allowing for the search for stone or the carrying out of an extractive industry, a person is not required to obtain such a lease, licence, permit or authority if the person has complied with the provisions of this Act relating to extractive industries with respect to the searching for stone or the carrying out of the extractive industry.
- (3) Subsection (1) does not affect any lease, licence, permit or authority issued or granted under an Act administered by the Minister referred to in subsection (2).
- (4) The provisions of this Act relating to extractive industries do not apply to or with respect to the extraction or removal of stone from land that is a farm if the stone is intended in good faith only to

s. 5AB

be used on that farm for the purposes of a dam or other farm works and not for sale or any other commercial use.

- (5) The provisions of this Act relating to extractive industries do not apply to or with respect to the carrying out of any *extractive activity* within the meaning of the **Catchment and Land Protection Act 1994**.

S. 5AB
inserted by
No. 6/2009
s. 8.

5AB Application of this Act to Alcoa land

- (1) For the purposes of the provisions of this Act relating to extractive industries, land in the leased area within the meaning of the definition of *leased area* in the agreement set out in the Schedule to the **Mines (Aluminium Agreement) Act 1961** is deemed to be private land of which Alcoa of Australia Proprietary Limited ACN 004 879 298 is the owner for any purpose other than the determination and payment of royalties to the Crown.
- (2) The Minister must not grant an extractive industry work authority over any part of the leased area referred to in subsection (1) without the consent of the Minister administering the **Conservation, Forests and Lands Act 1987**.

S. 5A
inserted by
No. 82/2000
s. 5.

5A Interaction of this Act with native title legislation

- (1) Any action taken under this Act must be taken in a way that is not inconsistent with the Native Title Act 1993 of the Commonwealth and the **Land Titles Validation Act 1994**.
- (2) Subject to subsection (1), it is declared that if native title exists over land, the land may still be dealt with under this Act.

(3) In this section, *action* includes—

(a) the granting of a licence under Part 2, permit, right or an authority under Part 5;

S. 5A(3)(a)
substituted by
No. 6/2009
s. 7.

(b) undertaking any exploration, searching or mining.

6 Land not available for exploration, mining and searching

S. 6
amended by
No. 82/2000
s. 6(2) (ILA
s. 39B(1)).

(1) The following land is exempted from being subject to a licence or other authority under this Act—

(a) land that is a reference area under the **Reference Areas Act 1978**;

(b) land that is a national park, wilderness park or State park under the **National Parks Act 1975**, unless the land is covered by—

(i) a lease, licence, permit or authority under the **Mines Act 1958** that must, by virtue of this Act, be treated as a mining licence or an exploration licence (including such a lease, licence, permit or authority that is renewed under this Act); or

(ii) a licence under this Act granted before the declaration of the national park, wilderness park or State park (including such a licence that is renewed after that declaration); or

(iii) a mining licence that is granted over land that was, immediately before the granting of the mining licence, covered by an exploration licence that was granted before the declaration of the national park, wilderness park or State

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park (including such a mining licence
that is renewed after that declaration);

S. 6(1)(ba)
inserted by
No. 40/2002
s. 29.

(ba) land that is a marine national park or a
marine sanctuary under the **National Parks
Act 1975**;

S. 6(1)(c)
substituted by
Nos 82/2000
s. 6(1),
16/2006
s. 198(Sch. 2
item 5(2)).

(c) land in respect of which an ongoing
protection declaration is in force under the
Aboriginal Heritage Act 2006;

S. 6(1)(d)
substituted by
No. 82/2000
s. 6(1),
repealed by
No. 16/2006
s. 198(Sch. 2
item 5(2)).

* * * * *

(e) land that is, under section 7 or by or under
any other Act, exempted from mining, or
from being subject to a licence or other
authority under this Act.

S. 6(2)
inserted by
No. 82/2000
s. 6(2).

(2) Despite subsection (1)(b), any area of a park that
is the subject of a notice under section 32D(1) of
the **National Parks Act 1975** is not exempted
from being subject to a miner's right or a tourist
fossicking authority to the extent that any activity
permitted under such a right or authority is
consistent with an authorisation under section
32D(2)(b) of that Act in the area designated by the
notice.

S. 6(3)
inserted by
No. 50/2002
s. 20.

(3) Despite subsection (1), that part of the park
described in Part 41 of Schedule Two to the
National Parks Act 1975 that is shown by
hatching or cross-hatching on the plans lodged in
the Central Plan Office and numbered N.P. 105A
and N.P. 105B is not exempt from being subject to
a mining licence, to the extent of the entitlements

set out in section 40(1D)(a) of that Act, or from being subject to an exploration licence.

6AA Land not available for searching for stone

S. 6AA
inserted by
No. 6/2009
s. 9.

The Crown land Minister must not give consent under section 77A to search for stone on the following land—

- (a) land that is a reference area under the **Reference Areas Act 1978**;
- (b) except as provided for in section 40 of the **National Parks Act 1975**, land that is a national park, wilderness park, State park, marine national park or marine sanctuary under the **National Parks Act 1975**;
- (c) land in respect of which an ongoing protection declaration is in force under the **Aboriginal Heritage Act 2006**.

6A Extent of application of licences and authorities under this Act to Deep Lead Nature Conservation Reserve (No. 2)

S. 6A
inserted by
No. 50/2002
s. 21.

- (1) Despite section 14, a mining licence issued over the Deep Lead Nature Conservation Reserve (No. 2) does not entitle the holder to carry out mining on the land surface of the whole or any part of the Reserve.
- (2) Despite subsection (1), a mining licence granted over any part of the Deep Lead Nature Conservation Reserve (No. 2) may authorise the holder to construct and operate minor mining infrastructure on the land surface of the Reserve, if the Minister administering section 4 of the **Crown Land (Reserves) Act 1978** has consented to any such construction or operation. Consent under this subsection must not be unreasonably withheld.

- (3) A mining licence in respect of which a consent has been given under subsection (2) is subject to any terms and conditions imposed by the Minister administering section 4 of the **Crown Land (Reserves) Act 1978** as to the nature of the infrastructure and as to the effect the infrastructure may have on the Reserve.
- (4) Deep Lead Nature Conservation Reserve (No. 2) is exempted from being subject to a miner's right or tourism fossicking authority under Part 5.
- (5) In this section *Deep Lead Nature Conservation Reserve (No. 2)* means the land described in section 35 of the **Crown Land (Reserves) Act 1978**.

7 Minister may exempt land from exploration or mining licence

S. 7(1)
amended by
No. 82/2000
s. 7(1)(a).

- (1) The Minister may, by writing signed by him or her, exempt any land from being subject to an exploration licence or a mining licence, or both.
- (2) The Minister may grant an exemption for any reason he or she decides to be appropriate, including but not limited to the following reasons—
 - (a) if, in the Minister's opinion, the exemption is required to protect land that is of significant environmental importance;
 - (b) if, in the Minister's opinion, the exemption is required for the implementation of a recommendation of the Land Conservation Council of which notice has been given under section 10(3) of the **Land Conservation Act 1970**;
 - (c) if, in the Minister's opinion, the exemption is necessary to enable the orderly and optimal development of mineral resources in Victoria.

S. 7(2)(c)
inserted by
No. 82/2000
s. 7(1)(b).

- (3) In deciding whether to grant an exemption the Minister must take into account the social and economic implications of the decision.
- (4) The Minister must make sure that notice of an exemption is—
 - (a) published in the Government Gazette; and
 - (b) recorded in the mining register.
- (5) The Minister may revoke an exemption by notice—
 - (a) published in the Government Gazette; and
 - (b) recorded in the mining register.
- (6) The Minister may state in a notice revoking an exemption that the land that was the subject of the exemption is to become available for one or more licences on or after the date specified in the notice by the Minister.
- (7) The Minister must ensure that a copy of the revocation of an exemption is lodged in the mining register.

S. 7(6)
inserted by
No. 82/2000
s. 7(2).

S. 7(7)
inserted by
No. 82/2000
s. 7(2).

7A Minister may declare meaning of graticular section

S. 7A
inserted by
No. 82/2000
s. 8.

- (1) The Minister may from time to time, by notice published in the Government Gazette, declare the meaning of a graticular section for the purposes of this Act.
- (2) In making a declaration, the Minister may apply, adopt or incorporate (with or without modification) any matter contained in any document as at the time the declaration is made or at any time before then.

s. 7B

S. 7B
inserted by
No. 82/2000
s. 8.

7B Ministers may declare low impact exploration activity

The Minister and the Minister administering the **Conservation, Forests and Lands Act 1987** may from time to time, by notice published in the Government Gazette, jointly declare an exploration activity to be low impact exploration for the purposes of this Act.

S. 7C
inserted by
No. 57/2009
s. 24.

7C Ministerial Order declaring specified mines and quarries

- (1) The Minister, by Order published in the Government Gazette, may declare that a specified mine or quarry is a declared mine or declared quarry.
- (2) The Minister must not make a declaration under subsection (1) in respect of a mine or quarry unless the Minister is satisfied that there are geotechnical or hydrogeological factors within the mine or quarry that pose a significant risk to—
 - (a) public safety; or
 - (b) the environment; or
 - (c) infrastructure.

8 Offence to search for minerals or do work without authority

S. 8(1)
substituted by
No. 82/2000
s. 9.

- (1) A person, other than the Crown, must not prospect, fossick or otherwise search for minerals, or carry out any exploration or mining, on any land unless—

S. 8(1)(a)
amended by
No. 59/2010
s. 42(2).

- (a) the person does so in accordance with a licence, a miner's right or tourist fossicking authority; or

(b) the person benefits from a relevant minerals exemption.

Penalty: In the case of a corporation,
1000 penalty units.

In any other case, 200 penalty units.

Default penalty:

In the case of a corporation, 20 penalty
units.

In any other case, 10 penalty units.

(2) The owner of minerals that are taken from land in contravention of subsection (1) may recover from the person taking them, as a debt due to the owner of the minerals and recoverable in a court of competent jurisdiction, the value of the minerals taken.

(3) Subsection (1) applies to the extraction or removal of stone under a work authority relating to an extractive industry which would necessarily involve the mining of a mineral.

S. 8(3)
inserted by
No. 67/1995
s. 60(2),
substituted by
No. 67/1995
s. 60(3),
amended by
No. 6/2009
s. 10.

8AA Offence to search for stone without owner's consent

S. 8AA
inserted by
No. 6/2009
s. 11.

A person must not search for stone or carry out any survey or other operation for the purpose of searching for stone—

(a) on Crown land without consent under section 77A and any consent required under section 77B(1); or

(b) on any private land without—

(i) the consent of the owner of the land and any consent required under section 77B(1), if the person whose

s. 8AB

consent is required under section 77B(1) is not the owner; or

- (ii) the authority of the Minister under section 77C and any consent required under section 77B(1).

Penalty: 50 penalty units.

S. 8AB
inserted by
No. 6/2009
s. 11.

8AB Offence to carry on extractive industry without authority

- (1) A person must not carry out an extractive industry on any land without a current extractive industry work authority to carry out that extractive industry on that land.

Penalty: 200 penalty units.

- (2) Subject to subsection (3), the holder of an extractive industry work authority and the manager of the place where the extractive industry is being carried out under the work authority must comply with the work authority in carrying out the extractive industry.

Penalty: 20 penalty units.

S. 8AB(3)
amended by
No. 55/2010
s. 49.

- (3) The holder of an extractive industry work authority and the manager of the place where the extractive industry is being carried out under the work authority must comply with the conditions of the work authority relating to the safety of the public.

Penalty: 20 penalty units.

S. 8A
inserted by
No. 82/2000
s. 10.

8A Aerial surveys permitted without licence

- (1) A person may undertake an aerial survey for the purpose of searching for minerals, or doing work preparatory to the search for minerals, without holding the authorisation required by section 8 if the person complies with subsection (2).

-
- (2) The person must supply any information acquired during the course of the survey as if section 116 applied to the person and as if the survey was work done under a licence.
 - (3) A person conducting an aerial survey in accordance with this section may survey land covered by licences held by other people.

9 Ownership of minerals

- (1) The Crown owns all minerals except—
 - (a) those in respect of which a minerals exemption is current; and
 - (b) those in which the property has passed under section 11.
- (2) A minerals exemption continues in operation after the commencement of this section until the exemption expires or is revoked.
- (3) The Minister may, after giving 14 days' written notice to the person who benefits from a minerals exemption, transfer, vary or revoke that exemption.
- (4) The person who benefits from a minerals exemption may apply to the Minister for a transfer, variation or revocation of the exemption, and the Minister may grant or refuse the application.
- (5) Ownership of the minerals in respect of which a minerals exemption was granted reverts to the Crown when the exemption expires or is revoked.

10 Tailings

Tailings are to be treated as part of the land on which they are situated, and minerals in them are owned by the Crown unless the property in them passes under section 11, or unless a minerals exemption is current in respect of them.

11 Transfer of property in minerals

- (1) The property in minerals passes from the Crown to the holder of a licence or a person searching under a miner's right or tourist fossicking authority when the minerals are separated from the land in accordance with the licence, miner's right or tourist fossicking authority.
- (2) The property in minerals which are separated from the land otherwise than in accordance with a licence, miner's right or tourist fossicking authority remains in the Crown.
- (3) Subsection (2) does not apply to minerals in respect of which a minerals exemption is current.

S. 11A
inserted by
No. 6/2009
s. 12.

11A Ownership of stone

- (1) All stone which is on or below the surface of any private land, despite any reservation in the Crown grant or in any Crown lease of the land, is not the property of the Crown but is the property of the owner of the land.
- (2) A person who—
 - (a) holds an extractive industry work authority;
or
 - (b) applies for an extractive industry work authority—in respect of any stratum of private land immediately below which there is unalienated Crown land and who proposes to carry out an extractive industry on that unalienated Crown land is to be regarded as the owner of that Crown land for the purpose of obtaining a work authority for the carrying out of that extractive industry.
- (3) Despite subsection (2), the stone in any Crown land to which that subsection applies remains the property of the Crown and that person must pay royalties for the stone extracted or removed from

the land and the extractive industry work authority may provide for the determination and payment of royalties accordingly.

12 Royalties

S. 12
amended by
No. 86/1993
s. 6(a).

- (1) Subject to section 12A, the holder of a mining licence must pay royalties in accordance with the rate or method of assessment and at the times—

S. 12(1)
amended by
No. 89/2005
s. 3.

- (a) specified in the licence, after consultation by the Minister with the licensee; or
(b) prescribed, if not specified in the licence.

- (2) Without limiting subsection (1), the holder of a mining licence must, unless the Minister decides otherwise, pay royalties in respect of the disposal under section 14(2)(b) of tailings resulting from work under a licence over Crown land in accordance with the rate or method of assessment and at the times prescribed.

S. 12(2)
inserted by
No. 86/1993
s. 6(b),
amended by
No. 82/2000
s. 11(a)(b).

- (3) The holder of an extractive industry work authority to be carried out on Crown land must pay royalties in accordance with the rate or method of assessment and at the times—

S. 12(3)
inserted by
No. 6/2009
s. 13.

- (a) specified in the work authority; or
(b) prescribed, if not specified in the work authority—

unless the Minister decides to waive or vary the royalties under subsection (4).

- (4) The Minister may waive the requirement for any holder of an extractive industry work authority to pay royalties or vary the rate, method of assessment or times at which the royalty is to be paid by any holder of an extractive industry work authority if the Minister is satisfied that a royalty

S. 12(4)
inserted by
No. 6/2009
s. 13.

is being paid to the Crown or in any other circumstances in which the Minister is satisfied that it is appropriate that there should be such a waiver or variation.

S. 12A
inserted by
No. 89/2005
s. 4.

12A Royalties for lignite

- (1) This section applies to the holder of a mining licence if the holder mines lignite in accordance with the licence and has effect despite anything to the contrary specified in the licence or the regulations (other than regulations made for the purposes of subsection (2)).
- (2) The holder of the mining licence must pay royalties for the lignite in accordance with the prescribed rate.
- (3) For the purposes of subsection (2), the *prescribed rate* is—
 - (a) the base amount per gigajoule unit of lignite produced; or
 - (b) if a different rate is prescribed in the regulations, that rate.
- (4) Without limiting subsection (2), the holder of a mining licence must, unless the Minister decides otherwise, pay royalties in respect of the disposal under section 14(2)(b) of tailings resulting from work under a licence over Crown land in accordance with the rate or method of assessment and at the times prescribed.
- (5) In this section—

base amount means—

 - (a) for the financial year ending on 30 June 2006, \$0.0588; and

- (b) for each subsequent financial year, the amount determined in accordance with the following formula—

$$\$0.0588 \times \left(\frac{A}{B} \right)$$

where—

A is the consumer price index number for the quarter ending on 30 June immediately preceding the financial year for which the determined amount is being calculated;

B is the consumer price index number for the financial year ending on 30 June 2005;

consumer price index number means the all groups consumer price index number for Melbourne published by the Commonwealth Statistician in respect of the relevant period;

gigajoule unit of lignite means a quantity of lignite which, when mined, has a net wet specific energy content of 1 gigajoule.

PART 2—EXPLORATION LICENCES AND MINING LICENCES

Pt 2 Div. 1
(Heading)
inserted by
No. 63/2006
s. 7.

Division 1—General licence provisions

13 Exploration licences

- (1) The holder of an exploration licence is, subject to section 43(1), entitled to carry out exploration on the land covered by the licence.
- (2) An exploration licence must describe the land by reference to graticular sections (whether whole or part), unless the Minister decides otherwise.
- (3) An exploration licence—
 - (a) is current for the time specified in the licence (unless it is surrendered or cancelled earlier or unless this Act otherwise provides); and
 - (b) may be renewed in accordance with the provisions of this Part; and
 - (c) applies to the area, not less than 1 nor more than 500 graticular sections, specified in the licence, unless the Minister decides otherwise.
- (4) In issuing an exploration licence, the Minister may specify on the licence that it is to remain current for a period of up to 5 years from the date on which it is registered.

S. 13(3)(a)
substituted by
No. 82/2000
s. 12(1).

S. 13(4)
inserted by
No. 82/2000
s. 12(2).

14 Mining licences

- (1) The holder of a mining licence who obtains a work authority is entitled to carry out mining on the land covered by the licence and—

S. 14(1)
 amended by
 No. 82/2000
 s. 13(1).

- (a) to explore for minerals; and
- (b) to construct any facilities specified in the licence, including drives, roads, water races, tailing dumps, tailing dams, drains, dams, reservoirs and pipe-lines; and
- (c) to do anything else that is incidental to that mining.

- (2) The licensee may—

- (a) use, for any mining purpose, any tailings produced by the licensee during work under the licence or a former licence or a former title within the meaning of clause 2 of Schedule 2 (whether before or after 6 November 1991); or
- (b) with the consent of the Minister and in accordance with any conditions imposed by the Minister on that consent, dispose of any tailings referred to in paragraph (a).

S. 14(2)(a)
 amended by
 No. 86/1993
 s. 7(1)(a).

S. 14(2)(b)
 amended by
 No. 86/1993
 s. 7(1)(b)(i)(ii).

- (2A) A licensee must not dispose of any tailings referred to in subsection (2)(a) otherwise than with the consent of the Minister under subsection (2)(b) and in accordance with any conditions imposed by the Minister on that consent.

S. 14(2A)
 inserted by
 No. 86/1993
 s. 7(2).

Penalty applying to this subsection: 60 penalty units.

- (3) A mining licence—

- (a) is current for the time specified in the licence, not exceeding 20 years from the date on which it is registered unless the Minister decides otherwise; and

S. 14(3)(a)
 amended by
 No. 56/1995
 s. 40.

s. 14A

(b) may be renewed in accordance with the provisions of this Part; and

(c) applies to the land described in the licence.

(4) The area of the land described in a licence must not exceed 260 hectares, unless the Minister decides otherwise.

S. 14(5)
inserted by
No. 82/2000
s. 13(2).

(5) A mining licence that covers an area of more than 5 hectares does not entitle the holder of the licence to only explore for minerals during the currency of the licence.

S. 14(6)
inserted by
No. 82/2000
s. 13(2).

(6) However, the Minister may, by notice in writing, authorise the holder of such a mining licence to only explore for minerals for a specified period of up to 2 years.

S. 14A
inserted by
No. 86/1993
s. 8.

14A Licence may be limited to stratum of land?

An exploration licence or a mining licence may be granted—

(a) for a stratum of land; or

(b) without being limited to a particular stratum—

and references in this Act to land must be construed accordingly.

Pt 2 Div. 2
(Heading and
s. 14AB)
inserted by
No. 63/2006
s. 8.

Division 2—Licence process

S. 14AB
inserted by
No. 63/2006
s. 8.

14AB Application of this Division

The provisions in this Division do not apply to a licence for which an application may be made under Division 3 unless specifically applied under Division 3.

15 Application for a licence

(1) A person may apply to the Minister in accordance with the regulations for an exploration licence or a mining licence.

(1A) An application for a licence is ineffective, and must not be accepted by the Minister, to the extent that it is for—

S. 15(1A)
inserted by
No. 86/1993
s. 9(1).

(a) a licence over land that is covered by a mining licence; or

(b) an exploration licence over land that is covered by an exploration licence; or

(c) a mining licence over land that is covered by an exploration licence unless—

(i) the applicant is the holder of the exploration licence; or

(ii) the application is accompanied by the written consent of the holder of the exploration licence to the granting of the licence; or

S. 15(1A)(c)(ii)
substituted by
No. 82/2000
s. 14(1)(a).

(iii) both of the following apply—

(A) the area of the land for which the mining licence is to be sought is 5 hectares or less; and

S. 15(1A)(c)(iii)
inserted by
No. 82/2000
s. 14(1)(a).

(B) the exploration licence was first registered more than 2 years before the application was lodged;
or

(d) a licence over land in respect of which an application for a licence has already been made (unless the application is made on the same day as the other application); or

S. 15(1A)(d)
substituted by
No. 82/2000
s. 14(1)(b).

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s. 15

S. 15(1A)(e)
amended by
No. 82/2000
s. 14(1)(c).

(e) a licence over land that is subject to the tender process under section 27; or

S. 15(1A)(f)
inserted by
No. 82/2000
s. 14(1)(c).

(f) a licence over land that is the subject of an exemption under section 6 or 7; or

S. 15(1A)(g)
inserted by
No. 82/2000
s. 14(1)(c),
repealed by
No. 63/2006
s. 9(a).

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S. 15(1A)(h)
inserted by
No. 82/2000
s. 14(1)(c).

(h) a licence over land that was covered by a previous licence if the application is lodged less than 28 days after the previous licence ceased to apply to the land; or

S. 15(1A)(i)
inserted by
No. 82/2000
s. 14(1)(c).

(i) a licence over land that was the subject of a previous application if the application is lodged less than 28 days after the previous application lapsed, or was withdrawn, rejected or not accepted.

S. 15(1B)
inserted by
No. 86/1993
s. 9(1).

(1B) An application of a kind described in paragraph (a), (b), (c), (d) or (e) of subsection (1A) must be taken to be an application for an exploration licence or a mining licence (as the case requires) over any other land to which it relates.

S. 15(1C)
inserted by
No. 82/2000
s. 14(2).

(1C) An application for a licence is ineffective, and must not be accepted by the Minister, if it does not contain all of the details required by the regulations for an application for that type of licence.

S. 15(1D)
inserted by
No. 82/2000
s. 14(2).

(1D) For the purpose of determining whether an application falls within a category listed in subsection (1A), the Minister may ask the applicant to provide additional information about the application (but only if that information is not information that was required by the regulations).

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- (1E) The request for the additional information must be made in writing and may specify a time within which the information is to be given to the Minister. **S. 15(1E) inserted by No. 82/2000 s. 14(2).**
- (1F) If, in asking for additional information, the Minister specified a period within which the information was to be given, the application lapses if— **S. 15(1F) inserted by No. 82/2000 s. 14(2).**
- (a) the information is not given to the Minister within the time specified by the Minister in making the request (or within any later time subsequently allowed by the Minister in writing); and
 - (b) the Minister has not withdrawn the request for the information within the times referred to in paragraph (a).
- (1G) If, in asking for additional information, the Minister did not specify a period within which the information was to be given, the application lapses if the information is not given to the Minister within 6 months after the request was made (unless the Minister withdraws the request within that time). **S. 15(1G) inserted by No. 82/2000 s. 14(2).**
- (2) If the Minister does not accept an application, he or she must notify the applicant in writing that the application has not been accepted and must include in the notification details of the reasons why it was not accepted. **S. 15(2) substituted by No. 82/2000 s. 14(3).**
- (3) If the Minister accepts an application, he or she must notify the applicant in writing that the application has been accepted, and must include in the notification— **S. 15(3) amended by No. 76/1998 s. 31(b), substituted by No. 82/2000 s. 14(3).**
- (a) if, because of section 23, the application has a lower priority than another application, a statement that another application has priority; or
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s. 15

(b) in any other case, a statement that the application has priority.

S. 15(4)
amended by
No. 76/1998
s. 31(b).

(4) On an application ceasing to have a lower priority than another application, the Department Head must notify the applicant that the application has priority.

(5) An applicant for a licence must, within 14 days after being notified under subsection (3)(b) or (4) that the application has priority, advertise the application in accordance with the regulations and, if the application is for a mining licence, give notice of it in accordance with the regulations to the owner and occupier of the land affected².

S. 15(5A)
inserted by
No. 86/1993
s. 9(2),
amended by
No. 63/2006
s. 9(b).

(5A) The Minister must, as soon as practicable after an applicant for a licence covering unrestricted Crown land is notified under subsection (3)(b) or (4) that the application has priority, consult with the Crown land Minister in relation to the carrying out of work on that land and the Crown land Minister may recommend to the Minister conditions to which the licence should be made subject.

(6) An applicant for a licence must satisfy the Minister that the applicant—

(a) is a fit and proper person to hold the licence;
and

S. 15(6)(b)
substituted by
No. 86/1993
s. 9(3).

(b) intends to comply with this Act; and

S. 15(6)(ba)
inserted by
No. 86/1993
s. 9(3).

(ba) genuinely intends to do work; and

- (c) has an appropriate program of work; and
 - (d) is likely to be able to finance the proposed work and rehabilitation of the land.
- (7) An applicant for a licence must provide any additional information about the application that is requested in writing by the Minister, within 14 days after receipt of the request or any longer time allowed by the Minister.
- (8) If the Minister asks for additional information about an application, the application lapses if—
- (a) the information is not given to the Minister within the time required by subsection (7); and
 - (b) the Minister has not withdrawn the request for the information within that time.
- (9) In consenting to the granting of a mining licence over land that is covered by an exploration licence, the holder of the exploration licence may make the consent conditional on specified depth restrictions.

S. 15(8)
 substituted by
 No. 82/2000
 s. 14(4).

S. 15(9)
 substituted by
 No. 82/2000
 s. 14(4).

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S. 15(10)–(14)
 repealed by
 No. 82/2000
 s. 14(5).

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S. 15(15)
 amended by
 No. 27/1991
 s. 4(3),
 repealed by
 No. 82/2000
 s. 14(5).

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S. 15(16)–(18)
 repealed by
 No. 82/2000
 s. 14(5).

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s. 17

S. 15(19)
amended by
No. 27/1991
s. 4(3),
repealed by
No. 82/2000
s. 14(5).

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S. 16
amended by
No. 76/1998
s. 31(b),
repealed by
No. 82/2000
s. 14(6).

* * * *

17 Application not transferable

An application for a licence is not transferable.

S. 18
(Heading)
inserted by
No. 63/2006
s. 10(1).

18 Notice of applications with priority

The Department Head must, within 14 days after an applicant for a licence is notified under section 15(3)(b) or (4) that the application has priority, give notice of the application to—

S. 18
amended by
No. 76/1998
s. 31(b).

S. 18(a)
amended by
No. 16/2006
s. 198(Sch. 2
item 5(3)).

(a) any person or body nominated by the Minister administering the **Aboriginal Heritage Act 2006**; and

S. 18(b)
amended by
Nos 82/2000
s. 15, 63/2006
s. 10(2)(a),
substituted by
No. 16/2006
s. 198(Sch. 2
item 5(4)) (as
amended by
No. 63/2006
s. 61(Sch.
item 1.4)).

(b) any registered Aboriginal party (within the meaning of the **Aboriginal Heritage Act 2006**) for an area to which the application relates; and

S. 18(c)
inserted by
No. 63/2006
s. 10(2)(b).

(c) if the application is for a mining licence, the Executive Director (within the meaning of the **Heritage Act 1995**).

19 Withdrawal of application

- (1) An applicant for a licence may withdraw the application, either in whole or in part, by delivering a signed notice of withdrawal to the Minister.
- (2) A withdrawal takes effect on the delivery of the notice to the principal office of the Department Head.

New s. 19
 inserted by
 No. 82/2000
 s. 16.

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Ss 19, 20
 amended by
 No. 76/1998
 s. 31(b),
 repealed by
 No. 82/2000
 s. 17.

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S. 21
 repealed by
 No. 82/2000
 s. 17.

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S. 22
 amended by
 Nos 86/1993
 s. 10(a)(b),
 76/1998
 s. 31(b),
 repealed by
 No. 82/2000
 s. 17.

23 Priority of applications

- (1) If more than one application for a licence in respect of the same land is received on the same day, the Minister must assign an order of priority to those applications.
- (2) The Minister must assign the highest priority to the application that he or she believes will best further the objectives of this Act after considering—

S. 23
 substituted by
 No. 82/2000
 s. 18.

- (a) the relative merits of the applications; and
- (b) the likely ability of each applicant to meet the requirements specified in section 15(6).
- (3) Once an application has been assigned the highest priority, any further assessment of the application must be made without regard to anything contained in applications having a lower priority.

24 Objections to licence

- (1) Any person may object to a licence being granted.
- (2) A person who objects must—
 - (a) put the objection in writing; and
 - (b) include the grounds on which it is made; and
 - (c) send it to the Minister within 21 days after the latest date on which the application was advertised.
- (3) The Department Head must make sure that a copy of each objection received by the Minister is available to be inspected at the principal office of the Department by any person, on request and free of charge, during office hours until the application is granted or refused.

S. 24(3)
amended by
No. 76/1998
s. 31(b).

25 Grant or refusal of licence

- (1) The Minister must not grant a licence over land—
 - (a) that is covered by a mining licence; or
 - (b) that is covered by an exploration licence, unless the application is for a mining licence and, if the applicant is not the holder of the exploration licence—
 - (i) the holder of that licence consents in writing; or

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- (ii) all of the following conditions apply—
- (A) the area of the land for which the mining licence is to be sought is 5 hectares or less; and
 - (B) the exploration licence was first registered more than 2 years before the application was lodged; and
 - (C) the Minister has waived the need for the exploration licence holder's consent under section 25A; or
- (c) that has been covered by an exploration licence for at least 2 years, if the granting of the licence would mean that—
- (i) the number of mining licences which each cover 5 hectares or less granted by virtue of section 25A over land covered by the exploration licence is more than the number of graticular sections³ covered by the exploration licence divided by 10; or
 - (ii) any 2 areas of 5 hectares or less covered by mining licences granted by virtue of section 25A within the exploration licence would be 1 kilometre or less apart at the closest points; or
- (d) that is the subject of any other application that—
- (i) has not been determined; and
 - (ii) has, because of section 23, a higher priority than the present application; or

S. 25(1)(b)(ii)
substituted by
No. 82/2000
s. 19(a).

S. 25(1)(c)(i)
amended by
No. 82/2000
s. 19(c).

S. 25(1)(c)(ii)
amended by
No. 82/2000
s. 19(c).

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s. 25

(e) that is exempted under this or any other Act from being subject to—

(i) an exploration licence, if the application is for an exploration licence; or

(ii) a mining licence, if the application is for a mining licence; or

(f) that is subject to a current minerals exemption; or

(g) that is subject to the tender process under section 27, unless the licence is granted to the successful tenderer; or

S. 25(1)(g) amended by No. 63/2006 s. 11(1).

S. 25(1)(h) amended by No. 86/1993 s. 11(1), repealed by No. 82/2000 s. 19(b).

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S. 25(1)(i) inserted by No. 86/1993 s. 11(1).

(i) that is limited to a particular stratum unless the Minister is satisfied that the applicant can obtain reasonable access to and use of the land.

(2) Otherwise, the Minister may grant or refuse a licence after considering any objections made under section 24.

S. 25(3) amended by No. 86/1993 s. 11(2).

(3) The Minister may grant a licence if the applicant has substantially complied with this Act or the regulations (provided that the applicant complies with section 15(6)(a), (b), (c) and (d)), and may refuse to grant a licence even though the applicant has complied with this Act and the regulations.

S. 25(3A) inserted by No. 86/1993 s. 11(3), repealed by No. 82/2000 s. 19(b).

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- (4) Subsection (3) does not authorise the Minister to grant a licence if the applicant has not complied with this Act or the regulations unless the Minister is satisfied that the non-compliance is not likely to affect adversely any person's rights under this Act or the regulations or to result in any person being deprived of information necessary for the effectual exercise of those rights.
- (5) For the purposes of subsection (1)(c)(i), any part of a graticular section covered by the licence, and any fraction of a graticular section that remains after dividing the number of graticular sections covered by the licence by 10, must be treated as a whole graticular section.
- (6) In determining whether the limit imposed by subsection (1)(c)(i) or (ii) would be exceeded by the granting of a mining licence, regard must be had to the area covered by the exploration licence after excluding any area—
 - (a) excluded on a renewal of the exploration licence; or
 - (b) identified for exclusion in an application lodged for renewal of the exploration licence—on account of section 30.
- (7) On granting a licence over land the Minister must refuse any other application for a similar type of licence that has been received to the extent that it relates to land covered by the licence being granted.

Note

The grant of a licence under this section may be a land use activity under the **Traditional Owner Settlement Act 2010** if it relates to public land to which a land use activity agreement under that Act applies.

**Note to s. 25
inserted by
No. 62/2010
s. 140(1).**

S. 25A
inserted by
No. 82/2000
s. 20.

25A Waiver of exploration licence holder's consent

- (1) This section applies if—
 - (a) a person applies for a mining licence over land that is covered by an exploration licence; and
 - (b) the area of the land for which the mining licence is to be sought is 5 hectares or less; and
 - (c) the exploration licence was first registered more than 2 years before the application was lodged; and
 - (d) the person is unable or unwilling to obtain the written consent of the holder of the exploration licence to the granting of the licence.
- (2) The person may apply to the Minister for the Minister to waive the need for the person to obtain the exploration licence holder's consent to the granting of the licence.
- (3) An application must be made in the form and manner required by the Minister.
- (4) On the receipt of an application for waiver, the Minister must assess whether the granting of the mining licence would mean that the limit imposed by section 25(1)(c)(i) or (ii) would be exceeded.
- (5) If the Minister determines that the limit would not be exceeded, the Minister must refer the application for waiver to the mining warden for a recommendation as to whether the Minister should grant the waiver.

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- (6) The mining warden must, within 30 days after receiving a referral, make a recommendation to the Minister about whether or not the Minister should grant the waiver.
 - (7) The mining warden must not recommend that the Minister grant a waiver unless the mining warden is satisfied that the granting of the application for the licence—
 - (a) would not be likely to significantly interfere with any work being, or proposed to be, carried out by the exploration licence holder; and
 - (b) would not be unfair to the exploration licence holder; and
 - (c) would not otherwise be inappropriate.
 - (8) In making a recommendation, the mining warden may propose specified depth restrictions that should be applied if the licence is granted.
 - (9) Before granting a waiver, the Minister must consider the recommendation made by the mining warden.

26 Grant of licence

- (1) The Minister may grant a licence over an area that is smaller than the area in respect of which the application is made.
- (2) The Minister may impose conditions to which a licence is subject, including but not limited to conditions about—
 - (a) rehabilitation of the land;
 - (b) protection of the environment;
 - (c) protection of groundwater;

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s. 26

S. 26(2)(d)
repealed by
No. 82/2000
s. 21(1), new
s. 26(2)(d)
inserted by
No. 63/2006
s. 11(2)(a).

(d) providing and implementing environmental offsets on the land or any other land;

(e) expenditure;

(f) reporting the discovery of minerals;

(g) entering into a rehabilitation bond;

(h) payment of fees;

S. 26(2)(ha)
inserted by
No. 82/2000
s. 21(2).

(ha) payment of an environmental levy;

S. 26(2)(i)
substituted by
No. 89/2005
s. 5.

(i) payment of royalties, other than royalties in respect of lignite;

S. 26(2)(j)
substituted by
No. 86/1993
s. 12(1),
amended by
No. 63/2006
s. 11(2)(b).

(j) access to and use of the land by the holder of another licence that is limited to a particular stratum;

S. 26(2)(k)
repealed by
No. 86/1993
s. 12(1), new
s. 26(2)(k)
inserted by
No. 63/2006
s. 11(2)(c).

(k) protection of community facilities.

S. 26(3)
substituted by
No. 82/2000
s. 21(3).

(3) The Minister must impose, as conditions to which a licence is subject, any conditions subject to which consent to the application for the licence was obtained under section 15(9).

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|---|--|
| <p>(3A) If the Minister has granted a waiver under section 25A, the Minister may impose, as conditions to which the licence is subject, any conditions relating to specified depth restrictions that were recommended under section 25A(8) with respect to the granting of the licence.</p> | <p>S. 26(3A)
inserted by
No. 82/2000
s. 21(3).</p> |
| <p>(4) It is a condition of a mining licence that the licensee pays rent from the date of registration of the work authority, in accordance with the rate or method of assessment and at the times prescribed.</p> | <p>S. 26(4)
amended by
Nos 86/1993
s. 12(2),
82/2000
s. 21(4).</p> |
| <p>(4A) It is a condition of a mining licence that, in providing a document to the Minister under section 116, the licensee must give the Crown a licence to reproduce the document and any information in the document.</p> | <p>S. 26(4A)
inserted by
No. 82/2000
s. 21(5).</p> |
| <p>* * * *</p> | <p>S. 26(5)(6)
repealed by
No. 82/2000
s. 21(1).</p> |
| <p>* * * *</p> | <p>S. 26(7)
substituted by
No. 52/1998
s. 311(Sch. 1
item 64.2),
repealed by
No. 82/2000
s. 21(1).</p> |
| <p>(8) A licence has no effect until registered.</p> | |
| <p>(9) On the registration of the grant of a mining licence, any land covered by that licence that was, immediately before the registration, covered by an exploration licence ceases to be covered by that exploration licence.</p> | <p>S. 26(9)
inserted by
No. 63/2006
s. 11(3).</p> |

s. 26AA

Pt 2 Div. 3
(Heading and
ss 26AA–
26AQ)
inserted by
No. 63/2006
s. 12.

Division 3—Licence process for direct allocation of licences relating to coal

Subdivision 1—General

S. 26AA
inserted by
No. 63/2006
s. 12.

26AA Definition

In this Division, *exempted land* means land—

- (a) that has been exempted under section 7 from being subject to an exploration licence or a mining licence or both; and
- (b) that is not subject to an exemption under section 6.

S. 26AB
inserted by
No. 63/2006
s. 12.

26AB Licence applications under Division to be in respect of exempted land

An application for a licence under this Division may only be made in respect of exempted land.

Subdivision 2—Licences granted by the Minister

S. 26AC
inserted by
No. 63/2006
s. 12.

26AC Who may apply for a licence under this Subdivision?

A person may apply for a licence under this Subdivision only if the Minister is satisfied that—

- (a) the person was a successful tenderer under a prior competitive process equivalent to the tender process under section 27; and
- (b) in order to implement the requirements of the tender, the person requires access to coal.

26AD Application procedure

**S. 26AD
inserted by
No. 63/2006
s. 12.**

- (1) A person may apply to the Minister in accordance with the regulations for a licence to carry out the exploration or mining of coal on exempted land.
- (2) Sections 15(1C), 15(2), 15(6), 15(7) and 15(8) apply to an application under this Subdivision as if the application were made under Division 2.
- (3) If the Minister accepts an application, he or she must notify the applicant in writing that the application has been accepted.
- (4) An applicant for a licence must, within 14 days after being notified under subsection (3) that the application has been accepted—
 - (a) advertise the application in accordance with the regulations; and
 - (b) if the application is for a mining licence, give notice of it in accordance with the regulations to the owner and occupier of the land affected.
- (5) The Minister must, as soon as practicable after an applicant for a licence covering unrestricted Crown land is notified under subsection (3) that the application has been accepted, consult with the Crown land Minister in relation to the carrying out of work on that land and the Crown land Minister may recommend to the Minister conditions to which the licence should be made subject.
- (6) Until regulations are made for the purposes of subsections (1) and (4), the relevant regulations relating to applications for licences under Division 2 will apply (with any necessary modifications).

s. 26AE

S. 26AE
inserted by
No. 63/2006
s. 12.

26AE Application of Act to licence application

- (1) Sections 17, 19 and 24 apply to an application under this Subdivision as if the application were made under Division 2.
- (2) The Department Head must, within 14 days after an applicant for a licence is notified under section 26AD(3) that the application has been accepted, give notice of the application to the persons and bodies referred to in section 18.

S. 26AF
inserted by
No. 63/2006
s. 12.

26AF Grant or refusal of licence

- (1) The Minister must not grant a licence over land—
 - (a) that is exempted under section 6 of this Act or under any other Act from being subject to—
 - (i) an exploration licence, if the application is for an exploration licence; or
 - (ii) a mining licence, if the application is for a mining licence; or
 - (b) that is subject to a current minerals exemption; or
 - (c) that is limited to a particular stratum unless the Minister is satisfied that the applicant can obtain reasonable access to and use of the land.
- (2) Otherwise, the Minister may grant or refuse a licence after considering any objections made under section 24 as applied by section 26AE.
- (3) Sections 25(3), 25(4) and 25(7) apply to the granting of a licence under this Subdivision as if the decision to grant or refuse to grant the licence were made under Division 2.

- (4) Sections 26(1), 26(2), 26(4), 26(4A) and 26(8) apply to a licence granted under this Subdivision as if the licence were granted under Division 2.

26AG Revocation of exemption over licence land

On the granting of a licence under this Subdivision the exemption to which the area of land covered by the licence is subject under section 7(1) is revoked to the extent that it relates to that land.

S. 26AG
inserted by
No. 63/2006
s. 12.

26AH Minister must publish notice

The Minister must cause a notice to be published in the Government Gazette—

- (a) stating that a licence under this Subdivision has been granted; and
- (b) describing the area of land covered by the licence; and
- (c) stating that the exemption relating to the area of land covered by the licence is revoked to the extent that it relates to that land.

S. 26AH
inserted by
No. 63/2006
s. 12.

26AI Application of Act to licence

- (1) On the granting of a licence under this Subdivision, this Act (except Divisions 2 and 5 of this Part) applies to the licence as if it were granted by the Minister under Division 2.
- (2) Without limiting subsection (1), the following things may be done under this Part in relation to the licence—
 - (a) the licence may be renewed, transferred, varied, surrendered, cancelled or amalgamated with another licence;

S. 26AI
inserted by
No. 63/2006
s. 12.

s. 26AJ

- (b) a condition of the licence may be varied, suspended, revoked or added;
- (c) the area of land covered by the licence may be excised, transferred or cancelled in part.

Subdivision 3—Licences granted by the Governor in Council

S. 26AJ
inserted by
No. 63/2006
s. 12.

26AJ Application procedure

- (1) A person may apply in accordance with the regulations for the Governor in Council to grant a licence to carry out the exploration or mining of coal on exempted land on the basis that the application is of State interest.
- (2) The application must be made to the Minister and be accompanied by evidence setting out the grounds for the application to be considered as one of State interest.
- (3) An application for a licence is ineffective, and must not be accepted by the Minister unless it is made in accordance with the regulations and subsection (2).
- (4) Sections 15(2), 15(6), 15(7) and 15(8) apply to an application under this Subdivision as if the application were made under Division 2.

S. 26AK
inserted by
No. 63/2006
s. 12.

26AK Notification and advertising requirements

- (1) If the Minister is not satisfied that the application is of State interest he or she must notify the applicant in writing of that fact setting out the reasons for not being so satisfied.
- (2) If the Minister is satisfied that the application is of State interest, he or she must notify the applicant in writing that the application is of State interest.

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- (3) An applicant for a licence must, within 14 days after being notified under subsection (2) that the application is of State interest—
 - (a) advertise the application in accordance with the regulations; and
 - (b) if the application is for a mining licence, give notice of it in accordance with the regulations to the owner and occupier of the land affected.
 - (4) The Minister must, as soon as practicable after an applicant for a licence covering unrestricted Crown land is notified under subsection (2) that the application is of State interest, consult with the Crown land Minister in relation to the carrying out of work on that land and the Crown land Minister may recommend to the Minister conditions to which the licence should be made subject.
 - (5) Until regulations are made for the purposes of section 26AJ(1) and subsection (3), the relevant regulations relating to applications for licences under Division 2 will apply (with any necessary modifications).

26AL Application of Act to licence application

- (1) Sections 17, 19 and 24 apply to an application under this Subdivision as if the application were made under Division 2.
- (2) The Department Head must, within 14 days after an applicant for a licence is notified under section 26AK(2) that the application is of State interest, give notice of the application to the persons and bodies referred to in section 18.

S. 26AL
inserted by
No. 63/2006
s. 12.

s. 26AM

S. 26AM
inserted by
No. 63/2006
s. 12.

26AM Grant or refusal of licence

- (1) The Governor in Council must not grant a licence over land—
 - (a) that is exempted under section 6 of this Act or under any other Act from being subject to—
 - (i) an exploration licence, if the application is for an exploration licence; or
 - (ii) a mining licence, if the application is for a mining licence; or
 - (b) that is subject to a current minerals exemption; or
 - (c) that is limited to a particular stratum unless the Governor in Council, on the recommendation of the Minister, is satisfied that the applicant can obtain reasonable access to and use of the land.
- (2) Otherwise, the Governor in Council on the recommendation of the Minister may—
 - (a) grant a licence under this section to an applicant to carry out the exploration or mining of coal on exempted land; or
 - (b) refuse to grant that licence.
- (3) The Minister must not make a recommendation under subsection (2) unless the Minister has first considered any objections made under section 24 as applied by section 26AL(1).
- (4) Sections 25(3), 25(4) and 25(7) apply to the granting or refusal of the granting of a licence under this Subdivision as if—

- (a) the decision to grant or refuse to grant the licence were made under Division 2; and
 - (b) any reference to the Minister were a reference to the Governor in Council on the recommendation of the Minister.
- (5) Sections 26(1), 26(2), 26(4), 26(4A) and 26(8) apply to a licence granted under this Subdivision as if—
- (a) the licence were granted under Division 2; and
 - (b) any reference to the Minister were a reference to the Governor in Council on the recommendation of the Minister.

26AN Minister must publish reasons for refusal to grant licence

S. 26AN
inserted by
No. 63/2006
s. 12.

If the Governor in Council, on the recommendation of the Minister, refuses to grant a licence under this Subdivision, the Minister must publish a notice setting out the reasons for the refusal in—

- (a) the Government Gazette; and
- (b) a newspaper circulating generally throughout the State.

26AO Revocation of exemption over licence land

S. 26AO
inserted by
No. 63/2006
s. 12.

On the granting of a licence under this Subdivision the exemption to which the area of land covered by the licence is subject under section 7(1) is revoked to the extent that it relates to that land.

s. 26AP

S. 26AP
inserted by
No. 63/2006
s. 12.

26AP Minister must publish notice

- (1) The Minister must cause a notice to be published in the Government Gazette—
 - (a) stating that a licence under this Subdivision has been granted; and
 - (b) stating the reasons for granting the licence; and
 - (c) describing the area of land covered by the licence; and
 - (d) stating that the exemption relating to the area of land covered by the licence is revoked to the extent that it relates to that land.
- (2) The Minister must also cause a notice setting out the reasons for granting the licence to be published in a newspaper circulating generally throughout the State.

S. 26AQ
inserted by
No. 63/2006
s. 12.

26AQ Application of Act to licence

- (1) On the granting of a licence under this Subdivision, this Act (except Divisions 2 and 5 of this Part) applies to the licence as if it were granted by the Minister under Division 2.
- (2) Without limiting subsection (1), the following things may be done under this Part in relation to the licence—
 - (a) the licence may be renewed, transferred, varied, surrendered, cancelled or amalgamated with another licence;
 - (b) a condition of the licence may be varied, suspended, revoked or added;
 - (c) the area of land covered by the licence may be excised, transferred or cancelled in part.

Division 4—Requirements if agricultural land covered by mining licence

Pt 2 Div. 4
(Heading)
inserted by
No. 63/2006
s. 13.

26A Statement of economic significance if agricultural land covered by licence

S. 26A
inserted by
No. 82/2000
s. 22.

- (1) This section applies if a licensee holding a mining licence that covers agricultural land that is not owned by the licensee proposes to carry out work on that land.
- (2) The licensee must prepare a statement of the economic significance of the work—
 - (a) that contains an assessment of the benefits to Victoria of the proposed work, including employment and revenue considerations; and
 - (b) that contains an assessment of those benefits if it was not possible to do the work on the agricultural land.
- (3) The assessment required by subsection (2)(b) must be made with respect to each separately owned or occupied property that comprises the agricultural land.
- (4) The licensee must give the statement of economic significance to the owners and occupiers of the agricultural land—
 - (a) if the proposed work forms part of the work proposed to be carried out under the licensee's initial work plan, no later than—
 - (i) 6 months after the date the licensee was notified that the licence had been granted; or
 - (ii) the date the licensee lodges the work plan under section 40(1)—whichever is the earlier;

- (b) in any other case, no later than the date the licensee lodges the relevant variation of the work plan under section 41.

S. 26B
inserted by
No. 82/2000
s. 22.

26B Excision of agricultural land from a licence

- (1) On the application of an owner or occupier of agricultural land, the Minister must excise the land from the area covered by a mining licence if—
 - (a) the licensee consents to the excision; or
 - (b) the Minister decides, in accordance with section 26D, that there would be greater economic benefit to Victoria in continuing the use of the land as agricultural land than in carrying out the work proposed to be carried out on that land under the licence.
- (2) An application for excision must be made to the Minister in writing within 30 days after the owner or occupier receives a copy of the statement of economic significance provided in relation to the land.
- (3) The application must include—
 - (a) an assessment of the benefits to Victoria in continuing the use of the land as agricultural land; and
 - (b) if the owner disputes anything contained in the statement of economic significance, details of the matters the owner disputes, including the reasons why the owner disputes those matters.
- (4) The owner must also give a copy of the application to the licensee within the 30 days referred to in subsection (2).

26C Notice of excision dispute

S. 26C
inserted by
No. 82/2000
s. 22.

- (1) If the licensee wishes to dispute an application for excision, the licensee must give a notice of dispute to—
- (a) the Minister; and
 - (b) the person applying for the excision; and
 - (c) the President of the Australian Property Institute—

S. 26C(1)(c)
amended by
No. 63/2006
s. 14.

within 30 days after receiving the copy of the application.

- (2) The notice of dispute must include details of the matters in the application that the licensee disputes, including the reasons why the licensee disputes those matters.
- (3) The licensee is deemed to consent to the excision of the land that is the subject of the application if the licensee does not give a notice of dispute to the people specified in subsection (1) within the time required by that subsection.

26D Resolution of excision disputes

S. 26D
inserted by
No. 82/2000
s. 22.

- (1) As soon as possible after receiving notice of a dispute under section 26C, the President of the Australian Property Institute must appoint a person who is appropriately qualified, in the President's opinion, to act as an independent expert to consider the application.
- (2) The independent expert must consider the application, the statement of economic significance, the notice of dispute and any other material submitted to the expert within any time specified by the expert.

S. 26D(1)
amended by
No. 63/2006
s. 14.

s. 26E

- (3) Within 60 days after her or his appointment, the independent expert must make a recommendation to the Minister, supported by reasons, in relation to the dispute.
- (4) The Minister must consider the recommendation and decide whether there would be greater economic benefit to Victoria in continuing the use of the land as agricultural land than in carrying out the work proposed to be carried out on that land under the licence.
- (5) The President of the Australian Property Institute, after considering the advice of the independent expert, may direct the licensee or the person who applied for the excision to pay the whole or any part of the reasonable fees and expenses of the independent expert.
- (6) A direction under subsection (5) creates a debt due to the independent expert.

S. 26D(5)
amended by
No. 63/2006
s. 14.

S. 26E
inserted by
No. 82/2000
s. 22.

26E Offence to divulge details of a statement of economic significance

- (1) A person who is given a copy of—
 - (a) a statement of economic significance prepared under section 26A; or
 - (b) an assessment prepared under section 26B—must not divulge or communicate to any person (other than a professional advisor retained by the person) or publish any information contained in the statement or assessment unless the divulgence, communication or publication is made with the written consent of the person on whose behalf the statement or assessment was prepared.

Penalty: 100 penalty units.

- (2) A professional advisor to whom any information is divulged or communicated under subsection (1) must not divulge or communicate that information to any other person, or publish it.

Penalty: 100 penalty units.

Division 5—Tenders for licences

Pt 2 Div. 5
(Heading)
inserted by
No. 63/2006
s. 15.

27 Tendering process

S. 27
substituted by
Nos 82/2000
s. 23, 63/2006
s. 15.

- (1) The Minister may invite tenders for a licence over land that is not the subject of a licence or an application for a licence.
- (2) A tender for a licence is ineffective if it does not contain the information required by the regulations for the purposes of this section.
- (3) A tender for a licence may be over land that has been exempted under section 7 from being subject to an exploration licence or a mining licence, or both.

27A Acceptance of tender

S. 27A
inserted by
No. 63/2006
s. 15.

- (1) If the Minister accepts a tender, he or she must notify the successful tenderer in writing that the tender has been accepted.
- (2) On the Minister accepting a tender for a licence that covers an area of land all or part of which is subject to an exemption under section 7(1)—
- (a) the exemption is revoked to the extent that it relates to the area of land; and
 - (b) the Minister must cause a notice to be published in the Government Gazette—
 - (i) stating that the tender has been accepted; and

s. 27B

- (ii) describing the area of land subject to the exemption; and
- (iii) stating that the exemption relating to the area of land is revoked to the extent that it relates to that land.

S. 27B
inserted by
No. 63/2006
s. 15.

27B Advertising and notice requirements

- (1) A successful tenderer, within 14 days after being notified under section 27A(1) that the tender has been accepted, must—
 - (a) advertise the acceptance of the tender in accordance with the regulations; and
 - (b) if the tender is for a mining licence, give notice of the acceptance of the tender in accordance with the regulations to the owner and occupier of the land to be affected by the licence.
- (2) Until regulations are made for the purposes of subsection (1) the relevant regulations relating to applications for licences under Division 2 will apply (with any necessary modifications).

S. 27C
inserted by
No. 63/2006
s. 15.

27C Consultation and notification requirements

- (1) The Minister must, as soon as practicable after a successful tenderer for a licence covering unrestricted Crown land is notified under section 27A(1) that the tender has been accepted, consult with the Crown land Minister in relation to the carrying out of work on that land and that Minister may recommend to the Minister conditions to which the licence should be made subject.
- (2) The Department Head must, within 14 days after a successful tenderer is notified under section 27A(1) that the tender has been accepted, give notice of the acceptance of the tender to the persons and bodies referred to in section 18.

27D Application of provisions to tenders

S. 27D
inserted by
No. 63/2006
s. 15.

- (1) The application process under Division 2 does not apply to a tender under this Division except as provided in this section.
- (2) Sections 24, 25, 25A and 26 apply to a tender for a licence as if the successful tenderer were an applicant for the licence.
- (3) Without limiting subsection (2), the Minister must not grant a licence to a person who has submitted a tender unless the Minister is satisfied that the person meets the requirements listed in section 15(6).

27E Minister may not accept any tenders

S. 27E
inserted by
No. 63/2006
s. 15.

- (1) The Minister may decide not to accept any tenders for a licence over land that are submitted in response to an invitation under this Division.
- (2) If the Minister decides not to accept any tender, he or she may invite further tenders or decide not to call for any more tenders in relation to that land.
- (3) If the Minister decides not to call for any more tenders in relation to that land, he or she must—
 - (a) notify the unsuccessful tenderers that further tenders will not be invited; and
 - (b) unless the land has been exempted under section 7 from being subject to an exploration licence or a mining licence, or both, declare by notice published in the Government Gazette that the land is available for applications for licences.

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S. 28
substituted by
No. 82/2000
s. 24,
repealed by
No. 63/2006
s. 16.

Pt 2 Div. 6
(Heading)
inserted by
No. 63/2006
s. 17.

Division 6—Renewals of licences

29 Application for renewal of licence

S. 29(1)
amended by
No. 82/2000
s. 25,
substituted by
No. 63/2006
s. 18(1).

- (1) A licensee may, before a licence expires, apply in accordance with the regulations to the Minister for renewal of the licence.

S. 29(2)
amended by
No. 63/2006
s. 18(2).

- (2) If an application for renewal of a licence is lodged before the licence expires, the licence continues in operation until the application is granted and registered or refused.

S. 30
repealed by
No. 82/2000
s. 26.

* * * * *

31 Minister may renew or refuse to renew a licence

S. 31(1)
amended by
No. 86/1993
s. 13(1).

- (1) The Minister must refuse to renew a licence if the applicant does not satisfy the Minister as to the matters specified in section 15(6)(a), (b), (c) and (d).

S. 31(1A)
inserted by
No. 86/1993
s. 13(2).

- (1A) The Minister must refuse to renew a licence if the applicant does not satisfy the Minister as to the matter specified in section 15(6)(ba) unless the applicant satisfies the Minister that the applicant has identified minerals in the land covered by the licence and that—
- (a) additional time is necessary to assess the economic viability of mining those minerals;
or

- (b) it is not at present economically viable to mine those minerals but it may become so in the future.
- (2) Otherwise, the Minister may, by instrument served on the applicant, renew or refuse to renew a licence.
- (3) The Minister may renew a licence—
 - (a) subject to any conditions specified in the renewal; or
 - (b) to cover a smaller area than that covered by the application for renewal.
- (4) The Minister may renew a licence if the licensee has substantially complied with this Act or the regulations (provided that the licensee complies with section 15(6)(a), (b), (c) and (d)), and may refuse to renew a licence even though the licensee has complied with this Act and the regulations.
- (5) Subsection (4) does not authorise the Minister to renew a licence if the licensee has not complied with this Act or the regulations unless the Minister is satisfied that the non-compliance is not likely to affect adversely any person's rights under this Act or the regulations or to result in any person being deprived of information necessary for the effectual exercise of those rights.
- (6) A renewal or refusal to renew has no effect until the instrument of renewal or refusal to renew is registered.

S. 31(4)
amended by
No. 86/1993
s. 13(3).

32 Period of renewal

- (1) A mining licence that has been renewed has effect for the period, not exceeding 20 years unless the Minister decides otherwise, that is specified in the notice of renewal.

S. 32(1)
amended by
No. 56/1995
s. 41.

s. 33

S. 32(2)
amended by
No. 86/1993
s. 14,
substituted by
No. 82/2000
s. 27.

- (2) The Minister may renew an exploration licence for a period of up to 5 years—
 - (a) if he or she is satisfied that the licensee has identified minerals in the land covered by the licence and that—
 - (i) additional time is necessary to assess the economic viability of mining those minerals; or
 - (ii) it is not at present economically viable to mine those minerals but it may become so in the future; or
 - (b) for any other reason.
- (3) The renewal of a licence takes effect on the anniversary of the registration under this Act of the initial licence.

Pt 2 Div. 7
(Heading)
inserted by
No. 63/2006
s. 19.

Division 7—Changes to licences

33 Transfer of licence

S. 33(3)
amended by
No. 86/1993
s. 15(1).

- (1) An exploration licence must not be transferred during its first year, and a purported transfer during that time has no effect.
- (2) A licence (other than an exploration licence during its first year) may be transferred by an instrument approved by the Minister and not otherwise.
- (3) Before approving an instrument of transfer, the Minister must be satisfied that the proposed transferee complies with section 15(6)(a), (b), (c) and (d).

(3A) The Minister may approve an instrument of transfer even if he or she is not satisfied as to the matter specified in section 15(6)(ba) if the Minister is satisfied that minerals have been identified in the land covered by the licence and that—

S. 33(3A)
inserted by
No. 86/1993
s. 15(2).

- (a) additional time is necessary to assess the economic viability of mining those minerals;
or
- (b) it is not at present economically viable to mine those minerals but it may become so in the future.

(4) A transfer—

- (a) has no effect until the instrument of transfer is approved by the Minister and registered;
and
- (b) once approved and registered, attaches to the transferee all rights and obligations under the licence.

(5) The transferee of a mining licence must give written notice of the transfer to the owner of any land covered by the licence.

33A Transfer of land from one mining licence to another

S. 33A
inserted by
No. 82/2000
s. 28.

- (1) The holder of a mining licence may transfer an area of land covered by the holder's licence to the holder of another mining licence.
- (2) Such a transfer may only be made—
 - (a) with the approval of the Minister; and
 - (b) in the manner and form specified by the Minister; and
 - (c) if the land to be transferred adjoins the land covered by the licence to which the land is to be transferred; and

s. 33B

- (d) if the conditions applying to, and the remaining currency of, the 2 licences are substantially the same; and
 - (e) if the Minister is satisfied that adequate arrangements have been made to continue or replace any rehabilitation bond that applies to the land.
- (3) The Minister must not approve a transfer under this section unless the Minister is satisfied that the transfer is necessary to ensure that work can be undertaken on the land.
- (4) A transfer has no effect until evidence of the transfer and the Minister's approval is registered.
- (5) The holder of the licence to which land has been transferred must give written notice of the transfer to the owners of the land.
- (6) On a transfer taking effect—
- (a) any licence conditions that applied to the transferred land cease to apply; and
 - (b) the transferred land is subject to the licence conditions that apply to the licence to which the land has been transferred; and
 - (c) the transferred land becomes part of the land covered by that licence.

S. 33B
inserted by
No. 82/2000
s. 28.

33B Mining licence may be split and transferred

- (1) This section applies if the holder of a mining licence wishes to transfer an area of land covered by the holder's licence to another person (*the transferee*), but is not able to do so under section 33A.
- (2) The holder may apply to the Minister to have the land severed from the holder's licence and made the subject of a separate licence that is subject to

the same conditions, and that will have the same currency, as the holder's licence.

- (3) The application must be made in the manner and form specified by the Minister.
- (4) The Minister must not approve an application under this section unless the Minister is satisfied—
 - (a) that the severance is necessary to ensure that work can be undertaken on the land; and
 - (b) that the transferee satisfies the requirements listed in section 15(6); and
 - (c) that adequate arrangements have been made to continue or replace any rehabilitation bond that applies to the land.
- (5) In approving an application, the Minister is to be taken as granting the licence in relation to the severed land to the transferee.
- (6) On registration of the licence in relation to the severed land—
 - (a) the transferee becomes the holder of the licence; and
 - (b) the licence is subject to the same conditions, and has the same currency, as the licence that applied to the land that was severed before the severance; and
 - (c) the transferee has all the rights, and is subject to the same obligations, applying under the licence.
- (7) The transferee must give written notice of the change of licensee to the owners of the land.

34 Variation of licence

S. 34(1)
 amended by
 Nos 86/1993
 s. 16(1),
 82/2000
 s. 29(1).

- (1) The Minister may after consultation with the licensee, by instrument served on the licensee, vary a licence, or vary, suspend or revoke a condition of a licence or add a new condition but the Minister cannot vary the period for which a mining licence has effect.

S. 34(1A)
 inserted by
 No. 82/2000
 s. 29(2),
 repealed by
 No. 63/2006
 s. 20(1).

* * * *

- (2) The Minister may act under subsection (1)—

- (a) at the request of the licensee; or
 (b) if the Minister decides it is necessary for the protection of the environment or the rehabilitation or stabilisation of the land to which the licence applies; or

S. 34(2)(ba)
 inserted by
 No. 63/2006
 s. 20(2)(a).

- (ba) if the Minister decides it is necessary to ensure that appropriate environmental offsets are provided for or implemented; or

S. 34(2)(c)
 substituted by
 No. 63/2006
 s. 20(2)(b).

- (c) if the Minister decides it is necessary for the protection of a community facility; or

S. 34(2)(ca)
 inserted by
 No. 86/1993
 s. 16(2).

- (ca) if the Minister decides it is necessary for the purpose of allowing access to and use of the land to which the licence applies by the holder of another licence that is limited to a particular stratum; or

S. 34(2)(cb)
 inserted by
 No. 86/1993
 s. 16(2),
 amended by
 No. 63/2006
 s. 20(2)(c).

- (cb) if the Minister decides it is necessary because of any condition imposed on the approval of a work plan under section 40(6) or 41(5); or

(d) in any other circumstances that are prescribed.

* * * * *

S. 34(2A)
 inserted by
 No. 82/2000
 s. 29(3),
 repealed by
 No. 63/2006
 s. 20(3).

(3) A variation of a licence or a variation, suspension, revocation or addition of a licence condition has no effect until the instrument by which it was done is registered.

S. 34(3)
 amended by
 No. 86/1993
 s. 16(3).

35 Combined conditions

S. 35
 substituted by
 No. 82/2000
 s. 30.

- (1) The Minister may treat 2 or more licences of the same type held by the same person as a single licence over the combined areas covered by the licences for the purpose of determining whether conditions of any of those licences about expenditure have been complied with.
- (2) The Minister may do this—
 - (a) at the request of the licensee; or
 - (b) on the Minister's own initiative, after consultation with the licensee.
- (3) It is not necessary that areas combined for the purposes of this section adjoin each other.

36 Amalgamation of licences

- (1) The Minister may, by instrument served on the licensee, determine that one of two or more licences of the same type held by the same person over adjoining areas applies to the combined areas.
- (2) The Minister may nominate which licence covers the combined areas and must cancel the other licence or licences.

S. 36(1)
 amended by
 No. 82/2000
 s. 31(1).

s. 36A

S. 36(2A)
inserted by
No. 82/2000
s. 31(2).

- (2A) The Minister may act under this section—
- (a) at the request of the licensee; or
 - (b) on the Minister's own initiative, after consultation with the licensee.
- (3) An amalgamation has no effect until the instrument of amalgamation is registered.
- (4) A cancellation has no effect until the instrument of cancellation is registered.

S. 36(4A)
inserted by
No. 63/2006
s. 21.

- (4A) On an amalgamation of licences coming into effect the term of the licence nominated under subsection (2) is to be the term of whichever of the amalgamated licences is to expire first.

S. 36(5)
inserted by
No. 82/2000
s. 31(3).

- (5) If one of the licences amalgamated under this section was a mining lease under the **Mines Act 1958** that became a mining licence as a result of section 129, for the remainder of the term for which the licence remains current the rental payable for the amalgamated licence is the sum of the amounts that would have been payable for each of the amalgamated licences had they not been amalgamated.

S. 36A
inserted by
No. 82/2000
s. 32.

36A Expedited procedure for replacement of invalidated title

- (1) This section applies if—
- (a) a court or tribunal finds a licence to be wholly or partly invalid and the invalidity stems from circumstances that were beyond the control of the holder of the licence; and
 - (b) the person who held the licence applies within 60 days after the finding to the Minister for the grant of a licence of the same type for all or part of the land covered by the former licence.

- (2) The Minister may grant the licence to the person without the need to comply with any procedural requirement that would usually apply to the grant of such a licence.
- (3) In granting a licence under this section, the Minister may impose any conditions the Minister considers to be appropriate on the licence.

Division 8—Surrender and cancellation of licences

Pt 2 Div. 8
(Heading)
inserted by
No. 63/2006
s. 22.

37 Surrender of licence

- (1) A licensee may, with the consent of the Minister, surrender the licence, in whole or in part, by notice in writing in a form approved by the Registrar.
- (2) If a licence is surrendered in part, the licensee must include in the notice details of any part of the land in respect of which the licence is surrendered.
- (3) A surrender has no effect until the notice of surrender is registered.

38 Cancellation of licence

- (1) The Minister may cancel a licence, by instrument served on the licensee, if—
 - (a) the Minister has given the licensee 28 days' written notice of his or her intention to cancel the licence and has, in that notice, requested the licensee to provide reasons why the licence should not be cancelled; and

Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990

Part 2—Exploration Licences and Mining Licences

s. 38

S. 38(1)(b)
amended by
No. 82/2000
s. 33(1)(a).

(b) at the end of the 28 days the Minister is
satisfied that—

S. 38(1)(b)(i)
amended by
Nos 86/1993
s. 17(1)(a),
82/2000
s. 33(1)(b).

- (i) the licensee has not substantially
complied with—
(A) this Act or the regulations; or

S. 38(1)
(b)(i)(B)
amended by
No. 63/2006
s. 23(1).

(B) any condition to which the licence
or the work plan is subject or any
condition specified under
section 44; or

(C) any relevant planning scheme or
permit; or

S. 38(1)(b)(ii)
amended by
No. 82/2000
s. 33(1)(b).

(ii) the licensee has unreasonably delayed
in trying to obtain any necessary
consent or other authority; or

S. 38(1)(b)(iii)
amended by
No. 82/2000
s. 33(1)(b).

(iii) the licensee has not commenced work
within the time specified in or allowed
under section 42(5); or

S. 38(1)(b)(iv)
amended by
No. 82/2000
s. 33(1)(b).

(iv) the licensee has endangered the public
or an employee on or near the land
covered by the licence; or

S. 38(1)(b)(v)
amended by
No. 82/2000
s. 33(1)(b).

(v) the licensee has undertaken work on
land otherwise than in accordance with
the work plan; or

S. 38(1)(b)(vi)
amended by
Nos 86/1993
s. 17(1)(b),
82/2000
s. 33(1)(c)(d).

(vi) the licensee subject to subsection
(1A), no longer complies with
section 15(6)(a) to (d); or

S. 38(1)(b)(vii)
inserted by
No. 82/2000
s. 33(1)(d).

(vii) the area covered by the licence is
depleted of minerals to the extent that it
is no longer feasible to mine that area;
or

-
- | | |
|---|---|
| <p>(viii) it is not feasible to mine minerals in the area covered by the licence and will not be feasible to do so in the foreseeable future.</p> | <p>S. 38(1)(b)(viii)
inserted by
No. 82/2000
s. 33(1)(d).</p> |
| <p>(1A) The Minister must not cancel a licence under subsection (1) because of non-compliance with section 15(6)(ba) if the Minister waived compliance by the licensee with that section under section 31(1A) or 33(3A) (as the case requires).</p> | <p>S. 38(1A)
inserted by
No. 86/1993
s. 17(2),
amended by
No. 82/2000
s. 33(2).</p> |
| <p>(1B) The Minister may cancel a licence, by instrument served on the licensee—</p> <p style="padding-left: 20px;">(a) in the case of a mining licence, if—</p> <p style="padding-left: 40px;">(i) the licensee has not applied for a work authority within 12 months (or any longer period allowed by the Minister) after the licence was granted; or</p> <p style="padding-left: 40px;">(ii) a work authority has been refused or has lapsed;</p> <p style="padding-left: 20px;">(b) in the case of an exploration licence if the licensee has not commenced work within 3 months (or any longer period allowed by the Minister) after notifying the Chief Inspector under section 43(1)(d)(i) of the licensee's intention to commence work.</p> | <p>S. 38(1B)
inserted by
No. 86/1993
s. 17(2).</p> <p style="padding-top: 10px;">S. 38(1B)(a)(i)
amended by
No. 82/2000
s. 33(3).</p> <p style="padding-top: 10px;">S. 38(1B)(a)(ii)
amended by
No. 82/2000
s. 33(3).</p> <p style="padding-top: 10px;">S. 38(1B)(b)
amended by
Nos 82/2000
s. 61(b),
6/2009 s. 14.</p> |
| <p style="text-align: center;">* * * *</p> | <p>S. 38(2)
repealed by
No. 63/2006
s. 23(2).</p> |
| <p>(2A) The Minister must, by instrument served on the licensee, cancel a mining licence if a work authority is not granted for that licence within 18 months after the date the grant of the licence is registered, unless the Minister is satisfied that—</p> | <p>S. 38(2A)
inserted by
No. 82/2000
s. 33(4).</p> |
-

- (a) the licensee has been unable to obtain the consents and authorities needed to enable the grant of the work authority, despite genuine attempts to do so; or
 - (b) exceptional circumstances exist that have been instrumental in precluding the grant of the work authority.
- (3) A cancellation has no effect until the instrument of cancellation is registered.

S. 38A
inserted by
No. 82/2000
s. 34.

38A Decrease in area under exploration licence

- (1) On the second anniversary of the initial registration of an exploration licence, the Minister must, unless he or she decides otherwise, cancel the licence in relation to at least 25% of the total number of graticular sections (in one or more areas each comprising whole graticular sections only) covered by the licence.
- (2) On the fourth anniversary of the initial registration of an exploration licence, the Minister must, unless he or she decides otherwise, cancel the licence in relation to at least a further 35% of the total number of graticular sections (in one or more areas each comprising whole graticular sections only) covered by the licence as originally granted.
- (3) The areas in relation to which a licence is to be cancelled under this section—
 - (a) are to be those identified by the licensee in a notice given to the Minister at least 30 days before the relevant anniversary; or
 - (b) in the absence of such a notice, are to be chosen by the Minister.

- (4) At least 60 days before the relevant anniversary, the Minister must give the licensee a written notice inviting the licensee to nominate the areas to be cancelled under this section (unless the Minister does not intend to cancel any area in relation to the licence).
- (5) In calculating the area to be cancelled—
 - (a) any part of a graticular section covered by the licence, and any fraction of a graticular section that remains after calculating the area to be cancelled, must be treated as a whole graticular section; and
 - (b) if the licensee holds 2 or more exploration licences with a common expiry date over adjoining areas, the combined areas covered by the licences may, at the Minister's discretion, be treated as a single area.

Division 9—Mine stability levy for Latrobe Valley

Pt 2 Div. 9
(Heading and
ss 38AAA–
38AAE)
inserted by
No. 57/2009
s. 25.

38AAA Definitions

In this Division—

Latrobe Valley region means the region constituted by the municipal boundaries of the Latrobe City Council and Wellington Shire Council;

Latrobe Valley region coal mine means a coal mine that—

- (a) is prescribed for the purposes of the mine stability levy; and
- (b) is situated within the Latrobe Valley region;

S. 38AAA
inserted by
No. 57/2009
s. 25.

s. 38AAB

mine stability levy means the levy referred to in section 38AAB.

S. 38AAB
inserted by
No. 57/2009
s. 25.

38AAB Mine stability levy imposed

This Division imposes a levy (the *mine stability levy*) for the purpose of providing measures designed to decrease geotechnical and hydrogeological risks to mine stability in the Latrobe Valley region coal mines.

S. 38AAC
inserted by
No. 57/2009
s. 25.

38AAC Who is liable for mine stability levy?

A holder of a mining licence in respect of a Latrobe Valley region coal mine is liable to pay the Minister the mine stability levy.

S. 38AAD
inserted by
No. 57/2009
s. 25.

38AAD Amount of the mine stability levy

The mine stability levy is the amount determined in accordance with the regulations.

S. 38AAE
inserted by
No. 57/2009
s. 25.

38AAE When and how is the mine stability levy to be paid?

A holder of a mining licence in respect of a Latrobe Valley region coal mine must pay the mine stability levy to the Minister by the date or dates and in the manner and in respect of the period specified under the regulations.

PART 3—WORK UNDER A LICENCE

38AA Boundaries of licence area must be surveyed and marked out

S. 38AA
inserted by
No. 82/2000
s. 35.

- (1) The holder of a mining licence must survey and mark out the boundaries of the land covered by the licence in the manner, and within the time, required by the regulations.

Penalty: 50 penalty units.
- (2) The purpose of the survey and marking out is to ensure that the boundaries of the area to which the licence applies are readily ascertainable by a person in the area.
- (3) A licensee is not entitled to enter land for the purpose of surveying or marking out boundaries as required by subsection (1), unless—

(a) the licensee—

- (i) has, in the case of private land, the written consent of the owner or occupier of the land to the entry; or

S. 38AA
(3)(a)(i)
amended by
No. 71/2001
s. 4.

- (ii) has, in the case of occupied Crown land, the written consent of the occupier of the land to the entry; or

- (iii) has, in the case of any other Crown land, given the person responsible for the management of the land written notice of the intended entry; or

- (b) the Department Head grants an authority in writing to the licensee under section 38AB.

s. 38AB

- (4) For the purposes of subsection (3), ***occupied Crown land*** means any Crown land on which a person is undertaking an activity that is authorised by a lease, licence, permit or other authority granted in respect of that land by, or under, an Act.

S. 38AB
inserted by
No. 82/2000
s. 35.

38AB Authority to enter land

- (1) The Department Head may grant to a licensee an authority to enter land for the purposes of section 38AA if he or she is satisfied that the licensee has made reasonable attempts to obtain the consent of the owner or occupier and—
- (a) the applicant has been unable to contact the owner or occupier; or
 - (b) the owner or occupier has refused or failed to consent.
- (2) A person does not trespass on land only because the person exercises reasonable access to the land—
- (a) in accordance with an authority to enter the land; and
 - (b) for the purpose of surveying or marking out the boundaries of the land covered by the mining licence.
- (3) An authority to enter land expires if either of the following occurs—
- (a) a work authority over the land is registered; or
 - (b) the licence ceases to have effect.

- (4) The Department Head must serve on the owner and occupier of land a copy of any authority that is granted to enter the land as soon as is practicable after the authority is granted.

38AC Offence not to show authority

A person who enters land under an authority to enter land must comply with any request made by the owner or occupier of the land to be shown a copy of the authority.

Penalty: 10 penalty units.

S. 38AC
inserted by
No. 82/2000
s. 35.

38AD Security

- (1) The Department Head must, before granting an authority to enter land, require a licensee to provide a security, of an amount and kind specified by the Department Head, against the risk of damage to the property of the owner or occupier of the land as a result of the licensee's entry on to, or activities on, the land.
- (2) The Department Head—
- (a) may use the security, or part of it, to compensate the owner or occupier for any damage resulting from that entry or those activities; and
 - (b) must return the balance of the security to the licensee no later than 30 days after the day on which the authority lapses or is withdrawn.

S. 38AD
inserted by
No. 82/2000
s. 35.

38AE Insurance

A licensee must not enter any land, or carry out any surveying or marking out, for the purposes of section 38AA unless the licensee is insured for an amount determined by the Department Head against any risk that might arise if the owner or occupier of the land were to sustain a personal

S. 38AE
inserted by
No. 82/2000
s. 35.

injury as a result of the licensee's entry on to, or activities on, the land.

Penalty: In the case of a corporation,
1000 penalty units.

In any other case, 200 penalty units.

Default penalty:

In the case of a corporation, 20 penalty units.

In any other case, 10 penalty units.

S. 39
amended by
Nos 86/1993
s. 18(a)(b),
76/1998
s. 31(b),
substituted by
No. 82/2000
s. 36.

39 Work must be approved

(1) A person, other than the Crown, must not do any work under a licence otherwise than—

(a) in accordance with the licence; or

(ab) in accordance with the approved work plan;
or

(b) as authorised by a minerals exemption.

Penalty: In the case of a corporation,
1000 penalty units.

In any other case, 200 penalty units.

(2) A licensee and the manager of a worksite must comply with this Act and the regulations in doing any work under the licence.

Penalty: In the case of a corporation,
1000 penalty units.

In any other case, 200 penalty units.

S. 39(1)(ab)
inserted by
No. 63/2006
s. 24(1).

- (3) The holder of a mining licence must not do work under a licence unless a work authority applying to that work is in effect.

Penalty: In the case of a corporation,
1000 penalty units.

In any other case, 200 penalty units.

- (4) Despite subsection (3), the holder may do the following work without a work authority—
- (a) exploration work, but only if, in relation to that work, the licensee complies with the requirements listed in sections 43(1)(a) to (e);
 - (b) low impact exploration work but only if, in relation to that work, the licensee complies with the requirements listed in sections 43(1)(c), (cb) and (e).

S. 39(4)(b)
amended by
No. 63/2006
s. 24(2).

- (5) A licensee must not do work under the licence unless the licensee is insured under a policy of public liability insurance in respect of the doing of that work for an amount determined by the Department Head.

Penalty: In the case of a corporation,
1000 penalty units.

In any other case, 200 penalty units.

- (6) A person who is convicted of an offence against this section is also liable to the following default penalty—
- (a) in the case of a corporation, 20 penalty units;
 - (b) in any other case, 10 penalty units.

s. 39A

S. 39A
inserted by
No. 63/2006
s. 25.

39A Licensee's duty to consult with community

A licensee has a duty to consult with the community throughout the period of the licence by—

- (a) sharing with the community information about any activities authorised by the licence that may affect the community; and
- (b) giving members of the community a reasonable opportunity to express their views about those activities.

40 Work plan

S. 40(1)
amended by
Nos 76/1998
s. 31(b),
82/2000
s. 37(1).

- (1) A licensee who proposes to do work under the licence must lodge a work plan with the Department Head.

S. 40(1AA)
inserted by
No. 57/2009
s. 26(1).

- (1AA) A work plan lodged under subsection (1) must—
 - (a) specify the location at which work is to be carried out; or
 - (b) if the exact location is not known, specify the area within which work is to be carried out.

S. 40(1A)
amended by
No. 82/2000
s. 37(2).

- (1A) This section does not apply to low impact exploration work.

- (2) If—

- (a) an applicant for an exploration licence indicates in the application that the program of work referred to in section 15(6)(c) will be the work plan for the licence; and
 - (b) that program of work complies with subsection (3); and

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s. 40

* * * * *

S. 40(2)(c)
repealed by
No. 86/1993
s. 19(a).

then on the grant of the licence the applicant must
be taken to have lodged that program of work as
the work plan under subsection (1).

(2AA) A licensee—

S. 40(2AA)
inserted by
No. 82/2000
s. 37(3).

(a) who holds a mining licence that covers an
area of 5 hectares or less; and

(b) who does not propose to do any work on
agricultural land—

may, instead of lodging a work plan, lodge a
notice with the Department Head electing to have
the work program that the licensee submitted as
part of the application for the licence to be
considered to be the licensee's work plan.

(2A) In the case of a mining licence, if any part of the
land relating to the work plan is Crown land, the
Department Head must without delay lodge a
copy of the work plan with the Crown land
Minister.

S. 40(2A)
inserted by
No. 86/1993
s. 19(b),
amended by
No. 76/1998
s. 31(b),
substituted by
No. 63/2006
s. 26(1).

(2B) Subsection (2A) does not apply if the only work
set out in the work plan that is proposed to be
done on the Crown land is exploration work.

S. 40(2B)
inserted by
No. 63/2006
s. 26(1).

(3) A work plan must contain—

(a) the prescribed information; and

S. 40(3)
amended by
No. 86/1993
s. 19(c),
substituted by
No. 63/2006
s. 26(2).

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s. 40

S. 40(3)(ab)
inserted by
No. 57/2009
s. 26(2).

- (ab) if the licence is a mining licence relating to a declared mine, in addition to the prescribed information referred to in paragraph (a), prescribed mine stability requirements and processes; and
- (b) if the licence is a mining licence—
 - (i) a rehabilitation plan for the area of land covered by the licence; and
 - (ii) in relation to the mining activities proposed to be carried out under the licence, a plan for consulting with the community prepared in accordance with the regulations and any guidelines issued by the Minister relating to such plans (a *community engagement plan*).

S. 40(3A)
inserted by
No. 86/1993
s. 19(d),
substituted by
No. 63/2006
s. 26(3).

- (3A) Within 28 days after a copy of the work plan is lodged with the Crown land Minister, or any longer period allowed by the Minister, the Crown land Minister—
 - (a) must give comments to the Minister on the rehabilitation plan included in the work plan; and
 - (b) may recommend changes to be made to the work plan before it is approved or conditions to which an approval should be made subject.

S. 40(4)
amended by
Nos 86/1993
s. 19(e)(f),
76/1998
s. 31(b),
substituted by
No. 82/2000
s. 37(4).

- (4) The Department Head must give a licensee a written notice approving, refusing to approve, or asking for changes to, a work plan within 30 days after the last of any of these events that are applicable—
 - (a) the licensee notifying the Department Head that all required planning approvals have been granted (other than any permit that it is not necessary to obtain as a result of section 42(7));

- (b) the Minister administering the **Environment Effects Act 1978** submitting an assessment to the Minister under section 42(7);
- (c) the granting or refusal of any application under section 26B relating to the licence;
- (d) the Minister notifying the Department Head that he or she has considered any comments received under section 41A(2);
- (e) the Crown land Minister giving the Minister comments under section 40(3A);

S. 40(4)(e)
 substituted by
 No. 63/2006
 s. 26(4).

(f) the lodging of the work plan.

- (5) The Department Head must not approve a work plan before the events described in subsections (4)(a), (b), (c), (d) and (e) occur (if applicable).
- (6) In approving a work plan, the Department Head may specify that certain conditions must be observed by the licensee in carrying out the work plan.
- (7) If the Department Head asks for changes to be made to a work plan, subsection (4) applies to the revised work plan as if it was the original work plan.
- (8) If the Minister administering the **Environment Effects Act 1978** submits an assessment under section 42(7), the Department Head must give a copy of the work plan to that Minister at least 10 days before approving the plan.

S. 40(5)
 inserted by
 No. 82/2000
 s. 37(4).

S. 40(6)
 inserted by
 No. 82/2000
 s. 37(4).

S. 40(7)
 inserted by
 No. 82/2000
 s. 37(4).

S. 40(8)
 inserted by
 No. 82/2000
 s. 37(4).

41 Variation of work plan on application of a licensee

- (1) The Department Head may approve the variation of an approved work plan on the written application of the licensee.
- (2) The application must contain the information required by the regulations.

S. 41
 amended by
 Nos 86/1993
 s. 20, 76/1998
 s. 31(c)(i)(ii),
 substituted by
 No. 82/2000
 s. 38.

s. 41

S. 41(2A)
inserted by
No. 63/2006
s. 27(1).

(2A) In the case of a mining licence, if any part of the land relating to the variation of the work plan is Crown land, the Department Head must without delay lodge a copy of the variation to the work plan with the Crown land Minister.

S. 41(2B)
inserted by
No. 63/2006
s. 27(1).

(2B) Subsection (2A) does not apply if the only work set out in the work plan that is proposed to be done on the Crown land is exploration work.

S. 41(2C)
inserted by
No. 63/2006
s. 27(1).

(2C) Within 28 days after the variation of the work plan is lodged with the Crown land Minister, or any longer period allowed by the Minister, the Crown land Minister—

- (a) must give comments to the Minister on the rehabilitation plan included in the work plan if affected by the variation; and
- (b) may recommend changes to be made to the variation before it is approved or conditions to which an approval should be made subject.

(3) The Department Head must give a licensee a written notice approving, refusing to approve, or asking for changes to, the variation of a work plan within 30 days after the last of any of these events that are applicable—

- (a) the licensee notifying the Department Head that all required planning approvals have been granted (other than any permit that it is not necessary to obtain as a result of section 42A);
- (b) the Minister administering the **Environment Effects Act 1978** submitting an assessment to the Minister under section 42(7) or section 42A;

-
- (c) the granting or refusal of any application under section 26B relating to the licence;
- (d) the Minister notifying the Department Head that he or she has considered any comments received under section 41A(2);
- (e) the Crown land Minister giving the Minister comments under subsection (2C);
- (f) the lodging of the application for approval.
- (4) The Department Head must not approve the variation of a work plan before the events described in subsections (3)(a), (b), (c), (d) and (e) occur (if applicable).
- (5) In approving the variation of a work plan, the Department Head may specify that certain conditions must be observed by the licensee in carrying out the work plan.
- (5A) The conditions specified under subsection (5) may include any of the matters set out in section 26(2).
- (6) If the Department Head asks for changes to be made to an application for the variation of a work plan, subsection (3) applies to the revised application as if it was the original application.
- (7) If the Minister administering the **Environment Effects Act 1978** submits an assessment under section 42(7) or 42A, the Department Head must give a copy of the proposed variation to that Minister at least 10 days before approving the variation.
- (8) Once notice of approval of a variation has been given to the licensee, the approved work plan for the work authority is the work plan as amended by the variation.

S. 41(3)(e)
substituted by
No. 63/2006
s. 27(2).

S. 41(5A)
inserted by
No. 63/2006
s. 27(3).

S. 41(6)
amended by
No. 25/2008
s. 12.

s. 41AA

S. 41(9)
inserted by
No. 63/2006
s. 27(4).

- (9) If an application to vary the work plan consists solely of the inclusion of a community engagement plan in the work plan—
- (a) the Department Head must give the licensee a written notice approving, or refusing to approve, or asking for changes to, the variation of a work plan within 30 days of receiving the application; and
 - (b) subsections (2A), (2B), (2C), (3), (4), (6) and (7) do not apply in respect of the variation.

S. 41AA
inserted by
No. 82/2000
s. 38.

41AA Department Head may direct variation of work plan

- (1) The Department Head may, on her or his own initiative, determine that an approved work plan be varied.
- (2) On making a determination, the Department Head must give the licensee written notice of the proposed variation, and the reasons for it, and give the licensee an opportunity to comment on the proposal.
- (3) After considering any comments made by the licensee, the Department Head may direct the licensee to submit an application for approval of the variation.
- (4) The licensee must comply with the direction.
- (5) Sections 41(2) to (9) apply to an application lodged under this section.

S. 41AA(5)
amended by
No. 63/2006
s. 28.

41A Minister may require impact statement

S. 41A
inserted by
No. 86/1993
s. 21.

- (1) If the Minister is of the opinion that the proposed exploration work under a work plan or an application to vary an approved work plan lodged with the Department Head by a licensee will have a material impact on the environment, he or she may, in writing, require the licensee to submit a statement, in the form specified by the Minister, assessing the impact of the proposed work on the environment.

S. 41A(1)
amended by
Nos 76/1998
s. 31(d),
82/2000
s. 39(a),
substituted by
No. 63/2006
s. 29(1).

- (2) The Minister must, on receipt of the statement, forward a copy to—

S. 41A(2)
substituted by
No. 63/2006
s. 29(2).

(a) the Minister administering the **Planning and Environment Act 1987**; and

(b) if the proposed work relates to Crown land, the Crown land Minister—

and request comments on it by the date specified by the Minister.

- (3) The Minister must consider any comments received under subsection (2) by the specified date.

S. 41A(3)
amended by
No. 82/2000
s. 39(b).

- (4) The Minister may seek public comments on the statement by a specified date and must consider any comments received by that date.

S. 41A(4)
inserted by
No. 63/2006
s. 29(3).

41AB Reporting requirements for declared mines

S. 41AB
inserted by
No. 57/2009
s. 27.

A holder of a licence in respect of a declared mine must provide a report containing the prescribed particulars to the Department Head in accordance with the regulations.

s. 41AC

S. 41AC
inserted by
No. 57/2009
s. 27.

41AC Chief Inspector to be notified of reportable events in relation to mines

- (1) A licensee must report to the Chief Inspector in accordance with the regulations a reportable event at the mine as soon as practicable after the reportable event occurs.
- (2) In this section, *reportable event* means an event prescribed as a reportable event for the purposes of this section.

S. 41AD
inserted by
No. 57/2009
s. 27.

41AD Licensee to submit area plan work schedule

- (1) A licensee who has lodged an area work plan must not carry out any work on the land to which the area work plan relates unless the licensee has submitted to the Department Head, not less than 21 days before carrying out that work, an area work plan schedule containing the prescribed information in relation to that work plan.
- (2) If an approved cultural heritage management plan (within the meaning of the **Aboriginal Heritage Act 2006**) is required under that Act or regulations made under that Act in respect of work on land to which an area work plan relates, an area work plan schedule is taken not to have been submitted under subsection (1) unless the area work plan schedule is accompanied by a copy of the approved cultural heritage management plan.
- (3) An area work plan schedule that is required to be submitted with a copy of an approved cultural heritage management plan under subsection (2) must be consistent with the approved cultural heritage management plan.

- (4) In this section, *area work plan* means a work plan that has been—
- (a) lodged under section 40(1AA)(b); and
 - (b) approved under section 40.

41AE Variation application must be made if mine is declared

S. 41AE
inserted by
No. 57/2009
s. 27.

- (1) If the Minister declares by Order under section 7C that a specified mine is a declared mine, the licensee in respect of the declared mine, within 60 days after the declaration, must make an application to vary the approved work plan in respect of the declared mine.
- (2) The application must contain the prescribed mine stability requirements and processes.
- (3) Sections 41(2) to (9) apply to an application lodged under this section.

42 Commencement of work under mining licence

- (1) The holder of a mining licence may apply to the Department Head for a work authority in relation to a specified area.
- (2) The Department Head must grant that authority, if he or she is satisfied—
 - (a) that the licensee—
 - (i) has an approved work plan; and
 - (ii) has entered into a rehabilitation bond in accordance with section 80; and
 - (iii) has obtained all the necessary consents and other authorities required by or under this or any other Act; and

S. 42(1)
amended by
No. 76/1998
s. 31(d),
substituted by
No. 82/2000
s. 40(1).

S. 42(2)
amended by
No. 76/1998
s. 31(d).

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No. 92 of 1990

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s. 42

S. 42(2)(a)(iv)
inserted by
No. 63/2006
s. 30(1).

(iv) has complied with any condition imposed by the Minister under section 26(2)(d) to provide an environmental offset; and

S. 42(2)(a)(v)
inserted by
No. 63/2006
s. 30(1).

(v) has obtained the insurance required under section 39(5); and

S. 42(2)(ab)
inserted by
No. 63/2006
s. 30(2).

(ab) any consent under section 45 or authorisation under section 46 has been registered; and

S. 42(2)(b)
amended by
No. 82/2000
s. 40(2)(a).

(b) that 7 days have passed since the licensee notified—

S. 42(2)(b)(i)
amended by
Nos 82/2000
s. 61(b),
6/2009 s. 15.

(i) the Chief Inspector; and

(ii) the owners and occupiers of the land affected⁴—

of the licensee's intention to commence work; and

(c) if the land affected⁵ is private land, that—

S. 42(2)(c)(i)
amended by
No. 82/2000
s. 40(2)(b).

(i) the licensee has obtained the written consent of the owners and occupiers of the land affected⁶; or

S. 42(2)(c)(ii)
amended by
No. 82/2000
s. 40(2)(c).

(ii) the licensee has made and registered compensation agreements with those owners and occupiers; or

(iii) the amount of compensation payable to those owners and occupiers has been determined under Part 8; or

S. 42(2)(c)(iv)
amended by
No. 82/2000
s. 40(2)(d).

(iv) the licensee has purchased the land affected⁷; or

- (v) the licensee has been unable to determine the name and address of the owners and occupiers of the land affected despite making, in the Department Head's opinion, all reasonable efforts to do so—

S. 42(2)(c)(v)
inserted by
No. 82/2000
s. 40(2)(d).

but must otherwise refuse to grant that authority.

- (2A) If subsection (2)(c)(v) applies to a licensee, the Department Head may, before granting the work authority, require the licensee—

S. 42(2A)
inserted by
No. 82/2000
s. 40(3).

- (a) to advertise the licensee's intention to start work on the land affected in a specified edition of a newspaper circulating generally in the area in which the land is situated;
- (b) to post a notice on the land affected stating that the licensee intends to start work on that land.

- (3) A work authority—

S. 42(3)
substituted by
No. 82/2000
s. 40(4).

- (a) has no effect until it is registered;
- (b) only has effect with respect to the area specified in the authority.

- (4) Once registered, a work authority—

S. 42(4)
amended by
No. 82/2000
s. 40(5).

- (a) is not invalid only because one or more of the necessary consents and other authorities were not obtained; and
- (b) does not relieve the licensee from the requirement to obtain any consents or other authorities made necessary by a variation of the approved work plan; and
- (c) does not relieve the licensee from liability under any other Act for a failure to obtain any necessary consent or other authority; and
- (d) authorises the licensee to carry out work in accordance with the approved work plan.

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s. 42

S. 42(5)
substituted by
No. 82/2000
s. 40(6).

(5) A work authority lapses if—

S. 42(5)(a)
amended by
No. 63/2006
s. 30(3).

- (a) the licensee does not start work within 6 months after the authority was registered, or any longer period allowed by the Department Head in writing; or
- (b) the licensee undertakes work in the area to which the authority applies that is not permitted by a permit issued under the relevant planning scheme; or
- (c) an Environment Effects Statement was prepared and assessed under subsection (7) before the authority was granted and the licensee undertakes work in the area to which the authority applies that was not considered in the Environment Effects Statement (unless section 42A applies).

S. 42(6)
inserted by
No. 86/1993
s. 22.

(6) Despite anything in any planning scheme approved under the **Planning and Environment Act 1987**, the holder of a mining licence may be granted a permit under the scheme for carrying out mining on the land covered by the licence even if the scheme prohibits that use or development of the land (whether absolutely or unless specified conditions are complied with) and does not provide for the granting of a permit for that use or development.

S. 42(7)
inserted by
No. 86/1993
s. 22.

(7) If under subsection (6) or any planning scheme a permit is required to be obtained for carrying out mining on the land covered by a mining licence in accordance with that licence, the licensee is not required to obtain a permit for that work if—

-
- (a) an Environment Effects Statement has been prepared under the **Environment Effects Act 1978** on the work proposed to be done under the licence; and
- (b) an assessment of that Statement by the Minister administering the **Environment Effects Act 1978** has been submitted to the Minister; and
- (c) a work authority has been granted by the Department Head following the Minister's consideration of that assessment.
- S. 42(7)(c) amended by No. 76/1998 s. 31(d), substituted by No. 82/2000 s. 40(7), amended by No. 63/2006 s. 30(3).
- (8) In addition to any other power to prepare, adopt or approve amendments to planning schemes, the Minister administering the **Planning and Environment Act 1987** may—
- (a) on the recommendation of the Minister prepare; and
- (b) adopt and approve—
- amendments to any planning scheme to facilitate the carrying out of mining on land covered by a mining licence in accordance with that licence.
- (9) Without limiting what an amendment may include, an amendment prepared under subsection (8) may provide that, in the circumstances set out in subsection (7), no permit is required to carry out mining on land covered by a mining licence in accordance with that licence.
- S. 42(9) inserted by No. 86/1993 s. 22.
- (10) The **Planning and Environment Act 1987** (except section 12(2), Divisions 1 and 2 of Part 3 and section 39(1) to (6) and any regulations made for the purposes of those provisions) applies to the
- S. 42(10) inserted by No. 86/1993 s. 22.

s. 42A

preparation, adoption and approval of an amendment under subsection (8).

S. 42(11)
inserted by
No. 86/1993
s. 22.

- (11) Section 39(7) of the **Planning and Environment Act 1987** applies to an amendment prepared, adopted or approved under subsection (8) as if before "Division 1" there were inserted "section 12(1) or".

S. 42(12)
inserted by
No. 86/1993
s. 22.

- (12) Section 39(8) of the **Planning and Environment Act 1987** applies to an amendment prepared or adopted under subsection (8) as if—
- (a) the expression "Except for an application under this section," were deleted; and
 - (b) before "Division 1" there were inserted "section 12(1) or".

S. 42(13)
inserted by
No. 86/1993
s. 22.

- (13) Section 46 of the **Planning and Environment Act 1987** does not apply to a planning scheme to the extent to which, because of an amendment prepared, adopted or approved under subsection (8), it is expressed or purports to deal with any land that has been permanently reserved for any purpose set out in section 4 of the **Crown Land (Reserves) Act 1978** in any manner inconsistent with that reservation.

S. 42(14)
inserted by
No. 86/1993
s. 22.

- (14) Nothing in this section prevents either House of Parliament exercising its power under section 38 of the **Planning and Environment Act 1987**.

S. 42A
inserted by
No. 82/2000
s. 41.

42A Planning permits not required for some work variations

- (1) This section applies if—
- (a) a licensee proposes to vary an approved work plan that was approved in respect of work for which an Environment Effects Statement was prepared and assessed under section 42(7); and

-
- (b) a permit is required to be obtained under a planning scheme for the new work that it is proposed to do.
- (2) The licensee is not required to obtain a permit for that work only if—
- (a) the Minister, after consultation with the Minister administering the **Environment Effects Act 1978**, is satisfied that the new work will not cause any significant additional environmental impacts; and
- (b) the Department Head approves the variation.
- (3) If the Minister is not so satisfied, the licensee is still not required to obtain a permit for that work if—
- (a) the Minister administering the **Environment Effects Act 1978** directs that a report be prepared on the additional environmental impacts that the new work may have; and
- (b) the report is made available for public inspection and comment for at least 28 days; and
- (c) after considering any comments made during that period, that Minister submits an assessment of the report to the Minister; and
- (d) the variation, in the form that it is approved by the Department Head, substantially complies with any requirements recommended by that assessment.
- S. 42A(2) amended by No. 57/2009 s. 28(1).**
- S. 42A(2)(b) amended by No. 57/2009 s. 28(2).**
- S. 42A(3)(d) amended by No. 57/2009 s. 28(3).**

43 Commencement of work under exploration licence

S. 43(1)
amended by
Nos 86/1993
s. 23(a)(i)(iii),
82/2000
s. 42(1)(a)(d),
63/2006
s. 31(1)(a).

(1) The holder of an exploration licence must not carry out any work on the land covered by the licence unless—

(a) the licensee has an approved work plan; and

S. 43(1)(ab)
inserted by
No. 57/2009
s. 29.

(ab) in the case of an area work plan within the meaning of section 41AD(4), the licensee has submitted the relevant area work plan schedule containing the prescribed information to the Department Head not less than 21 days before carrying out any work on the land affected; and

(b) the licensee has entered into a rehabilitation bond in accordance with section 80; and

S. 43(1)(ba)
inserted by
No. 63/2006
s. 31(1)(b).

(ba) the licensee has complied with any condition imposed by the Minister under section 26(2)(d) to provide an environmental offset; and

(c) the licensee has obtained all the necessary consents and other authorities relating to the land affected⁸ required by or under this or any other Act; and

S. 43(1)(ca)
inserted by
No. 63/2006
s. 31(1)(c).

(ca) any consent under section 45 or authorisation under section 46 has been registered; and

S. 43(1)(cb)
inserted by
No. 63/2006
s. 31(1)(c).

(cb) the licensee has obtained the insurance required under section 39(5); and

(d) the licensee has given—

- (i) 7 days' notice to the Chief Inspector;
and

S. 43(1)(d)(i)
amended by
Nos 82/2000
ss 42(1)(b),
61(b), 6/2009
s. 16.

- (ii) 7 days' notice (or any shorter period
agreed between the licensee and the
owners and occupiers of the land
affected) to the owners and occupiers of
the land affected⁹—

S. 43(1)(d)(ii)
amended by
No. 82/2000
s. 42(1)(b).

of the licensee's intention to commence
work; and

(e) if the land affected¹⁰ is private land—

S. 43(1)(e)
substituted by
No. 82/2000
s. 42(1)(c).

- (i) the licensee has obtained the written
consent of the owners and occupiers of
the land affected¹¹; or
- (ii) the licensee has made and registered
compensation agreements with those
owners and occupiers; or
- (iii) the amount of compensation payable to
those owners and occupiers has been
determined under Part 8 and the
licensee has been advised in writing of
the result by the person or body making
the determination; or
- (iv) the licensee has purchased the land
affected¹²—

unless this requirement has been waived by
the Department Head under subsection (2).

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s. 43

S. 43(1)(f)
repealed by
No. 86/1993
s. 23(a)(ii).

* * * *

Penalty: In the case of a corporation,
1000 penalty units.

In any other case, 200 penalty units.

Default penalty:

In the case of a corporation, 20 penalty
units.

In any other case, 10 penalty units.

S. 43(1A)
inserted by
No. 63/2006
s. 31(2).

(1A) Subsections (1)(a), (1)(b), (1)(ba), (1)(ca) and
(1)(d) do not apply to low impact exploration.

S. 43(2)
repealed by
No. 86/1993
s. 23(b),
new s. 43(2)
inserted by
No. 82/2000
s. 42(2).

(2) If the land affected is private land and the licensee
has been unable to determine the name and
address of the owners and occupiers of the land,
the licensee may apply to the Department Head to
have the requirement specified by subsection
(1)(e) waived.

S. 43(2A)
inserted by
No. 82/2000
s. 42(2).

(2A) The Department Head may grant such an
application if, in her or his opinion, the licensee
has made all reasonable efforts to determine the
name and address of the owners and occupiers of
the land.

S. 43(2B)
inserted by
No. 82/2000
s. 42(2).

(2B) Before waiving the requirement, the Department
Head may require the licensee—
(a) to advertise the licensee's intention to start
work on the land affected in a specified
edition of a newspaper circulating generally
in the area in which the land is situated;
(b) to post a notice on the land affected stating
that the licensee intends to start work on that
land.

- (3) Despite anything in any planning scheme approved under the **Planning and Environment Act 1987** which—

S. 43(3)
substituted by
No. 86/1993
s. 23(c),
amended by
No. 7/1994
s. 6(a).

- (a) prohibits the use or development of the land covered by the licence for exploration (whether absolutely or unless specified conditions are complied with) and does not provide for the granting of a permit for that use or development; or
- (b) requires a permit to be obtained for that use or development—

the holder of an exploration licence or mining licence is not prohibited from carrying out exploration on the land covered by the licence in accordance with that licence and is not required to comply with any conditions specified in the planning scheme relating to, or to obtain a permit for, the carrying out of that exploration.

- (4) In addition to any other power to prepare, adopt or approve amendments to planning schemes, the Minister administering the **Planning and Environment Act 1987** may—

S. 43(4)
substituted by
No. 86/1993
s. 23(c),
amended by
No. 7/1994
s. 6(b).

- (a) on the recommendation of the Minister prepare; and
- (b) adopt and approve—

amendments to any planning scheme to facilitate the carrying out of exploration on land covered by an exploration licence or mining licence in accordance with that licence.

- (5) Without limiting what an amendment may include, an amendment prepared under subsection (4) may provide that no permit is required to carry out exploration on land covered by an exploration licence or mining licence in accordance with that licence.

S. 43(5)
inserted by
No. 86/1993
s. 23(c),
amended by
No. 7/1994
s. 6(c).

s. 43A

S. 43(6)
inserted by
No. 86/1993
s. 23(c).

- (6) The **Planning and Environment Act 1987** (except section 12(2), Divisions 1 and 2 of Part 3 and section 39(1) to (6) and any regulations made for the purposes of those provisions) applies to the preparation, adoption and approval of an amendment under subsection (4).

S. 43(7)
inserted by
No. 86/1993
s. 23(c).

- (7) Section 39(7) of the **Planning and Environment Act 1987** applies to an amendment prepared, adopted or approved under subsection (4) as if before "Division 1" there were inserted "section 12(1) or".

S. 43(8)
inserted by
No. 86/1993
s. 23(c).

- (8) Section 39(8) of the **Planning and Environment Act 1987** applies to an amendment prepared or adopted under subsection (4) as if—
- (a) the expression "Except for an application under this section," were deleted; and
 - (b) before "Division 1" there were inserted "section 12(1) or".

S. 43(9)
inserted by
No. 86/1993
s. 23(c).

- (9) Section 46 of the **Planning and Environment Act 1987** does not apply to a planning scheme to the extent to which, because of an amendment prepared, adopted or approved under subsection (4), it is expressed or purports to deal with any land that has been permanently reserved for any purpose set out in section 4 of the **Crown Land (Reserves) Act 1978** in any manner inconsistent with that reservation.

S. 43(10)
inserted by
No. 86/1993
s. 23(c).

- (10) Nothing in this section prevents either House of Parliament exercising its power under section 38 of the **Planning and Environment Act 1987**.

S. 43A
inserted by
No. 86/1993
s. 24.

43A Effect of contraventions

A failure by a licensee in carrying out exploration or mining on the land covered by the licence to comply with this Act or the regulations or with any condition to which the licence is subject or any condition specified under section 44 or with

the approved work plan for the licence does not constitute a contravention of the **Planning and Environment Act 1987** or any planning scheme, despite anything in that Act or scheme.

43B Certain consents etc. not required in case of unrestricted Crown land

S. 43B
inserted by
No. 86/1993
s. 24.

- (1) Despite any provision to the contrary made by or under any Act (being an Act that relates to access to, or the doing of work under a licence on, unrestricted Crown land) other than this Act that requires a person to obtain any consent or other authority under that provision before carrying out exploration or mining on unrestricted Crown land but subject to any conditions imposed by the Minister on the exploration licence or mining licence (as the case requires), it is not necessary for a licensee to obtain any such consent or other authority before carrying out exploration or mining on unrestricted Crown land.

S. 43B(1)
amended by
No. 82/2000
s. 43(a).

- (2) Subsection (1) does not apply to the **Planning and Environment Act 1987**, the **Environment Protection Act 1970**, the **Flora and Fauna Guarantee Act 1988** or the Forests (Fire Protection) Regulations 2004.

S. 43B(2)
amended by
Nos 82/2000
s. 43(b),
25/2008 s. 13.

44 Particular consents etc. required

- (1) A licensee who proposes to do work under the licence on restricted Crown land must obtain the consent of the Crown land Minister.

S. 44(1)
amended by
Nos 86/1993
s. 25(a)(b),
82/2000
s. 44(1),
63/2006 s. 32.

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S. 44(2)
amended by
No. 82/2000
s. 44(1).

(2) A licensee who proposes to do work under the licence on land—

S. 44(2)(a)
repealed by
No. 86/1993
s. 25(c).

* * * *

S. 44(2)(b)
amended by
No. 74/2000
s. 3(Sch. 1
item 83.1).

(b) that is owned by, vested in or managed or controlled by the Melbourne Water Corporation or an Authority under the **Water Act 1989** must obtain the consent of that Board or Authority; and

S. 44(2)(c)
amended by
No. 86/1993
s. 25(d).

(c) on which there is a public highway, road or street must give 21 days' notice of the proposed work to the person or body having the care or management of the public highway, road or street.

S. 44(3)
repealed by
No. 86/1993
s. 25(e).

* * * *

S. 44(4)
amended by
No. 86/1993
s. 25(f).

(4) A consent under subsection (1) or (2)—
(a) must not be unreasonably withheld; and
(b) may be granted subject to conditions.

S. 44(5)
amended by
No. 86/1993
s. 25(f)(g).

(5) A person or body whose consent is sought under subsection (1) or (2) must, within 28 days (or any longer period allowed by the Minister) after the consent being sought, grant that consent (whether subject to conditions or not) or refuse to consent.

S. 44(6)
substituted by
No. 82/2000
s. 44(2).

(6) A person or body that does not comply with subsection (5) in relation to any land is deemed to have given the consent sought.

-
- (7) A person or body that refuses to consent under subsection (1) or (2) must, within 7 days after the decision to refuse, give the licensee a statement in writing of the reasons for the decision. **S. 44(7) amended by No. 86/1993 s. 25(f).**
- (8) A licensee may only do work under the licence at a depth of more than 0.75 metres below any land that is within 100 metres of—
- (a) a waterway that is owned by, vested in or managed or controlled by the Melbourne and Metropolitan Board of Works or an Authority under the **Water Act 1989**; or
 - (b) any main drains, sewers, aqueducts, channels or pipelines of that Board or such an Authority—
- after consultation with the Board or Authority and in compliance with any conditions specified by the Board or Authority.
- (9) A licensee may apply to the Tribunal for review of a decision— **S. 44(9) amended by No. 52/1998 s. 311(Sch. 1 item 64.3).**
- (a) by a person or body under subsection (1) or (2)— **S. 44(9)(a) amended by No. 86/1993 s. 25(f).**
 - (i) to refuse to consent; or
 - (ii) to consent subject to conditions; or
 - (b) under subsection (8) by the Board or an Authority to specify a condition with which the licensee must comply in doing work.
- (10) An application for review must be made within 28 days after the later of— **S. 44(10) inserted by No. 52/1998 s. 311(Sch. 1 item 64.4).**
- (a) the day on which the decision is made;
-

(b) either—

- (i) in the case of a decision under subsection (1) or (2), the day on which the statement of reasons for the decision is given to the licensee under subsection (7); or
- (ii) in the case of a decision under subsection (8), if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the licensee requests a statement of reasons for the decision, the day on which the statement of reasons is given to the licensee or the licensee is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 45
(Heading)
inserted by
No. 63/2006
s. 33(1).

45 Prohibition of work near dwellings and certain places and sites

S. 45(1)
amended by
Nos 18/1997
s. 3(1)(a),
82/2000
s. 45(1)(a)
(b)(d).

- (1) A licensee must not, except as provided by subsection (2), (4), (4A) or (4B) do any work under the licence—

(a) within 100 metres laterally of—

S. 45(1)(a)(i)
amended by
No. 63/2006
s. 33(2)(a).

- (i) a dwelling house that existed before an approved work plan was registered in respect of the licence; or

S. 45(1)
(a)(ii)–(x)
repealed by
No. 63/2006
s. 33(2)(b).

* * * * *

- (xi) land in respect of which an ongoing protection declaration is in force under the **Aboriginal Heritage Act 2006**; or

S. 45(1)(a)(xi) amended by Nos 93/1995 s. 218(1) (Sch. 2 item 5.1), 18/1997 s. 3(1)(b), 93/1995 s. 218(2) (Sch. 2 item 9.1), substituted by Nos 82/2000 s. 45(1)(c), 16/2006 s. 198(Sch. 2 item 5(5)).

- (xii) any Aboriginal place within the meaning of the **Aboriginal Heritage Act 2006** that is recorded in the Victorian Aboriginal Heritage Register under that Act; or

S. 45(1)(a)(xii) substituted by Nos 82/2000 s. 45(1)(c), 63/2006 s. 33(2)(c), 16/2006 s. 198(Sch. 2 item 5(5)).

- (xiii) an archaeological site on the Heritage Inventory established under the **Heritage Act 1995** or a place or object included in the Heritage Register established under the **Heritage Act 1995**; or

S. 45(1)(a)(xiii) inserted by No. 93/1995 s. 218(1) (Sch. 2 item 5.2).

- (b) within 100 metres below any area prohibited by paragraph (a).

Penalty: In the case of a corporation,
1000 penalty units.

In any other case, 200 penalty units.

Default penalty:

In the case of a corporation, 20 penalty units.

In any other case, 10 penalty units.

s. 45

S. 45(1A)
inserted by
No. 82/2000
s. 45(2).

(1A) Despite subsection (1), a licensee may do any work prohibited by subsection (1) (except work within the prohibited distances of the area relating to a site described in subsection (1)(a)(xiii)) if the licensee is not required to obtain a permit for that work under section 42(7) or 42A.

S. 45(1B)
inserted by
No. 82/2000
s. 45(2).

(1B) Subsection (1A) applies regardless of whether the licensee has any of the consents referred to in subsections (2) and (4).

S. 45(2)
substituted by
No. 63/2006
s. 33(3).

(2) A licensee may, with the consent of the owners of the land on which a dwelling house is situated, do work within the area prohibited by subsection (1)(a)(i) in relation to that dwelling house or within 100 metres below that area.

S. 45(3)
amended by
Nos 93/1995
s. 218(1)(2)
(Sch. 2
items 5.3, 9.2)
(as amended
by No.
66/1997 s. 10),
18/1997
s. 3(2),
repealed by
No. 82/2000
s. 45(3),
new s. 45(3)
inserted by
No. 63/2006
s. 33(3).

(3) A consent given by any owner of land under subsection (2)—

- (a) must be in writing and in the prescribed form (if any); and
- (b) cannot be withdrawn by that owner or by any subsequent owner of the land; and
- (c) binds all subsequent owners and occupiers of the land.

(4) A licensee may, with the consent of any person or body nominated under section 18(a) in relation to the application for the licence, do work within the area prohibited by subsection (1)(a)(xii) or within 100 metres below that area.

S. 45(4A)
inserted by
No. 18/1997
s. 3(3),
amended by
No. 63/2006
s. 33(4).

(4A) A licensee may, with the consent of the Executive Director (within the meaning of the **Heritage Act 1995**) in respect of a place or object that is included in the Heritage Register established under the **Heritage Act 1995**, do work within the area that is prohibited in relation to that place

or object by subsection (1)(a)(xiii), or within 100 metres below that area.

- (4B) A licensee may, with the consent of the Executive Director (within the meaning of the **Heritage Act 1995**), in respect of an archaeological site on the Heritage Inventory established under the **Heritage Act 1995**, other than an archaeological site which is a place or object to which subsection (4A) applies, do work within the area that is prohibited in relation to that archaeological site by subsection (1)(a)(xiii) or within 100 metres below that area.

S. 45(4B) inserted by No. 18/1997 s. 3(3).

- (5) An owner who consents under subsection (2), or a person or a body that consents under subsection (4), (4A) or (4B), may make the consent conditional on the following matters only—

S. 45(5) amended by Nos 18/1997 s. 3(4), 82/2000 s. 45(4), substituted by No. 63/2006 s. 33(5).

- (a) specified distance restrictions;
- (b) specified depth restrictions.

* * * * *

S. 45(6) substituted by No. 82/2000 s. 45(5), repealed by No. 16/2006 s. 198(Sch. 2 item 5(6)).

- (7) In this section—

S. 45(7) inserted by No. 63/2006 s. 33(6).

dwelling house means a building that is used primarily, or is intended, adapted or designed to be used primarily, as a residence, (including kitchen, bathroom and sanitary facilities) for an occupier who has a right to the exclusive use of it and includes a building that may, in addition to its primary residential use, be used for small-scale commercial activities;

work means any of the following activities—

- (a) any excavation for the purposes of mining or bulk sampling of ore;
- (b) any excavation for the purposes of exploration using mechanised equipment;
- (c) any construction or use of any opening, excavation, structure or equipment for access to, or ventilation of, underground workings;
- (d) any treatment, extraction, handling or processing of minerals using plant or equipment (other than hand-operated equipment);
- (e) any construction or use of roads for the haulage of ore, waste rock or overburden;
- (f) the bulk storage of ore, waste rock or overburden;
- (g) any construction or use of dams for the storage of tailings, process water or groundwater;
- (h) any construction or use of other facilities for the treatment, handling or storage of tailings or other wastes;
- (i) any drilling (unless carried out with hand-held equipment);
- (j) any other activity specified in the regulations—

but does not include the carrying out of low impact exploration.

- (8) For the purposes of subsection (1)(a)(i) the distance of 100 metres is to be measured from—
- (a) the boundary of the allotment on which the dwelling house is situated if the area of the allotment is 0.4 hectares or less; or
 - (b) in any other case, a distance of 25 metres from the outer edge of any eave forming part of the dwelling house.

S. 45(8)
inserted by
No. 63/2006
s. 33(6).

45A Certain exploration and mining work complies with section 45

S. 45A
inserted by
No. 63/2006
s. 34.

- (1) A licensee who does any work under the licence within an area of land prohibited by section 45(1)(a)(i) or within 100 metres below that area complies with section 45 in respect of that work if—
- (a) at the commencement date—
 - (i) an approved work plan, and, in the case of a mining licence, a work authority, was registered in respect of the licence; and
 - (ii) the approved work plan provided for that work to be done under the licence; and
 - (b) the approved work plan and, in the case of a mining licence the work authority, is still registered at the time that work is done; and
 - (c) that work is done in accordance with the approved work plan as in effect at the commencement date.
- (2) In this section—

commencement date means the date of commencement of section 34 of the **Mineral Resources Development (Sustainable Development) Act 2006**;

work has the same meaning as it has in section 45(7).

S. 46
(Heading)
inserted by
No. 63/2006
s. 35(1).

46 Minister may authorise work near dwelling house

S. 46(1)
amended by
No. 74/2000
s. 3(Sch. 1
item 83.2),
substituted by
No. 82/2000
s. 46(1),
amended by
No. 63/2006
s. 35(2).

- (1) The Minister may authorise a licensee to do work within the area prohibited by section 45(1)(a)(i) or within 100 metres below that area—
 - (a) after considering the advice of the Mining and Environment Advisory Committee; or
 - (b) after consultation with the municipal council in whose municipal district an area is situated, and any community group or member of the community whom the Minister considers should be consulted about the proposed work.
- (2) A licensee who does work in accordance with an authority under subsection (1) is not guilty of an offence under section 45(1).
- (3) A licensee who does work in accordance with an authority under subsection (1), or with the consent of a person or body under section 45(4), must repair any damage caused to the protected building or site by the work.
- (4) In this section *work* has the same meaning as it has in section 45(7).

S. 46(3)
amended by
No. 82/2000
s. 46(2).

S. 46(4)
inserted by
No. 63/2006
s. 35(3).

S. 47
repealed by
No. 82/2000
s. 47,
new s. 47
inserted by
No. 63/2006
s. 36.

47 New consent or authorisation for certain work plan variations

- (1) A licensee must obtain a consent under section 45 (*a new consent*) to do mining work (*the new work*) that is proposed by a variation to an approved work plan under section 41 or 41AA if—

-
- (a) the new work affects all or part of any mining work within an area of land prohibited by section 45(1), being mining work—
 - (i) for which a consent under section 45 or an authorisation under section 46 is held by the licensee; or
 - (ii) that is permitted to be done under section 45A; and
 - (b) if the mining work affected by the new work is within an area of land prohibited by section 45(1)(a)(i), (xi) or (xii) or within 100 metres below that area, a permit is required to be obtained under a planning scheme for the new work; and
 - (c) if the mining work affected by the new work is within an area of land prohibited by section 45(1)(a)(xiii) or within 100 metres below that area—
 - (i) a permit is required to be obtained under a planning scheme for the new work; or
 - (ii) the new work is excepted under section 42(7) or 42A from the requirement to obtain such a permit.
- (2) The Department Head must direct a licensee to obtain consent under section 45 (a *new consent*) to do exploration work (*the new work*) that is proposed by a variation to an approved work plan under section 41 or 41AA if—
- (a) the new work affects all or part of any exploration work within an area of land prohibited by section 45(1) being exploration work—
-

s. 47A

- (i) for which a consent under section 45 or an authorisation under section 46 is held by the licensee; or
- (ii) that is permitted to be done under section 45A; and
- (b) the Department Head considers that the new work will result in significant changes to that exploration work.
- (3) In this section *work* has the same meaning as it has in section 45(7).
- (4) This section applies despite section 45A.

S. 47A
 inserted by
 No. 86/1993
 s. 26,
 substituted by
 No. 82/2000
 s. 48.

47A Management of worksites

- (1) A licensee holding a mining licence must appoint a manager to control and manage the licence worksites.

S. 47A(2)
 repealed by
 No. 6/2009
 s. 17(1).

* * * *

S. 47A(3)
 repealed by
 No. 6/2009
 s. 17(1).

* * * *

- (4) The licensee must provide the manager with sufficient means to enable the manager to ensure that all obligations placed on the licensee by or under this Act with respect to the licence worksites are met.

Penalty: In the case of a corporation,
 1000 penalty units.

In any other case, 200 penalty units.

Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990
Part 3—Work Under a Licence

s. 47A

-
- (5) The licensee may appoint himself or herself to be the manager of the licence worksites.
-

S. 47A(5)
amended by
No. 6/2009
s. 17(2).

**PART 4—MINING AND ENVIRONMENT ADVISORY
COMMITTEE**

48 Establishment of the Committee

There is established a committee called the
Mining and Environment Advisory Committee.

49 Functions of the Committee

(1) The functions of the Committee are—

- (a) to advise the Minister about amendments to
planning schemes relating to exploration or
mining; and
- (b) to advise the Minister about authorising
work under section 46(1); and

* * * * *

- (d) to investigate, and to report and make
recommendations to the Minister on, any
matter referred to it by the Minister.

(2) In exercising its functions the committee may—

- (a) obtain information from a licensee in any
form appropriate to the committee's
operations; and
- (b) consider expert advice relevant to its
deliberations.

S. 49(1)(c)
repealed by
No. 86/1993
s. 27.

50 Members of the Committee

(1) The Committee consists of 7 members appointed by the Minister of whom—

(a) one is the Department Head; and

S. 50(1)(a)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
No. 76/1998
s. 31(e).

(b) one is an employee in the Department nominated by the Department Head; and

S. 50(1)(b)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
No. 76/1998
s. 31(e).

(c) one is nominated by the Minister administering the **Planning and Environment Act 1987** and is the Secretary to the Department of Infrastructure or a person employed in that Department; and

S. 50(1)(c)
substituted by
No. 46/1998
s. 7(Sch. 1).

(d) one, in the opinion of the Minister, is capable of representing the interest of the sector of the mining industry holding licences covering land of 5 hectares or less; and

(e) one is selected by the Minister from a panel of 3 names submitted by the Victorian Chamber of Mines; and

(f) one is selected by the Minister from a panel of 3 names submitted by the Victorian Farmers Federation; and

(g) one, in the opinion of the Minister, is capable of representing environmental interests.

(2) If a body referred to in subsection (1)(e) or (f)—

(a) fails to submit a panel of 3 names on or before the date specified by the Minister when requesting a panel; or

(b) ceases to exist—

the Minister may appoint a member who, in the opinion of the Minister, is capable of representing the persons represented or previously represented by that body.

51 Terms and conditions of office of member

- (1) A member holds office for the term, not exceeding 3 years, that is specified in the instrument of appointment, and is eligible for re-appointment.
- (2) The office of a member becomes vacant if—
 - (a) the member becomes bankrupt; or
 - (b) the member is convicted of an offence which is, or which would if committed in Victoria be, an indictable offence; or
 - (c) the member is absent from 4 consecutive meetings of the Committee without the Committee's leave.
- (3) A member may resign his or her office in writing delivered to the Minister.
- (4) The Minister may suspend a member or remove a member from office.
- (5) A member (other than a person who holds a full-time statutory office within the meaning of the **Public Administration Act 2004** or is employed full-time in the public service or holds an office with or is employed by a statutory authority and whose travelling and personal expenses are met through that office or employment) is entitled to be paid any remuneration and travelling and other allowances specified in the instrument of appointment or fixed from time to time by the Governor in Council.

S. 51(5)
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 134.2).

- (6) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

S. 51(6)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 134.3),
80/2006
s. 26(Sch.
item 71.1).

52 Chairperson and deputy chairperson

- (1) The Minister may appoint a member to be chairperson of the Committee and a member to be deputy chairperson.
- (2) The chairperson or deputy chairperson may resign that office in writing delivered to the Minister.

53 Meetings of the Committee

- (1) The quorum of the Committee is 4 members of whom one is the chairperson or deputy chairperson.
- (2) The chairperson (or in his or her absence, the deputy chairperson) must preside at a meeting of the Committee.
- (3) The person presiding has a deliberative vote and a casting vote.
- (4) Otherwise, the Committee may regulate its own procedure.

54 Validity of acts or decisions of the Committee

An act or decision of the Committee is not invalid only because of—

- (a) a vacancy in the office of member; or
- (b) a defect or irregularity in or in connection with the appointment of a member.

Pt 4A
(Heading and
ss 54A–54M)
inserted by
No. 63/2006
s. 37.

PART 4A—ADVISORY PANELS

Division 1—Appointment of panels

S. 54A
inserted by
No. 63/2006
s. 37,
amended by
No. 6/2009
s. 18.

54A Appointment of advisory panels

The Minister may appoint a panel to consider and advise on any matter relating to exploration, mining, extractive industries, or the administration of this Act, referred to the panel by the Minister.

S. 54B
inserted by
No. 63/2006
s. 37.

54B Composition of panel

- (1) A panel may consist of one or more persons.
- (2) In appointing a person to be a member of a panel, the Minister must be satisfied that the person has appropriate knowledge, skills or experience.

S. 54C
inserted by
No. 63/2006
s. 37.

54C Chairperson

If a panel consists of more than one member, the Minister must appoint one of the members to be the chairperson.

S. 54D
inserted by
No. 63/2006
s. 37.

54D Terms of reference

On appointing a panel, the Minister must specify the terms of reference of the panel.

S. 54E
inserted by
No. 63/2006
s. 37.

54E Terms and conditions of appointment

- (1) A member of a panel is appointed for the term that is specified in the instrument of his or her appointment.
- (2) A member of a panel, other than a member who is employed by or on behalf of the Crown, is entitled to receive any fees and allowances fixed by the Minister in the instrument of his or her appointment.

Division 2—Procedure of panels

54F Procedure of panel

S. 54F
inserted by
No. 63/2006
s. 37.

- (1) A panel may call for and consider written submissions from any persons having an interest in the matter referred to it.
- (2) A panel may hold a public hearing.
- (3) If a panel holds a public hearing, it must give a reasonable opportunity to be heard by it to any person who has stated in a written submission that the person wishes to be heard with respect to that submission.

54G Directions about hearings

S. 54G
inserted by
No. 63/2006
s. 37.

- (1) A panel may give directions about—
 - (a) the times and places of hearings; and
 - (b) matters preliminary to hearings; and
 - (c) the conduct of hearings.
- (2) A panel may refuse to hear any person who fails to comply with a direction of the panel.

54H Hearings to be in public

S. 54H
inserted by
No. 63/2006
s. 37.

A panel must conduct its hearings in public unless any person making a submission objects to making the submission in public and the panel is satisfied that the submission is confidential in nature.

54I Procedure for hearing submissions

S. 54I
inserted by
No. 63/2006
s. 37.

- (1) A person who has a right to be heard by a panel may—
 - (a) appear and be heard in person or be represented by any other person; and
 - (b) give submissions to a panel orally or in writing or partly orally and partly in writing.

s. 54J

- (2) A panel may report and make recommendations on a submission without hearing the person who made the submission if the person is not present or represented at the time and place appointed for the hearing of the submission.
- (3) A panel may consider 2 or more submissions together if the submissions concern the same or a related matter.

S. 54J
inserted by
No. 63/2006
s. 37.

54J Adjournment of hearings

A panel may from time to time adjourn a hearing to any times and places and for any purposes it thinks necessary or just in the circumstances.

S. 54K
inserted by
No. 63/2006
s. 37.

54K Panel may regulate its own proceedings

A panel may regulate its own proceedings.

S. 54L
inserted by
No. 63/2006
s. 37.

54L Panel may take into account any relevant matter

A panel may take into account any matter it thinks relevant in making its report and recommendations.

S. 54M
inserted by
No. 63/2006
s. 37.

54M Report of panel

- (1) After considering a matter, including conducting hearings and considering submissions under this Part, the panel—
 - (a) must report to the Minister on the matter;
and
 - (b) may make recommendations in relation to the matter.

-
- (2) The report of the panel and any recommendations must be forwarded to the Minister—
- (a) if a period is specified in the instrument of appointment for the forwarding of the report and any recommendations, within that period; or
 - (b) in any other case, within 60 days after the appointment of the panel.
-

PART 5—OTHER AUTHORITIES

Division 1—Miner's rights

55 Miner's right

S. 55(1)
substituted by
No. 82/2000
s. 49(1).

- (1) A miner's right entitles the holder to search for minerals on any of the following land, unless the land is covered by a mining licence—

(a) private land, but only with the consent of the owner or occupier; and

S. 55(1)(b)
amended by
No. 50/2002
s. 22.

- (b) Crown land (other than land exempted under section 6, 6A or 7 of this Act or nominated under section 7(1) of the **Crown Land (Reserves) Act 1978**).

S. 55(1A)
inserted by
No. 82/2000
s. 49(1).

- (1A) If the land is covered by a mining licence, the holder of a miner's right is entitled to search for minerals on the land if he or she has, in addition to any consent required under subsection (1), the consent of the licensee.

S. 55(2)
substituted by
No. 82/2000
s. 49(1).

- (2) A consent granted under subsection (1) or (1A)—
- (a) may be granted subject to conditions; and
- (b) may be withdrawn at any time by the person who granted it.

S. 55(2A)
inserted by
No. 82/2000
s. 49(1).

- (2A) If the holder of a miner's right is validly on any land under this section, he or she may remove from the land any minerals discovered by him or her on the land.

S. 55(3)
amended by
No. 59/2010
s. 37.

- (3) A miner's right is current for the time, not exceeding 10 years, specified in the miner's right.

56 Who may grant a miner's right

- (1) The Department Head may grant a miner's right.
- (2) The Department Head may authorise in writing—
 - (a) a person or body; or
 - (b) all people or bodies falling within a specified class—to grant miner's rights.

S. 56
amended by
No. 76/1998
s. 31(f),
substituted by
No. 69/2004
s. 55.

57 Grant of miner's right

On receiving an application for a miner's right, a person who is authorised to grant miner's rights must grant the miner's right to the applicant if the application has been made in accordance with the regulations.

S. 57
amended by
Nos 27/1991
s. 4(4),
76/1998
s. 31(f),
82/2000
s. 49(2),
substituted by
No. 69/2004
s. 55.

58 Obligations of holder

- (1) The holder of a miner's right acting under that right must not—
 - (a) use any equipment for the purposes of excavation on the land, other than non-mechanical hand tools; or
 - (b) use explosives on the land; or
 - (c) remove or damage any tree or shrub on the land; or
 - (d) disturb any Aboriginal cultural heritage (within the meaning of the **Aboriginal Heritage Act 2006**) on the land.

S. 58(1)
amended by
No. 82/2000
s. 50(1)(a).

S. 58(1)(d)
substituted by
No. 16/2006
s. 198(Sch. 2
item 5(7)).

Penalty: 100 penalty units.

- (2) The holder of a miner's right must repair any damage to the land arising out of the search.
Penalty: 50 penalty units.

S. 58(2)
amended by
No. 82/2000
s. 50(1)(b).

s. 59

S. 58(3)
inserted by
No. 82/2000
s. 50(2).

- (3) The holder of a miner's right must produce the miner's right for inspection if asked to do so by an inspector or any person acting under a delegation conferred under section 91(b).

Division 2—Tourist fossicking authorities

59 Tourist fossicking authority

S. 59(1)
substituted by
No. 82/2000
s. 51(1),
amended by
No. 25/2008
s. 14(1).

- (1) A tourist fossicking authority entitles the holder, or any employee or agent of the holder if the holder is not a natural person, and any person accompanied by the holder to search for minerals at the times, and subject to the conditions, specified in the authority on any of the following land that is specified in the authority, unless the land is covered by a mining licence—

(a) private land, but only with the consent of the owner or occupier; and

S. 59(1)(b)
amended by
No. 50/2002
s. 23.

(b) Crown land (other than land exempted under section 6, 6A or 7 of this Act).

S. 59(1A)
inserted by
No. 82/2000
s. 51(1),
amended by
No. 25/2008
s. 14(2).

- (1A) If the land is covered by a mining licence, the holder of the authority and any person accompanied by the holder, or any employee or agent of the holder if the holder is not a natural person, are entitled to search for minerals on the land under a tourist fossicking authority if—
- (a) the land is specified in the authority; and
- (b) the holder of the authority has, in addition to any consent required under subsection (1), the consent of the licensee.
- (2) A tourist fossicking authority is current for the time, not exceeding 2 years, specified in the authority.

- (3) A consent granted under subsection (1) or (1A)—
- (a) may be granted subject to conditions; and
 - (b) may be withdrawn at any time by the person who granted it.

S. 59(3)
substituted by
No. 82/2000
s. 51(2).

- (4) If a person is validly on any land under this section, he or she may remove from the land any minerals discovered by him or her on the land.

S. 59(4)
inserted by
No. 82/2000
s. 51(2).

60 Application for tourist fossicking authority

A person may apply to the Department Head in accordance with the regulations for a tourist fossicking authority.

S. 60
amended by
No. 76/1998
s. 31(f).

61 Grant or refusal of tourist fossicking authority

- (1) The Department Head may grant or refuse an application.

S. 61(1)
amended by
No. 76/1998
s. 31(g)(i).

- (2) The Department Head may grant an application on any terms and conditions specified in the authority.

S. 61(2)
amended by
No. 76/1998
s. 31(g)(i).

* * * * *

S. 61(3)
repealed by
No. 76/1998
s. 31(g)(ii).

62 Obligations of holder

- (1) The holder of a tourist fossicking authority must not—
- (a) use any equipment for the purposes of excavation on the land, other than non-mechanical hand tools; or
 - (b) use explosives on the land; or
 - (c) remove or damage any tree or shrub on the land; or

Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990
Part 5—Other Authorities

s. 62

S. 62(1)(d)
substituted by
No. 16/2006
s. 198(Sch. 2
item 5(8)).

(d) disturb any Aboriginal cultural heritage
(within the meaning of the **Aboriginal
Heritage Act 2006**) on the land.

Penalty: 100 penalty units.

- (2) The holder of a tourist fossicking authority must make sure that a person who searches for minerals under that authority does not do anything specified in subsection (1)(a), (b), (c) or (d).

Penalty: 100 penalty units.

S. 62(3)
amended by
No. 25/2008
s. 15.

- (3) The holder of a tourist fossicking authority must repair any damage to the land arising out of the searching for minerals under that authority by any person.

Penalty: 50 penalty units.

Pt 5 Div. 3
(Heading and
ss 63–67)
amended by
Nos 86/1993
s. 28, 82/2000
ss 61(b), 72(a),
6/2009 s. 19,
repealed by
No. 59/2010
s. 41.

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PART 6—MINING REGISTER

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S. 68
 amended by
 No. 46/1998
 s. 7(Sch. 1),
 repealed by
 No. 82/2000
 s. 52(1).

69 Functions of Department Head regarding mining register

S. 69
 (Heading)
 inserted by
 No. 63/2006
 s. 38(1).

(1) The Department Head must establish and maintain a mining register.

S. 69(1)
 amended by
 No. 82/2000
 s. 52(2).

(1A) The mining register may be kept in electronic form.

S. 69(1A)
 inserted by
 No. 63/2006
 s. 38(2).

(2) The Department Head must, by any means he or she considers appropriate—

S. 69(2)
 amended by
 No. 82/2000
 s. 52(2).

(a) register the following documents—

(i) licences;

(ia) instruments of refusal of applications for licences;

S. 69(2)(a)(ia)
 inserted by
 No. 82/2000
 s. 52(3)(b).

(ii) compensation agreements;

(iii) rehabilitation bonds;

(iiia) consents given under section 45;

S. 69(2)(a)(iiia)
 inserted by
 No. 63/2006
 s. 38(3).

(iiib) authorisations given under section 46;

S. 69(2)(a)(iiib)
 inserted by
 No. 63/2006
 s. 38(3).

Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990
Part 6—Mining Register

s. 69

S. 69(2)(a)(v)
substituted by
No. 82/2000
s. 52(3)(a).

(iv) approved work plans;

(v) work authorities;

(vi) instruments of renewal of licences,
including notice of decreased area and
of any changed conditions;

(vii) instruments of refusal to renew
licences;

(viii) instruments of variation of licences;

(ix) instruments of amalgamation of
licences;

(x) notices of surrender of licences;

(xi) instruments of cancellation of licences;

S. 69(2)(a)(xii)
amended by
No. 86/1993
s. 29.

(xii) instruments of variation, suspension,
revocation or addition of licence
conditions;

(xiii) approved instruments of transfer of
licences;

S. 69(2)(a)(xiv)
amended by
No. 82/2000
s. 52(3)(c).

(xiv) instruments for creating, assigning or
affecting interests in, or conferred by,
licences (including mortgages);

(xv) instruments for the devolution of
licences or interests in, or conferred by,
licences;

S. 69(2)(a)(xvi)
amended by
Nos 91/1994
s. 28(1),
52/1998
s. 311(Sch. 1
item 64.5).

(xvi) determinations of the Tribunal or the
Supreme Court as to the amount of
compensation payable;

(xvii) any other prescribed documents; and

- (b) record in the register the prescribed information contained in—
 - (i) any document registered under paragraph (a); and
 - (ii) any other document that is required to be lodged under this Act; and
 - (c) endorse on the document and in the register the date and time of registration.
- (3) The Department Head may—
- (a) approve forms of documents referred to in subsection (2)(a) for registration; and
 - (b) register a document by registering either the original or a copy; and
 - (c) determine the form of an extract from the register.
- (4) The Department Head may refuse to accept for registration any document referred to in subsection (2)(a) that does not contain the prescribed information or that is not in an approved form.

S. 69(3)
amended by
No. 82/2000
s. 52(2).

S. 69(4)
amended by
No. 82/2000
s. 52(2).

70 Effect of registration

- (1) A document referred to in section 69(2)(a) (other than one referred to in subparagraph (xiv), (xv) or (xvi)) has no effect until it is registered.
- (2) A document referred to in section 69(2)(a)(xiv) or (xv) is ineffective for creating, assigning or affecting any interest in or conferred by a licence, or for the devolution of a licence or any interest in or conferred by a licence, until it is registered.
- (3) A licence, on registration, confers on the licensee a proprietary interest in the land covered by the licence and attaches to the licensee all rights and obligations under the licence.

S. 70(6)
amended by
No. 82/2000
s. 52(2).

- (4) A proprietary interest in land is conferred by a licence only for the purpose of assisting the licensee to exercise the rights and discharge the obligations under the licence.
- (5) A licence or renewal when registered is not invalid only because of any defect or irregularity (other than one resulting from fraud) in any application or process leading up to the grant or renewal of the licence.
- (6) The Department Head must make sure that documents relating to the same licence are registered in the order in which they are lodged.
- (7) The approval or registration of a document does not give any right, interest or dealing that is evidenced by that document any force or effect that the right, interest or dealing would not have had if this Part had not been enacted.

71 Creation etc. of interests in licences

A purported creation or assignment of an interest in, or conferred by, a licence, and any purported dealing affecting an interest in, or conferred by, a licence, has no effect until an instrument in an approved form evidencing the creation, assignment or other dealing is registered.

72 Devolution of rights of licensee

- (1) The devolution of any rights under a licence, or any interest in, or conferred by, a licence, that would, but for this section, occur by operation of law has no effect until an instrument in the approved form evidencing the devolution is registered.
- (2) Subsection (1) applies despite anything in any Act or rule of law to the contrary.

73 Correction of register

- (1) The Department Head may correct any error or omission in the register by—

S. 73(1)
amended by
No. 82/2000
s. 52(2).

- (a) inserting an entry; or
- (b) amending an entry; or
- (c) omitting an entry—

if he or she decides that the correction is necessary.

- (2) The Department Head may make the correction on his or her initiative or on the application of any person.

S. 73(2)
amended by
No. 82/2000
s. 52(2).

- (3) The Department Head must notify the licensee of any correction made under this section that affects the licence.

S. 73(3)
amended by
No. 82/2000
s. 52(2).

- (4) A person whose interests are affected by a decision of the Department Head to correct the register may apply to the Tribunal for review of the decision.

S. 73(4)
substituted by
No. 52/1998
s. 311(Sch. 1
item 64.6),
amended by
No. 82/2000
s. 52(2).

- (5) An application for review must be made within 28 days after the later of—

S. 73(5)
substituted by
No. 52/1998
s. 311(Sch. 1
item 64.6).

- (a) the day on which the decision is made;
- (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

74 Disclosure of registered information

S. 74(1)
amended by
No. 82/2000
s. 52(2).

(1) The Department Head must—

(a) allow access at all reasonable times to the register; and

(b) provide information from the register; and

(c) provide a copy of a registered licence; and

S. 74(1)(c)
amended by
No. 82/2000
s. 52(4).

(ca) provide a copy of a registered consent given under section 45; and

S. 74(1)(ca)
inserted by
No. 63/2006
s. 39.

(cb) provide a copy of a registered authorisation given under section 46; and

S. 74(1)(cb)
inserted by
No. 63/2006
s. 39.

(d) provide a copy of a registered work plan; and

S. 74(1)(d)
inserted by
No. 82/2000
s. 52(4).

(e) provide a copy of a registered variation to a work plan—

S. 74(1)(e)
inserted by
No. 82/2000
s. 52(4).

to any person who pays the prescribed fee.

S. 74(1A)
inserted by
No. 82/2000
s. 52(5).

(1A) In complying with subsections (1)(d) and (e), the Department Head must exclude from any copy provided any information that is, in the opinion of the Department Head, of a confidential or commercially sensitive nature.

- (2) The Department Head may provide information to a prescribed person in connection with—

- (a) the establishment of; or
- (b) the operation of; or
- (c) the satisfaction of enquiries to—

the integrated computerised information retrieval project, relating to information about land, its ownership and use, that is known as Landata.

S. 74(2)
amended by
No. 82/2000
s. 52(2).

75 Survey standards

The Department Head may, subject to the regulations, specify standards for surveys and the circumstances in which surveys must be carried out before documents will be registered.

S. 75
amended by
No. 82/2000
s. 52(2).

76 Evidence

A certificate in the prescribed form purporting to be issued by the Department Head certifying as to any matter that appears in or can be ascertained from the register or other records kept by the Department Head under this Act is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

S. 76
amended by
No. 82/2000
s. 52(2).

77 Offences

A person must not knowingly make, or cause or allow to be made, a false or unauthorised entry in the register.

Penalty: 200 penalty units.

S. 77
amended by
No. 82/2000
s. 72(b).

Pt 6A
(Heading)
inserted by
No. 6/2009
s. 20.

PART 6A—EXTRACTIVE INDUSTRIES—WORK AUTHORITIES AND OTHER MATTERS

Pt 6A Div. 1
(Heading)
inserted by
No. 6/2009
s. 20.

Division 1—Consent to search for stone

S. 77A
inserted by
No. 63/2006
s. 40,
substituted by
No. 6/2009
s. 20.

77A Consent to search for stone on Crown land

- (1) A person may apply to the Crown land Minister for an area of Crown land for consent to search for stone on that Crown land.
- (2) The Crown land Minister must, within 14 days after receiving an application for consent, give notice of the application to—
 - (a) any person or body nominated by the Minister administering the **Aboriginal Heritage Act 2006**; and
 - (b) any registered Aboriginal party (within the meaning of the **Aboriginal Heritage Act 2006**) for an area to which the application relates.
- (3) The Crown land Minister must have regard to any comments or submissions of a person or body nominated for the purposes of subsection (2) in considering an application for consent.
- (4) The Crown land Minister may, by instrument—
 - (a) consent to search for stone on the Crown land; or
 - (b) consent to search for stone on the Crown land subject to conditions; or
 - (c) refuse to consent to search for stone on the Crown land.

- (5) The Crown land Minister must not unreasonably withhold consent.
- (6) The Crown land Minister must consent or refuse to consent to an application within 60 days after receiving the application or within any further period that the Minister requires to determine the application including the consideration of comments or submissions from a person or body nominated for the purposes of subsection (2).
- (7) If the Crown land Minister refuses to consent under subsection (4)(c), he or she must, within 7 days after the decision to refuse, give the person proposing to carry out the search a statement in writing of the reasons for the decision.
- (8) A person may apply to the Tribunal for review of a decision by the Crown land Minister—
 - (a) to refuse to consent under subsection (4)(c);
or
 - (b) to consent subject to conditions under subsection (4)(b).

77B Special requirements for particular land

S. 77B
inserted by
No. 6/2009
s. 20.

- (1) A person who proposes to carry out any search for stone on land that is owned by, vested in or managed or controlled by an Authority under the **Water Act 1989** or a licensee within the meaning of the **Water Industry Act 1994** must obtain the consent of that Authority or licensee.
- (2) A person who proposes to carry out any search for stone on land on which there is a public highway, road or street must give 21 days notice of the proposed search to the person or body having the care or management of the public highway, road or street.

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- (3) A person must not do work at a depth of more than 0.75 metres below any land that is within 100 metres of—
- (a) a waterway that is owned by, vested in or managed or controlled by an Authority under the **Water Act 1989** or a licensee within the meaning of the **Water Industry Act 1994**; or
 - (b) any main drains, sewers, aqueducts, channels or pipelines of that Authority or licensee—
- unless the person has first consulted with the Authority or licensee and does so in compliance with any conditions specified by the Authority or licensee.
- (4) The Authority or licensee may, by instrument—
- (a) consent to search for stone on the land referred to in subsection (1); or
 - (b) consent to search for stone on the land referred to in subsection (1) subject to conditions; or
 - (c) refuse to consent to search for stone on the land referred to in subsection (1).
- (5) The Authority or licensee must not unreasonably withhold consent.
- (6) If the Authority or licensee does not, within 60 days after the consent under subsection (1) being sought, consent or refuse to consent, that consent is deemed to have been granted.
- (7) If the Authority or licensee refuses to consent under subsection (1) the Authority or licensee must, within 7 days after the decision to refuse, give the person proposing to carry out the search a statement in writing of the reasons for the decision.
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- (8) A person may apply to the Tribunal for review of a decision—
- (a) by the Authority or licensee to refuse to consent under subsection (4)(a); or
 - (b) by the Authority or licensee to consent subject to conditions under subsection (4)(b); or
 - (c) by the Authority or licensee to specify any conditions for that person to do work at a depth of more than 0.75 metres below any land under subsection (3).

77C Authority to search for stone for Department

S. 77C
inserted by
No. 6/2009
s. 20.

- (1) The Minister may authorise any person to enter upon and occupy any private land for the purpose of the carrying on by the Department of any survey or search for stone and do anything that may be necessary for the purpose of the survey or search.
- (2) Any person authorised in writing by the Minister in accordance with this section and any person assisting that person or acting under the orders of that person may enter and occupy private land and do anything mentioned in subsection (1) which is authorised by the Minister.
- (3) An authority under this section must be in writing.

77D Form and content of consent

S. 77D
inserted by
No. 6/2009
s. 20.

- (1) A consent granted under section 77A—
 - (a) must describe the land in respect of which the consent is granted; and
 - (b) must specify the stone in respect of which it is granted; and
 - (c) is subject to any conditions, limitations and restrictions that are prescribed; and

s. 77E

(d) is subject to any conditions, limitations or restrictions that the Crown land Minister thinks fit to impose.

- (2) A consent granted under section 77A remains in force, unless sooner cancelled or suspended, for a period of 2 years from the date the consent was granted.

S. 77E
inserted by
No. 6/2009
s. 20.

77E Effect of consent under section 77A

- (1) The holder of a consent under section 77A is, during the currency of the consent, entitled to carry out any surveys or other operations that are authorised by the consent for the purpose of searching for the stone specified in the consent on the land in respect of which the consent is granted.
- (2) In carrying out any of those surveys or operations the holder of a consent under section 77A must proceed in an expeditious manner without causing unnecessary damage and without interfering with the existing use of the land to a greater extent than is necessary.

S. 77F
inserted by
No. 6/2009
s. 20.

77F Power of Minister to cancel or suspend consent etc.

- (1) The Crown land Minister may at any time—
- (a) cancel or suspend a consent under section 77A if the holder of the consent has contravened any provision of this Act or any condition, limitation or restriction to which the consent is subject; or
- (b) withdraw, from the operation of a consent granted under section 77A, any land which is required for any public purpose and cancel the part of the consent that relates to the land withdrawn; or
- (c) at the request of the holder of the consent, cancel the consent either wholly or in part.

- (2) The holder of a consent under section 77A may apply to the Tribunal for review of a decision of the Crown land Minister to cancel or suspend the consent under subsection (1)(a) or cancel part of the consent under subsection (1)(b).

Division 2—Work Plans and Extractive Industry Work Authorities

77G Work plan

S. 77G
inserted by
No. 6/2009
s. 20.

- (1) A person who proposes to apply for an extractive industry work authority to carry out an extractive industry must lodge a work plan with the Department Head.
- (2) Subsection (1) does not apply to a person who proposes to apply for an extractive industry work authority to carry out an extractive industry—
- (a) on land that has an area of less than 5 hectares and a depth of less than 5 metres; and
 - (b) that does not require blasting or the clearing of native vegetation—

unless the Minister declares, in writing, that the applicant must lodge a work plan.

- (3) A work plan must—
- (a) contain the prescribed information; and
 - (ab) if the extractive industry work authority relates to a declared quarry, in addition to the prescribed information referred to in paragraph (a), prescribed quarry stability information; and
 - (b) include a rehabilitation plan for the land proposed to be covered by the work authority; and

S. 77G(3)(ab)
inserted by
No. 55/2010
s. 50.

- (c) in relation to extractive industry activities proposed to be carried out under the work authority, include a plan for consulting with the community prepared in accordance with the regulations and any guidelines issued by the Minister relating to such plans (a *community engagement plan*).
- (4) The Department Head must, within 1 month after the work plan is lodged—
 - (a) approve the work plan with or without conditions; or
 - (b) require the changes to the rehabilitation plan or the work plan specified in a notice to the person lodging the plan to be made before the plan will be approved; or
 - (c) refuse to approve the work plan—and notify the person who lodged the plan.

S. 77H
inserted by
No. 6/2009
s. 20.

77H Variation of work plan

- (1) On application by the holder of an extractive industry work authority under subsection (3) for variation of the work plan relating to that authority, the Department Head may, by instrument served on the holder of an extractive industry work authority, approve the variation.
- (2) The Department Head may direct the holder of an extractive industry work authority to submit an application for approval of—
 - (a) a variation of a work plan;
 - (b) a variation or revocation of any condition imposed on the approval of a work plan;
 - (c) the imposition of new conditions on the approval of a work plan.

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- (3) The holder of an extractive industry work authority who—
- (a) proposes to vary an approved work plan; or
 - (b) is directed by the Department Head under subsection (2) to submit an application—
- must lodge an application for approval of the proposed variation with the Department Head.
- (4) An application for approval of a variation must contain the prescribed information.
- (5) The Department Head must, within 1 month after the application for approval of a variation is lodged—
- (a) approve the variation with or without conditions; or
 - (b) require the changes specified in a notice to the holder of the work authority to be made before the variation will be approved; or
 - (c) refuse to approve the variation—
- and notify the holder of the work authority.
- (6) The Department Head must not approve a variation of a work plan unless he or she has consulted the municipal council in whose municipal district the land is situated.
- (7) Once the Department Head has decided to approve a variation the approved work plan for the work authority is the work plan as amended by that variation.
- (8) If an application to vary the work plan consists solely of the inclusion of a community engagement plan in the work plan the Department Head must give the holder of the work authority a written notice approving, or refusing to approve, or asking for changes to, the variation of a work plan within 30 days of receiving the application.
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s. 77I

S. 77I
inserted by
No. 6/2009
s. 20.

77I Extractive industry work authorities

- (1) A person who proposes to carry out an extractive industry may apply to the Minister for an authority to carry out the extractive industry.
- (2) The Minister may grant or refuse to grant an authority to a person (who has applied for the authority) to carry out the extractive industry specified in the authority on the land specified in the authority.
- (3) The Minister must not grant an authority under subsection (2) unless he or she is satisfied that the applicant has—
 - (a) when required under section 77G, a work plan approved under that section; and
 - (b) entered into a rehabilitation bond under section 80; and
 - (c) complied with any relevant planning scheme and obtained any necessary planning permit under that planning scheme; and
 - (d) obtained all necessary consents and other authorities required by or under this or any other Act; and
 - (e) in the case of Crown land, obtained the consent of the Crown land Minister—and that the proposed extractive industry will, if carried out in accordance with the extractive industry work authority, comply with any relevant planning scheme.
- (4) The Crown land Minister may consent to the carrying out of an extractive industry on Crown land—
 - (a) for an unlimited period or for a specified period; and

- (b) unconditionally or subject to any specified conditions.
- (5) An extractive industry work authority must describe the land in respect of which the work authority is granted.
- (6) The grant of an extractive industry work authority under this section does not confer a right on the holder of the authority to enter any land without the consent of the owner of the land.

Note

The granting of an authority under this section may be a land use activity under the **Traditional Owner Settlement Act 2010** if it relates to public land to which a land use activity agreement under that Act applies.

Note to s. 77J
inserted by
No. 62/2010
s. 140(2).

77J Conditions of extractive industry work authorities

S. 77J
inserted by
No. 6/2009
s. 20.

- (1) The Minister may impose conditions to which an extractive industry work authority is to be subject, including but not limited to conditions about—
 - (a) the rehabilitation of the land to a safe, stable and visually acceptable condition;
 - (b) the time when rehabilitation work must be commenced or completed;
 - (c) the protection of the environment;
 - (d) the protection of the amenity of the area;
 - (e) the protection of groundwater;
 - (f) ensuring the safety of the public;
- (g) the payment of royalties;
- (h) the payment of fees (if any) prescribed in the regulations.

S. 77J(1)(f)
amended by
No. 55/2010
s. 51.

s. 77K

- (2) If, by the operation of section 77G(2), a person carrying out an extractive industry is not required to have a work plan, the Minister may impose a condition requiring compliance with a Code of Practice on the extractive industry work authority for that extractive industry operation.

S. 77K
inserted by
No. 6/2009
s. 20.

77K Extractive industry work authority holder's duty to consult with community

The holder of an extractive industry work authority has a duty to consult with the community throughout the period of the work authority by—

- (a) sharing with the community information about any activities authorised by the work authority that may affect the community; and
- (b) giving members of the community a reasonable opportunity to express their views about those activities.

S. 77KA
inserted by
No. 55/2010
s. 52.

77KA Chief Inspector to be notified of reportable events in relation to quarries

- (1) The holder of an extractive industry work authority who carries out an extractive industry at a quarry must report to the Chief Inspector in accordance with the regulations a reportable event at the quarry as soon as practicable after the reportable event occurs.
- (2) In this section, *reportable event* means an event prescribed as a reportable event for the purposes of this section.

S. 77KB
inserted by
No. 55/2010
s. 52.

77KB Variation application must be made if quarry is declared

- (1) If the Minister declares by Order under section 7C that a specified quarry is a declared quarry, the holder of an extractive industry work authority in respect of the declared quarry, within 60 days

after the declaration, must make an application to vary the approved work plan in respect of the declared quarry.

- (2) The application must contain the prescribed quarry stability information.
- (3) Section 77H(2) to (8) apply to an application lodged under this section.

77L Period of extractive industry work authority

An extractive industry work authority remains in force for the period for which the carrying out of an extractive industry is permitted on the land under the relevant planning scheme or a planning permit unless—

- (a) the work authority is sooner cancelled; or
- (b) in the case of Crown land, the Crown land Minister's consent is revoked, lapses or otherwise ceases to have effect; or
- (c) it is varied under section 77M.

S. 77L
inserted by
No. 6/2009
s. 20.

77M Variation of an extractive industry work authority

- (1) The Minister may, by instrument served on the holder of the extractive industry work authority, vary the work authority, or vary, suspend or revoke a condition of the extractive industry work authority or add a new condition.
- (2) The Minister may act under subsection (1)—
 - (a) at the request of the holder of the work authority; or
 - (b) if the Minister decides it is necessary for the protection of the environment or the rehabilitation or stabilisation of the land to which the extractive industry work authority applies; or

S. 77M
inserted by
No. 6/2009
s. 20.

s. 77N

S. 77M(2)(c)
amended by
No. 55/2010
s. 53.

(c) if the Minister decides it is necessary for ensuring the safety of the public.

- (3) The Minister must not act under subsection (1) unless he or she has consulted with the holder of the extractive industry work authority and the municipal council in whose municipal district the land is situated.

S. 77N
inserted by
No. 6/2009
s. 20.

77N Transfer of an extractive industry work authority

- (1) The holder of an extractive industry work authority may, with the consent in writing of the Minister, transfer that work authority to another person.
- (2) The Minister must consent to the transfer of an extractive industry work authority if—
- (a) the person to whom the extractive industry work authority is to be transferred has entered into a rehabilitation bond for an amount determined by the Minister; and
 - (b) the Minister is satisfied that the work plan relating to the extractive industry work authority is adequate.
- (3) If the Minister is not satisfied that the work plan relating to the extractive industry work authority is adequate, the Minister may consent to the transfer of the extractive industry work authority subject to the person to whom the extractive industry work authority is to be transferred being required to submit a new work plan for approval by the Department Head within the time specified by the Minister.

77O Cancellation of an extractive industry work authority

**S. 77O
inserted by
No. 6/2009
s. 20.**

- (1) The Minister may cancel an extractive industry work authority by instrument served on the holder of the work authority if at the end of 28 days the Minister is satisfied that the holder—
 - (a) has not substantially complied with—
 - (i) this Act or the regulations; or
 - (ii) any condition to which the authority is subject; or
 - (iii) a condition of a work plan under section 77G; or
 - (iv) a condition on the approval of a variation of a work plan under section 77H; or
 - (v) any relevant planning scheme or planning permit; or
 - (b) has endangered an employee or a member of the public on or near land to which the extractive industry work authority applies; or
 - (c) has undertaken work on the land other than in accordance with the work plan.
- (2) Before cancelling an extractive industry work authority under subsection (1), the Minister must give the holder of the work authority 28 days written notice of his or her intention to cancel and, in the notice, request the holder to provide reasons why the work authority should not be cancelled.

s. 77P

S. 77P
inserted by
No. 6/2009
s. 20.

77P Review of certain decisions about work plans and extractive industry authorities

- (1) The holder of an extractive industry work authority may apply to the Tribunal for review of—
 - (a) a decision of the Department Head under section 77G(4)(a) to approve a work plan relating to that authority with conditions; or
 - (b) a decision of the Department Head under section 77H(5) to approve the variation of a work plan relating to that authority with conditions; or
 - (c) a decision of the Minister to impose a condition on the extractive industry work authority under section 77J; or
 - (d) a decision of the Minister to vary a condition of the extractive industry work authority under section 77M or impose a new condition under that section; or
 - (e) a decision of the Minister under section 77N to impose a new condition on the extractive industry work authority that the Minister has consented to be transferred to another person under that section.
- (2) The former holder of an extractive industry work authority may apply to the Tribunal for review of a decision of the Minister to cancel the work authority under section 77O.
- (3) Subsection (1) does not apply to a condition that has been imposed on an approval of a work plan or of a variation to a work plan if—
 - (a) the condition is substantially the same as a condition of the relevant planning scheme or a planning permit for the carrying out of the extractive industry; or

- (b) a decision to impose the condition has already been the subject of review by the Tribunal.

Division 3—Managers

77Q Manager must be appointed

S. 77Q
inserted by
No. 6/2009
s. 20.

- (1) The holder of an extractive industry work authority must not carry out any extractive industry unless the holder has appointed a quarry manager or a person to manage the extractive industry operation.

Penalty: 50 penalty units.

- (2) A person must not operate a quarry unless the person has appointed a quarry manager to manage the quarry.

Penalty: 50 penalty units.

- (3) The holder of an extractive industry work authority or the operator of a quarry may appoint himself or herself to be the quarry manager or person to manage the extractive industry operation.

Division 4—Planning requirements

77R Powers to amend planning scheme

S. 77R
inserted by
No. 6/2009
s. 20.

- (1) In addition to any other power to prepare, adopt or approve amendments to planning schemes, the Minister administering the **Planning and Environment Act 1987** may prepare, adopt and approve amendments to any planning scheme to—
- (a) set out policies relating to extractive industries; or
- (b) enable the carrying out of an extractive industry on land with a planning permit; or

- (c) specify the Minister administering this Act or any other person or body as a referral authority for any application for a planning permit to carry out an extractive industry.
- (2) The **Planning and Environment Act 1987** (except section 12(2), Divisions 1 and 2 of Part 3 and section 39(1) to (5) and any regulations made for the purposes of those provisions) applies to the preparation, adoption and approval of an amendment under subsection (1).
- (3) Section 39(7) of the **Planning and Environment Act 1987** applies to an amendment prepared, adopted or approved under subsection (1) as if before "Division 1" there were inserted "section 12(1) or".
- (4) Section 39(8) of the **Planning and Environment Act 1987** applies to an amendment prepared, adopted or approved under subsection (1) as if—
 - (a) the expression "Except for an application under this section," were omitted; and
 - (b) before "Division 1" there were inserted "section 12(1) or".
- (5) Nothing in this section prevents either House of Parliament exercising its power under section 38 of the **Planning and Environment Act 1987**.

S. 77S
inserted by
No. 6/2009
s. 20.

77S Land subject to a licence under Part 2

- (1) A person who applies to a responsible authority for a permit under the **Planning and Environment Act 1987** to carry out an extractive industry in respect of land which is the subject of a licence under Part 2 must—
 - (a) lodge a copy of the application with the Department Head; and

- (b) send a copy of the application to any holder of an exploration or mining licence under Part 2 relating to the land or any part of the land to which the application applies; and
 - (c) send a notice to any holder of an exploration or mining licence referred to in paragraph (b) seeking consent to the carrying out of the extractive industry—

on the same day that the applicant lodges the application with the responsible authority.
- (2) The applicant for an extractive industry work authority over land in respect of which there is a licence under Part 2 must forward to the Minister—
 - (a) a copy of any consent to the granting of an extractive industry work authority that the licensee has given to the applicant; and
 - (b) if the licence is an exploration licence, and the licensee is withholding consent to the granting of an extractive industry work authority, evidence that the applicant has given the licensee a copy of the application under subsection (1)(b) and a notice seeking consent under subsection (1)(c).
- (3) If land that is the subject of an application for an extractive industry work authority is also the subject of an exploration or mining licence under Part 2, the Minister must not grant an extractive industry work authority over the land unless—
 - (a) the Minister is satisfied that the licensee has consented to the granting of an extractive industry work authority; or
 - (b) if the licence is an exploration licence and the licensee is withholding consent, the Minister is satisfied that the licensee is unreasonably withholding consent.

s. 77T

S. 77T
inserted by
No. 6/2009
s. 20.

77T Environment Effects Statement

If under a planning scheme a permit is required to be obtained for carrying out an extractive industry on the land covered by an extractive industry work authority in accordance with that work authority, the holder of the work authority is not required to obtain a permit if—

- (a) an Environment Effects Statement has been prepared under the **Environment Effects Act 1978** on the work proposed to be done under the work authority; and
- (b) an assessment of that Statement by the Minister administering the **Environment Effects Act 1978** has been submitted to the Minister; and
- (c) the work authority was granted by the Minister following the Minister's consideration of that assessment.

PART 7—REHABILITATION

New Pt 7
(Heading)
inserted by
No. 6/2009
s. 20.

77U Definitions

S. 77U
inserted by
No. 6/2009
s. 20.

In this Part—

auditor means an environmental auditor appointed
under section 53S of the **Environment
Protection Act 1970**;

authority means—

S. 77U def. of
authority
amended by
No. 55/2010
s. 56(1).

- (a) an exploration licence under Part 2; or
- (b) a mining licence under Part 2; or
- (c) an extractive industry work authority;

authority holder means the holder of an authority.

78 Licensee must rehabilitate land

- (1) The holder of a mining licence must rehabilitate
land in accordance with the rehabilitation plan
approved by the Department Head.
- (2) The holder of an exploration licence must
rehabilitate land in accordance with the conditions
in the licence.

S. 78(1)
amended by
No. 76/1998
s. 31(h).

S. 78(2)
amended by
No. 86/1993
s. 30(1).

* * * * *

S. 78(3)
repealed by
No. 86/1993
s. 30(2).

- (4) The owner of land may request the licensee to
enter into a written agreement as to the
rehabilitation plan.

s. 78A

S. 78A
inserted by
No. 6/2009
s. 21.

78A Holder of extractive industry work authority must rehabilitate land

- (1) The holder of an extractive industry work authority must rehabilitate land in accordance with the rehabilitation plan approved by the Department Head.
- (2) The holder of an extractive industry work authority must rehabilitate land in accordance with the conditions in the authority.

79 Rehabilitation plan

A rehabilitation plan must—

(a) take into account—

- (i) any special characteristics of the land; and
- (ii) the surrounding environment; and
- (iii) the need to stabilise the land; and
- (iv) the desirability or otherwise of returning agricultural land to a state that is as close as is reasonably possible to its state before the mining licence or extractive industry work authority was granted; and
- (v) any potential long term degradation of the environment; and

S. 79(a)(iv)
amended by
No. 6/2009
s. 22(1).

S. 79(a)(v)
inserted by
No. 82/2000
s. 53.

(b) be prepared by—

- (i) the applicant for the extractive industry work authority after consultation with the owner of the land, if the land is private land; or
- (ii) the licensee after consultation with the owner of the land, if the land is private land and the licence is a mining licence.

S. 79(b)
amended by
76/1998
s. 31(i),
substituted by
No. 6/2009
s. 22(2).

79A Rehabilitation liability assessment

S. 79A
inserted by
No. 63/2006
s. 41.

- (1) The Minister may require an authority holder to undertake an assessment of the authority holder's rehabilitation liability under section 78 or 78A (a *rehabilitation liability assessment*) for the purpose of determining the amount of a rehabilitation bond or reviewing the amount of a rehabilitation bond entered into or to be entered into by the authority holder.
- (2) A rehabilitation liability assessment must—
 - (a) be undertaken in a manner and form determined by the Minister; and
 - (b) take into account works required to be undertaken to rehabilitate the land in accordance with the requirements of section 78 or 78A (as the case may be).
- (3) The Minister may require an authority holder to engage an auditor to certify that a rehabilitation liability assessment has been prepared in accordance with subsection (2) and that it is accurate.
- (4) An auditor who has given a certification under subsection (3) must forward a copy of the certificate to the Minister within 21 days after giving that certification.

S. 79A(1)
amended by
Nos 6/2009
s. 23(1),
59/2010 s. 51.

S. 79A(2)(b)
amended by
No. 6/2009
s. 23(2).

S. 79A(3)
amended by
No. 6/2009
s. 23(3).

80 Rehabilitation bond

- (1) A licensee or an applicant for an extractive industry work authority must enter into a rehabilitation bond for an amount determined by the Minister.

S. 80(1)
amended by
No. 6/2009
s. 24(1).

Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990
Part 7—Rehabilitation

s. 80

S. 80(2)
amended by
No. 76/1998
s. 31(j)(i),
substituted by
No. 63/2006
s. 42.

(2) If land covered by a mining licence is private land, the Minister must, before determining the amount of a rehabilitation bond, consult with—

(a) the council in whose municipal district the land is situated; and

(b) the owner of the land.

S. 80(2A)
inserted by
No. 6/2009
s. 24(2).

(2A) If the land that is proposed to be covered by an extractive industry work authority is private land, the Minister must, before determining the amount of a rehabilitation bond, consult with the council in whose municipal district the land is situated.

S. 80(3)
amended by
Nos 76/1998
s. 31(j)(ii),
6/2009
s. 24(3).

(3) The condition of a rehabilitation bond is that the authority holder rehabilitates the land as required by section 78 or 78A to the satisfaction of the Minister.

S. 80(4)
amended by
No. 6/2009
s. 24(4)(b).

(4) The Minister may, at any time after a rehabilitation bond is entered into and after consultation with the authority holder, by notice served on the authority holder require the licensee to enter into a further rehabilitation bond for an amount determined by the Minister if he or she is of the opinion that the amount of the bond already entered into is insufficient¹³.

S. 80(5)
amended by
No. 6/2009
s. 24(5).

(5) The Minister may serve on a licensee who has not complied with a requirement under subsection (4) within 1 month after service of notice of the requirement, a notice prohibiting the authority holder from doing any work until the authority holder has entered into the further rehabilitation bond.

- (6) The licensee must comply with a notice under subsection (5)¹⁴.

S. 80(6)
amended by
No. 82/2000
s. 54(1).

Penalty: In the case of a corporation,
1000 penalty units.

In any other case, 200 penalty units.

Default penalty:

In the case of a corporation, 20 penalty
units.

In any other case, 10 penalty units.

81 Rehabilitation

S. 81
amended by
Nos 82/2000
s. 54(2),
63/2006 s. 43
(ILA s. 39B(1)).

- (1) The authority holder must rehabilitate land in the course of doing work under the authority and must, as far as practicable, complete the rehabilitation of the land before the authority or any renewed authority ceases to apply to that land.

S. 81(1)
amended by
No. 6/2009
s. 25(1)(a).

- (2) If the rehabilitation has not been completed before the authority or renewed authority ceases to apply to the land the former authority holder must complete it as expeditiously as possible.

S. 81(2)
inserted by
No. 63/2006
s. 43,
amended by
No. 6/2009
s. 25(1)(b).

- (3) While the rehabilitation is being completed, a former authority holder must continue the appointment of—

S. 81(3)
inserted by
No. 63/2006
s. 43,
substituted by
No. 6/2009
s. 25(2).

(a) in the case of a former licensee, a manager to control and manage the former licence worksite; and

(b) in the case of a former extractive industry work authority holder, a quarry manager or person to manage the site where the extractive industry operation was carried out.

Penalty: 20 penalty units.

s. 81A

81A Certification that land has been rehabilitated

S. 81A
inserted by
No. 63/2006
s. 44.

S. 81A(1)
amended by
No. 6/2009
s. 26.

- (1) The Minister may require that an authority holder or a former authority holder engage an auditor to certify that land has been rehabilitated as required by section 78 for the purpose of deciding whether to return any rehabilitation bond under section 82.
- (2) An auditor who has given a certification under subsection (1) must forward a copy of the certificate to the Minister within 21 days after giving that certification.

82 Return of bond if rehabilitation satisfactory

S. 82(1)
amended by
Nos 76/1998
s. 31(k),
6/2009
s. 27(a).

- (1) The Minister must return the bond or bonds to the authority holder or former authority holder as soon as possible if the Minister is satisfied—

S. 82(1)(a)
amended by
No. 6/2009
s. 27(b).

- (a) that the land has been rehabilitated as required by section 78 or 78A (as the case may be); and
- (b) that the rehabilitation is likely to be successful.

S. 82(2)
amended by
No. 6/2009
s. 27(c).

- (2) If the land is private land the Minister must not return the bond or bonds to the holder or former holder of a mining licence or the holder or former holder of an extractive industry work authority until after the owner of the land and the council in whose municipal district the land is situated have been consulted.

S. 82(3)
inserted by
No. 82/2000
s. 55,
amended by
No. 6/2009
s. 27(d).

- (3) The Minister may, as a condition of returning a bond or bonds to a authority holder or a former authority holder, require that person to enter into a further rehabilitation bond if any land or part of the land to which the bond relates has not been rehabilitated, or requires further rehabilitation.

83 Minister may carry out rehabilitation

- (1) The Minister may take any necessary action to rehabilitate land if he or she—
 - (a) is not satisfied that the land has been rehabilitated as required by section 78 or 78A (as the case may be); or
 - (b) is satisfied that further rehabilitation of the land is necessary; or
 - (c) is requested to do so by the owner of the land.
- (2) The Minister must, if he or she refuses to act on a request under subsection (1)(c), inform the owner of the land of the reasons for that refusal.
- (3) The Minister may only take action under subsection (1) if he or she has requested the authority holder or former authority holder to rehabilitate the land and the authority holder or former authority holder has failed to do so within a reasonable period after the request.
- (4) The Minister may recover as a debt due to the Crown in a court of competent jurisdiction any amount by which the cost incurred under subsection (1) exceeds the amount of the bond or bonds.
- (5) The Minister must, if satisfied that no further rehabilitation of the land is likely to be necessary, return to the authority holder or former authority holder as soon as possible any balance of the bond or bonds after any cost incurred under subsection (1) is deducted.
- (6) In making a decision under subsection (5), the Minister must take into account the possibility that some of the damage caused to the land by the authorised activities may not become evident for some time.

S. 83(1)(a)
amended by
No. 6/2009
s. 28(a).

S. 83(3)
amended by
No. 6/2009
s. 28(b).

S. 83(5)
amended by
No. 6/2009
s. 28(c).

S. 83(6)
substituted by
No. 82/2000
s. 56,
amended by
No. 6/2009
s. 28(d).

84 Payment out of Consolidated Fund

Any money required by the Minister under this Part is payable out of the Consolidated Fund, which is appropriated to the necessary extent.

PART 8—COMPENSATION

Division 1—General

Pt 8 Div. 1
(Heading)
inserted by
No. 6/2009
s. 29.

84A Application of this Division

This Division does not apply in any circumstances in which Division 2 applies.

S. 84A
inserted by
No. 6/2009
s. 29.

85 What compensation is payable for

- (1) Compensation is payable by the licensee to the owner or occupier of private land for any loss or damage that has been or will be sustained as a direct, natural and reasonable consequence of the approval of the work plan or the doing of work under the licence including—
 - (a) deprivation of possession of the whole or any part of the surface of the land; and
 - (b) damage to the surface of the land; and
 - (c) damage to any improvements on the land; and
 - (d) severance of the land from other land of the owner or occupier; and
 - (e) loss of amenity, including recreation and conservation values; and
 - (f) loss of opportunity to make any planned improvement on the land; and
 - (g) any decrease in the market value of the owner or occupier's interest in the land; and

S. 85(1)(g)
amended by
No. 82/2000
s. 57(1).

s. 85

S. 85(1)(h)
inserted by
No. 82/2000
s. 57(1).

(h) loss of opportunity to use tailings disposed of with the consent of the Minister under section 14(2).

(2) The amount of compensation payable under subsection (1)—

(a) must, if it is necessary for the owner or occupier of land to obtain replacement land, take account of the reasonable incidental expenses incurred in obtaining and moving to that land; and

(b) may be increased by up to 10% by way of solatium to compensate the owner or occupier for intangible and non-pecuniary disadvantages that are not otherwise compensable and that result from the approval of the work plan or the doing of work under the licence.

S. 85(2A)
inserted by
No. 6/2009
s. 30.

(2A) The holder of an extractive industry work authority is entitled to compensation under this section only for the deprivation of possession of the whole or any part of the surface of the land and for the loss of opportunity to extract stone from the whole or any part of the land.

(3) Compensation is not payable for the value of any mineral in or under the surface of land covered by a licence.

(4) Any amount of compensation paid, agreed to be paid or determined under this Part is not affected by any subsequent change in the ownership or occupancy of the land.

(5) A licensee is not liable to pay any greater total amount of compensation because of a change in the ownership or occupancy of the land.

- (6) Compensation is not payable in respect of any land which only became private land after the commencement of work on that land under the licence.

85A What compensation is payable for—Crown land

**S. 85A
inserted by
No. 82/2000
s. 58.**

- (1) This section applies if the Minister is of the opinion that the approval of a work plan, or the carrying out of any work under a licence, in relation to any Crown land has, or will, result in loss or damage of the following nature being sustained as a direct, natural and reasonable consequence of the approval of the plan, or the carrying out of the work—
- (a) deprivation of possession of the whole, or any part of the surface, of the land; or
 - (b) damage to the surface of the land to such an extent that it cannot be rehabilitated and returned to its former, or a comparable, state; or
 - (c) damage to any improvements on the land; or
 - (d) severance of the land from any other Crown land; or
 - (e) loss of opportunity to make any planned improvement on the land.
- (2) The Minister may require the licensee to pay compensation for the loss or damage—
- (a) to the Crown; or
 - (b) to any person who is authorised to undertake activities on the land under a lease, licence, permit or other authority granted under an Act.
- (3) In determining whether compensation should be paid under subsection (2)(a), the Minister must take into account any benefits that may accrue to

the people of Victoria from the work carried out under the licence (for example, the provision of infrastructure).

- (4) In determining the amount of compensation to be paid, the Minister may, if it is necessary for the Crown to obtain replacement land, take account of the reasonable incidental expenses incurred in obtaining that land.
- (5) If the Minister determines that compensation should be paid to a person referred to in subsection (2)(b), the Minister may increase the amount payable by up to 10% by way of solatium to compensate the person for intangible and non-pecuniary disadvantages for which compensation is not otherwise payable and that result from the approval or the carrying out of the work.
- (6) Compensation is not payable in respect of any land which only became Crown land after work under the licence started on that land.
- (7) Sections 85(4) and (5) also apply to this section.

86 When a claim can be made

A claim for compensation for any loss or damage under section 85 which is not the subject of a registered compensation agreement may be made at any time until the end of the period of three years—

- (a) after the loss or damage occurred; or
- (b) after the licence expires—

whichever is the earlier.

87 Compensation agreement

- (1) The licensee and the owner or occupier may enter into a written agreement as to the amount of compensation payable under section 85.

- (2) The licensee must lodge an agreement under subsection (1) with the mining registrar for registration.
- (3) A compensation agreement may include (among other things)—
 - (a) a description of the licensee's proposed work, including the location and area of that work; and
 - (b) the anticipated date of commencement and anticipated duration of the proposed work; and
 - (c) agreed points of entry onto and exit from the land for the purposes of the proposed work; and
 - (d) the number and type of vehicles, plant and equipment involved in the proposed work; and
 - (e) a description of the facilities, including sanitary arrangements, which the licensee will be providing on the land.

88 Determination of compensation disputes

- (1) The owner or occupier or the licensee may—
 - (a) apply to the Tribunal for determination of a disputed claim for compensation; or
 - (b) refer a disputed claim for compensation to the Supreme Court for determination—

S. 88(1)
amended by
No. 91/1994
s. 28(2)(a),
substituted by
No. 52/1998
s. 311(Sch. 1
item 64.7).

in accordance with Part 10 of the **Land Acquisition and Compensation Act 1986** as if it were a claim for compensation under that Act and the licensee were the Authority referred to in that Part.

Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990
Part 8—Compensation

s. 88

S. 88(2)
amended by
Nos 91/1994
s. 28(2)(b)(c),
52/1998
s. 311(Sch. 1
item 64.8).

- (2) A party who applies to the Tribunal in respect of a claim or refers a claim to the Court under subsection (1) is only entitled to have that claim determined by the Tribunal or the Court (as the case requires) if the Tribunal or the Court is satisfied, after considering evidence produced to it, that the party has attempted to settle the claim by conciliation but has not been able to do so because the other party has refused to negotiate a settlement or because both parties are unable to agree.

- (3) In its application to a claim referred under subsection (1) Part 10 of the **Land Acquisition and Compensation Act 1986** has effect as if—

S. 88(3)(a)
amended by
No. 91/1994
s. 28(2)(b).

- (a) it required the Tribunal or the Court (as the case requires) in determining the compensation payable to have regard to the provisions of this Part; and

S. 88(3)(b)
amended by
No. 91/1994
s. 28(2)(b).

- (b) section 91(1) provided that the licensee must pay the licensee's own costs and the costs of the other party unless—

S. 88(3)(b)(i)
substituted by
No. 82/2000
s. 57(2).

- (i) the other party is not the owner or occupier of the land affected; or

- (ii) the other party has been frivolous or vexatious or has otherwise acted unreasonably—

in which case the Tribunal or the Court (as the case requires) may, subject to that section, award such costs as it thinks proper.

- (4) The licensee must lodge a copy of a determination under this section with the mining registrar for registration.

88A Determination of disputes—Crown land

S. 88A
inserted by
No. 82/2000
s. 59.

- (1) A licensee may apply to the Tribunal for a review of any requirement made by the Minister under section 85A.
- (2) A person who is authorised to undertake activities on Crown land under a lease, licence, permit or other authority granted under an Act may apply to the Tribunal for a review of any decision made by the Minister under section 85A that affects the person.
- (3) An application for a review under this section must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the applicant requests a statement of reasons for the decision, the day on which the statement of reasons is given to the applicant or the applicant is informed under section 46(5) of that Act that a statement of reasons will not be given.

89 Limit on total amount of compensation

- (1) The total amount of compensation payable under section 85(1) in respect of any land must be no greater if the land is not owned and occupied by the same person than if it is.
- (2) Nothing in subsection (1) limits the amount of solatium payable to the owner or occupier under section 85(2).
- (3) The maximum amount of compensation that a court or the Tribunal may order to be paid under section 85(1)(e) (loss of amenity) is \$10 000.

S. 89(3)
inserted by
No. 82/2000
s. 60.

s. 89AA

Pt 8 Div. 2
(Heading and
ss 89AA,
89AB)
inserted by
No. 6/2009
s. 31.

Division 2—Extractive industries search authorities

S. 89AA
inserted by
No. 6/2009
s. 31.

89AA Compensation—search authorities

- (1) Compensation is payable by the Crown to the owner or occupier of any land in respect of which an authority is granted under section 77C (a *search authority*) for damage that has been or will be sustained by the owner or occupier to crops or improvements, including permanent artificial water supply, by reason of any operation that has been or will be carried out on that land under the search authority.
- (2) The holder of a search authority must not commence any surveys or operations on any land unless the Crown has paid or tendered to the owner and to the occupier of the land the amount of compensation (if any) in each case that is—
 - (a) agreed on by the Crown and the owner or occupier (as the case may be); or
 - (b) in default of agreement, determined by the Magistrates' Court in accordance with subsection (6).
- (3) The Crown may treat and agree with the owner or occupier with respect to the amount of compensation to be paid.
- (4) An agreement is not valid unless it is in writing signed by the parties and a copy is lodged with the Secretary.
- (5) At least 28 days before the holder of a search authority commences to search for stone on any land he or she must notify the owner of the land or

the owner and the occupier of his or her intention to do so.

- (6) If within 21 days after notice of intention to commence to search for stone on any land has been given the parties have not agreed upon the compensation to be paid the amount may upon the application of either party be determined by the Magistrates' Court.

89AB Measure of compensation payable under section 89AA

**S. 89AB
inserted by
No. 6/2009
s. 31.**

Compensation payable under section 89AA is compensation for—

- (a) deprivation of the possession of the surface of the land or any part of the surface; and
 - (b) damage to the surface of any land and to any improvements on the land which has been caused by or may arise from the carrying on of any operation under the search authority on the land in respect of which the search authority was granted; and
 - (c) all consequential damage to the land.
-

Pt 8A
(Heading and
ss 89A–89H)
inserted by
No. 63/2006
s. 45.

PART 8A—CODES OF PRACTICE

S. 89A
inserted by
No. 63/2006
s. 45.

89A Power to make Codes of Practice

- (1) The Minister, in accordance with this Part, may make Codes of Practice that—
 - (a) specify standards and procedures for the carrying out of any of the objectives or purposes of this Act or the regulations made under this Act; and
 - (b) provide practical guidance to persons on complying with their obligations under this Act or the regulations made under this Act.
- (2) A Code of Practice may apply, adopt or incorporate any matter contained in any document, standard, rule, specification or method, formulated, issued, prescribed or published by any person whether—
 - (a) wholly or partially or as amended by the Code of Practice; or
 - (b) as formulated, issued, prescribed or published at the time the Code of Practice is made or at any time before then; or
 - (c) as formulated, issued, prescribed or published from time to time.

S. 89B
inserted by
No. 63/2006
s. 45.

89B Variation and revocation of Code of Practice

The Minister, in accordance with this Part, may vary or revoke a Code of Practice at any time.

89C Advertising of draft Code of Practice, variation or revocation

S. 89C
inserted by
No. 63/2006
s. 45.

- (1) The Minister must give notice of—
- (a) any draft Code of Practice which the Minister proposes to make;
 - (b) any variation of a Code of Practice which the Minister proposes to make;
 - (c) any revocation of a Code of Practice which the Minister proposes to make.
- (2) A notice under subsection (1) must—
- (a) state where a copy of the draft Code of Practice, variation or revocation (as the case requires) may be obtained; and
 - (b) state that submissions may be made to the Minister within 28 days of the publication of the notice; and
 - (c) be published—
 - (i) in the Government Gazette; and
 - (ii) in a newspaper circulating generally throughout the State.
- (3) Subsection (1) does not apply to any proposed variation to a Code of Practice—
- (a) to correct a clerical mistake; or
 - (b) to correct an error arising from an accidental slip or omission; or
 - (c) to update references.

89D Consideration of submissions

S. 89D
inserted by
No. 63/2006
s. 45.

The Minister must consider any submissions received by the Minister within the time specified in section 89C(2)(b).

s. 89E

S. 89E
inserted by
No. 63/2006
s. 45.

89E How is a Code of Practice made?

- (1) After the Minister has considered any submissions, the Minister may make the Code of Practice or the variation or revocation of the Code of Practice.
- (2) On the making of a Code of Practice or a variation or revocation of a Code of Practice the Minister must cause to be published in the Government Gazette notice of—
 - (a) the making of the Code of Practice or the variation or revocation of the Code of Practice; and
 - (b) in the case of the making of the Code of Practice or any variation, the place where copies of the Code of Practice may be obtained.
- (3) A Code of Practice or a variation or revocation of a Code of Practice takes effect on—
 - (a) the date that the notice under subsection (2) is published in the Government Gazette; or
 - (b) any later date specified in the notice.

S. 89F
inserted by
No. 63/2006
s. 45.

89F Availability of Code of Practice

A Code of Practice and any documents incorporated in a Code of Practice must be made available for public inspection free of charge—

- (a) at the principal office of the Department and major regional offices of the Department; or
- (b) in electronic form published on the Department's Internet site.

89G Code of Practice

- (1) Subject to subsection (2), a person is not liable to any civil or criminal proceedings merely because the person has failed to observe any provision of a Code of Practice.
- (2) Subsection (1) does not apply to the holder of an extractive industry work authority that is subject to a condition of compliance with a Code of Practice under section 77J(2).

S. 89G
inserted by
No. 63/2006
s. 45,
substituted by
No. 6/2009
s. 32.

89H Use of Code of Practice in proceedings

If in any proceeding under this Act it is alleged that a person contravened a provision of this Act in relation to which a Code of Practice was in effect at the time of the alleged contravention—

- (a) the Code of Practice is admissible in evidence in that proceeding; and
- (b) if the court is satisfied in relation to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention that—
 - (i) a provision of the Code of Practice is relevant to that matter; and
 - (ii) the person failed at any material time to observe that provision—

that matter must be taken as proved unless the court is satisfied that in respect of that matter the person complied with the provision of this Act otherwise than by way of observance of that provision of the Code of Practice.

S. 89H
inserted by
No. 63/2006
s. 45.

PART 9—INSPECTORS

Pt 9 Div. 1
(Heading)
inserted by
No. 63/2006
s. 46.

Division 1—Employment of inspectors

90 Employment of inspectors

S. 90(1)
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 134.4).

- (1) There may be employed under Part 3 of the
Public Administration Act 2004—

S. 90(1)(a)
substituted by
No. 82/2000
s. 61(a),
amended by
No. 6/2009
s. 33(1)(a).

- (a) a Chief Inspector; and

S. 90(1)(b)
amended by
No. 6/2009
s. 33(1)(b).

- (b) such number of inspectors as are necessary
for the purposes of this Act.

S. 90(2)
amended by
No. 46/1998
s. 7(Sch. 1).

- (2) A person must not be employed under
subsection (1) unless he or she has appropriate
qualifications and experience.

S. 90(3)
amended by
Nos 82/2000
s. 61(b),
6/2009
s. 33(2).

- (3) The Chief Inspector has all the powers of an
inspector.

91 Delegation by Chief Inspector

The Chief Inspector may, by instrument—

- (a) delegate to an inspector any power of the Chief Inspector; or
- (b) delegate any power of an inspector to—
 - (i) any person employed under Part 3 of the **Public Administration Act 2004**; or
 - (ii) any employee of Parks Victoria established under the **Parks Victoria Act 1998**—

other than this power of delegation.

92 Identity cards

- (1) The Department Head must issue an identity card to each inspector containing a photograph of the inspector and his or her signature.
- (2) An inspector must produce his or her identity card for inspection if asked to do so when performing a function or exercising a power under this Act or the regulations.
- (3) If a person to whom an identity card has been issued ceases to be an inspector, the person must return the identity card to the Department Head as soon as practicable.

S. 91
(Heading)
inserted by
No. 6/2009
s. 34(1).

S. 91
amended by
Nos 82/2000
s. 61(b),
6/2009
s. 34(2).

S. 91(a)
amended by
Nos 82/2000
s. 61(b),
6/2009
s. 34(2).

S. 91(b)
substituted by
No. 63/2006
s. 47.

S. 92
amended by
No. 86/1993
s. 31(a)(b),
substituted by
No. 63/2006
s. 48.

Pt 9 Div. 2
(Heading)
inserted by
No. 63/2006
s. 49.

Division 2—Performance of functions or exercise of powers

S. 93
substituted by
Nos 82/2000
s. 62, 63/2006
s. 49.

93 Inspectors subject to Department Head's directions

- (1) An inspector is subject to the Department Head's directions in the performance of his or her functions or in the exercise of his or her powers under this Act or the regulations.
- (2) A direction under subsection (1) may be of a general nature or may relate to a specified matter or specified class of matter.

Pt 9 Div. 3
(Heading and
ss 94–95B)
inserted by
No. 63/2006
s. 49.

Division 3—Powers relating to entry

New s. 94
inserted by
No. 63/2006
s. 49.

94 Power to enter

- (1) An inspector may enter a place that the inspector reasonably believes is a worksite at any time during working hours.
- (2) However, an inspector may enter any place that the inspector reasonably believes is a worksite at any time if the inspector reasonably believes that there is an immediate risk to the environment arising from the conduct of an undertaking at the place.

New s. 95
inserted by
No. 63/2006
s. 49.

95 General powers on entry

An inspector who enters a place under this Division may do any of the following—

- (a) inspect, examine and make enquiries at the place;
- (b) inspect and examine any thing (including a document) at the place;

- (c) bring any equipment or materials to the place that may be required;
- (d) seize any thing (including a document) at the place that may afford evidence of the commission of an offence against this Act or the regulations;
- (e) seize any thing at the place for further examination or testing but only if the inspector reasonably believes that the examination or testing is reasonably necessary and cannot be reasonably conducted on site;
- (f) take photographs or measurements or make sketches or recordings;
- (g) exercise any other power conferred on the inspector by this Act or the regulations;
- (h) do any other thing that is reasonably necessary for the purpose of the inspector performing his or her functions or exercising his or her powers under this Act or the regulations.

Note

The powers conferred by this section are limited if all or part of the place is used only for residential purposes (see section 95I).

95A Power to require production of documents etc.

**S. 95A
inserted by
No. 63/2006
s. 49.**

- (1) An inspector who enters a place under this Division may—
 - (a) require a person to produce a document or part of a document located at the place that is in the person's possession or control; and
 - (b) examine that document or part; and
 - (c) require a person at the place to answer any questions put by the inspector.

s. 95B

- (2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).

Penalty: In the case of a corporation,
300 penalty units;

In any other case 60 penalty units.

- (3) Before requiring a person to produce a document or part of a document or to answer questions under subsection (1), an inspector—
- (a) must produce his or her identity card for inspection by the person and warn the person that a refusal or failure to comply with the requirement, without reasonable excuse, is an offence; and
 - (b) must inform the person that he or she may refuse or fail to answer any question if answering the question would tend to incriminate him or her.
- (4) A person is not liable to be prosecuted for an offence against subsection (2) if the inspector concerned failed to comply with subsection (3).

Notes

- 1 The powers conferred by this section are limited if all or part of the place is used only for residential purposes (see section 95I).
- 2 This section does not affect legal professional privilege or client legal privilege (see section 95T) or, in the case of a requirement to answer questions, the privilege against self-incrimination (see section 95S).

**Note 2 to
s. 95A(4)
amended by
No. 69/2009
s. 54(Sch. Pt 1
item 37.1).**

**S. 95B
inserted by
No. 63/2006
s. 49.**

95B Power to take samples

- (1) An inspector who enters a place under this Division may take (without payment) samples of any thing at the place that may be required for analysis.

- (2) If an inspector intends to take a sample, he or she must notify the occupier or apparent occupier for the time being of the place of his or her intention.
- (3) Unless it is unsafe to do so, after taking the sample the inspector must—
 - (a) divide it into as many parts as are necessary and mark and seal or fasten up each part in a way that the nature of the sample allows; and
 - (b) if the occupier or apparent occupier requires the inspector to give them a part, give one part to that person; and
 - (c) keep one part for future comparison.
- (4) If it is determined that the sample is to be analysed the inspector must submit another part to an analyst for that purpose.

Division 4—Procedure relating to entry

Pt 9 Div. 4
(Heading and
ss 95C, 95D)
inserted by
No. 63/2006
s. 49.

95C Announcement on entry

S. 95C
inserted by
No. 63/2006
s. 49.

- (1) Immediately on entering a place under Division 3, an inspector must take all reasonable steps to notify the occupier or apparent occupier for the time being of the place of the entry and to produce his or her identity card for inspection by that person.
- (2) However, an inspector is not required to notify, or produce his or her identity card for inspection by, a person if—
 - (a) to do so would defeat the purpose for which the place was entered or cause unreasonable delay; or

s. 95D

- (b) the person is already aware that the inspector has entered the place or was notified in advance of when he or she would enter.

S. 95D
inserted by
No. 63/2006
s. 49.

95D Report to be given about entry

- (1) An inspector who enters a place under Division 3 must give a report concerning the entry when, or as soon as practicable after, the inspector leaves the place to the occupier or apparent occupier for the time being of the place.
- (2) The report must be in writing and include—
 - (a) the time of the entry and departure; and
 - (b) the purpose of the entry; and
 - (c) a description of things done while at the place; and
 - (d) a summary of the inspector's observations while at the place; and
 - (e) the procedure for contacting the Department Head and the inspector for further details of the entry; and
 - (f) the procedure for seeking review of any decision made by the inspector during the entry.
- (3) If the inspector takes photographs or makes sketches or recordings under section 95(f), the report must also include a statement that—
 - (a) the photographs have been taken or sketches or recordings have been made; and
 - (b) they are or will be available for inspection at a specified place.

S. 95D(4)
repealed by
No. 55/2010
s. 54.

* * * * *

Division 5—Search warrants

Pt 9 Div. 5
(Heading and
ss 95E–95H)
inserted by
No. 63/2006
s. 49.

95E Definition

In this Division a *place* includes a worksite, premises and a vehicle.

S. 95E
inserted by
No. 63/2006
s. 49.

95F Issue of search warrants

S. 95F
inserted by
No. 63/2006
s. 49.

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to a particular place if the inspector believes on reasonable grounds that there is, or may be within the next 72 hours, a particular thing (including a document) at the place that may afford evidence of the commission of an offence against this Act or the regulations.
- (2) A magistrate may issue the search warrant if he or she is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that there is, or may be within 72 hours, a particular thing (including a document) at the place that may afford evidence of the commission of an offence against this Act or the regulations.
- (3) The search warrant may authorise a named inspector and any assistants the inspector considers necessary—
 - (a) to enter the place or part of the place named or described in the warrant; and
 - (b) to search for the thing named or described in the warrant.
- (4) In addition to any other requirement, the search warrant must state—
 - (a) the offence suspected; and

- (b) the place to be searched; and
 - (c) a description of the thing for which the search is to be made; and
 - (d) any conditions to which the warrant is subject; and
 - (e) whether entry is authorised to be made at any time or during specified hours; and
 - (f) that the warrant authorises entry on only one occasion; and
 - (g) a day, not later than 7 days after the warrant is issued, on which it ceases to have effect.
- (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (6) The rules that apply to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to search warrants under this section.

S. 95G
inserted by
No. 63/2006
s. 49.

95G Announcement before entry on warrant

- (1) Before executing a search warrant, the inspector named in the warrant or an assistant to the inspector must—
- (a) announce that he or she is authorised by the warrant to enter the place; and
 - (b) give any person at the place an opportunity to allow that entry.
- (2) However, the inspector or an assistant to the inspector need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the place is needed to ensure that the effective execution of the warrant is not frustrated.

95H Copy of warrant to be given to occupier

S. 95H
inserted by
No. 63/2006
s. 49.

If an occupier or apparent occupier is present at the place when a search warrant is being executed, the inspector must—

- (a) identify himself or herself to that person by producing his or her identity card for inspection; and
- (b) give that person a copy of the execution copy of the warrant.

Division 6—Limitation on entry powers

Pt 9 Div. 6
(Heading and
s. 95I)
inserted by
No. 63/2006
s. 49.

95I Places used for residential purposes

S. 95I
inserted by
No. 63/2006
s. 49.

Despite anything else in this Part, the powers of an inspector under this Part in relation to entering a place are not exercisable in respect of any part of a place that is used only for residential purposes except—

- (a) with the consent of the occupier for the time being of the place; or
- (b) under the authority conferred by a search warrant.

Division 7—Return and forfeiture of seized things

Pt 9 Div. 7
(Heading and
ss 95J, 95K)
inserted by
No. 63/2006
s. 49.

95J Return of seized things

S. 95J
inserted by
No. 63/2006
s. 49.

- (1) As soon as possible after an inspector seizes any thing (including a document) under this Part the Department Head must return the thing to the owner unless—

s. 95K

- (a) the Department Head considers it necessary to retain the thing because it may afford evidence in proceedings, that have been or may be commenced, for an offence against this Act or the regulations; or
 - (b) the thing is forfeited to the Crown under section 95K; or
 - (c) the Department Head is otherwise authorised (by a law or court order) to retain, destroy or dispose of the thing.
- (2) The thing may be returned either unconditionally or on such terms and conditions as the Department Head considers appropriate.
- (3) If the Department Head imposes terms or conditions on the return of a thing, the owner must comply with each of those terms and conditions.

Penalty: In the case of a corporation,
300 penalty units;

In any other case 60 penalty units.

S. 95K
inserted by
No. 63/2006
s. 49.

95K Forfeiture of seized things

Any thing (including a document) that an inspector has seized and retained under this Part is forfeited to the Crown if the Department Head—

- (a) cannot find its owner despite making reasonable enquiries; or
- (b) cannot return it to the owner despite making reasonable efforts.

Division 8—Other powers

Pt 9 Div. 8
(Heading and
ss 95L, 95M)
inserted by
No. 63/2006
s. 49.

95L Power to require name and address

S. 95L
inserted by
No. 63/2006
s. 49.

- (1) An inspector may ask a person to state his or her name and address if the inspector reasonably believes that the person—
 - (a) may be able to assist in the investigation of an offence under this Act that has been committed or is suspected of having been committed; or
 - (b) has committed or is about to commit an offence under this Act or the regulations.
- (2) The inspector must inform the person of the grounds for his or her belief in sufficient detail to allow the person to understand the nature of the offence or suspected offence.
- (3) A person who, in response to being asked to state his or her name and address in accordance with this section—
 - (a) refuses or fails to do so; or
 - (b) states a name that is false in a material particular; or
 - (c) states an address other than the full and correct address of his or her ordinary place of residence or business—is guilty of an offence and liable to a fine not exceeding 5 penalty units.
- (4) A person who is asked to state his or her name and address may ask the inspector to produce his or her identity card for inspection.

s. 95M

S. 95M
inserted by
No. 63/2006
s. 49.

95M Power to give directions

- (1) An inspector may give a direction (either orally or in writing) to a person at a worksite if the inspector reasonably believes that it is necessary to do so because of an immediate risk to the environment.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a direction given to the person under subsection (1).

Penalty: In the case of a corporation,
500 penalty units;
In any other case 100 penalty units.

Pt 9 Div. 9
(Heading and
ss 95N–95Q)
inserted by
No. 63/2006
s. 49.

Division 9—Other matters

S. 95N
inserted by
No. 63/2006
s. 49.

95N Occupier must assist inspector

The occupier or apparent occupier for the time being of a worksite must not, without reasonable excuse, refuse or fail to provide such assistance as an inspector may reasonably require for the performance of his or her functions or exercise of his or her powers under this Act or the regulations.

Penalty: In the case of a corporation,
300 penalty units;
In any other case 60 penalty units.

S. 95O
inserted by
No. 63/2006
s. 49.

95O Other assistance in exercising powers

- (1) For the purpose of exercising a power under this Act or the regulations, an inspector may seek the assistance of any person.

- (2) If the power being exercised involves entry to a worksite, the occupier or apparent occupier for the time being of the worksite must allow the person assisting access to that worksite.

Penalty: In the case of a corporation,
300 penalty units;

In any other case 60 penalty units.

- (3) If an inspector uses the assistance of an interpreter—
- (a) any enquiry or request made by the interpreter on the inspector's behalf is taken to have been made by the inspector; and
 - (b) any answer given to the interpreter is taken to have been given to the inspector.

95P Inspector may take affidavits

An inspector is authorised to take affidavits for any purpose relating or incidental to the performance of his or her functions or exercise of his or her powers under this Act or the regulations.

S. 95P
inserted by
No. 63/2006
s. 49.

95Q Inspector may copy documents

An inspector may make copies of, or take extracts from, a document or part of a document given to the inspector in accordance with a requirement under this Act or the regulations.

S. 95Q
inserted by
No. 63/2006
s. 49.

Division 10—Offences

Pt 9 Div. 10
(Heading and
s. 95R)
inserted by
No. 63/2006
s. 49.

95R Offences in relation to inspections

- (1) A person must not wilfully assault, obstruct or attempt to obstruct, threaten, intimidate or attempt to intimidate an inspector in the exercise of the

S. 95R
inserted by
No. 63/2006
s. 49.

s. 95S

inspector's powers or the discharge of the inspector's duties.

Penalty: In the case of a corporation,
1000 penalty units;

In any other case, 200 penalty units.

(2) A person must not—

(a) contravene or fail to comply with any lawful requirement of an inspector; or

(b) make to an inspector exercising a power or discharging a duty under this Act a statement knowing it to be false or misleading in any particular.

Penalty: In the case of a corporation,
500 penalty units;

In any other case, 100 penalty units.

(3) A reference in this section to an inspector includes a reference to a person acting under an instrument of delegation under section 91(b).

Pt 9 Div. 11
(Heading and
ss 95S, 95T)
inserted by
No. 63/2006
s. 49.

Division 11—Protection of privileges

S. 95S
inserted by
No. 63/2006
s. 49.

95S Protection against self-incrimination

(1) A natural person may refuse or fail to give information or do any other thing that the person is required to do by or under this Part if giving the information or doing the other thing would tend to incriminate the person.

(2) However, subsection (1) does not apply to—

(a) the production of a document or part of a document that the person is required by this Part to produce; or

- (b) the giving of a person's name or address in accordance with section 95L.

95T Legal professional privilege and client legal privilege not affected

Nothing in this Act or the regulations—

- (a) entitles or requires a person to disclose information that is the subject of legal professional privilege or client legal privilege; or
- (b) affects the law or practice relating to legal professional privilege or client legal privilege.

S. 95T
(Heading)
amended by
No. 69/2009
s. 54(Sch. Pt 1
item 37.2).

S. 95T
inserted by
No. 63/2006
s. 49.

S. 95T(a)
amended by
No. 69/2009
s. 54(Sch. Pt 1
item 37.3).

S. 95T(b)
amended by
No. 69/2009
s. 54(Sch. Pt 1
item 37.3).

* * * * *

Pt 10
(Heading and
ss 94, 95)
amended by
Nos 46/1998
s. 7(Sch. 1),
52/1998
s. 311(Sch. 1
items 64.9,
64.10 (as
amended by
No. 101/1998
s. 22(1)(j)),
64.11, 64.12),
76/1998
s. 31(l),
repealed by
No. 82/2000
s. 63.

PART 11—MINING WARDENS

96 Appointment of mining wardens

- (1) The Governor in Council may appoint as many persons to be mining wardens as are required for the purposes of this Act.
- (2) The appointment of a person as a mining warden is subject to any terms and conditions that are specified in the instrument of appointment.
- (3) A mining warden holds office for the term, not exceeding 3 years, that is specified in the instrument of appointment and is eligible for re-appointment.
- (4) A mining warden is entitled to be paid—
 - (a) the remuneration fixed from time to time by the Governor in Council; and
 - (b) the travelling and other allowances fixed from time to time by the Governor in Council.
- (5) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a mining warden in respect of the office of mining warden.
- (6) A mining warden may resign from office by delivering to the Governor in Council a signed letter of resignation.
- (7) The Governor in Council may at any time remove a mining warden from office.

S. 96(5)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 134.5),
80/2006
s. 26(Sch.
item 71.2).

- (8) If a mining warden was, immediately before his or her appointment, an officer within the meaning of the **State Superannuation Act 1988**, he or she continues, subject to that Act, to be an officer within the meaning of that Act while he or she continues in the appointment.

97 Disputes

- (1) A party to a dispute may refer the dispute to a mining warden.
- (2) The mining warden must investigate the dispute, attempt to settle, or arbitrate in relation to, the matters in dispute and, where appropriate, make recommendations to the Minister concerning those matters.

98 Matters referred to mining warden

The Minister or the Department Head may refer a matter to a mining warden for investigation, report and recommendations.

S. 98
amended by
No. 76/1998
s. 31(l).

99 Powers of mining warden

- (1) In investigating a dispute or other matter referred to him or her, a mining warden has power to do all or any of the following—
- (a) conduct a hearing;
 - (b) enter and inspect any relevant land;
 - (c) make an order for the inspection, detention, custody or preservation of any relevant minerals, whether or not in the possession, custody or power of a party to the dispute or other matter;
 - (d) make an order restraining a person from removing from Victoria or otherwise dealing with any minerals specified in the order, whether or not that person is domiciled, resident or present within Victoria;

s. 100

S. 99(1)(e)
amended by
No. 46/1998
s. 7(Sch. 1).

(e) require an employee of the Department to produce any record or other document kept by, or in the custody, possession or control of, the Department and give any other information or assistance that the mining warden requests and the employee is able to give.

S. 99(2)
amended by
No. 69/2009
s. 54(Sch. Pt 2
item 36).

- (2) For the purpose of an investigation a mining warden has the powers conferred on a board appointed by the Governor in Council by sections 14, 15, 16 and 21A of the **Evidence (Miscellaneous Provisions) Act 1958**.
- (3) An order made by a mining warden under subsection (1)(c) or (d) may be enforced as if it were an order made by the Magistrates' Court in a civil proceeding.

100 Conduct of hearing

- (1) In conducting a hearing, a mining warden—
- (a) is not bound by rules of evidence but may inform himself or herself on any matter in any manner that he or she thinks fit; and
 - (b) is bound by the rules of natural justice; and
 - (c) is not required to conduct the hearing in a formal manner.
- (2) Evidence in a hearing—
- (a) may be given orally or in writing; and
 - (b) if the mining warden so requires, must be given on oath or by affidavit.
- (3) A party may appear before a mining warden in person or may be represented by an agent.

- (4) A party may only be represented by an agent who is an Australian lawyer (within the meaning of the **Legal Profession Act 2004**) if—
- (a) the other parties to the matter agree; or
 - (b) the mining warden grants leave.
- (5) Otherwise, the procedure of the mining warden is in his or her discretion.

S. 100(4)
amended by
No. 18/2005
s. 18(Sch. 1
item 69).

101 Evidence not admissible in other proceedings

Evidence given to a mining warden must not be used in any proceedings (whether civil or criminal) before a court or tribunal except proceedings for an offence against this Act or for perjury.

102 Validity of acts or decisions

An act or decision of a mining warden is not invalid only because there was a defect or irregularity in or in connection with his or her appointment.

103 Discontinuance of investigation

A mining warden must discontinue the investigation of a dispute or other matter if—

- (a) it appears to him or her that the interests of the person or body that referred the dispute to the mining warden are not directly and substantially affected by the dispute; or
- (b) it appears to him or her that the dispute or other matter is the subject of proceedings before a court or tribunal; or
- (c) the person or body that referred the dispute or other matter to the mining warden requests the mining warden in writing to discontinue the investigation.

104 Costs

- (1) The costs of, and incidental to, an investigation by a mining warden are in the discretion of the mining warden and he or she has power to determine by whom, to whom and to what extent the costs are to be paid.
- (2) A determination by a mining warden as to costs may be enforced as if it were an order made by the Magistrates' Court in a civil proceeding for the payment of money.

New s. 105
inserted by
No. 63/2006
s. 50.

105 Annual report

- (1) A mining warden must, within 3 months after the end of a financial year, submit a report to the Minister.
- (2) A report under subsection (1) must include a brief summary of the following things that occurred in that financial year—
 - (a) the nature and status of any dispute referred to the mining warden under section 97;
 - (b) the nature and status of any matter referred to the mining warden under section 98;
 - (c) any other activity commenced, conducted or completed by the mining warden under this Act.

PART 12—ENFORCEMENT

Pt 12
(Heading)
amended by
No. 82/2001
s. 34(a).

* * * * *

S. 105
amended by
Nos 86/1993
s. 32, 56/1995
s. 42, 69/2000
s. 60,
repealed by
No. 82/2001
s. 34(b).

106 Infringements

S. 106
amended by
No. 32/2006
s. 94(Sch.
item 33(1)–
(3)),
substituted by
No. 6/2009
s. 35.

- (1) An inspector who has reason to believe that a person has committed an offence against this Act or the regulations that is prescribed for the purposes of this Part may serve on that person an infringement notice.
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) The infringement penalty for the purposes of this section in respect of an offence referred to in subsection (1) is the penalty prescribed in respect of that offence.

* * * * *

S. 107
repealed by
No. 32/2006
s. 94(Sch.
item 33(3)).

* * * * *

S. 108
repealed by
No. 25/2008
s. 16(1).

s. 110

S. 109
repealed by
No. 86/1993
s. 33.

* * * * *

110 Order to cease work etc.

S. 110(1)
substituted by
Nos 82/2000
s. 64(1),
63/2006
s. 51(1).

- (1) This section applies if the Minister believes on reasonable grounds that—
- (a) an act or omission by the holder of an authority is likely to result in a risk to the environment; or
 - (b) the holder of an authority—
 - (i) has contravened or is likely to contravene this Act or the regulations; or
 - (ii) has not complied with any condition to which the authority is subject or any condition specified under section 44; or
 - (iii) has not complied with any relevant planning scheme or permit; or
 - (iv) has not complied with any condition applying to the carrying out of the work plan under the authority; or
 - (v) has undertaken work on land otherwise than in accordance with the work plan under the authority; or
 - (c) a former licensee or former holder of an extractive industry work authority has failed to comply with section 81.

S. 110(1)(c)
amended by
No. 6/2009
s. 36(1).

S. 110(2)
amended by
No. 86/1993
s. 34,
substituted by
No. 82/2000
s. 64(1).

- (2) The Minister may, by notice served on the holder of the authority—
- (a) require the taking within a specified period of any action necessary to remedy the contravention or non-compliance;

- (b) prohibit the doing of any activity or class of activity by the holder of the authority for a specified period or until the occurrence of a specified event;
 - (c) require the holder of the authority to supply any plans or other information specified in the notice;
 - (d) require the holder of the authority—
 - (i) to provide monitoring equipment;
 - (ii) to carry out any monitoring or surveys specified in the notice;
 - (iii) to have any audit or assessment specified in the notice carried out by an appropriately qualified person or body;
 - (iv) to give the Minister a report detailing the results of the monitoring, surveys, audit or assessment.
 - (3) The holder of an authority must comply with a notice issued under subsection (2).
- Penalty: In the case of a corporation,
1000 penalty units.
- In any other case, 200 penalty units.
- Default penalty:
- In the case of a corporation, 20 penalty units.
- In any other case, 10 penalty units.
- (4) A person whose interests are affected by a decision of the Minister to serve a notice under subsection (2) may apply to the Tribunal for review of the decision.

S. 110(3)
substituted by
No. 82/2000
s. 64(1).

S. 110(4)
substituted by
No. 52/1998
s. 311(Sch. 1
item 64.13),
amended by
No. 82/2000
s. 64(2).

Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990
Part 12—Enforcement

s. 110

S. 110(4A)
inserted by
No. 52/1998
s. 311(Sch. 1
item 64.13).

- (4A) An application for review must be made within 28 days after the later of—
- (a) the day on which the notice is served;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision to serve the notice, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 110(5)
substituted by
No. 82/2000
s. 64(3).

- (5) The Minister may, by notice served on the holder of the authority, cancel a notice issued under subsection (2).

S. 110(6)
substituted by
Nos 82/2000
s. 64(3),
6/2009
s. 36(2).

- (6) For the purposes of this section—
- (a) in the case of a mining licence, service of a notice on the manager appointed to control and manage the licence worksites is deemed to be service of the notice on the licensee; and
 - (b) in the case of an extractive industry work authority, service of a notice on the quarry manager or person appointed to manage the extractive industry operation is deemed to be service on the holder of the work authority.

S. 110(7)
inserted by
No. 82/2000
s. 64(3),
amended by
Nos 6/2009
s. 36(3),
59/2010
s. 42(3).

- (7) In this section **authority** means a licence, an extractive industry work authority, a miner's right or tourist fossicking authority.

- (8) In subsections (2) to (6) a reference to the holder of an authority or a licensee includes a reference to a former licensee or former holder of an extractive industry work authority.

S. 110(8)
inserted by
No. 63/2006
s. 51(2),
amended by
No. 6/2009
s. 36(4).

110A Enforcement order

S. 110A
inserted by
No. 63/2006
s. 52.

- (1) An inspector who believes on reasonable grounds that a person (other than the holder of an authority) is carrying out or is likely to carry out an activity on land in contravention of this Act or the regulations may issue a notice to the person—
- (a) to stop that activity; and
 - (b) to take within a specified period any action necessary to remedy the contravention.
- (2) A person must not, without reasonable excuse, fail to comply with a notice under this section.

Penalty: In the case of a corporation,
1000 penalty units;

In any other case, 200 penalty units.

- (3) In this section **authority** has the same meaning as it has in section 110.

111 Offences by corporations

- (1) In this section, **officer**—
- (a) in relation to a corporation within the meaning of the Corporations Act, has the same meaning as in section 9 of that Act; and
 - (b) in relation to a corporation which is not a corporation within the meaning of that Act, means any person (by whatever name called) who is concerned or takes part in the management of the corporation—

S. 111(1)(a)
substituted by
No. 44/2001
s. 3(Sch.
item 82.1(a)).

S. 111(1)(b)
amended by
No. 44/2001
s. 3(Sch.
item 82.1(b)).

s. 111A

but does not include an employee of the corporation.

- (2) If a corporation is guilty of an offence against this Act or a regulation, any officer of the corporation who was in any way, by act or omission, knowingly concerned in or party to the commission of the offence is also guilty of that offence and liable to the penalty for that offence.
- (3) If in a proceeding for an offence against this Act or a regulation it is necessary to establish the intention of a corporation, it is sufficient to show that a servant or agent of the corporation had that intention.
- (4) A statement made by an officer of a corporation is admissible as evidence against the corporation in any proceeding against the corporation for an offence against this Act or a regulation.

S. 111A
inserted by
No. 82/2000
s. 65.

111A Default penalties

- (1) If a person is convicted of an offence against this Act in respect of which a default penalty is provided, the person is guilty of a further offence for each day the offence continues after the conviction, and is liable to be fined up to the amount specified as the default penalty.
- (2) This section does not apply if, owing to a circumstance such as the loss of a document needed to comply with this Act, it is not possible for a person to comply with the provision in respect of which the offence was committed.

PART 13—MISCELLANEOUS

112 Surveys and drilling operations

- (1) The Minister may authorise in writing any person to enter, or fly over, any land for the purpose of making a land, mining or geological survey on behalf of the Department. **S. 112(1) substituted by No. 82/2000 s. 66(1).**
- (2) The Minister may authorise in writing any person to enter any land for the purpose of the carrying out by the Department of any drilling operations for minerals. **S. 112(2) amended by No. 82/2000 s. 66(2).**
- (3) A person authorised to enter land under subsection (1) or (2)—
- (a) may do any thing on the land that is necessary for the purposes of the survey or drilling operations; and **S. 112(3)(a) amended by No. 82/2000 s. 66(2).**
 - (b) must cause as little harm and inconvenience and do as little damage as possible to the land and anything on or growing on the land; and
 - (c) must remain on the land only for so long as is reasonably necessary; and
 - (d) must remove from the land on completion of the survey or drilling operations all plant, machinery, equipment, goods or buildings brought onto, or erected on, the land other than any of those things that the owner or occupier agrees may be left on the land; and **S. 112(3)(d) amended by No. 82/2000 s. 66(2).**
 - (e) must leave the land, as nearly as possible, in the condition in which it was immediately before the commencement of the survey or drilling operations; and **S. 112(3)(e) amended by No. 82/2000 s. 66(2).**
 - (f) must use the person's best endeavours to co-operate with the owner and occupier.

s. 113

S. 112(4)
substituted by
No. 82/2000
s. 66(3).

- (4) Part 8 applies to any drilling operation under subsection (2)—
 - (a) as if a reference in that Part to a licensee was a reference to the Department; and
 - (b) as if a reference in that Part to the approval of the work plan or the doing of work under the licence was a reference to the carrying out of the drilling operation.
- (5) Compensation is not payable for any loss or damage arising from the making of a survey under subsection (1).

113 Discovery of uranium or thorium to be reported

- (1) A person who discovers any uranium or thorium in or on any land in Victoria must immediately report in writing that discovery to the Minister.
Penalty: 100 penalty units.
- (2) The Minister may, by notice served on the person reporting a discovery under subsection (1), require that person to give him or her the further particulars relating to the discovery specified in the notice within the period specified in the notice.
- (3) A person must comply with a notice served on that person under subsection (2).
Penalty: 50 penalty units.
- (4) A person must not possess, use, sell or otherwise dispose of any uranium or thorium except under and in accordance with an authority granted by the Minister.
Penalty: 100 penalty units.
- (5) An authority granted by the Minister under subsection (4) may contain any terms and conditions that the Minister thinks fit.

- (6) The Minister may, by notice served on a person who is unlawfully in possession of any uranium or thorium, require that person to deliver the uranium or thorium to the Minister at the time and place specified in the notice.
 - (7) A person must comply with a notice served on that person under subsection (6).
- Penalty: 100 penalty units.

114 Abandoned plant becomes property of the Crown

- (1) If the licensee does not remove any plant from any land before, or within the period of 6 months after, the licence ceases to apply to that land, the plant becomes the absolute property of the Crown at the end of that period of 6 months.
- (2) Subsection (1) does not apply to plant brought onto land in connection with the rehabilitation of the land.
- (3) The Minister may direct the former licensee to remove plant referred to in subsection (2) and if the former licensee does not do so within the period of 6 months after the giving of that direction, the plant becomes the absolute property of the Crown at the end of that period of six months.
- (4) Plant that becomes the property of the Crown may be disposed of, or otherwise dealt with, by the Minister.
- (5) Any money received by the Minister on the sale of property under subsection (4) must—
 - (a) if the cost of taking action under section 83(1) in relation to any land covered by the licence exceeds the amount of the bond or bonds, be applied towards covering that cost;
 - (b) in any other case, be paid into the Consolidated Fund.

**S. 114(5)
substituted by
No. 82/2000
s. 67.**

s. 115

S. 114(6)
inserted by
No. 82/2000
s. 67.

- (6) If subsection (5)(a) applies and money remains after the cost referred to in that subsection has been covered, that remaining money must be paid into the Consolidated Fund.

S. 114(7)
inserted by
No. 82/2000
s. 67.

- (7) Nothing in this section applies to any plant that is on any land owned by the licensee or former licensee.

115 Occupiers liability

- (1) For the purposes of Part IIA of the **Wrongs Act 1958** and the rules of common law with respect to the liability of occupiers to persons entering on their premises, the licensee is the occupier of that part of any premises on which work is being done under a licence and not any other person.
- (2) An occupier of any premises covered by a licence does not, unless the occupier is also the licensee, owe a duty to take care of any person entering on those premises for the purpose of doing work under the licence.
- (3) An occupier of any premises covered by an application for a mining licence does not, unless the occupier is also the applicant, owe a duty to take care of any person entering on those premises for the purpose of marking out or surveying the boundaries of the land covered by the application—
- (a) with the consent of the occupier; or
- (b) under an authority to enter granted by the Department Head.

S. 115(3)(b)
amended by
No. 76/1998
s. 31(l).

- (4) Subsections (2) and (3) apply despite anything to the contrary in Part IIA of the **Wrongs Act 1958** or the rules of common law with respect to the liability of an occupier to a person entering on the occupier's premises.

- (5) Nothing in subsection (2) or (3) limits any other duty owed by an occupier to a person entering on the occupier's premises in the circumstances described in that subsection.

116 Licensee must supply information

- (1) A licensee must in the prescribed form and at the prescribed times furnish to the Minister the prescribed information relating to work done under the licence.

Penalty: 20 penalty units.

- (2) A document furnished under subsection (1) is the property of the Crown and may be made available by the Minister for inspection by the public at any time after the licence ceases to be in force.

- (3) The Minister may also make a document furnished under subsection (1) available for inspection by the public—

**S. 116(3)
substituted by
No. 82/2000
s. 68.**

- (a) if the licensee consents to the Minister doing so; or
- (b) if the licensee refuses to consent to the Minister doing so, but the Minister is satisfied that the licensee is acting unreasonably in refusing to consent and that it is in the public interest that the information should be released while the licence is still in force.

- (4) Regulations made under subsection (1) may require the licensee to lodge a detailed current plan of any mine within the area covered by the licence.

**S. 116(4)
inserted by
No. 82/2000
s. 68.**

s. 116A

S. 116A
inserted by
No. 57/2009
s. 30.

116A Holder of extractive industry work authority or consent to supply information

- (1) The holder of an extractive industry work authority must (in the prescribed form and at the prescribed times) furnish to the Minister the prescribed information relating to work done under the extractive industry work authority.

Penalty: 20 penalty units.

- (2) The holder of a consent under section 77A must (in the prescribed form and at the prescribed times) furnish to the Minister the prescribed information relating to any surveys and other operations authorised by the consent.

Penalty: 20 penalty units.

- (3) A document furnished under subsection (1) or (2) is the property of the Crown and may be made available by the Minister for inspection by the public at any time after the extractive industry work authority or consent under section 77A ceases to be in force.

117 Obtaining licence or other authority dishonestly

A person must not, by any false statement, misrepresentation or other dishonest means, obtain or attempt to obtain a licence or other authority, or the renewal of a licence or other authority.

Penalty: 50 penalty units.

118 Pecuniary interests

- (1) This section applies to a person who is for the time being—

(a) the Department Head; or

S. 118(1)(a)
amended by
No. 76/1998
s. 31(l).

- (b) an officer of the public service employed in the administration of this Act; or
- (c) a Chief Inspector; or

S. 118(1)(c)
amended by
Nos 82/2000
s. 61(b),
6/2009
s. 37(a).

- (d) an inspector; or

S. 118(1)(d)
amended by
No. 6/2009
s. 37(b).

- (e) a mining warden.

- (2) A person to whom this section applies must comply with any of the requirements of the regulations with respect to disclosure of interests.

Penalty: 50 penalty units.

119 Secrecy

- (1) This section applies to a person who has at any time—
 - (a) exercised a power or discharged a function under this Act or the regulations; or
 - (b) been employed for the purposes of, or in connection with, the administration of this Act.
- (2) A person to whom this section applies must not divulge or communicate to any person or publish any information obtained by him or her from a licensee in the course of his or her official duties unless the divulgence, communication or publication is made—
 - (a) with the written consent of the licensee or the Minister; or
 - (b) in connection with the administration of this Act; or

s. 120

(c) for the purpose of any legal proceedings under this Act.

Penalty: 100 penalty units.

- (3) The Minister may only consent under subsection (2)(a) if he or she is of the opinion that the licensee is unreasonably withholding consent.

120 Delegation

S. 120(1)
amended by
Nos 46/1998
s. 7(Sch. 1),
76/1998
s. 31(l).

- (1) The Minister may, by instrument, delegate to the Department Head or any employee in the Department any power of the Minister under this Act or the regulations, other than this power of delegation.

S. 120(2)
amended by
Nos 46/1998
s. 7(Sch. 1),
76/1998
s. 31(l).

- (2) The Department Head may, by instrument, delegate to any employee in the Department any power of the Department Head under this Act or the regulations, other than this power of delegation and a power delegated to him or her by the Minister.

S. 120(3)
inserted by
No. 57/2009
s. 31.

- (3) The Department Head may, by instrument, delegate to any employee in the Department any power or function the Department Head has as a referral authority under the **Planning and Environment Act 1987** or regulations under that Act.

S. 120A
inserted by
No. 63/2006
s. 53.

120A Ministerial guidelines

- (1) The Minister may, from time to time, issue guidelines relating to any of the objectives or purposes of this Act or the regulations made under this Act.
- (2) A guideline has no effect until a notice of its making has been published in the Government Gazette.

(3) The guidelines must be made available for public inspection free of charge—

(a) at the principal office of the Department and major regional offices of the Department; or

(b) in electronic form published on the Department's Internet site.

121 Immunity

(1) Nothing done or omitted to be done by the Department Head or an employee of the Department or a mining warden in good faith in the exercise or purported exercise of a power or the discharge or purported discharge of a duty under this Act or the regulations subjects him or her personally to any liability.

(2) Any liability that would, but for subsection (1), attach to a person attaches instead to the Crown.

S. 121(1)
amended by
Nos 46/1998
s. 7(Sch. 1),
76/1998
s. 31(l).

122 Service of documents

(1) If by or under this Act a document is required or permitted to be served on a person then, unless otherwise provided by this Act, the document may be served—

(a) by delivering it personally to the person to be served; or

(b) by leaving it at that person's usual or last known place of residence with a person apparently over the age of 16 years and apparently residing there; or

(c) by sending it by post addressed to the person to be served at that person's usual or last known place of residence; or

(d) in the case of service on an owner of any land or premises whose name and address are not known to the server, by serving it on the occupier of the land or premises

s. 123

concerned in accordance with paragraph (a) or (b) or, if there is no occupier, by posting it up on a conspicuous part of the land or premises; or

(e) in the case of service on an occupier of any land or premises whose name and address are not known to the server, by posting it up on a conspicuous part of the land or premises.

(2) A document that is to be served on the owner or occupier of any land or premises may be addressed by the description of "the owner" or "the occupier" of the land or premises concerned (naming it or them), without further name or description.

(3) The provisions of this section are additional to and do not take away from the provisions of sections 109X and 601CX of the Corporations Act.

(4) If a document is properly served on the owner or occupier of any land or premises, that service is binding on every subsequent owner or occupier to the same extent as if it had been served on that subsequent owner or occupier.

S. 122(3)
amended by
No. 44/2001
s. 3(Sch.
item 82.2).

S. 123
amended by
No. 27/1991
s. 4(5),
substituted by
No. 82/2000
s. 69.

123 Supreme Court—limitation of jurisdiction

It is the intention of section 89(3), as inserted by section 60 of the **Mineral Resources Development (Amendment) Act 2000**, to alter or vary section 85 of the **Constitution Act 1975**.

124 Regulations

(1) The Governor in Council may make regulations for or with respect to—

(a) the rate or method of assessment, and the times of payment, of royalties; and

-
- (b) applications for a licence and renewal of a licence; and
- (ba) applications for an extractive industry work authority and variation of an extractive industry work authority; and **S. 124(1)(ba) inserted by No. 6/2009 s. 38(1).**
- (c) the advertisement of applications for licences; and **S. 124(1)(c) amended by No. 82/2000 s. 70(a).**
- (d) the manner of marking out and surveying the boundaries of land and the time within which it must be done; and
- * * * * * **S. 124(1)(e) repealed by No. 25/2008 s. 16(2).**
- (f) the information to be contained in a work plan or in a notice of variation of an approved work plan; and
- (g) applications for a miner's right; and
- (h) applications for a tourist fossicking authority; and
- * * * * * **S. 124(1)(i) repealed by No. 59/2010 s. 42(4).**
- (j) the mining register; and
- (k) prescribing documents that may be registered; and
- (l) the qualifications of mine managers with respect to the administration of first-aid and the use of explosives; and
-

Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990
Part 13—Miscellaneous

s. 124

S. 124(1)(m)
repealed by
No. 82/2000
s. 70(b), new
s. 124(1)(m)
inserted by
No. 57/2009
s. 32.

- (m) the method by which the amount of a mine stability levy is determined; and

S. 124(1)(n)
repealed by
No. 82/2000
s. 70(b), new
s. 124(1)(n)
inserted by
No. 57/2009
s. 32.

- (n) the date by which the mine stability levy or a part of the mine stability levy must be paid; and

S. 124(1)(o)
repealed by
No. 63/2006
s. 54, new
s. 124(1)(o)
inserted by
No. 57/2009
s. 32.

- (o) the method by which the mine stability levy or a part of the mine stability levy must be paid; and

S. 124(1)(oa)
inserted by
No. 57/2009
s. 32.

- (oa) the period to which the mine stability levy will relate; and

S. 124(1)(ob)
inserted by
No. 57/2009
s. 32,
amended by
No. 55/2010
s. 56(2).

- (ob) prescribing requirements for licensees or holders of extractive industry work authorities that relate to geotechnical or hydrogeological risks to public safety, the environment or infrastructure; and

- (p) prescribing—
(i) infringements for which an infringement notice may be served; and

S. 124(1)
(p)(ii)(iii)
repealed by
No. 32/2006
s. 94(Sch.
item 33(4)(a)).

* * * * *

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(q) the penalties for any infringement; and

S. 124(1)(q)
amended by
No. 32/2006
s. 94(Sch.
item 33(4)(b)).

* * * * *

S. 124(1)(qa)
inserted by
No. 86/1993
s. 35(1),
repealed by
No. 55/2010
s. 55.

(qb) the health and safety of members of the
public in relation to work done under a
licence or an extractive industry work
authority;

S. 124(1)(qb)
inserted by
No. 86/1993
s. 35(1),
amended by
No. 6/2009
s. 38(2).

(qc) requiring that any information required by
the regulations be in the form of, or be
supported by, a statutory declaration;

S. 124(1)(qc)
inserted by
No. 86/1993
s. 35(1).

(r) the disposal of, or otherwise dealing with, by
the Minister of plant that becomes the
property of the Crown under section 114;
and

(s) the information to be furnished to the
Minister under section 116(1) and the times
at which it must be furnished; and

(t) requirements with respect to the disclosure
of interests by persons to whom section 118
applies; and

(u) applications under clause 2(10) of
Schedule 2; and

(v) requiring the payment of fees for anything
done under this Act or the regulations and
prescribing those fees; and

S. 124(1)(v)
substituted by
No. 82/2000
s. 70(c).

(w) prescribing forms; and

-
- (x) any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) A power conferred by this Act to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, with respect to the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (3) Regulations made under this Act may be made—
- (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) throughout the whole of the State or in a specified part of the State; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
 - (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
-

- (ii) approved by or to the satisfaction of a specified person or a specified class of persons; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
 - (c) so as to apply, adopt or incorporate (with or without modification) any matter contained in any document as at the time the regulations are made or at any time before then; and
 - (d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons; and
 - (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
 - (f) so as to impose a penalty not exceeding 100 penalty units for a contravention of the regulations and, in the case of a contravention of a continuing nature, a further penalty not exceeding 40 penalty units for each day during which the contravention continues after conviction.
- (3A) Regulations made under subsection (1)(qa) or (qb) must not be inconsistent with any provision of the **Dangerous Goods Act 1985** or the regulations made under that Act and any regulation made under that subsection that is so inconsistent is, to the extent of the inconsistency, of no effect.

S. 124(3A)
inserted by
No. 86/1993
s. 35(2).

- (4) Regulations made under this Act may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 6(2) of the **Subordinate Legislation Act 1962**.
- (5) Disallowance of a regulation under subsection (4) must be taken to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1962**.
- (6) If, under subsection (4), either House of Parliament disallows a regulation, no regulation which is the same in substance as the disallowed regulation may be made within 6 months after the date of the disallowance, unless the resolution to disallow the regulation has been rescinded by the House of Parliament by which it was passed.
- (7) Any regulation made in contravention of subsection (6) is void.
- (8) Regulations made under subsection (1)(v) may—
- (a) vary according to differences in time, place or circumstance; and
 - (b) provide for different fees for—
 - (i) different activities or classes of activities; or
 - (ii) different cases or classes of cases; or
 - (iii) different modes of providing any service in respect of which those fees apply.

S. 124(8)
inserted by
No. 69/2004
s. 56.

S. 125
repealed by
No. 86/1993
s. 36.

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**PART 14—REPEALS, AMENDMENTS, SAVINGS AND
TRANSITIONALS**

126 Repeal and amendment of Mines Act 1958

No. 6320.

- (1) The **Mines Act 1958** (except sections 1 and 66A and Divisions 2 and 6 of Part III) is **repealed**.
- (2) Section 66A of the **Mines Act 1958** is **repealed**.
- (3) Division 2 of Part III of the **Mines Act 1958** is **amended** as follows—
 - (a) in section 369(1), in the definition of *Mine*, paragraphs (a) and (d) are **repealed**;
 - (b) in section 369(1), in the definition of *Mining* and *Mining operations*, paragraphs (a), (b), (c) and (g) are **repealed**;
 - (c) in section 369(1), in the definition of *Owner*—
 - (i) paragraph (a) is **repealed**; and
 - (ii) in paragraph (b) **omit** "of any other kind";
 - (d) in section 369(3), for "(c) or (d)" **substitute** "or (c)";
 - (e) sections 378, 379 and 381 are **repealed**;
 - (f) in section 383(3), paragraph (b) is **repealed**;
 - (g) section 383AA is **repealed**;
 - (h) in section 386(1)(a) **omit** ", not being a mine within the meaning of paragraph (a) of the interpretation of *Mine* in section 369(1)".
- (4) ¹⁵Section 1 and Division 2 of Part III of the **Mines Act 1958** are **repealed**.
- (5) Division 6 of Part III of the **Mines Act 1958** is **repealed**.

127 Validation of existing titles

- (1) A lease, licence, claim, right, permit or other authority granted, issued or renewed under the **Mines Act 1958** is not invalid only because there was a failure to comply with any requirement of that Act or of the regulations made under that Act specifying a time before which any act or thing must be done or not done.
- (2) An instrument referred to in subsection (1) has, and must be taken always to have had, the same operation and effect that it would have had if this section had been in operation at the time it was granted, issued or renewed, as the case requires.
- (3) The rights of the parties to any proceeding commenced in a court before 2 November 1989 must be determined as if this section had not been enacted.

128 Consequential amendments

On the coming into operation of an item in Schedule 1 the Act specified in the heading to that item is amended as set out in that item.

129 Savings and transitionals

- (1) Schedule 2 contains saving and transitional provisions.
- (2) The provisions of Schedule 2 are additional to and do not take away from the provisions of the **Interpretation of Legislation Act 1984**.

130 Saving and transitional provisions— 2000 amendments

Schedule 5 contains saving and transitional provisions arising from the amendments made to this Act by the **Mineral Resources Development (Amendment) Act 2000**.

S. 130
inserted by
No. 82/2000
s. 71.

**131 Saving and transitional provisions—
2001 amendments**

S. 131
inserted by
No. 71/2001
s. 5.

Schedule 6 contains saving and transitional provisions arising from the amendments made to this Act by the **Mineral Resources Development (Further Amendment) Act 2001**.

132 Transitional provision—2005 amendments

S. 132
inserted by
No. 89/2005
s. 6.

The amendments made to this Act by the **Mineral Resources Development (Brown Coal Royalties) Act 2005** do not affect the rate at which royalties are payable in respect of any lignite produced before the commencement of that Act.

**133 Validation of certain exploration and mining
work—2006 amendments**

S. 133
inserted by
No. 63/2006
s. 55.

- (1) Despite section 45 (as in force immediately before the commencement date), a licensee who, before the commencement date, did any work under the licence within an area of land prohibited by section 45(1)(a)(i) to (x) (as in force immediately before the commencement date) or within 100 metres below that area is deemed always to have complied with section 45 in respect of that work if—
- (a) at the time the work was done an approved work plan and, in the case of a mining licence, a work authority, was registered in respect of the licence; and
 - (b) the work was done in accordance with the approved work plan.
- (2) Nothing in subsection (1) affects the rights of the parties in the proceedings in VCAT known as *Tech-Sol Resources Pty Ltd v Minister for Energy Industries and Resources* [2004] VCAT 1648 and [2004] VCAT 1654.

s. 134

- (3) In this section *commencement date* means the date of commencement of section 34 of the **Mineral Resources Development (Sustainable Development) Act 2006**.

S. 134
inserted by
No. 63/2006
s. 55.

134 Change of title provision—2006 amendments

On the commencement of section 4 of the **Mineral Resources Development (Sustainable Development) Act 2006**, in any Act (other than this Act) or in any instrument made under any Act or in any other document of any kind, any reference to the **Mineral Resources Development Act 1990** is deemed to be a reference to the **Mineral Resources (Sustainable Development) Act 1990** so far as it applies to any period on or after that commencement, unless the contrary intention appears.

S. 135
inserted by
No. 63/2006
s. 56.

135 Transitional provision—2006 amendments

A person who held a licence immediately before the commencement of section 26(2) of the **Mineral Resources Development (Sustainable Development) Act 2006** is not required to provide a community engagement plan in accordance with section 40(3)(b)(ii) as part of the work plan for that licence if the person before that commencement had lodged a work plan under section 40 and the work plan had not been approved.

Note

A licensee who is not required under section 135 to provide a community engagement plan under section 40 as part of the initial work plan may be required to provide a community engagement plan when the work plan is subsequently varied or the licence is renewed.

S. 136
inserted by
No. 6/2009
s. 39.

136 Saving and transitional provisions—2009 amendments

Schedule 7 has effect.

SCHEDULES

SCHEDULE 1

Section 128

CONSEQUENTIAL AMENDMENTS

1 Aboriginal Land (Northcote Land) Act 1989

1. In section 5(4), for "**Mines Act 1958**" substitute "**Mineral Resources Development Act 1990**".

2 Coroners Act 1985

2. In section 45(4)—
 - (a) for paragraph (a) substitute—

"(a) An inspector of mines;" and
 - (b) in paragraph (c), for "mining manager of the mine" substitute "mine manager"; and
 - (c) in paragraph (f), for "**Mines Act 1958**" substitute "**Mineral Resources Development Act 1990**".

3 County Court Act 1958

3. Section 53B is repealed.

4 Crown Land (Reserves) Act 1978

4. For section 7 substitute—

"7 (1) The Governor in Council may, by the Order reserving any land or by any subsequent Order published in the Government Gazette, nominate any specified part of reserved land for which consent of the person or manager administering or managing the land is required before work may be done on that land in accordance with the

Mineral Resources Development Act 1990.

- (2) The Governor in Council may revoke any nomination under subsection (1) by Order published in the Government Gazette."

5 Dangerous Goods Act 1985

- 5.1 In section 9(b), for "**Mines Act 1958**" substitute "**Mineral Resources Development Act 1990**".
- 5.2 In section 37(4), for "**Mines Act 1958**" substitute "**Mineral Resources Development Act 1990**".

6 Drainage Areas Act 1958

6. In section 28(1), for "except from occupation for mining purposes" substitute "exempt from being subject to a mining licence under the **Mineral Resources Development Act 1990**".

7 Electric Light and Power Act 1958

7. For section 62, substitute—

"62 Protection of mining rights

Nothing in this Act limits or interferes with any rights of a licensee under the **Mineral Resources Development Act 1990** to carry out work in respect of any minerals lying under or adjacent to any street along or across which any electric line is laid."

8 Environment Protection Act 1970

- 8.1 After section 19B(3)(a)(iii) insert—

"(iv) the Minister administering the **Mineral Resources Development Act 1990**, if the application relates to exploration for minerals or mining; and".

8.2 After section 19B(4B) **insert**—

"(4C) The Minister administering the **Mineral Resources Development Act 1990** must advise the Authority within 21 days after he or she receives a copy of an application under subsection (3)(a)(iv)—

- (a) whether the proposed works are prohibited by the planning scheme; and
- (b) if so, whether an amendment to the planning scheme is to be prepared to allow the proposed works to proceed."

8.3 In section 19B(5)(c), after "approval" **insert** ", unless the Authority has been advised under subsection (4C)(b) that an amendment to the planning scheme is to be prepared".

8.4 After section 19B(5) **insert**—

"(5A) The Authority may issue a works approval for proposed mining or exploration works that will require an amendment to the planning scheme on the condition that the works approval does not take effect until the Minister approves the required amendment."

8.5 In section 20AA—

- (a) for "any notice" **substitute** "any notice—
 - (a) "; and
- (b) after "proposal" **insert** "; or
 - (b) of the preparation of an amendment to a planning scheme—".

8.6 In section 33, after subsection (3) **insert**—

"(3A) Subsection (3) does not apply to an applicant for a works approval or the transfer of a works approval if that works approval is—

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-
- (a) issued—
 - (i) on an application which is jointly advertised under section 20AA with a notice of preparation of an amendment to a planning scheme under the **Planning and Environment Act 1987**; or
 - (ii) on an application that is so advertised and after the report of any panel appointed under that Act to consider submissions about a proposed amendment to a planning scheme; and
 - (b) substantially in accordance with the application."

8.7 In section 33B, after subsection (1) **insert**—

"(1A) Subsection (1) does not apply to the issue of a works approval if that works approval is—

- (a) issued—
 - (i) on an application which is jointly advertised under section 20AA with a notice of preparation of an amendment to a planning scheme under the **Planning and Environment Act 1987**; or
 - (ii) on an application that is so advertised and after the report of any panel appointed under that Act to consider submissions about a proposed amendment to a planning scheme; and
- (b) substantially in accordance with the application."

9 Extractive Industries Act 1966

9.1 In section 3(1), for "land occupied by the holder of a miner's right under the **Mines Act 1958**" **substitute** "land covered by a mining licence under the **Mineral Resources Development Act 1990**".

9.2 In section 9A(1)—

- (a) for "**Mines Act 1958**" (wherever occurring) **substitute** "**Mineral Resources Development Act 1990**"; and
- (b) for "mining tenement" **substitute** "mining licence".

9.3 Section 9A(2) is **repealed**.

9.4 In section 11A(1)—

- (a) for "**Mines Act 1958**" (wherever occurring) **substitute** "**Mineral Resources Development Act 1990**"; and
- (b) for "mining tenement" **substitute** "mining licence".

9.5 In section 11A(2)—

- (a) for "**Mines Act 1958**" (wherever occurring) **substitute** "**Mineral Resources Development Act 1990**"; and
- (b) for "mining tenement" **substitute** "mining licence".

9.6 Section 11A(3) is **repealed**.

9.7 In section 17B(1) and (2), for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

10 Fences Act 1968

10. In section 3, in the definition of *Occupier*—
- (a) for "comprised in a gold mining or mineral lease" **substitute** "covered by a mining licence under the **Mineral Resources Development Act 1990**"; and
 - (b) in paragraph (a) following "but does not include—", for "Part I. of the **Mines Act 1958**" **substitute** "a licence under the **Mineral Resources Development Act 1990**".

11 Flora and Fauna Guarantee Act 1988

11. In section 37(b), for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

12 Forests Act 1958

- 12.1 In section 6, **omit** "Nothing" and **insert** "(1) Apart from section 7, nothing".
- 12.2 In section 6, for "mining" **substitute** "doing work as defined in the **Mineral Resources Development Act 1990**".
- 12.3 In section 6, **omit** "for gold or silver or other metals or minerals".
- 12.4 In section 7(1), for "Notwithstanding anything in the **Mines Act 1958** or any lease licence right or authority thereunder" **substitute** "Despite the **Mineral Resources Development Act 1990** or any licence, right or authority under that Act".
- 12.5 In section 7(2), for "Notwithstanding anything in the **Mines Act 1958** or any lease licence" **substitute** "Despite the **Mineral Resources Development Act 1990** or any licence,".
- 12.6 In section 7(2), for "as to mining" **substitute** "to do work as defined in that Act".
-

12.7 In section 7(2), for "and maintenance of the forest" **substitute** "of the ecological condition of native forests".

12.8 In section 49(1), for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

13 Land Act 1958

13.1 In section 2(3), for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

13.2 In section 81, for "or licence to search for metals and minerals or a holder of a gold mining or mineral lease" **substitute** ", mining licence or exploration licence under the **Mineral Resources Development Act 1990**".

13.3 In section 125(i)—

- (a) for "any person holding a miner's right or a gold mining lease or a mineral lease" **substitute** "a licensee under the **Mineral Resources Development Act 1990**"; and
- (b) for "gold or minerals (as the case may be) within the meaning of the **Mines Act 1958**" **substitute** "any mineral within the meaning of the **Mineral Resources Development Act 1990**".

13.4 In section 171, for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

13.5 In section 173(2)—

- (a) for "on the ground of it being auriferous or for any other" **substitute** "for any"; and
- (b) **omit** ", subject to the provisions of section 25 of the **Mines Act 1958**".

13.6 In section 174(2)—

- (a) for "on the ground that it is auriferous or for any other" **substitute** "for any"; and
- (b) **omit** ", subject to the provisions of section 25 of the **Mines Act 1958**".

13.7 In section 190, for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

13.8 In section 204—

- (a) for "any person being the holder of a miner's right or of a mining lease or mineral lease under the **Mines Act 1958**" **substitute** "a licensee under the **Mineral Resources Development Act 1990**"; and
- (b) for "mine for gold or minerals" **substitute** "do work"; and
- (c) for "mine for gold and silver" **substitute** "do such work"; and
- (d) for "Part II." **substitute** "Part 8"; and
- (e) for "mining thereon" **substitute** "doing such work on it".

13.9 In section 205(2)—

- (a) **omit** "County Court or the Magistrates' Court in"; and
- (b) for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

13.10 Sections 205(3), 205(4) and 205(5) are **repealed**.

13.11 In section 212(1), for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

13.12 In section 217—

- (a) for "gold or minerals" **substitute** "any mineral"; and
- (b) for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

13.13 Section 243(2) is **repealed**.

13.14 In section 337, for "mining lease or miner's right" (wherever occurring) **substitute** "mining licence".

13.15 In section 340—

- (a) **omit** "(not being solely a mining lease or licence)"; and
- (b) before "remain" **insert** ", subject to the **Mineral Resources Development Act 1990**,".

14 Land Acquisition and Compensation Act 1986

14.1 For section 38(1) **substitute**—

"38 (1) For the purposes of this Act, a licensee under the **Mineral Resources Development Act 1990** is not entitled to compensation for the value of any mineral in or under the surface of any acquired land."

14.2 In section 38(3)—

- (a) for "an occupier of land held by virtue of a miner's right" **substitute** "a licensee under the **Mineral Resources Development Act 1990**"; and
- (b) for "occupied by virtue of" **substitute** "covered by".

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15 Land Tax Act 1958

15. In section 9(3), in the definition of *Mine*—
- (a) for "land held as a claim under a miner's right for mining purposes, or included in any lease or licence granted by the Crown for mining purposes" **substitute** "part of the land covered by a mining licence under the **Mineral Resources Development Act 1990**"; and
 - (b) for "lease or claim" **substitute** "licence".

16 Lifts and Cranes Act 1967

16. In section 3, in paragraph (ii) of the definition of *Crane*—
- (a) for "paragraph (a), (b), (c) or (d)" **substitute** "paragraph (b) or (c)"; and
 - (b) after "1958" **insert** "or being used in connection with work being done under a licence within the meaning of the **Mineral Resources Development Act 1990**".

Sch. 1 item 17
repealed by
No. 29/2006
s. 3(Sch. 1
item 23.1).

* * * * *

18 Mines (Miscellaneous Amendments) Act 1987

- 18.1 In section 2(1)—
- (a) **omit** "8,"; and
 - (b) for "a day to be proclaimed" **substitute** "the day on which the **Mineral Resources Development Act 1990** receives the Royal Assent".
- 18.2 Section 8 is **repealed**.

19 National Parks Act 1975

19.1 In section 40(1)—

- (a) for "**Mines Act 1958** or" substitute "**Mineral Resources Development Act 1990** or"; and
- (b) **omit** "and land which is part of a park shall not be registered as a claim under the **Mines Act 1958**".

19.1A In section 40(1A)—

- (a) for "Part V of the **Mines Act 1958**" substitute "the **Mineral Resources Development Act 1990**"; and
- (b) for "under the **Mines Act 1958**" substitute "under the **Mineral Resources Development Act 1990**".

Sch. 1
item 19.1A
inserted by
No. 27/1991
s. 4(6).

19.2 In section 40(1AA)—

- (a) **omit** paragraph (b); and
- (b) in paragraph (c), for "**Mines Act 1958**" substitute "**Mineral Resources Development Act 1990**".

20 National Parks (Alpine National Park) Act 1989

20. Section 15 is **repealed**.

21 Nuclear Activities (Prohibitions) Act 1983

21.1 In section 2, in the definition of *Mining title*—

- (a) **omit** "any claim marked out or registered under the **Mines Act 1958**, and"; and
- (b) for "granted under the **Mines Act 1958**" substitute "granted under the **Mineral Resources Development Act 1990**".

21.2 In section 9(1)(i), for "the provisions of section 511(2) or 511(3) of the **Mines Act 1958**" **substitute** "section 113 of the **Mineral Resources Development Act 1990**".

22 Petroleum Act 1958

22.1 In section 3(1), in the definition of *mineral lease*, for "mineral lease within the meaning of the **Mines Act 1958**" **substitute** "mining licence under the **Mineral Resources Development Act 1990**".

22.2 For section 3(2) **substitute**—

"(2) Expressions not defined in subsection (1) have the same meanings as in the **Mineral Resources Development Act 1990**".

22.3 In section 5(1), **omit** "the **Mines Act 1958** or".

22.4 In section 28(1)(a), for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

22.5 In section 41(2) before "warden" **insert** "mining".

22.6 In section 55(1)—

(a) for "or searching permit under Part V. of the **Mines Act 1958**" **substitute** "under the **Mineral Resources Development Act 1990**"; and

(b) for "under the **Mines Act 1958**" **substitute** "under the **Mineral Resources Development Act 1990**".

22.7 In section 55(2), for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

22.8 For section 59(2) and (3) **substitute**—

"(2) If the parties are unable to agree within the prescribed time on the amount of compensation to be paid, section 88 of the **Mineral Resources Development Act 1990** applies as if the dispute were a disputed claim for compensation under that Act."

22.9 In section 60(2), before "warden" **insert** "mining".

22.10 In section 78, for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

22.11 In section 79(1)(c), before "warden" (wherever occurring) **insert** "mining".

23 Planning Appeals Act 1980

23.1 Section 35A is **repealed**.

23.2 In section 52(1)(b), **omit** "or a person who makes a determination or fails to make a determination, being a determination or failure to which section 512G of the **Mines Act 1958** applies".

23.3 In the Schedule, **omit** "Division 2 of Part IVA of the **Mines Act 1958**".

24 Sale of Land Act 1962¹⁶

24. In section 32(2), after paragraph (i) **insert**—

"(j) In the case of land that is within a municipal district specified for the purposes of this paragraph by the Minister administering the **Mineral Resources (Sustainable Development) Act 1990** by notice published in the Government Gazette, a description of any mining licence granted under that Act that covers the land."

Sch. 1 item 24
amended by
No. 63/2006
s. 57.

25 Scaffolding Act 1971

25. In section 3(1), in paragraph (a) of the definition of *scaffolding*, after "1958" **insert** "or in connection with work being done under a licence within the meaning of the **Mineral Resources Development Act 1990**".

26 Stamps Act 1958

- 26.1 In the Second Schedule, for "6. **Mines Act 1958**" **substitute** "6. **Mineral Resources Development Act 1990**".
- 26.2 In the Third Schedule after exemption (17) under the heading "XXIV DEED of ANY KIND WHATEVER (Not otherwise chargeable with duty)" **insert**—
- "(18) Any document referred to in section 69(2)(a) of the **Mineral Resources Development Act 1990**".

27 State Electricity Commission Act 1958

- 27.1 In section 69D—
- (a) **omit** "(1)"; and
 - (b) **omit** "lease,"; and
 - (c) **omit** ", permit"; and
 - (d) for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**"; and
 - (e) **omit** subsection (2).
- 27.2. After section 108 **insert**—
- "108A Commission not subject to Mineral Resources Development Act 1990 within Latrobe area**
- (1) In this section "Latrobe area" has the same meaning as in Part VIA.

- (2) The Commission is not subject to the **Mineral Resources Development Act 1990** in exercising any rights, powers or authorities or discharging any duties within the Latrobe area."

28 Summary Offences Act 1966

28. In section 50(4), for "**Mines Act 1958**" substitute "**Mineral Resources Development Act 1990**".

29 Transfer of Land Act 1958

29. In section 4(1), in the definition of *Land*, after "in land" insert "but does not include an interest in land arising under the **Mineral Resources Development Act 1990**".

30 Trustee Act 1958

30. In section 3, in the definition of *Land*—
- (a) omit ", and mines and minerals, whether or not severed from the surface,"; and
 - (b) omit the expression beginning "and in this definition" and ending "an undivided share thereof;".

31 Underseas Mineral Resources Act 1963

31. In section 2, for "**Mines Act 1958**" (wherever occurring) substitute "**Mineral Resources Development Act 1990**".

32 Vagrancy Act 1966

32. In section 7(1)(i), for "in or upon a mine or claim within the meaning of the **Mines Act 1958**" substitute "in a mine within the meaning of the **Mineral Resources Development Act 1990**".

Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990

Sch. 1

33 Wildlife Act 1975

33. In section 19(1), for "**Mines Act 1958**" (wherever occurring) **substitute "Mineral Resources Development Act 1990"**.
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SCHEDULE 2

Section 129

SAVINGS AND TRANSITIONALS

1. (1) Subject to anything provided by this Act expressly or by necessary implication, the repeal by this Act of a provision of the **Mines Act 1958** does not disturb the continuity of status, operation or effect of—
 - (a) any lease, licence, claim, right, permit, certificate or authority granted, issued, given or renewed; or
 - (b) any application for, or for the renewal of, a lease, licence, claim, right, permit, certificate or authority made; or
 - (c) any objection made or lodged; or
 - (d) any agreement (including a tribute agreement) or appointment made; or
 - (e) any Order made; or
 - (f) any approval, consent or other authority granted or given; or
 - (g) any money borrowed, lent or appropriated or any amount payable; or
 - (h) any bond or security lodged; or
 - (i) any surety or security given; or
 - (j) any charge on property created; or
 - (k) any property vested; or
 - (l) any notice given or served; or
 - (m) any liability incurred; or
 - (n) any power conferred; or

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- (o) any entitlement granted; or
- (p) any right or privilege given or acquired; or
- (q) any exemption or immunity granted or conferred; or
- (r) any circumstances created; or
- (s) any other thing done—

by or under that provision before its repeal.

- (2) The repeal by this Act of a provision of the **Mines Act 1958** does not disturb the continuity of status, operation or effect of the registration under the **Transfer of Land Act 1958** of any document existing for the purposes of, or in connection with, that provision or the capacity of any such document to be registered under the **Transfer of Land Act 1958**.

- 2. (1) In this clause—

corresponding new title, in relation to a former title, means the licence, right or authority of the kind specified opposite the former title in column 2 of the Table in subclause (2);

former title means lease, licence, claim, right, permit or authority of a kind specified in column 1 of the Table in subclause (2).

- (2) A lease, licence, claim, right, permit or authority under the **Mines Act 1958** of a kind specified in column 1 of the Table that is in force immediately before the commencement of this clause has effect, subject to this clause, for the remainder of the term or period for which it was granted, issued or renewed (as the case requires) as if it were a licence, right or authority under this Act of the kind specified opposite it in column 2 of the Table.

TABLE

<i>Column 1</i>	<i>Column 2</i>
Exploration licence	Exploration licence
Prospecting area licence	Exploration licence
Searching permit	Exploration licence
Miner's right	Miner's right
Development lease	Mining licence
Licence under section 65	Mining licence
Mining lease	Mining licence
Mining purposes licence	Mining licence
Registration of land as a claim	Mining licence
Tailings removal licence	Mining licence
Tailings treatment licence	Mining licence
Authority under section 46A(1) or 46B(1)	Tourist mine authority

- (3) A former title that, by virtue of subclause (2), continues in force as if it were a new title—
- (a) subject to paragraph (b), continues in force subject to the same covenants, conditions, restrictions, limitations, reservations, exceptions or other provisions to which it was subject immediately before the commencement of this clause; and
 - (b) may be renewed (subject to subclause (12)), transferred, varied, amalgamated, surrendered or cancelled only in accordance with this Act, despite anything to the contrary in the former title or in the **Mines Act 1958** or in the regulations made under that Act.
- (4) An application for the grant, issue or renewal of a former title made before the commencement of this clause and not determined at that commencement has effect as if it were an application for the corresponding new title.

Sch. 2

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- (5) A former title continues in operation until the determination of an application for its renewal that, by virtue of subclause (4), has effect as an application for the corresponding new title.
 - (6) Section 23 applies to an application that, by virtue of subclause (4), has effect as an application for the corresponding new title as if it had been on the day of its receipt an application for a licence under this Act.
 - (7) Section 26(5) applies to an application that, by virtue of subclause (4), has effect as an application for the corresponding new title as if for the reference to 3 months there were substituted a reference to 12 months.
 - (8) This Act applies to an application for the renewal of an exploration licence under the **Mines Act 1958** that, by virtue of subclause (4), has effect as an application for an exploration licence under this Act as if—
 - (a) the reference in section 13(3)(a) to 2 years were a reference to 1 year; and
 - (b) it did not contain section 28.
 - (9) If by virtue of subclause (4) an exploration licence under this Act is granted on an application for the renewal of an exploration licence under the **Mines Act 1958** then—
 - (a) in calculating, for the purposes of sections 16(1), 25(1)(c), 32(2) and 33, the period for which an exploration licence has been in operation account must be taken of the period for which the former licence was in operation; and
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- (b) if the application was for the first or third renewal of the former licence, section 30 applies as if the grant of the new licence was the first or third renewal (as the case requires) of the former licence.
- (10) The holder of a former title may apply to the Minister in accordance with the regulations to have that former title converted into the corresponding new title.
- (11) The Minister may, subject to this Act, grant or refuse an application under subclause (10).
- (12) Despite subclause (3)(b), when a former title is renewed as provided for in this Schedule, the Minister may approve the continued operation of any underground workings, surface workings or open cut operations that were, immediately before the commencement of this subclause, in operation in accordance with the former title.
- (13) A person who continues any operation with the approval of the Minister under subclause (12) is not guilty of an offence under section 45(1) in respect of that operation.
- 2A. (1) Section 10 applies to tailings produced before the commencement of this clause and to which a former title within the meaning of clause 2 does not apply at that commencement.
- (2) Any tailings to which subclause (1) applies that are situated on land covered by a former title within the meaning of clause 2 that is in force immediately before the commencement of this clause must be taken to be included in the corresponding new title within the meaning of that clause.
- (3) Despite subclause (2), the Minister may after the day on which the **Mineral Resources Development (Amendment) Act 1993** receives

Sch. 2 item 2A
inserted by
No. 86/1993
s. 37.

Sch. 2

the Royal Assent grant a licence over tailings referred to in that subclause on an application made before that day as if those tailings were not included in the corresponding new title and, if the Minister does so, those tailings must be taken not to be, and to have never been, included in the corresponding new title by virtue of that subclause.

- (4) On the expiry without renewal of a licence referred to in subclause (3), the tailings covered by that licence must be taken to be included in any licence in which they would have been included at that time by virtue of subclause (2) but for subclause (3).
- 3. (1) The person nominated under section 413(1)(a) of the **Mines Act 1958** to perform the duties of the Chief Mining Inspector immediately before the commencement of section 90 of this Act holds office as chief mining inspector under and subject to this Act and the **Public Service Act 1974** on and from that commencement without any further appointment.
- (2) A person nominated under section 413(1)(b) of the **Mines Act 1958** to perform the duties of an inspector of mines immediately before the commencement of section 90 of this Act holds office as an inspector of mines under and subject to this Act and the **Public Service Act 1974** on and from that commencement without any further appointment.
- (3) The person who holds office as the mining warden immediately before the commencement of section 96 holds office as a mining warden under and subject to this Act on and from that commencement for the balance of his or her term of appointment without any further appointment.

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4. (1) Any land excepted as described in section 7(1) or 347(1) of the **Mines Act 1958** immediately before the commencement of this clause must be taken to be exempted under this Act from being subject to an exploration licence and a mining licence.
 - (2) Any land excepted as described in section 514(17) of the **Mines Act 1958** immediately before the commencement of this clause must be taken to be exempted under this Act from being subject to an exploration licence.
 - (3) The Governor in Council may, by Order published in the Government Gazette, vary or revoke either in whole or in part an exception that, by virtue of subclause (1) or (2), must be taken to be an exemption under this Act.
 5. A person who holds a permit under section 386 of the **Mines Act 1958** immediately before the commencement of section 94 of this Act must be taken to hold a mine manager's certificate for the period and subject to the conditions specified in or prescribed by or under that Act.
 6. An authority granted under section 511(2) of the **Mines Act 1958** must be taken for the purposes of section 113(4) of this Act to have been granted by the Minister under that section of this Act.
 7. Section 114 applies to plant left on land after an instrument referred to in section 59(1) of the **Mines Act 1958** ceases to apply to that land in the same way that it applies to plant left on land after a licence ceases to apply to that land with the modification that for any reference to a period of 6 months there is to be substituted a reference to the period that was applicable in relation to the instrument under section 59(1) of the **Mines Act 1958**.
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Sch. 2

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8. Any provision of the **Mines Act 1958** that is repealed by this Act continues, despite its repeal, to apply to and in relation to—
- (a) any proceeding or appeal under that provision pending before a court or the Administrative Appeals Tribunal; or
 - (b) any dispute or other matter under that provision pending before a Land Valuation Board of Review established under Part III of the **Valuation of Land Act 1960**; or
 - (c) any investigation or inquiry under that provision pending before the mining warden; or
 - (d) any inquiry under that provision pending before the Board of Examiners for Mine Managers; or
 - (e) any inquiry or other matter under that provision pending before the Minister; or
 - (f) any arbitration under that provision pending—
immediately before that repeal as if this Act had not been enacted.
9. Division 1A of Part III of the **Mines Act 1958** continues, despite its repeal, to apply with respect to any tribute agreement in force immediately before that repeal.
10. Section 527 of the **Mines Act 1958** continues, despite its repeal, to apply with respect to returns furnished under subsection (1) of that section or any corresponding previous enactment.
11. (1) Any drainage board appointed under Division 4 of Part III. of the **Mines Act 1958** is abolished and its members go out of office on the commencement of this subclause.
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- (2) Any sludge abatement trust appointed under Subdivision 3 of Division 5 of Part III. of the **Mines Act 1958** is abolished and its members go out of office on the commencement of this subclause.
- (3) The Mining Consultative Committee established under Division 1 of Part IVA of the **Mines Act 1958** is abolished and its members go out of office on the commencement of this subclause.
12. Any land that was, immediately before the commencement of item 4 of Schedule 1, reserved under section 7 of the **Crown Land (Reserves) Act 1978** must for the purposes of this Act be taken, on and after that commencement, to be nominated under that section as substituted by that item.
13. (1) In this clause—
- (a) *extractive industry title* means a lease, licence or permit—
- (i) granted or issued under the **Extractive Industries Act 1966** and in force in respect of a substance immediately before that substance became a mineral within the meaning of this Act; or
- (ii) granted or issued in respect of a substance under that Act on an extractive industry title application after that substance became a mineral within the meaning of this Act;
- (b) *extractive industry title application* means an application for the grant or issue of a lease, licence or permit under the **Extractive Industries Act 1966** in respect of a substance where the application is made before, but not determined at, the date on which that substance became a mineral within the meaning of this Act;

Sch. 2 cl. 13
inserted by
No. 7/1994
s. 7.

Sch. 2

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- (c) a reference to a substance becoming a mineral within the meaning of this Act is a reference to it becoming such a mineral by virtue of being specified in Schedule 4 to this Act.
- (2) The fact that a substance has become a mineral within the meaning of this Act does not disturb the continuity of status, operation or effect of—
- (a) an extractive industry title; or
 - (b) an extractive industry title application; or
 - (c) an application for the assignment, transfer, consolidation, variation or renewal of an extractive industry title; or
 - (d) any right to make an application of a kind referred to in paragraph (c); or
 - (e) an assignment of an interest in an extractive industry title application or any right to make such an assignment.
- (3) An extractive industry title may be varied, renewed, assigned, transferred, consolidated, suspended, cancelled or revoked in accordance with the **Extractive Industries Act 1966** as if the substance to which the title applies were not a mineral within the meaning of this Act.
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SCHEDULE 3

Section 4(1)

Sch. 3
inserted by
No. 86/1993
s. 38.

RESTRICTED CROWN LAND

1. In this Schedule—

relevant recommendation means a recommendation that proposes that land is to be reserved under the **Crown Land (Reserves) Act 1978** for any of the following purposes—

- (a) regional parks;
- (b) coastal parks (including Gippsland Lakes Reserve);
- (c) marine parks;
- (d) flora or flora and fauna reserves;
- (e) wildlife reserves or wildlife areas (including Wildlife Management Co-Operative Areas);
- (f) natural features reserves, scenic reserves, cave reserves, geological reserves or natural features and scenic reserves;
- (g) bushland reserves;
- (h) historic areas or historic reserves;
- (i) public land water frontage reserves;
- (j) streamside reserves;
- (k) coastal reserves;
- (l) national heritage parks;
- (m) nature conservation reserves;
- (n) historic and cultural features reserves.

Sch. 3 cl. 1
amended by
No. 50/2002
s. 24(1)(2)
substituted by
No. 64/2004
s. 34(1),
amended by
Nos 29/2006
s. 3(Sch. 1
item 23.2(a)),
82/2009
s. 42(1)(2).

Sch. 3

Sch. 3 cl. 1A
inserted by
No. 64/2004
s. 34(1),
amended by
No. 29/2006
s. 3(Sch. 1
item 23.2(b)).

- 1A. Any land that is the subject of a relevant recommendation of the Victorian Environmental Assessment Council that has been accepted by the Government under Part 3 of the **Victorian Environmental Assessment Council Act 2001**.

Sch. 3 cl. 1B
inserted by
No. 64/2004
s. 34(1),
amended by
No. 29/2006
s. 3(Sch. 1
item 23.2(c)).

- 1B. Any land—

Sch. 3
cl. 1B(a)
amended by
No. 29/2006
s. 3(Sch. 1
item 23.2(d)).

- (a) to which clause 1A does not apply; and
- (b) that is not the subject of any other recommendation of the Victorian Environmental Assessment Council that has been accepted by the Government under Part 3 of the **Victorian Environmental Assessment Council Act 2001**—
- if that land is the subject of a relevant recommendation of the Land Conservation Council under section 5(1) of the **Land Conservation Act 1970** (as in force before its repeal) of which notice has been given by the Governor in Council under section 10(3) of that Act (as so in force).
2. Any land that is an alpine resort within the meaning of the **Alpine Resorts Act 1983**.
3. Any land that is a heritage river area under section 5 of the **Heritage Rivers Act 1992** other than land to which paragraph (a) or (b) of section 6 of this Act applies.

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|--|---|
| 4. Any land that is a natural catchment area under section 6 of the Heritage Rivers Act 1992 other than land to which paragraph (a) or (b) of section 6 of this Act applies. | |
| 4A. Any land that is described in Divisions 1 to 6 and 9 of Part 3 and Division 1 of Part 4 of the Fifth Schedule to the Crown Land (Reserves) Act 1978 . | Sch. 3 cl. 4A inserted by No. 50/2002 s. 24(3), substituted by Nos 64/2004 s. 34(2), 57/2006 s. 31(1), amended by No. 90/2009 s. 25(1). |
| 4AB. Any land described in Division 2A of Part 4A of the Fifth Schedule to the Crown Land (Reserves) Act 1978 . | Sch. 3 cl. 4AB inserted by No. 82/2009 s. 42(3). |
| 4B. Any land that is described in Part 8 of Schedule Four to the National Parks Act 1975 . | Sch. 3 cl. 4B inserted by No. 57/2006 s. 31(2). |
| 4BA. Any land described in Divisions 4 and 5 of Part 4A of the Fifth Schedule to the Crown Land (Reserves) Act 1978 . | Sch. 3 cl. 4BA inserted by No. 82/2009 s. 42(4). |
| 4C. Any land described in Division 1 or 2 of Part 7 of the Fifth Schedule to the Crown Land (Reserves) Act 1978 . | Sch. 3 cl. 4C inserted by No. 54/2008 s. 23. |
| 4D. Any land described in Divisions 15 to 26 of Part 1 of the Fifth Schedule to the Crown Land (Reserves) Act 1978 . | Sch. 3 cl. 4D inserted by No. 90/2009 s. 25(2). |
| 5. Any other Crown land (other than land to which paragraph (a) or (b) of section 6 applies) that the Minister and the Crown land Minister, by notice published in the Government Gazette, declare to be restricted Crown land for the purposes of this Act. | Sch. 3 cl. 5 amended by No. 63/2006 s. 58. |
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Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990

Sch. 3

Sch. 3 cl. 6
inserted by
No. 57/2006
s. 31(3).

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6. Despite anything to the contrary in this Schedule, any land shown delineated and coloured grey on the plan lodged in the Central Plan Office of the Department of Sustainability and Environment and numbered LEGL./06–260 is to be taken not to be land specified in this Schedule for the purposes of the definition of *restricted Crown land*.
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SCHEDULE 4

MINERALS

1. Bentonite.
2. Fine clay.
3. Kaolin.
4. Lignite.
5. Minerals in alluvial form including those of titanium,
zirconium, rare earth elements and platinoid group
elements.
* * * * *
7. Quartz crystals.
8. Zeolite.

Sch. 4
inserted by
No. 7/1994
s. 5,
amended by
No. 71/2001
s. 3(1)(c).

SCHEDULE 5

SAVING AND TRANSITIONAL PROVISIONS ARISING FROM THE MINERAL RESOURCES DEVELOPMENT (AMENDMENT) ACT 2000

1 Definitions

In this Schedule—

amending Act means the **Mineral Resources
Development (Amendment) Act 2000**;

commencement date means the date section 14 of
the amending Act came into operation.

2 Saving of exploration licence applications based on former measurement system

If the Minister varies the meaning of a graticular
section under section 7A—

- (a) any application for an exploration licence
that was lodged before the date the variation
took effect is not invalid merely because it
does not take account of the varied meaning
of graticular sections; and
- (b) the Minister may grant the application
without modifying the area to which the
licence is to apply to take account of the
varied meaning.

3 "Queued" applications to lapse

(1) This clause applies if—

- (a) an application for a licence was lodged—
 - (i) before the commencement date; and
 - (ii) one or more days after an application
was lodged for a licence in respect of
the same land; and

(b) that other prior application had not lapsed or been withdrawn, rejected or not accepted before the commencement date.

(2) The later application lapses.

4 Other applications

Subject to clauses 2 and 3, any application for a licence or the renewal of a licence that was lodged before the commencement date and that had not lapsed or been withdrawn, rejected or not accepted before that date is to be treated as if it had been lodged on the commencement date.

5 Exploration licences held for less than 5 years

- (1) This clause applies to an exploration licence that was first registered less than 5 years before the commencement date.
- (2) The licence is to be treated as if it had been issued on the day it was first registered for a period of 5 years.
- (3) Subsection (2) is not to be read as enabling the recovery of any area that no longer applies to the licence as a result of section 30 (before its repeal).

6 Exploration licences held for 5 years or more

- (1) This clause applies to an exploration licence that was first registered 5 years or more before the commencement date.
- (2) The licence may be renewed on the expiry of the term specified in the licence.

7 Exploration licences not affected

Subject to clauses 5 and 6, any exploration licence in force on the commencement date continues in force.

8 Mining licences not affected

Any mining licence in force on the commencement date continues in force.

9 Right to reproduce section 116 document imposed as a condition

- (1) This clause applies to any mining licence in force immediately before the commencement date.
 - (2) It is a condition of the licence that, in providing a document to the Minister under section 116, the licensee must give the Crown a licence to reproduce the document and any information in the document.
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SCHEDULE 6

Sch. 6
inserted by
No. 71/2001
s. 6.

SAVING AND TRANSITIONAL PROVISIONS ARISING
FROM THE MINERAL RESOURCES DEVELOPMENT
(FURTHER AMENDMENT) ACT 2001

1 Definition

In this Schedule *amending Act* means the
**Mineral Resources Development (Further
Amendment) Act 2001**.

2 Peat mining licences to continue

- (1) In this clause *licence* means Mining Licence No. 4667 granted on 27 May 1993.
- (2) The licence continues, until the expiry of the licence, to remain in force after the commencement of the amending Act, subject to this Act, as if peat was still a mineral.
- (3) The licence may be renewed after the commencement of the amending Act in accordance with this Act as if peat was still a mineral.

3 Peat exploration licences to continue

- (1) In this clause *licence* means—
 - (a) Exploration Licence No. 4115 granted on 22 July 1997;
 - (b) Exploration Licence No. 4387 granted on 12 May 2000;
 - (c) Exploration Licence No. 4451 granted on 12 May 2000.

Sch. 6

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- (2) A licence continues, until the expiry of the licence, to remain in force after the commencement of the amending Act, subject to this Act, as if peat was still a mineral subject to the following exceptions—
- (a) the holder of the licence is not entitled to apply for a mining licence in respect of peat; and
 - (b) the Minister must not renew the licence for a period that allows the licence to remain in force on or after 12 May 2012.

4 Inconsistent permits and authorities not to be granted

The Minister administering the **Extractive Industries Development Act 1995** must not grant under that Act—

- (a) a permit that allows any searching for, or the carrying out of any survey or other operation for the purpose of searching for, peat; or
- (b) a work authority that allows the carrying out of any extractive industry involving peat—

over, in or from any area of land covered by a licence to which clause 2 or 3 applies while that licence remains in force.

SCHEDULE 7

SAVING AND TRANSITIONAL PROVISIONS ARISING FROM THE RESOURCES INDUSTRY LEGISLATION AMENDMENT ACT 2009

Sch. 7
(Heading and
cls 1–5)
inserted by
No. 6/2009
s. 40.

1 Definitions

In this Schedule—

amending Act means the **Resources Industry
Legislation Amendment Act 2009**;

old Act means the **Extractive Industries
Development Act 1995** as in force before its
repeal.

2 Work authorities granted under the old Act to continue

Despite the repeal of the old Act, a work authority
granted under that Act and in force immediately
before the repeal of the old Act, continues in force
as if it were an extractive industry work authority
granted under this Act.

3 Variation of work plans

- (1) If the holder of a work authority, that is continued
in operation under clause 2, made an application
under section 18 of the old Act to vary the work
plan relating to that work authority and that
application has not been determined before the
commencement of the amending Act, the
application must be determined in accordance
with this Act.
- (2) Despite anything to the contrary in this Act, the
holder of a work authority granted under the old
Act and continued in operation under clause 2
must not make an application to vary the work
plan relating to that authority if the extractive
industry—

Sch. 7

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- (a) is carried out on land that has an area of less than 5 hectares and a depth of less than 5 metres; and
 - (b) does not require blasting or the clearing of native vegetation.
- (3) The holder of a work authority to which subclause (2) applies may apply, in writing, to the Minister for a determination of the Minister that the holder is not required to comply with the work plan relating to that authority.
- (4) If the holder of a work authority makes an application under subclause (3), the Minister—
- (a) may determine that the holder is not required to comply with the work plan relating to that authority; and
 - (b) may impose a condition on that authority requiring compliance with a Code of Practice.

4 Chief Inspector of quarries

On the commencement of the amending Act the person who was, immediately before the commencement of that Act, the Chief Inspector of Quarries within the meaning of the old Act—

- (a) is deemed to be the Chief Inspector within the meaning of this Act; and
- (b) is deemed to be substituted as a party to any proceedings pending in any court to which the Chief Inspector of Quarries was a party immediately before the repeal of the old Act.

5 Inspectors of quarries

On the commencement of the amending Act a person who was, immediately before the commencement of that Act, an inspector within the meaning of the old Act—

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- (a) is deemed to be an inspector within the meaning of this Act; and
 - (b) is deemed to be substituted as a party to any proceedings pending in any court to which that inspector was a party immediately before the repeal of the old Act.
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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 29 May 1990

Legislative Council: 27 November 1990

The long title for the Bill for this Act was "A Bill to provide a new legislative framework for the use of mineral resources in the State, to repeal the **Mines Act 1958**, to make consequential amendments to other legislation and for other purposes."

The **Mineral Resources Development Act 1990**, No. 92/1990 was assented to on 18 December 1990 and came into operation as follows:

Section 126(2) on 1 November 1990: section 3(3); Schedule 1 item 18 on 1 December 1987: section 3(4); sections 1–125, 126(1)(3), 127, 128 (*except* Schedule 1 items 17, 24), 129 (Schedule 2 items 1–12) on 6 November 1991: Government Gazette 30 October 1991 page 2970; section 126(5) on 1 November 1997: Government Gazette 23 October 1997 page 2899; section 126(4), Schedule 1 item 24 not yet proclaimed.

Schedule 1 item 17 was never proclaimed, repealed by No. 29/2006 section 3(Schedule 1 item 23.1).

The title of this Act was changed from the **Mineral Resources Development Act 1990** to the **Mineral Resources (Sustainable Development) Act 1990** by section 4 of the **Mineral Resources Development (Sustainable Development) Act 2006**, No. 63/2006.

2. Table of Amendments

This Version incorporates amendments made to the **Mineral Resources (Sustainable Development) Act 1990** by Acts and subordinate instruments.

Extractive Industries (Further Amendment) Act 1991, No. 27/1991

<i>Assent Date:</i>	12.6.91
<i>Commencement Date:</i>	All of Act (<i>except</i> s. 4 (3)–(6)) on 12.6.91: s. 2(1); s. 4(3)–(6) on 18.12.90: s. 2(2)
<i>Current State:</i>	All of Act in operation

Mineral Resources Development (Amendment) Act 1993, No. 86/1993

<i>Assent Date:</i>	3.11.93
<i>Commencement Date:</i>	Ss 1–3, 32, 35, 42, 43 on 3.11.93: s. 2(1); ss 8, 11(1), 37 on 6.11.91: s. 2(2); ss 4, 5, 7, 9, 10, 11(2)(3), 12–17, 18(b), 19–25, 27–31, 33, 34, 36, 38–41, 44 on 17.1.94: Government Gazette 16.12.93 p. 3317; ss 18(a), 26 on 1.2.94: Special Gazette (No. 3) 1.2.94 p. 1; s. 6 on 3.11.94: s. 2(4)
<i>Current State:</i>	All of Act in operation

Building Act 1993, No. 126/1993

<i>Assent Date:</i>	14.12.93
<i>Commencement Date:</i>	S. 264(Sch. 5 item 16) on 1.7.94: Special Gazette (No. 42) 1.7.94 p. 1
<i>Current State:</i>	This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990

Mineral Resources Development (Further Amendment) Act 1994, No. 7/1994

<i>Assent Date:</i>	27.4.94
<i>Commencement Date:</i>	All of Act (<i>except</i> s. 6) on 27.4.94: s. 2(1); s. 6 on 17.1.94: s. 2(2)
<i>Current State:</i>	All of Act in operation

Valuation of Land (Amendment) Act 1994, No. 91/1994

<i>Assent Date:</i>	6.12.94
<i>Commencement Date:</i>	S. 28 on 23.1.95: Government Gazette 19.1.95 p. 121
<i>Current State:</i>	This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990

Electricity Industry (Amendment) Act 1995, No. 56/1995

<i>Assent Date:</i>	20.6.95
<i>Commencement Date:</i>	Ss 40, 42 on 20.6.95: Special Gazette (No. 52) 20.6.95 p. 1
<i>Current State:</i>	This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990

Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990

Endnotes

Extractive Industries Development Act 1995, No. 67/1995

Assent Date: 17.10.95
Commencement Date: S. 60(2) on 17.10.95: s. 2(1); s. 60(3) on 1.6.96:
Special Gazette (No. 60) 31.5.96 p. 4
Current State: This information relates only to the provision/s
amending the **Mineral Resources (Sustainable
Development) Act 1990**

Heritage Act 1995, No. 93/1995 (as amended by No. 66/1997)

Assent Date: 5.12.95
Commencement Date: S. 218(1)(Sch. 2 items 5.1–5.3) on 23.5.96:
Government Gazette 23.5.96 p. 1248; s. 218(2)(Sch. 2
items 9.1, 9.2) on 23.5.98: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Mineral Resources (Sustainable
Development) Act 1990**

Heritage (Amendment) Act 1997, No. 18/1997

Assent Date: 6.5.97
Commencement Date: S. 4 on 5.12.95: s. 2(2); rest of Act on 6.5.97: s. 2(1)
Current State: All of Act in operation

Victorian Plantations Corporation (Amendment) Act 1998, No. 35/1998

Assent Date: 19.5.98
Commencement Date: S. 18 on 26.6.98: Government Gazette 25.6.98 p. 1561
Current State: This information relates only to the provision/s
amending the **Mineral Resources (Sustainable
Development) Act 1990**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Mineral Resources (Sustainable
Development) Act 1990**

**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998,
No. 52/1998** (as amended by No. 101/1998)

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 64) on 1.7.98: Government Gazette
18.6.98 p. 1512
Current State: This information relates only to the provision/s
amending the **Mineral Resources (Sustainable
Development) Act 1990**

**Conservation, Forests and Lands (Miscellaneous Amendments) Act 1998,
No. 76/1998**

Assent Date: 10.11.98
Commencement Date: S. 31 on 15.12.98: s. 2(5)
Current State: This information relates only to the provision/s
amending the **Mineral Resources (Sustainable
Development) Act 1990**

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No. 92 of 1990

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Transfer of Land (Single Register) Act 1998, No. 85/1998 (as amended by No. 74/2000)

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 42) on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Electricity Industry Legislation (Miscellaneous Amendments) Act 2000, No. 69/2000

Assent Date: 21.11.00
Commencement Date: S. 60 on 1.1.01: s. 2(4)
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 83) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Mineral Resources Development (Amendment) Act 2000, No. 82/2000

Assent Date: 28.11.00
Commencement Date: Ss 60, 69 on 29.11.00: s. 2(1); ss 3–59, 61–68, 70–73 on 31.7.01: Government Gazette 26.7.01 p. 1703
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 82) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Mineral Resources Development (Further Amendment) Act 2001, No. 71/2001

Assent Date: 7.11.01
Commencement Date: Ss 3(1), 4–6 on 8.11.01: s. 2
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Accident Compensation (Amendment) Act 2001, No. 82/2001

Assent Date: 11.12.01
Commencement Date: S. 34 on 28.10.02: Government Gazette 24.10.02 p. 2859
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Mineral Resources (Sustainable Development) Act 1990
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National Parks (Marine National Parks and Marine Sanctuaries) Act 2002, No. 40/2002

Assent Date: 18.6.02
Commencement Date: S. 29 on 16.11.02: s. 2
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

National Parks (Box-Ironbark and Other Parks) Act 2002, No. 50/2002

Assent Date: 29.10.02
Commencement Date: Ss 20–24 on 30.10.02: s. 2
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Fisheries (Amendment) Act 2003, No. 56/2003

Assent Date: 16.6.03
Commencement Date: S. 11(Sch. item 12) on 17.6.03: s. 2
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

National Parks (Additions and Other Amendments) Act 2004, No. 64/2004

Assent Date: 12.10.04
Commencement Date: S. 34 on 13.10.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Primary Industries Legislation (Further Miscellaneous Amendments) Act 2004, No. 69/2004

Assent Date: 19.10.04
Commencement Date: S. 56 on 20.10.04: s. 2(1); s. 55 on 1.4.05: Government Gazette 24.3.05 p. 546
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 134) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 69) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

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Mineral Resources Development (Brown Coal Royalties) Act 2005, No. 89/2005

Assent Date: 29.11.05
Commencement Date: 1.1.06: s. 2
Current State: All of Act in operation

Aboriginal Heritage Act 2006, No. 16/2006 (as amended by No. 63/2006)

Assent Date: 9.5.06
Commencement Date: S. 198(Sch. 2 item 5) on 28.5.07: Government Gazette 24.5.07 p. 921
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Statute Law (Further Revision) Act 2006, No. 29/2006

Assent Date: 6.6.06
Commencement Date: S. 3(Sch. 1 item 23) on 7.6.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 94(Sch. item 33) on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

National Parks and Crown Land (Reserves) Acts (Amendment) Act 2006, No. 57/2006

Assent Date: 15.8.06
Commencement Date: S. 31 on 16.8.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Mineral Resources Development (Sustainable Development) Act 2006, No. 63/2006

Assent Date: 29.8.06
Commencement Date: Ss 4, 5, 6(1)(3), 7–25, 26(1)(3)(4), 27(1)–(3), 29–55, 57, 58 on 30.8.06: s. 2(1); ss 6(2), 26(2), 27(4), 28, 56 on 1.10.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 71) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

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Energy and Resources Legislation Amendment Act 2008, No. 25/2008

Assent Date: 3.6.08
Commencement Date: Ss 12–16 on 4.6.08: s. 2(1)
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

National Parks and Crown Land (Reserves) Acts Amendment Act 2008, No. 54/2008

Assent Date: 23.9.08
Commencement Date: S. 23 on 9.11.08: Government Gazette 6.11.08 p. 2574
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Resources Industry Legislation Amendment Act 2009, No. 6/2009

Assent Date: 3.3.09
Commencement Date: Ss 4–40 on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Energy and Resources Legislation Amendment Act 2009, No. 57/2009

Assent Date: 21.10.09
Commencement Date: Ss 28, 30, 31 on 1.1.10: Government Gazette 10.12.09 p. 3215; ss 23, 24, 32 on 27.1.10: Special Gazette (No. 33) 27.1.10 p. 1; ss 25–27, 29 on 30.6.10: Special Gazette (No. 255) 30.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 1 item 37), (Sch. Pt 2 item 36) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

Parks and Crown Land Legislation Amendment (River Red Gums) Act 2009, No. 82/2009

Assent Date: 8.12.09
Commencement Date: S. 42(1)(4) on 29.6.10: Government Gazette 24.6.10 p. 1274; s. 42(2)(3) on 30.9.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

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**Parks and Crown Land Legislation Amendment (East Gippsland) Act 2009,
No. 90/2009**

Assent Date: 15.12.09
Commencement Date: S. 25 on 20.8.10: Government Gazette 19.8.10 p. 1799
Current State: This information relates only to the provision/s
amending the **Mineral Resources (Sustainable
Development) Act 1990**

Energy and Resources Legislation Amendment Act 2010, No. 55/2010

Assent Date: 14.9.10
Commencement Date: Ss 47–56 on 14.10.10: Government Gazette 14.10.10
p. 2404
Current State: This information relates only to the provision/s
amending the **Mineral Resources (Sustainable
Development) Act 1990**

**Mineral Resources Amendment (Sustainable Development) Act 2010,
No. 59/2010**

Assent Date: 14.9.10
Commencement Date: Ss 37, 41, 42, 51 on 14.10.10: Government Gazette
14.10.10 p. 2405
Current State: This information relates only to the provision/s
amending the **Mineral Resources (Sustainable
Development) Act 1990**

Traditional Owner Settlement Act 2010, No. 62/2010

Assent Date: 21.9.10
Commencement Date: S. 140 on 23.9.10: Special Gazette (No. 382) 22.9.10
p. 1
Current State: This information relates only to the provision/s
amending the **Mineral Resources (Sustainable
Development) Act 1990**

Endnotes

3. Explanatory Details

¹ S. 4(1) def. of *petroleum*: See also **Petroleum Act 1998**.

² S. 15(5): See section 4(1) def. of *land affected*.

³ S. 25(1)(c)(i): See section 25(5).

⁴ S. 42(2)(b)(ii): See note 2.

⁵ S. 42(2)(c): See note 2.

⁶ S. 42(2)(c)(i): See note 2.

⁷ S. 42(2)(c)(iv): See note 2.

⁸ S. 43(1)(c): See note 2.

⁹ S. 43(1)(d)(ii): See note 2.

¹⁰ S. 43(1)(e): See note 2.

¹¹ S. 43(1)(e)(i): See note 2.

¹² S. 43(1)(e)(iv): See note 2.

¹³ S. 80(4): The amendment proposed by section 24(4)(a) of the **Resources Industry Legislation Amendment Act 2009**, No. 6/2009 is not included in this publication because the words "a licensee" do not appear in section 80(4). Section 24(4)(a) reads as follows:

24 Rehabilitation bond

(4) In section 80(4) of the Principal Act—

(a) for "a licensee" **substitute** "an authority holder";

¹⁴ S. 80(6): The amendment proposed by section 24(6) of the **Resources Industry Legislation Amendment Act 2009**, No. 6/2009 is not included in this publication because the words "the licensee" do not appear in section 80(6). Section 24(6) reads as follows:

24 Rehabilitation bond

(6) In section 80(6) of the Principal Act, for "the licensee" **substitute** "the authority holder".

¹⁵ S. 126(4): Section 126(4) of this Act is not yet proclaimed.

¹⁶ Sch. 1 item 24: Schedule 1 item 24 to this Act is not yet proclaimed.