

Statutes Amendment (Mineral Resources) Bill 2018

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Mining Act 1971*

4—Amendment of section 6—Interpretation

This clause amends a number of definitions consequent on new or updated provisions in the measure. This includes the amendment and recasting of key terms used in the Act such as *mineral tenement* (instead of mining tenement), *authorised operations* (instead of mining operations), and *tenement holder* (instead of mining operator).

5—Amendment of section 7—Application of Act

This clause inserts new subsections (2), (2a) and (2b). Subsections (2) and (2a) provide power to make regulations in respect of the application or non-application of specified provisions of the Act depending on various specified factors. Subsection (2b) provides for the circumstances in which royalty is payable or not payable under the Act. The clause also makes a consequential amendment.

6—Amendment of section 8—Declaration of mineral land etc

The amendments in subclauses (1) and (2) are consequential. Subclause (3) inserts a new subsection (7) which provides for the circumstances in which a proclamation made under the section before 29 June 1972 will be taken to have limited or affected the exercise of the power to make a proclamation under the section on or after that date.

7—Amendment of section 8A—Opal development areas

This amendment is consequential.

8—Amendment of section 9—Exempt land

The clause amends section 9 to declare land of the following kinds to be exempt land:

- land that is lawfully and genuinely used as a yard or garden;
- land that is lawfully and genuinely used as a cultivated field, plantation, orchard or vineyard for commercial purposes;
- land situated within the prescribed distance (as now defined in the section, which varies in relation to whether the operations are low impact or advanced

exploration operations, or any other authorised operations) of a building or structure used as a place of residence;

- land within 150m of a building or structure with a value equal to or exceeding the prescribed amount (as defined in the section) used for an industrial or commercial purpose.

The clause also makes a number of consequential amendments to section 9.

9—Amendment of section 9AA—Waiver of exemption (including cooling-off)

Section 9AA provides a formal process for a tenement holder to invite an owner of land to enter into an agreement with the tenement holder to waive the benefit of an exemption under section 9. If the tenement holder is unable to reach an agreement with the owner of land, they can apply to the ERD Court for an order waiving the benefit of the exemption.

Under section 9AA as proposed to be amended by this clause, an owner of land who has the benefit of an exemption in respect of land to which a mineral claim has been registered will be able to advise the tenement holder of their position in relation to the waiver, and the conditions (if any) on which they may agree to the waiver. If application is made for a production tenement or a miscellaneous purposes licence, an owner of land who has the benefit of an exemption under section 9 in respect of the land to which the application relates will be able to apply to the appropriate court for orders under subsection (9).

Subsection (9) as recast will authorise the appropriate court to make the following orders:

- an order confirming that the owner of land is entitled to the benefit of an exemption under section 9;
- if the tenement holder or owner of land satisfies the court that any adverse effects of the proposed authorised operations on the owner of land can be appropriately addressed by the imposition of conditions on the tenement holder (including the payment of compensation to the owner)—an order waiving the benefit of the exemption and imposing conditions on a party to the proceedings.

New subsection (14b) requires an agreement made under the section to be given to the Mining Registrar for registration on the mining register.

New subsection (14c) makes it clear that nothing in section 9AA derogates from the jurisdiction of the Warden's Court under section 67 to make determinations about whether land is exempt land under section 9.

10—Amendment of section 9A—Special declared areas

The amendments in this clause are of a consequential nature.

11—Repeal of section 10A

This clause repeals section 10A dealing with special conditions attaching to the mining of radioactive minerals.

12—Amendment of section 10B—Interaction with other legislation

The clause amends section 10B to provide that the Minister must, in acting in the administration of the *Mining Act 1971* take account of codes of management under the *Wilderness Protection Act 1992*.

13—Amendment of section 12—Delegation

This clause amends section 12 to extend and clarify the power of delegation of the Minister and the Director of Mines.

14—Amendment of section 13—Mining registrars and other staff

The clause amends section 13 to extend and clarify the power of delegation of the Mining Registrar.

15—Amendment of section 14B—Authorised investigations

The clause makes a number of consequential amendments, as well as provides additional circumstances in which an investigation is to be taken to be an authorised investigation, namely if the purpose of the investigation is—

- to undertake any inquiry relevant to the administration or enforcement of the Act; or
- to inspect any authorised operations which are creating, or are likely to create, a nuisance, or are damaging, or are likely to damage, property.

16—Amendment of section 14C—Powers of entry and inspection

This clause amends section 14C to extend and clarify the powers of entry and inspection of authorised officers under the Act. The clause also provides additional provisions that require an authorised officer to only exercise powers of entry and inspection as provided in the section on the authority of a warrant issued by a magistrate (including as a warden) or justice in accordance with the section.

17—Amendment of section 14D—Power to gather information

The clause amends section 14D to delete the existing self-incrimination provision and clarify the consequences for a person who fails to comply with a requirement to answer a question or to provide information. New subsections (6) and (7) make it an offence with a maximum penalty of \$5 000 to refuse to state a person's full name, usual place of residence and to produce evidence of the person's identity when required to do so by an authorised officer.

18—Amendment of section 14E—Production of records

This clause makes a number of consequential amendments, and extends the powers of authorised officers to retain, seize and make copies of records produced under the section.

19—Insertion of sections 14G and 14H

This clause inserts new sections as follows:

14G—Power to issue expiation notices

The proposed section enables authorised officers to give expiation notices for alleged offences which are expiable under the Act.

14H—Provisions relating to things seized

The proposed section sets out the process for dealing with things that are seized under Part 2 of the Act.

20—Amendment of section 15—Power to conduct geological investigations etc

The amendments in this clause make a number of consequential amendments.

21—Repeal of section 15A

This repeal is consequential on the re-enactment of this provision in proposed Part 2A.

22—Insertion of Part 2A

This clause inserts a new Part as follows:

Part 2A—Mining register and information

Division 1—Mining register

15AA—The register

The proposed section provides that there is to be a mining register kept by the Mining Registrar, sets out the matters that are to be registered on the register, the circumstances in which matters must be registered and the form and manner in which the register must be kept. It is an offence with a maximum penalty of \$5 000 for a tenement holder or other person to fail to meet registration requirements.

15AB—Dealings with mineral tenements

The proposed section provides that a mineral tenement or an interest in a mineral tenement (being a legal or proprietary interest) must not be transferred, assigned, sublet or be held subject to a trust, whether directly or indirectly, without the consent of the Minister. The section further sets out the consent and registration requirements for dealings with such mineral tenements and interests.

Division 2—Mortgages

15AC—Mortgages

The proposed section provides for the requirements in relation to a party to a mortgage over a mineral tenement who applies to the Mining Registrar for the registration of a mortgage, including the application requirements, requests for information from the Mining

Registrar, the status of a registered mortgage, and the effect and circumstances in which the mortgage may be surrendered and discharged.

15AD—Application to court to challenge aspects of mortgages

The proposed section provides for the circumstances in which a person who has an interest in a mineral tenement subject to a registered mortgage or an interest directly affected by a registered mortgage may apply to the appropriate court for an order or declaration in relation to the mortgage, as provided in the section.

Division 3—Caveats

15AE—Caveats

The proposed section provides for the circumstances in which a person who has or is claiming an interest in a mineral tenement may apply to have a caveat registered in accordance with the Division, including the form and manner in which the caveat is to be made, the matters to which a caveat may relate, and the effect of a caveat.

15AF—Application to Warden's Court to lapse caveat or obtain compensation

The proposed section provides for the circumstances in which a person who has an interest in a mineral tenement subject to a registered caveat or an interest directly affected by a registered caveat may apply to the Warden's Court for a declaration or order in relation to the caveat as registered under the proposed Division.

Division 4—Other dealings

15AG—Other dealings

The proposed section provides for the manner and circumstances in which a tenement holder may apply to the Mining Registrar for the registration on the register of any agreement, memorandum, arrangement, instrument, document or dealing (a *registrable dealing*) relating to—

- the relevant mineral tenement or an interest in the mineral tenement; or
- authorised operations carried out, or to be carried out, on the relevant mineral tenement.

Division 5—Protection from liability

15AH—Protection from liability

The proposed section provides for the status and liability of the Mining Registrar, Minister, Director of Mines and Crown in relation to an interest, instrument, agreement, statement, notice, order,

direction, bond, penalty or other document or dealing on the mining register.

Division 6—Information

15AI—Interpretation

The proposed section defines terms to be used in the proposed Division, and provides the manner in which the Director of Mines may specify information or material as designated material.

15AJ—Compilation, keeping and provision of material

The proposed section provides requirements for a tenement holder in relation to the compilation, keeping and provision of material relating to the tenement. An administrative penalty applies to any tenement holder who fails to comply with a provision of the proposed section.

15AK—Tests

The proposed section requires a tenement holder to allow testing and samples of minerals to be taken at the request of the Director or person acting under the written authority of the Director.

15AL—Release of material

The proposed section provides for the manner and circumstances in which prescribed material may be released by the Minister or Director of Mines.

23—Amendment of section 17—Royalty

Section 17 as amended by this clause will provide that, subject to the Act, royalty is payable on all minerals recovered from mineral land. An exception is made for extractive minerals in certain specified circumstances.

This clause also makes substantial changes to the manner in which the value of minerals is to be determined for the purposes of calculating royalty. Where minerals are sold pursuant to an arms length contract with a genuine purchaser, the value of the minerals for the purposes of determining royalty will be the market value on the day that ownership passes, and the market value will be the contract price. The section as amended by this clause will set out a number of alternative methods for determining market value that apply in circumstances where there is no contract with a genuine purchaser at arms length.

24—Amendment of section 17A—Reduced royalty for new mines

This clause makes consequential amendments.

25—Insertion of sections 17AB and 17AC

This clause re-enacts sections 73E and 73EA of the current Act (which deal with royalty for private mines) and relocates them into this Part.

26—Substitution of section 17B

This clause repeals section 17B and substitutes a new section that broadens the circumstances in which the Treasurer may make an assessment of royalty that a person is liable to pay. In addition to the circumstances that apply currently, the Treasurer will be authorised to make an assessment if—

- there is disagreement about an estimate of the market value of minerals; or
- there is a default in furnishing a return; or
- the Treasurer is not satisfied with a return; or
- the Treasurer is of the view that there has been an underpayment or an overpayment of royalty.

If there has been an overpayment of royalty, the Treasurer is required to refund the amount of the excess to the person or set off the amount against a future liability.

27—Insertion of section 17CA

New section 17CA, inserted by this clause, is substantially similar to current section 76, which is to be repealed. The section requires a tenement holder to furnish a return twice in each year. There is also a requirement for a return to be furnished if a tenement is cancelled, suspended, transferred, forfeited or due to expire.

28—Amendment of section 17D—When royalty falls due (general principles)

The amendments made by this clause are consequential.

29—Amendment of section 17DA—Special principles relating to designated tenement holders

The amendments made by this clause are consequential.

30—Amendment of section 17E—Penalty for unpaid royalty

A penalty applies under section 17E if royalty is not paid on or by the date on which it fell due. Currently, the formula for determining the penalty refers to the loan reference rate applied by the Commonwealth Bank of South Australia. The section as amended will refer instead to the applicable market rate under section 26 of the *Taxation Administration Act 1996* on the day on which royalty fell due.

31—Substitution of section 18

Current section 18 provides that property in minerals passes to a person in consideration of payment of royalty or, if royalty is not payable, on recovery of the minerals. This clause substitutes a new section that provides that property in minerals recovered from mineral land passes to the tenement holder on the day on which a determination of the value of the minerals is made for the purposes of assessing royalty payable on the minerals under section 17. It is still the case under the new section that if royalty is not payable, property passes on recovery of the minerals. The new section also provides that the liability of a tenement holder to pay royalty to the Crown arises when the property in minerals passes to the tenement holder or the proprietor.

32—Amendment of section 20—General right to prospect for minerals

This clause makes a consequential amendment.

33—Amendment of section 21—Steps to establish a mineral claim

This clause contains amendments consequential on the insertion of common provisions in proposed Part 8B. It also amends the section to make the Mining Registrar responsible for the manner and form of an application for the establishing of a mineral claim.

34—Amendment of section 25—Rights conferred by ownership of mineral claim

This clause amends section 25(3) consequent on amendments to section 17.

35—Amendment of section 26—Mineral claim not transferable etc

This amendment is of a technical nature.

36—Amendment of section 27—Land not to be subject to successive mineral claims

A new subsection 27(2) is proposed which relates to the circumstances in which a mineral claim due to lapse is the subject of another mineral claim covering the same area. The clause also makes a number of technical amendments.

37—Substitution of sections 28 and 29

This clause substitutes sections 28 and 29 as follows:

28—Preliminary

The proposed section defines terms to be used in relation to Part 5 which makes provision for the granting of an exploration licence, including when land will be taken to be open ground or relinquished ground. The proposed section also provides for an area of land to be declared by notice to be an exploration release area, and for the circumstances in which an exploration licence may be granted by the Minister.

29—Nature of exploration licence

The proposed section sets out the operations able to be undertaken by the holder of an exploration licence.

29A—Application for exploration licence

The proposed section sets out the application process for an exploration licence, including the requirements that the applicant must meet and the manner in which the Director and Minister must consider and deal with such applications.

29B—Grant of exploration licence

The proposed section provides for the circumstances in which an exploration licence will be taken to be granted, and for the Minister to give notice of the granting of such a licence.

38—Amendment of section 30—Incidents of licence

The clause updates references in the section to refer to terms or conditions of licence (instead of just conditions). It increases the maximum penalty for the offence provided for in section 30(8) from \$120 000 to \$250 000.

39—Insertion of section 30AAA

This clause inserts a new section as follows:

30AAA—Expenditure

The proposed section requires a tenement holder, as a condition of an exploration licence, to achieve a level of expenditure specified in or in relation to the licence on operations carried out under the licence (an *expenditure commitment*).

The tenement holder must furnish a statement to the Minister in a manner and form, and including such information or evidence, as determined by the Minister and the requirements of the proposed section and the regulations, outlining the exploration operations to be carried out under the licence and declaring the amount of expenditure incurred and estimated to be incurred in carrying out such operations.

The proposed section allows for a tenement holder or tenement holders to amalgamate their expenditure commitments in relation to 2 or more exploration licences, and also for the deferment or variation of the amount of an expenditure commitment.

40—Amendment of section 30AA—Area of licence

The clause inserts new subsections (3) to (11) which provide for the manner and circumstances in which the holder of an exploration licence may apply to the Minister for approval to surrender a part of the area of the licence. The surrender, under an agreement, would enable another party to the agreement to obtain a new exploration licence in relation to the land to be surrendered. The clause also provides for the manner in which the licences will be dealt with if the Minister grants such an approval.

41—Amendment of section 30A—Term and renewals of licence

The clause amends various provisions in the section to increase the maximum term for which an exploration licence may be granted from 5 years to 6 years. It also amends the section to provide for the manner in which an exploration licence may be renewed.

42—Substitution of section 30AB

This clause deletes current section 30AB which provides for a subsequent exploration licence to be granted. These provisions are now covered in the proposed amendments to section 30A allowing for renewal of an exploration licence. The proposed new section 30AB is as follows:

30AB—Excise of land for public purposes

The proposed new section allows the Minister, if of the opinion that land comprised in an exploration licence is required for a public purpose, to excise the land from the licence. The proposed section

outlines the manner in which the Minister may undertake such a process and the rights of the tenement holder to apply to the ERD Court for compensation.

43—Amendment of section 31—Fee

The clause amends section 31 to provide that the liability to pay a fee under the section is a debt due to the Crown.

44—Repeal of sections 32 and 33

The clause repeals sections 32 and 33, which are now provided for in proposed Part 8B.

45—Insertion of section 33B

This clause inserts a new section as follows:

33B—Retention status

The proposed section outlines the manner and circumstances in which the holder of an exploration licence may apply to the Minister for retention status in relation to the licence. The section further provides for the following:

- the circumstances in which retention status may be granted;
- the requirements on the tenement holder who has been granted retention status in respect of the licence;
- the terms and conditions of the licence to which retention status applies;
- the status of land before, during and after retention status applies to the land.

46—Substitution of sections 34 to 37

The proposed sections recast and consolidate the sections to be substituted as follows:

34—Preliminary

The proposed section outlines the circumstances in which the Minister may grant a mining lease.

35—Nature of mining lease

The proposed section outlines the rights conferred under a mining lease, that mining leases may be of a prescribed class and that terms and conditions may apply to the lease.

36—Application for mining lease

The proposed section sets out the requirements for a person making an application for a mining lease.

37—Approval of application and registration

The proposed section states the circumstances in which the Minister may or may not grant a mining lease.

47—Amendment of section 38—Term and renewal of mining lease

The clause amends section 38 to consolidate, simplify and clarify the process for the renewal of a mining lease.

48—Repeal of sections 39 to 41

The repealed sections are to be re-enacted in proposed Part 8B.

49—Substitution of Parts 6A and 8

This clause substitutes Parts 6A and 8 which provide for retention leases and miscellaneous purposes licences as follows:

Part 7—Retention leases

42—Preliminary

The proposed section outlines the persons to whom a retention lease may be granted and the requirements and limitations on the type of person and stratum to which the licence may relate.

43—Nature of retention lease

The proposed section sets out the cases in which a retention lease may be granted, and the rights that such a lease, if granted, confers on the holder of the lease, and that the lease is to be subject to terms and conditions as may be prescribed and as may be specified by the Minister in the lease.

44—Application for retention lease

The proposed section sets out the requirements for a person applying for a retention lease.

45—Approval of application and registration

The proposed section states the circumstances in which the Minister may or may not grant a retention lease.

46—Term and renewal of retention lease

The proposed section sets out the term for which a retention lease may be granted and the manner in which the holder of a retention lease may apply for renewal of the lease.

Part 8—Miscellaneous purposes licences

47—Preliminary

The proposed section sets out the circumstances in which the Minister may grant a miscellaneous purposes licence.

48—Nature of miscellaneous purposes licence

The proposed section provides that a miscellaneous purposes licence is to be granted for ancillary operations and that the Minister may

limit the scope of operations under the licence by terms and conditions to which the licence is subject.

49—Application for miscellaneous purposes licence

The proposed section outlines the process by which a person may apply for a miscellaneous purposes licence.

50—Approval of application and registration

The proposed section outlines the circumstances in which the Minister must not grant a miscellaneous purposes licence, and that the licence will be taken to be granted by the Minister when registered.

51—Term and renewal of miscellaneous purposes licence

The proposed section provides for the term for which a miscellaneous purposes licence may be granted, and outlines the process by which a miscellaneous purposes licence may be renewed.

50—Substitution of section 56B

This clause substitutes section 56B as follows:

56B—Special mining enterprises

The proposed section defines a special mining enterprise, and provides for the manner in which an agreement is to be made between a proponent and the Minister prior to an application under Part 8A being made, and the sections of the Act that are to apply to such an application.

56BA—Concept phase

The proposed section outlines the first step that a proponent seeking special mining enterprise status must undertake, namely to consult with the Director of Mines about the proposal in a manner set out in the section. The Director may then bring the consultation to an end by advising the proponent that the matter may proceed to an application to the Minister under Part 8A, or that the matter is not, in the opinion of the Director, suitable for further consideration. The effect of this is that the proponent is then not entitled to make an application to the Minister under the Part.

56BB—Application phase

The proposed section outlines the manner and form of an application to the Minister under Part 8A and the process by which the Minister must consider the application.

51—Amendment of section 56C—Power to exempt from or modify Act

The clause amends section 56C to provide that the following sections cannot be exempted or modified by agreement as contemplated by the section:

- sections 9 and 9AA;

- section 61;
- Part 9B;
- any other provisions specified by the regulations.

The clause also increases the maximum penalty for failure to comply with a condition of an exemption or a modification under the section from \$50 000 to \$250 000.

52—Amendment of section 56D—Existing tenements

This clause makes a technical amendment.

53—Insertion of Part 8B

This clause inserts a new Part as follows:

Part 8B—Common provisions

Division 1—Identifying areas and considering applications

56E—Identification of areas

The proposed section outlines the manner in which an area to which the section applies is to be identified, delineated or defined, including in accordance with any manner or form determined or approved by the Mining Registrar. The section applies in relation to the following:

- establishing a mineral claim;
- an application for an exploration licence;
- an application by the holder of an exploration licence for retention status in relation to the licence;
- an application for a mining lease, retention lease or miscellaneous purposes licence;
- a registered mineral tenement.

56F—Related environmental legislation

The proposed section provides that if an application to which the section applies relates to an area within the Murray-Darling Basin, the Minister must, in considering the application, take into account the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act. The section applies to the following:

- an application for an exploration licence, mining lease, retention lease, miscellaneous purposes licence or for the renewal of such a lease or licence;
- in relation to an exploration licence after it has been granted—an application to revise the program that applies in relation to the licence under Part 10A so as to authorise the use of declared equipment.

56G—Specially protected areas

The proposed section provides for applications to which the section applies relating to an area within or adjacent to a specially protected area to be referred by the Minister to the relevant Minister for consideration. If the Minister and the relevant Minister cannot agree, the matter is referred to the Governor for determination. The section applies to the following:

- an application for an exploration licence, mining lease, retention lease, miscellaneous purposes licence or for the renewal of such a lease or licence;
- in relation to an exploration licence after it has been granted—an application to revise the program that applies in relation to the licence under Part 10A so as to authorise the use of declared equipment.

Division 2—Notice

56H—Notice

The proposed section provides for the manner in which the Minister must give notice of an application to which the section applies before granting such applications. The section applies to an application for a mining lease, retention lease (unless exempt by the regulations), miscellaneous purposes licence or an application under Part 8B Division 7 (to the extent that the requirements of that Division are applied by the regulations).

Division 3—Terms and conditions

56I—Matters to be considered

The proposed section sets out the matters to which the Minister must give proper consideration in determining the terms and conditions subject to which a mining lease, retention lease or miscellaneous purposes licence is to be granted.

56J—Alteration of terms and conditions

The proposed section sets out the manner in which the terms and conditions of a mining lease, retention lease or miscellaneous purposes licence may be added to, varied or revoked by the Minister, and the circumstances in which the holder of a mineral tenement must be consulted or may appeal to the ERD Court in relation to such an addition, variation or revocation.

56K—Special term or condition relating to extractive minerals

The proposed section provides that the terms or conditions of a mineral tenement may make provision for the management and use of extractive minerals, and the exemption of those extractive minerals from the payment of royalty.

56L—Offence to contravene term or condition

The proposed section creates an offence with a maximum penalty of \$250 000 for a person to contravene or fail to comply with a term or condition of a mineral tenement.

Division 4—Rental

56M—Rental

The proposed section provides for the manner and circumstances in which rental is payable in relation to a mining lease, retention lease or a miscellaneous purposes licence.

56N—Debt payable to Crown

The proposed section provides that the liability to pay any rental under the proposed division is a debt due to the Crown.

Division 5—Rectification of boundaries

56O—Rectification of boundaries

The proposed section outlines the manner and circumstances in which the Mining Registrar may vary the boundaries or delineation of a mineral tenement.

Division 6—Amalgamation of areas

56P—Amalgamation of areas

The proposed section provides for the manner in which the Minister may, on application by a tenement holder or by agreement with a tenement holder, amalgamate the areas of 2 or more mineral tenements.

Division 7—Change in operations

56Q—Preliminary

The proposed section provides that a change in authorised operations under a mining lease, retention lease or a miscellaneous purposes licence of a kind outlined in the section must not be made without the approval of the Minister, with a maximum penalty of \$250 000.

56R—Application

The proposed section outlines the manner in which an application for an approval is to be made under the proposed Division.

56S—Consultation

The proposed section provides that the Minister must undertake consultation in a manner outlined in the section in relation to an application under the proposed Division.

56T—Consideration of proposal

The proposed section outlines the considerations that must be undertaken before a change under the Division is approved by the Minister.

56U—Terms and conditions

The proposed section provides the circumstances in which the Minister may, at the time of granting an approval under the proposed Division, add, vary or revoke a term or condition of the relevant mineral tenement, and the matters to which the Minister must give proper consideration in adding, varying or revoking such a term or condition.

56V—Registration

The proposed section provides that if the Minister decides to approve an application under the proposed Division, it will be taken to be granted when the approval is registered on the Mining Register.

Division 8—Cancellation, suspension and surrender

56W—Cancellation and suspension—action by Minister

The proposed section outlines the process and circumstances in which the Minister may cancel or suspend an exploration licence, mining lease, retention lease or miscellaneous purposes licence.

56X—Surrender on application

The proposed section outlines the manner in which a tenement holder may apply to the Minister for an approval to surrender a mineral tenement, or a part of the area of a mineral tenement, and how such a surrender will be taken to be approved.

Division 9—Extension of term or reinstatement of tenement

56Y—Extension of term of tenement

The proposed section provides for the circumstances in which the Minister may, in circumstances set out in the section, extend the term of certain mineral tenements.

56Z—Reinstatement of tenement

The proposed section sets out a scheme by which the Minister may renew a mining lease, retention lease, miscellaneous purposes licence or (if the regulations so provide) an exploration lease that has expired under another provision of the Act.

Division 10—Assessment reports

56ZA—Assessment reports

The proposed section provides that the Minister must prepare a report (an *assessment report*) under the proposed section that sets out or includes the Minister's assessment in respect of matters set out in the section. The section further provides for the manner in which the assessment report is to be dealt with.

54—Amendment of section 57—Entry on land

The proposed clause makes amendments consequential on other provisions in the measure.

55—Amendment of section 58—How entry on land may be authorised

The proposed clause makes amendments consequential on other provisions in the measure.

56—Substitution of section 58A

The clause substitutes section 58A as follows:

58A—Notice requirements

The proposed section recasts the current section 58A which provides for the manner and circumstances in which a person intending to prospect for minerals under section 20 or the holder of an exploration licence or a mineral claim must give notice to the owner of land before entering the land to carry out authorised operations. The proposed section further provides for the circumstances in which an owner of land may object to the entry on the land by the person or to the use of the land for authorised operations.

57—Repeal of section 59

The clause repeals section 59 which dealt with the authorisation of the use of declared equipment, which is now to be undertaken as part of the program under Part 10A.

58—Amendment of section 61—Compensation

This clause makes a number of amendments consequential on other changes in the measure.

59—Amendment of section 62—Bond and security

Subclauses (1) to (5) make a number of amendments consequential on other changes in the measure. Subclause (6) recasts the current subsections (4), (5) and (6) to update the provisions, increases the maximum penalties from \$120 000 to \$150 000 under subsection (3) and adds a further provision to clarify that liability to pay an amount of bond paid under the section is a debt due to the Crown.

60—Insertion of section 62AA

This clause inserts a new section as follows:

62AA—Mining Rehabilitation Fund

The proposed section provides for the Minister to establish a fund entitled the Mining Rehabilitation Fund and outlines the following matters:

- amounts that will be paid into the fund;
- the manner in which those amounts are to be paid;
- the circumstances in which the Minister may require a tenement holder to pay an amount into the fund;
- the purposes for which money standing to the credit of the fund may be used by the Minister;
- power for the Minister, Director of Mines or a person authorised in writing by the Minister or Director to enter land and carry out tests or work for the purpose of carrying out operations associated with using fund money for a specified purpose, making it an offence for a person to interfere with or obstruct such a person in the exercise of such a power.

61—Amendment of section 62A—Right to require acquisition of land

This clause makes amendments of a consequential nature.

62—Amendment of section 63—Extractive Areas Rehabilitation Fund

This clause makes amendments of a consequential nature.

63—Repeal of Part 9A

This clause repeals Part 9A.

64—Amendment of section 63F—Qualification of rights conferred by exploration authority

This clause makes amendments of a consequential nature.

65—Amendment of section 63K—Types of agreement authorising mining operations on native title land

This clause makes amendments of a consequential nature.

66—Amendment of section 63L—Negotiation of agreements

This clause makes amendments of a consequential nature.

67—Amendment of section 63N—What happens when there are no registered native title parties with whom to negotiate

This clause makes an amendment of a consequential nature.

68—Amendment of section 63O—Expedited procedure where impact of operations is minimal

This clause increases the period during which a notice may be given under Part 9B Division 4 from 2 months to 4 months.

69—Amendment of section 63R—Effect of registered agreement

This clause makes amendments of a consequential nature.

70—Amendment of section 63S—Application for determination

The clause amends section 63 to substitute the definitions of *relevant period* for the purposes of subsections (1) and (4) to refer consistently to a period of 6 months.

71—Amendment of section 63V—Effect of determination

This clause makes an amendment of a consequential nature.

72—Amendment of section 63ZB—Review of compensation

This clause makes an amendment of a consequential nature.

73—Amendment of section 63ZBA—Mining Native Title Register

The clause increases the maximum penalty for an offence against subsection (7) from \$10 000 to \$50 000.

74—Substitution of heading to Part 10

This clause substitutes the heading to Part 10 as follows:

Part 10—Warden's Court—general provisions

75—Amendment of section 64—Establishment of Warden's Court

This clause inserts a new subsection (1a) which provides that the jurisdiction of the Warden's Court will be such jurisdiction as conferred by or under the *Mining Act 1971* or any other Act or contemplated by those Acts.

76—Amendment of section 65—Powers etc of Warden's Court

This clause proposes amendments to section 65 that will give the Warden's Court the powers and authorities of the Magistrates Court. However, the Warden's Court will not have a power or authority of the Magistrates Court that is prescribed for the purposes of the section. Under the section as amended, additional powers and authorities may also be prescribed.

77—Amendment of section 66—Rules of Warden's Court

The clause amends subsection (1) to provide that the rules of the Warden's Court are to be made by the Senior Warden, being a warden nominated by the Attorney-General to be the senior warden of the Warden's Court.

78—Amendment of section 67—Jurisdiction relating to tenements and monetary claims

The clause amends section 67(1a) to increase the jurisdictional limit on claims to be heard in the Warden's Court from \$100 000 to \$150 000. The clause makes further amendments of a consequential nature.

79—Repeal of section 69

This clause deletes section 69.

80—Amendment of section 70—Forfeiture and transfer of mineral tenement

The clause amends section 70 significantly to clarify the circumstances in which the Warden's Court may, on application under the section, adjudge that a mineral tenement to which the section applies is liable to forfeiture and recommend to the Minister that the tenement be forfeited. The section applies in relation to a mineral claim, an exploration licence (if the regulations so provide), a mining lease or a retention lease. The clause further allows the regulations to provide for matters associated with making an application under the section, and makes amendments of a consequential nature.

81—Amendment of heading to Part 10A

This clause amends the section to include the term "operating approval".

82—Amendment of section 70A—Object of Part

This clause amends the heading to Part 10A to include the term "operating approval" and makes other amendments of a consequential nature.

83—Amendment of section 70B—Preparation or application of program

The clause amends the manner in which programs under Part 10A are to be submitted, and also makes a number of amendments of a consequential nature.

84—Amendment of section 70C—Review of programs

The clause makes amendment to the review of programs provisions to provide for additional circumstances in which a program must be reviewed. The clause also makes amendments of a consequential nature.

85—Substitution of section 70D

This section substitutes section 70D and inserts new sections as follows:

70D—Notice of certain programs

Programs where authorised operations proposed to be carried out constitute a controlled action within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth which is not to be assessed under Part 8 of that Act but under a bilateral agreement in accordance with that Act are to be notified in the manner outlined in the proposed section.

70DA—Audit of program

The proposed section requires a tenement holder to carry out tests, environmental monitoring or other investigations (a *program audit*) in relation to authorised operations carried out under the relevant mineral tenement. The tenement holder must comply with the requirements or outcomes as determined by the program audit to the satisfaction of the Minister. The section allows the Minister to provide directions regarding a program audit, which must be carried out in accordance with the provisions of the proposed section.

70DB—Publication of program

The proposed section provides that the Minister may publish a program or part of a program in such manner as the Minister thinks fit.

70DC—Offences

The proposed section recasts current section 70D, clarifying offence provisions and increasing the maximum penalties for offences under the section from \$120 000 to \$250 000.

86—Substitution of heading to Part 10B

This clause substitutes the heading to Part 10B as follows:

Part 10B—Compliance and enforcement

87—Amendment of section 70E—Power to direct tenement holders to take action to prevent or minimise environmental harm

The clause makes amendment to the section to remove the ability of an authorised officer to issue an environmental direction that is urgently necessary (which is now to be incorporated into a new provision permitting authorised officers to issue emergency directions—see proposed section 70FB), inserts into subsection (3) more detailed requirements in relation to a direction relating to testing and monitoring, and makes a number of other consequential amendments.

88—Amendment of section 70F—Power to direct rehabilitation of land

The clause clarifies the requirements in section 70F(6) that a rehabilitation direction may be issued at any time including after a mineral tenement has expired or been cancelled, and makes a number of other consequential amendments to the section.

89—Insertion of sections 70FA, 70FB and 70FC

This clause inserts new sections as follows:

70FA—Compliance directions

The proposed section allows the Minister to issue a compliance direction for the following purposes:

- securing compliance with a requirement under the Act, a mineral tenement or any authorisation or direction under or in relation to a mineral tenement;

- preventing or bringing to an end specified operations that are contrary to the Act or a mineral tenement (including a term or condition of a mineral tenement);
- preventing or rehabilitating land on account of any authorised operations carried out without an authority required by the Act.

The compliance direction must be given in a manner and form outlined in the proposed section. It is an offence with a maximum penalty of \$250 000 for a person to fail to comply with a compliance direction within the time allowed in the direction.

70FB—Emergency directions

The proposed section provides for the circumstances in which an authorised officer may issue a direction (an *emergency direction*) to a person involved in undertaking authorised operations. Such circumstances include if, in the opinion of the authorised officer, it is urgently necessary to take action as authorised operations are being carried out in a way that results in, or that is reasonably likely to result in undue damage to the environment, a breach of an environmental outcome under a Part 10A program or a breach of a term or condition of a mineral tenement.

The proposed section further provides for the manner in which an emergency direction may be issued, the term and duration of the direction and the manner in which a direction may be varied or revoked. It is an offence with a maximum penalty of \$250 000 for a person to whom an emergency direction relates to fail to comply with the direction within the time allowed in the direction.

70FC—Contravention of Act

The proposed section provides that the Minister or an authorised officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in a direction under the Part an act or omission that might otherwise constitute a contravention of the Act and, in that event, a person incurs no liability to a penalty under the Act for compliance with the requirement.

90—Amendment of section 70G—Application for review of direction

The clause makes amendments consequential on the insertion of the sections proposed in clause 89.

91—Amendment of section 70H—Action if non-compliance occurs

The clause makes amendments consequential on the insertion of the sections proposed in clause 89.

92—Insertion of sections 70HA and 70HB

This clause inserts new sections as follows:

70HA—Restriction of claims

The proposed section provides that the Warden's Court may make orders restricting claims under the Act until the requirements of a direction under Part 10B have been complied with.

70HB—Self-incrimination

The proposed section makes provision for the grounds on which a person may refuse to provide information required by or under a direction under Part 10B if to do so might tend to incriminate the person or make them liable to a penalty.

93—Insertion of Part 10C

This clause inserts a new Part as follows:

Part 10C—Offences and penalties

70HC—Penalty for illegal mining

The proposed section sets out the offence of illegal mining.

70HD—Obstruction of person authorised to mine etc

The proposed section sets out the offence of obstructing or hindering the holder of a mineral tenement in the reasonable exercise of rights conferred under the Act.

70HE—Civil penalties

The proposed section sets out a scheme for the imposition of civil penalties as an alternative to undertaking criminal proceedings against a person who has committed an offence under, or contravened a provision of, the Act.

70HF—Additional orders on conviction

The proposed section provides for additional orders that the court may make in relation to a person who is convicted of an offence against the Act.

70HG—Continuing offences

The proposed section provides for the manner and circumstances in which a person convicted of an offence against the Act in respect of a continuing act or omission may be liable to further and ongoing penalties for each day during which the act or omission continues.

70HH—Offences by bodies corporate

The proposed section provides for the circumstances in which a director of a body corporate may be guilty of offences against the Act for which the body corporate is found guilty.

70HI—Time limits

The proposed section sets out the time limits for commencement of criminal proceedings under the Act.

70HJ—Summary offences

The proposed section provides that all offences under the Act are to be classified as summary offences.

70HK—Evidentiary provisions

The proposed section provides certain evidentiary provisions for the purposes of the Act.

94—Amendment of section 71—Minister may assist in conduct of operations

This clause makes a consequential amendment.

95—Amendment of section 72—Research and investigations

This clause makes a consequential amendment.

96—Repeal of Part 11A

This clause repeals Part 11A

97—Amendment of section 73C—Interpretation

The clause amends several definitions to support other amendments to Part 11B in the measure.

98—Amendment of section 73D—Application of Act

Subclauses (1) and (2) make amendments of a consequential nature. Subclause (3) inserts a new subsection (3) setting out which sections of the Act apply to or in relation to a private mine or a person carrying out operations in relation to a private mine.

99—Repeal of sections 73E, 73EA and 73F

The clause repeals sections that are to be re-enacted and relocated elsewhere in the Act.

100—Amendment of section 73G—Mine operations plans

The clause inserts a new subsection (12a) which provides that the Minister may publish a mine operations plan in such manner, and to such extent, as the Minister thinks fit.

101—Amendment of section 73H—General duty to avoid undue environmental damage

This amendment is consequential.

102—Amendment of section 73I—Compliance orders

This clause increases the penalty provision in subsection (4) from a maximum penalty of \$120 000 to a maximum penalty of \$250 000.

103—Amendment of section 73J—Rectification orders

This clause increases the penalty provision in subsection (4) from a maximum penalty of \$120 000 to a maximum penalty of \$250 000.

104—Insertion of sections 73KA and 73KB

The clause inserts new sections as follows:

73KA—Emergency order

The proposed section sets out the manner and circumstances in which an authorised officer may issue a notice (an *emergency order*) to a person undertaking mining operations in order to address operations that may constitute a breach of an objective under a mine operations plan or undue damage to the environment.

73KB—Contravention of Act

The proposed section provides that the Minister or an authorised officer incur no liability for acts or omissions they may order under Part 11B.

105—Amendment of section 73L—Application for review of direction

The clause makes a consequential amendment.

106—Substitution of sections 73M to 73Q

The clause deletes and substitutes sections as follows:

73M—Action if non-compliance occurs

The proposed section provides for the circumstances in which the Minister or Director may take action required by an order under Part 11B.

73N—Revocation of private mine

The proposed section provides power for the Governor, by proclamation and on recommendation of the Minister, to vary or revoke the declaration of an area as a private mine made under the Act, and the actions the Minister must take before giving such a recommendation.

73O—Evidentiary provisions

The proposed section provides evidentiary provisions for the purposes of Part 11B.

107—Substitution of sections 74 and 74AA

This clause substitutes sections 74 and 74AA as follows:

74—Civil remedies

The proposed section provides for the circumstances in which the Minister or the Director of Mines may make application to the ERD

Court for various orders as provided in the section in respect of the following persons:

- a person who has engaged, is engaging or is proposing to engage in conduct in contravention of the Act;
- a person who has refused or failed, is refusing or failing or is proposing to refuse or fail to take any action required by the Act;
- a person who has suffered injury or loss or damage to property as a result of a contravention of the Act, or incurred costs and expenses in taking action to prevent or mitigate such injury, loss or damage.

The proposed section further provides for the manner in which the Court may deal with such orders.

74AA—Enforceable voluntary undertakings

The proposed section provides for the Minister to accept a written undertaking from a person in connection with a matter relating to a contravention or alleged contravention by the person of the Act, and for a penalty to apply and powers for the ERD Court to make orders in respect of a person who contravenes the undertaking.

108—Amendment of section 74A—Compliance orders

This clause makes a consequential amendment.

109—Amendment of section 75—Provision relating to certain minerals

The clause makes an amendment to provide for the circumstances in which a claim, lease or mineral tenement is not required under the Act for the recovery of extractive minerals from land.

110—Amendment of section 75A—Avoidance of double compensation

This clause makes technical amendments.

111—Repeal of sections 76 to 77D

The section repeals sections 76 to 77D (inclusive) consequent on the recasting and relocation of these provisions in proposed Part 8B.

112—Amendment of section 78—Persons under 16 years of age

This clause makes consequential amendments.

113—Amendment of section 79—Minister may grant exemptions

This clause makes consequential amendments.

114—Substitution of section 79A

This clause deletes section 79A (which is obsolete) and substitutes the following:

79A—False or misleading information

The proposed section makes it an offence with a maximum penalty of \$150 000 for a person who furnishes information to the Minister, the Director, the Mining Registrar or any other person involved in the administration of the Act that is false or misleading in a material particular.

115—Amendment of section 80—Conditions under which land may be simultaneously subject to more than 1 tenement

The clause makes a number of amendments consequential on other amendments in the measure, and increases the maximum penalty for the offence in subsection (1d) from \$5 000 to \$20 000.

116—Substitution of sections 81, 82 and 83

This clause substitutes sections 81, 82 and 83 as follows:

81—Additional provisions relating to liability

The proposed section provides for joint and several liability of each tenement holder in circumstances where there are 2 or more tenement holders in relation to the same mineral tenement.

82—Deemed consent or agreement

The proposed section provides for deemed consent or agreement between an owner of land and a tenement holder in circumstances where the owner of land and the tenement holder are the same person.

117—Repeal of sections 84 and 84A

This clause repeals obsolete sections.

118—Substitution of sections 85 and 86

This clause substitutes sections 85 and 86 as follows:

85—Charge on property if debt due to Crown

The proposed section makes provision in relation to the creation of a charge on property if the owner of the property is liable to pay a debt due to the Crown under the Act.

86—Removal of machinery etc

The proposed section recasts and updates the current provision in relation to removal of machinery on land that is within a mineral tenement that has been transferred or that has ceased to be subject to a mineral tenement.

119—Substitution of sections 88 and 89

This clause substitutes sections 88 and 89 as follows:

88—Hindering authorised officers

The proposed section updates and consolidates the offences formerly contained in sections 88 and 89 of the Act.

120—Insertion of section 89B

The clause inserts a new section as follows:

89B—Penalties and expiation fees payable into fund

The proposed section provides that penalties payable in respect of offences against the Act and expiation fees paid under the Act are payable into the Mining Rehabilitation Fund.

121—Substitution of section 90

This clause deletes section 90 (the content of which is relocated elsewhere in the measure) and substitutes the following:

90—Reports and verification of information

The proposed section provides for the manner and circumstances in which a tenement holder must provide a report, at the request of the Minister, setting out or accompanied by information or material relevant to matters set out in the section. A tenement holder is liable to a maximum penalty of \$20 000 for failure to comply with a requirement under the section within the period specified by the Minister.

122—Amendment of section 91—Administrative penalties

The clause amends the section to allow the Director of Mines (instead of the Minister) to impose an administrative penalty on a person, and to issue a penalty notice without prior consultation with the person and without the need to give a warning or any prior notice in relation to the matter. The level of administrative penalty is increased from a maximum of \$10 000 to a maximum of \$15 000. Any such penalty recovered will be paid into the Mining Rehabilitation Fund.

123—Repeal of section 91A

This clause repeals section 91A which is proposed to be reenacted in Part 11B as section 73N.

124—Amendment of section 92—Regulations

The clause amends section 92 to update and include provisions in relation to the circumstances in which the Governor may make regulations as a result of the measure.

125—Amendment of Schedule

This amendment is consequential.

126—Renumbering

This is a technical amendment allowing for the renumbering of the provisions of the Act after all provisions in Part 2 of the measure have been brought into operation.

Part 3—Amendment of *Mines and Works Inspection Act 1920*

127—Amendment of section 4—Interpretation

Subclause (1) deletes the definition of *manager*, as all references in the Act to "manager" are to be deleted. Subclause (2) amends the definition of *mining operation* to limit it to mining operations in respect of which the Act applies.

128—Substitution of section 5

This clause substitutes section 5 as follows:

5—Application of Act

The proposed section provides that the Act applies in respect of the following operations:

- operations undertaken under the Indenture under the *Roxby Downs (Indenture Ratification) Act 1982*;
- operations under the Indenture under the *Whyalla Steel Works Act 1958*;
- operations by a person to whom a sale or lease of any seam of coal vested in the Crown at or near Leigh Creek has been made or granted by or on behalf of the Crown (including any successors at law of such a person) as authorised under section 48(1) of the *Electricity Corporations Act 1994*;
- operations by a person authorised under section 48(2) or (3) of the *Electricity Corporations Act 1994* to mine any seam of coal vested in the Crown or SAGC, at or near Leigh Creek.

129—Amendment of section 8—Disqualification for office of inspector

These amendments are consequential on removal of references to "manager" in the measure.

130—Amendment of section 10—Power of inspector on inspection

These amendments are consequential on removal of references to "manager" in the measure.

131—Amendment of section 12—Miners' inspectors

These amendments are consequential on removal of references to "manager" in the measure, and replaces the references with "owner".

132—Amendment of section 13—Obstructing or refusing to assist inspector

These amendments are consequential on removal of references to "manager" in the measure.

133—Substitution of section 16

This clause substitutes section 16 as follows:

16—Notice

The proposed section updates the current notice provision in the Act.

134—Amendment of section 20—Imprisonment for wilful neglect

This amendment is consequential on removal of references to "manager" in the measure.

135—Amendment of section 22—General provisions as to proceedings for offences

This amendment is consequential on removal of references to "manager" in the measure.

136—Amendment of Schedule—Subject matter of regulations

These amendments are consequential on removal of references to "manager" in the measure.

Part 4—Amendment of *Opal Mining Act 1995*

137—Amendment of section 3—Interpretation

The clause amends various definitions, and inserts new definitions to support provisions in the measure.

138—Amendment of section 6—Exempt land

The clause makes a number of amendments to ensure consistency with amendments made to the *Mining Act 1971* in the measure, and makes other consequential amendments.

139—Amendment of section 7—Application for permit

These amendments update the manner in which an application for a permit may be made, and change references to "a mining registrar" to "an opal mining registrar".

140—Amendment of section 8—Nature of permit

This clause substitutes the penalty in section 8(4) with an administrative penalty as provided for in the measure.

141—Amendment of section 9—Terms and renewal of permit

These amendments update the manner in which the terms and renewal of precious stones permits may be made, and change references from "mining registrar" to "opal mining registrar".

142—Amendment of section 10—Rights of holder of permit

This clause amends the section to extend the prohibition on residing on precious stones fields other than in the Mintabie township lease area.

143—Amendment of section 10A—Special provisions in relation to Mintabie precious stones field

The clause makes a number of amendments consequential on the amendments in clause 142 and further consequential amendments related to the change of reference from "mining registrar" to "opal mining registrar".

144—Amendment of section 11—Qualifications to permits

Subclause (1) inserts a new subsection that provides that a precious stones prospecting permit does not authorise the pegging out of an area that is not either wholly within, or wholly outside, a precious stones field. The clause also makes a number of amendments consequential on the change of reference from "Mining Registrar" to "Opal Mining Registrar".

145—Amendment of section 15—Effect of pegging an area

This amendment is consequential on the amendment in clause 144.

146—Amendment of section 16—Ballot may be conducted in certain cases

This clause makes consequential amendments related to the change of reference from "mining registrar" to "opal mining registrar". The clause also updates the penalty provisions currently in subsection (9) to include an administrative penalty for pegging out an area for a precious stones tenement in contravention of the section.

147—Substitution of section 18

This clause substitutes section 18 as follows:

18—Contravention of Part

The proposed section recasts current section 18 to update penalties and insert administrative penalties for certain offences under the section.

148—Amendment of section 18A—Special conditions for tenements in relation to Mintabie precious stones field

The clause makes amendments consequential on the amendments in clause 142.

149—Amendment of section 19—Application for registration of tenement

This clause makes amendments of a consequential and technical nature.

150—Amendment of section 19A—Special provision related to application for and registration of tenements on Mintabie precious stones field

This clause makes a number of consequential amendments related to the change of reference from "Mining Registrar" to "Opal Mining Registrar".

151—Amendment of section 20—Registration of tenement

This clause makes a number of consequential amendments related to the change of reference from "Mining Registrar" to "Opal Mining Registrar", and, in subclause (10), makes a technical amendment.

152—Amendment of section 22—Term and renewal of tenement

These amendments update the manner in which the terms and renewal of precious stones permits may be made, and change references from "Mining Registrar" to "Opal Mining Registrar".

153—Amendment of section 23—Rights conferred by a tenement

The clause inserts a new subsection (3) to provide that it is a condition of every registered precious stones claim and every registered opal development lease that the holder of the claim or lease (being a holder who is a natural person) must not reside on the land comprising the claim or lease other than in the Mintabie township lease area in accordance with a licence issued under section 29D of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*, or as otherwise allowed under that Act.

154—Amendment of section 25—Unlawful entry on tenement

This clause updates the penalty provision in section 25(1).

155—Substitution of section 26

This clause substitutes section 26 as follows:

26—Caveats

The proposed section provides for the circumstances in which a person who has or is claiming an interest in a matter relevant to the registration of a tenement may apply to have a caveat registered in accordance with the section, which includes the form and manner in which the caveat is to be made, the matters to which a caveat may relate, and the effect of a caveat.

26A—Application to Warden's Court to lapse caveat or obtain compensation

The proposed section provides for the circumstances in which a person who has an interest in a tenement subject to a registered caveat or an interest directly affected by a registered caveat may apply to the Warden's Court for a declaration or order in relation to the registered caveat.

156—Amendment of section 27—Power of Opal Mining Registrar to cancel tenement

This clause makes a number of consequential amendments related to the change of reference from "Mining Registrar" to "Opal Mining Registrar".

157—Insertion of section 27A

This clause inserts a new section 27A:

27A—Cancellation and suspension

The proposed section provides for the circumstances and manner in which the Opal Mining Registrar may cancel or suspend a precious stones tenement if the tenement holder contravenes or fails to comply with a term or condition of the tenement or a provision of the Act.

158—Amendment of section 28—Surrender of tenement, removal of posts etc

This clause makes a number of consequential amendments related to the change of reference from "Mining Registrar" to "Opal Mining Registrar" and on the amendments in clause 144.

159—Substitution of section 29

This clause substitutes section 29 as follows:

29—Removal of machinery

The proposed section recasts and updates the current provision in relation to removal of machinery on land that has ceased to be subject to a tenement.

160—Amendment of section 30—Maintenance of posts

The proposed section provides for an administrative penalty for the offence in the section.

161—Amendment of section 32—Notice of entry

The clause makes a consequential amendment updating the reference from "Mining Registrar" to "Opal Mining Registrar", and an amendment updating the penalty provision in section 32(7).

162—Amendment of section 33—Duration of notice of entry

The clause amends section 33(1) to provide that a notice of entry remains in force for a period of 12 months instead of 6 months.

163—Amendment of section 34—Use of declared equipment

The clause updates the penalty provisions in section 34 and makes an amendment updating the reference from "Mining Registrar" to "Opal Mining Registrar".

164—Amendment of section 35—Rehabilitation of land

The clause updates the penalty provisions in the section and makes consequential amendments.

165—Insertion of sections 35A and 35B

This clause inserts new sections 35A and 35B:

35A—Compliance directions

The proposed section allows the Minister to issue a compliance direction for the following purposes:

- securing compliance with a requirement under the Act, a tenement or any authorisation or direction under or in relation to a tenement;
- preventing or bringing to an end specified operations that are contrary to the Act or a tenement (including a term or condition of a tenement);

- requiring rehabilitation of land on account of any operations carried out without an authority required by the Act;
- requiring the taking of any action that, in the opinion of the Minister, is required to ensure public safety.

The compliance direction must be given in a manner and form outlined in the proposed section. It is an offence with a maximum penalty of \$250 000 if a person fails to comply with a compliance direction within the time allowed in the direction.

35B—Contravention of Act

The proposed section provides that the Minister or an authorised officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in a direction under the Part a requirement for an act or omission that might otherwise constitute a contravention of the Act and, in that event, a person incurs no liability to a penalty under this Act for compliance with the requirement.

166—Amendment of section 36—Bonds

The clause makes consequential amendments updating references from "Mining Registrar" to "Opal Mining Registrar", updates penalty provisions and makes another amendment consequential on the amendment in clause 144.

167—Amendment of section 37—Application of bonds

This clause makes a consequential amendment updating references from "Mining Registrar" to "Opal Mining Registrar".

168—Amendment of section 43—Registration of agreement

This clause makes a number of consequential amendments updating references from "Mining Registrar" to "Opal Mining Registrar".

169—Amendment of section 44—Agreement may be varied or revoked

This clause makes a number of consequential amendments related to the change of reference from "Mining Registrar" to "Opal Mining Registrar".

170—Amendment of section 45—Appeal to Warden's Court

This clause makes a consequential amendment to update the reference to "Mining Registrar" to "Opal Mining Registrar".

171—Amendment of section 49—Qualification of rights conferred by permit

The clause amends section 49(1) to provide that a precious stones prospecting permit confers no right to carry out mining operations on native title land unless an indigenous land use agreement registered under the *Native Title Act 1993* of the Commonwealth provides that statutory rights to negotiate are not intended to apply in relation to the mining operations.

172—Amendment of section 50—Limits on grant of tenement

The clause amends section 50 to provide that a precious stones tenement may not be registered over native title land unless an indigenous land use agreement registered under the *Native Title Act 1993* of the Commonwealth provides that statutory rights to negotiate are not intended to apply in relation to the mining operations.

173—Amendment of section 51—Applications for tenements

The clause makes a consequential amendment updating the reference to "Mining Registrar" to "Opal Mining Registrar".

174—Amendment of section 59—Agreement

This clause makes consequential amendments updating references from "Mining Registrar" to "Opal Mining Registrar".

175—Amendment of section 64—Effect of determination

This clause makes a consequential amendment updating the reference to "Mining Registrar" to "Opal Mining Registrar".

176—Amendment of section 70A—Opal Mining Native Title Register

The clause substitutes subsection (1) to provide that the Opal Mining Registrar must establish a distinct part of the opal mining register (which may be referred to as the *Opal Mining Native Title Register*) for the registration of agreements and determinations under Part 7. The clause makes a number of amendments consequential on proposed subsection (1) and updates the penalty provision in subsection (7).

177—Amendment to section 72—Jurisdiction relating to tenements and monetary claims

The clause updates the penalty provision in subsection (2a) and makes a number of other consequential amendments updating references from "Mining Registrar" to "Opal Mining Registrar".

178—Insertion of section 75A

This clause inserts section 75A:

75A—Opal Mining Registrar

The proposed section provides for there to be an Opal Mining Registrar and other opal mining registrars who are to be Public Service employees, and sets out the powers of delegation of such officers.

179—Amendment of section 76—Opal Mining Register

The clause amends section 76 to provide that the Opal Mining Registrar must keep a register (the *opal mining register*) in accordance with the requirements set out in the section.

180—Amendment of section 77—Appointment of authorised persons

The clause updates penalty provisions in the section, and makes a number of other amendments to bring the appointment and powers of authorised persons into line with the powers of authorised officers under the *Mining Act 1971*.

181—Amendment of section 79—Exemptions

The clause substitutes subsection (1) to provide for the circumstances in which the Minister, if satisfied that it is justifiable to do so, may exempt the holder of a tenement from the obligation to comply with a term or condition of the tenement or a provision of the Act (except Part 7). The clause also updates the penalty provision in section 79(5).

182—Amendment of section 82—Offences

The clause updates the penalty provisions for offences as outlined in the section.

183—Amendment of section 84—Prohibition orders

The clause updates the penalty for the offence in subsection (5).

184—Amendment of section 85—Power of Opal Mining Registrar to require pegs be removed

The clause makes consequential amendments to update references from "Mining Registrar" to "Opal Mining Registrar".

185—Amendment of section 87—Evidentiary provision

The clause makes a number of amendments consequential on taking into account other amendments in the measure.

186—Amendment of section 89—Disposal of waste

The clause updates the penalty provisions in the section.

187—Repeal of section 91

The clause repeals an obsolete section.

188—Amendment of section 93—Interaction with Mining Act

The clause makes amendments consequential on amendments in Part 2 of the measure, and updates the penalty provisions in the section.

189—Insertion of sections 98A and 98B

This clause inserts a new section:

98A—Administrative penalties

The proposed section provides for an administrative penalty to apply to a provision of the Act (of an amount not exceeding \$15 000 prescribed by the regulations in relation to the relevant provision) and the circumstances and manner in which such a penalty may be imposed.

98B—Penalties payable into Mining Rehabilitation Fund

The proposed section provides for penalties including administrative penalties paid under the Act to be paid into the Mining Rehabilitation Fund established under the *Mining Act 1971*.

190—Amendment of section 99—Regulations

The clause provides for further powers of the Governor to make regulations for the purposes of the Act.

Schedule 1—Transitional provisions

Part 1—Transitional provisions—*Mining Act 1971*

This Part contains a number of transitional provisions consequent on the enactment of provisions in the measure dealing with the following:

- references to mining operations in other Acts;
- waiver of exemptions;
- registers;
- mortgages;
- registered documents and dealings;
- royalty;
- exploration licences;
- expenditure;
- reinstatement of tenements;
- Mining Rehabilitation Fund;
- jurisdiction relating to tenements and monetary claims;
- programs for environment protection and rehabilitation;
- caveats;
- private mines;
- safety net.

Part 2—Transitional provisions—*Opal Mining Act 1995*

This Part contains a number of transitional provisions consequent on the enactment of provisions in the measure dealing with the following:

- opal mining register;
- caveats;
- safety net;
- jurisdiction relating to tenements and monetary claims.