Authorised Version No. 115

Mineral Resources (Sustainable Development) Act 1990

No. 92 of 1990

Authorised Version incorporating amendments as at 12 September 2018

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Part 1—Introduction

1 Purpose

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

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
(iv) an economically efficient system of royalties, rentals, fees and charges; and

(b) to establish a legal framework aimed at ensuring that—

(i) risks posed to the environment, to members of the public, or to land, property or infrastructure by work being done under a licence or extractive industry work authority are identified and are eliminated or minimised as far as reasonably practicable; 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
Part 1—Introduction

(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.

* * * * *

2A Principles of sustainable development

(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—

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

* * * * *

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

* * * * *

coal mine land means the land covered by any of the following licences (whether or not those licences are in force)—

(a) mining licence No. 5003;
(b) mining licence No. 5004;
(c) mining licence No. 5189;
(d) mining licence No. 5216;
(e) mining licence No. 5304;

coal seam gas means natural gas when it is contained in oil shale or coal, whether or not it is in a gaseous state;

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

Commissioner means the Latrobe Valley Mine Rehabilitation Commissioner appointed under section 84AF;

community engagement plan has the meaning set out in sections 40(3)(d) and 77G(3)(e);

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

(a) land of the Crown that is reserved permanently or temporarily by or under any Act; and
Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990
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(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;

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

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

Department means the Department of State Development, Business and Innovation;
**Department Head** means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department;

---

* * * * *

**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—

(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;

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

**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;

**hydraulic fracturing** means the injection of a substance or substances into a bore under pressure for the purposes of stimulating a geological formation;

**infrastructure mining licence** means a mining licence solely for the construction of a facility or other infrastructure to be used for the purpose of mining under another mining licence;

* * * * *
**Part 1—Introduction**

**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;

**Latrobe Valley region** means the region constituted by the municipal districts of the Latrobe City Council, Baw Baw Shire Council and Wellington Shire Council;

**licence** means an exploration licence, a mining licence, a prospecting licence or a retention licence under Part 2;

**licensee** means the holder of a licence;

**low impact exploration** has the meaning set out in Schedule 4A;

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

**miner's right** means a miner's right under Part 5;
**Part 1—Introduction**

*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;

*mineral resource* means a concentration of a mineral or minerals that is or may be economically viable to mine;

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

*mining register* means the register kept under Part 6;
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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

(b) 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

(ii) in any other case, the person who has the fee in the land;

petroleum means¹—

(a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state; or

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

_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;

_planning permit_ means a planning permit issued under the _Planning and Environment Act 1987_;

_planning scheme_ means a planning scheme made under the _Planning and Environment Act 1987_;
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—

(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;

* * * * *

**regional rehabilitation strategy** means the strategy prepared under section 84AZM;

*S. 4(1) def. of regional rehabilitation strategy inserted by No. 22/2017 s. 4.*

**register** means the mining register kept under Part 6;

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

**registered** means registered in the mining register;

*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 referred to in section 79;*

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

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

**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 responsible authority inserted by No. 62/2009 s. 6(1).*

**restricted Crown land** means any land specified in Schedule 3;

*S. 4(1) def. of restricted Crown land inserted by No. 86/1993 s. 5(1)(e).*
search means search for minerals using no equipment for the purposes of excavation other than non-mechanical hand tools;

specified work plan means a work plan for work in respect of which a planning permit under the Planning and Environment Act 1987 is required;

specified variation, in relation to an approved work plan, means a variation to work—

(a) that is being carried out in accordance with the approved work plan; and

(b) in respect of which a planning permit under the Planning and Environment Act 1987 is required;

statutorily endorsed, in relation to a work plan or a variation to an approved work plan, means endorsed in accordance with Part 6B;

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;

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;

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

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;

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

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;
work plan means a work plan lodged under section 40 or section 77G or varied under section 41AAB or 77HB;

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.

(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 State Development, Business and Innovation" must, from the date when the name is changed, be treated as a reference to the Department by its new name.
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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

(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
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**.

### 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**.

### 5ABA Leased area

(1) To avoid doubt, in this Act and in any other
Act, the land within the meaning of the definition
of *leased area* in the Agreement set out in the
**Mines (Aluminium Agreement) Act 1961** does not include any land that Alcoa of Australia
Limited ACN 004 879 298 has surrendered its
rights to under clause 10(8) of that Agreement.

(2) In this section—

*Agreement* has the same meaning as

*The Agreement* has in section 2(a) of the
**Mines (Aluminium Agreement) Act 1961**.
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;

(b) undertaking any exploration, searching or mining.

6 Land not available for exploration, mining and searching

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

(ba) land that is a marine national park or a 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*;

* * * * *

(e) land that is—

(i) under section 7 exempted from being subject to a licence; or

(ii) by or under any other Act exempted from exploration or mining, or being subject to a licence;

(f) land that is by or under any other Act exempted from—

(i) search for minerals or stone; or
(ii) the carrying out of an extractive industry; or

(iii) being subject to an authority under this Act.

(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.

(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 on the plans lodged in the Central Plan Office and numbered N.P. 105A/4 and N.P. 105B/3 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

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)

(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 tourist 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 being subject to a licence

(1) The Minister may, by writing signed by him or her, exempt any land from being subject to a licence.

(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 as in force before its repeal;

(ba) if, in the Minister's opinion, the exemption is required for the implementation of a recommendation of the Victorian Environmental Assessment Council under the Victorian Environmental Assessment Council Act 2001 to the extent that it has been accepted by the Government;

(c) if, in the Minister's opinion, the exemption is necessary to enable the orderly and optimal development of mineral resources in Victoria.
(3) In deciding whether to grant an exemption, the Minister must take into account—

(a) the known or potential value of the mineral resources and the impact that the proposed exemption may have on that value; and

(b) 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.

7A Minister may declare meaning of graticular section

(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.
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.

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

(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—

(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.

8AA Offence to search for stone without consent

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(1) and any consent required under section 77A(2); or

(b) on any private land without—

(i) the consent of the owner of the land and any consent required under section 77A(2), if the body whose
consent is required under that section is not the owner; or
(ii) the authority of the Minister under section 112 and any consent required under section 77A(2).

Penalty: 50 penalty units.

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

In any other case, 200 penalty units.

(2) 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 not carry out extractive industry under the work authority otherwise than—
(a) in accordance with the work authority; and
(b) in accordance with the approved work plan.

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

In any other case, 200 penalty units.

(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 this Act and the regulations in doing any work under the work authority.
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Penalty: In the case of a corporation, 1000 penalty units.
In any other case, 200 penalty units.

(4) 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.

Note
For default penalties, see section 111A.

8AC Offence to carry out exploration or mining of coal seam gas

(1) A person must not carry out exploration for, or carry out mining of, coal seam gas on any 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.

(2) Subsection (1) does not apply to a person who is the holder of an exploration licence, a mining licence or a retention licence and who—
(a) in the course of carrying out exploration for, or mining of, a mineral other than coal seam gas in accordance with that licence, incidentally discovers or mines coal seam gas; and
(b) reports the discovery of coal seam gas in accordance with section 113A.
8AD Offence to carry out hydraulic fracturing

The holder of an exploration licence, a mining licence or a retention licence must not carry out any hydraulic fracturing on any land in the course of carrying out any exploration or mining under the licence.

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.

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.
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

(1) Subject to section 12A, the holder of a mining licence or prospecting licence must pay royalties in accordance with the rate or method of assessment and at the times—
(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 or prospecting licence must, unless
the Minister decides otherwise, pay royalties in
respect of the disposal under section 14(2)(b) or
14B(2A) (as the case requires) 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.

(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—

(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
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.
12A Royalties for lignite

(1) This section applies to the holder of a mining licence or prospecting 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 or prospecting 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 or prospecting licence must, unless the Minister decides otherwise, pay royalties in respect of the disposal under section 14(2)(b) or 14B(2A) (as the case requires) 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 period commencing on 1 July 2016 and ending on 31 December 2016, 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 reference period ending on 30 June 2016;

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

(b) for the period commencing on 1 January 2017 and ending on 30 June 2017, the amount determined in accordance with the following formula—

\[ \$0.0021402 \times C \]

where—

C is the consumer price index number for the financial year ending on 30 June 2016; and

(c) for the financial year ending on 30 June 2018 and each subsequent financial year, the amount determined in accordance with the following formula—

\[ D \times \left( \frac{E}{F} \right) \]
where—

D is the amount calculated under paragraph (b);  

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

F is the consumer price index number for the financial year ending on 30 June 2016;  

consumer price index number means the all groups consumer price index number for Melbourne in original terms published by the Australian Bureau of Statistics;  

gigajoule unit of lignite means a quantity of lignite which, when mined and measured at a prescribed time and in the prescribed manner, has a net wet specific energy content of 1 gigajoule.  

S. 12A(5) def. of consumer price index number substituted as consumer price index number by No. 44/2014 s. 33(Sch. item 16(2)), substituted as consumer price index number by No. 40/2016 s. 31.  

S. 12A(5) def. of gigajoule unit of lignite substituted by No. 59/2010 s. 33.
Part 2—Exploration licences, mining, prospecting and retention licences

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.

(5) For the purposes of section 8(1)(k) of the Personal Property Securities Act 2009 of the Commonwealth, an exploration licence is declared not to be personal property.
14 Mining licences

(1) The holder of a mining licence is, subject to section 42(1), entitled to carry out mining on the land covered by the licence and—

(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).

(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.

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
   (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 a greater area may be required to mine a mineral resource.

(5) A mining licence does not entitle the holder of the licence to only explore for a mineral resource during the currency of the licence.

(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.

(7) For the purposes of section 8(1)(k) of the Personal Property Securities Act 2009 of the Commonwealth, a mining licence is declared not to be personal property.

14A Licence may be limited to stratum of land

A 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.

14B Prospecting licences

(1) The holder of a prospecting licence is entitled—

(a) to prospect or explore for minerals; and

(b) to carry out mining on the land covered by the licence; and

(c) to do anything else that is incidental to that mining.

(2) To avoid doubt, the holder of a prospecting licence is entitled to apply for a mining licence or retention licence in respect of the land covered by the licence.

(2A) The holder of a prospecting licence may with the consent of the Minister, and in accordance with any conditions imposed by the Minister on that consent, dispose of any tailings produced by the holder during work under the licence.

(3) A prospecting licence—

(a) is current for the time specified in the licence, not exceeding 5 years from the date on which it is registered; and

(b) cannot be renewed; and

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

(4) The area of the land described in a prospecting licence must not exceed 5 hectares.

(5) For the purposes of section 8(1)(k) of the Personal Property Securities Act 2009 of the Commonwealth, a prospecting licence is declared not to be personal property.
14BA Holder of prospecting licence must not dispose of tailings contrary to Minister's consent

A holder of a prospecting licence must not dispose of any tailings contrary to any consent of the Minister under section 14B(2A).

Penalty: 60 penalty units.

14C Retention licences

(1) The holder of a retention licence is entitled—

(a) to retain rights to a mineral resource in the land covered by the licence—

(i) that is not economically viable to mine but may become economically viable to mine in the future; or

(ii) for the purpose of sustaining the operations of an existing mine; and

(b) to explore and carry out other work to establish the economic viability of mining a mineral resource in the land covered by the licence.

(2) To avoid doubt, the holder of a retention licence is entitled to—

(a) apply for a mining licence in respect of the land covered by the licence; or

(b) give consent to another person to apply for a mining licence in respect of the land covered by the licence.

(3) A retention licence—

(a) is current for the time specified in the licence, not exceeding 10 years from the date on which it is registered; and
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(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 is the area the Minister determines as the area that may be required for the purpose of mining a mineral resource in the future.

(5) For the purposes of section 8(1)(k) of the Personal Property Securities Act 2009 of the Commonwealth, a retention licence is declared not to be personal property.

Division 2—Licence process

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, a mining licence, prospecting licence or retention licence.

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

(a) a licence over land that is covered by a mining licence or that is the subject of an application for a mining licence; or
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(b) an exploration licence over land that is covered by an exploration licence or that is the subject of an application for an exploration licence; or

(ba) a prospecting licence over land that is covered by a prospecting licence or that is the subject of an application for a prospecting licence; or

(bb) a retention licence over land that is covered by a retention licence or that is the subject of an application for a retention licence; or

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

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

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

*(ca) a prospecting licence over land that is covered by an exploration licence or that is the subject of an application for an exploration licence unless—

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

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

(cb) a prospecting licence over land that is covered by a retention licence or that is the subject of an application for a retention licence unless—

(i) the applicant is the holder of, or the applicant for, the retention licence; or

(ii) the application is accompanied by the written consent of the holder of, or the applicant for, the retention licence to the granting of the licence; or

(cc) a retention licence over land that is covered by an exploration licence or that is the subject of an application for an exploration licence unless—

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

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

(cd) a retention licence over land that is covered by a prospecting licence or that is the subject of an application for a prospecting licence unless—

(i) the applicant is the holder of, or the applicant for, the prospecting licence; or
(ii) the application is accompanied by the written consent of the holder of, or the applicant for, the prospecting licence to the granting of the licence; 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

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

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

(g) a prospecting licence over land that abuts land covered by an adjoining prospecting licence and—

(i) that application has been made within 2 years after the registration of the adjoining prospecting licence; or

(ii) the land to be covered by that application and land covered by other prospecting licences will form a contiguous area of land that exceeds 20 hectares; or

(ga) a prospecting licence over land that abuts land that is the subject of an application for a prospecting licence; or
(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

(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.

(1AB) Subsection (1A)(h) and (i) do not apply if—

(a) the person who applied for the licence is the holder of an exploration licence, mining licence or retention licence covering land that surrounds the area of the application; and

(b) the land was previously covered by—

(i) a mining licence not exceeding 5 hectares; or

(ii) a prospecting licence; or

(iii) an application for a prospecting licence.

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

(1BA) An application for a licence must specify the mineral or minerals to which the licence will relate.

(1BAA) An application for an exploration licence, a mining licence or a retention licence is ineffective, and must not be accepted by the Minister, to the extent that it specifies that the licence is to relate to coal seam gas.
(1BB) An application for a mining licence (other than an infrastructure mining licence) or a retention licence must describe, in accordance with the guidelines issued by the Minister, a mineral resource.

(1BC) In addition, an application for a retention licence must specify the area of land that the licence will cover and the reasons for that coverage.

(1BD) To avoid doubt, an application for an exploration licence or a prospecting licence is not required to describe a mineral resource.

(1BE) If the mineral resource described in an application referred to in subsection (1BB) is not being mined from the land that will be covered by the licence being applied for, the application must include a report (a mineralisation report) prepared by a competent person that—

(a) sets out the exploration results in relation to the described mineral resource; and

(b) includes an analysis of whether the exploration results indicate that there is a reasonable prospect that the mining of the described mineral resource will be economically viable.

(1BF) The exploration results referred to in subsection (1BE) must—

(a) specify the type of the mineral or minerals; and

(b) specify the location, depth, quantity and extent of the mineral or minerals; and

(c) specify the method by which the extent of the mineral or minerals have been determined; and

(d) include analytical results obtained from samples of the mineral or minerals.
(1BG) In subsection (1BE), a **competent person** means a person prescribed for the purposes of that subsection as a competent person.

(1BH) Unless otherwise provided by the regulations, an application for a mining licence, prospecting licence or retention licence must include a survey of the boundaries of the land proposed to be covered by the licence in accordance with Division 3A.

(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.

(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).

(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.

(1F) If, in asking for additional information, the Minister specified a period within which the information was to be given, the application lapses if—

(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).

(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.

(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—

(aa) if the application is not the only application that has been accepted, a statement that more than one application has been received and accepted and that the applications will be ranked in accordance with this Part; or

(a) if, because of section 23, the application has a lower ranking than another application, a statement that another application has a higher ranking; or

(b) in any other case, a statement that the application has the highest ranking.
(4) On an application ceasing to have a lower ranking than another application, the Department Head must notify the applicant that the application has the highest ranking.

S. 15(4) amended by Nos 76/1998 s. 31(b), 64/2012 s. 19(6).

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

S. 15(5) amended by Nos 53/2011 s. 3, 64/2012 s. 19(7).

(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 the highest ranking, 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.

S. 15(5A) inserted by No. 86/1993 s. 9(2), amended by Nos 63/2006 s. 9(b), 64/2012 s. 19(8).

(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

(b) intends to comply with this Act; and

(ba) subject to subsection (6A), genuinely intends to do work; and

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

S. 15(6)(ba) inserted by No. 86/1993 s. 9(3), substituted by No. 59/2010 s. 9(8).
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(c) subject to subsection (6A), has an appropriate program of work; and

(d) is likely to be able to finance the proposed work and rehabilitation of the land.

(6A) An applicant for a retention licence is not required to satisfy the Minister that the applicant genuinely intends to do work and has an appropriate program of work if the Minister considers it unnecessary or inappropriate in the circumstances.

(6B) Without limiting subsection (6), an applicant for a mining licence (other than an infrastructure mining licence) or a retention licence must satisfy the Minister that there is a reasonable prospect that the mining of the mineral resource described in the application will be economically viable.

(6C) Without limiting subsection (6), in the case where the Minister accepts an application for a mining licence or a retention licence referred to in subsection (1BB), the Minister must, for the purpose of being satisfied whether to grant the mining licence or retention licence, consider the mineralisation report included in the application.

(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.
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(9) In consenting to the granting of a mining licence, prospecting licence or retention licence over land that is covered by an exploration licence or that is the subject of an application for an exploration licence, the holder of, or the applicant for, the exploration licence may make the consent conditional on specified depth restrictions.

16 Applicant for licence—fit and proper person

(1) For the purpose of being satisfied under section 15(6)(a) that an applicant for a licence is a fit and proper person to hold the licence, the Minister must have regard to whether—

(a) the Minister has taken action under section 83 to rehabilitate land because the applicant or an associate of the applicant has not complied with Part 7, including—
(i) the circumstances which led to the
taking of that action under that Part;
and
(ii) when those circumstances arose;

(b) a licence held by the applicant or an
associate of the applicant has been cancelled,
including—
   (i) the circumstances which led to that
cancellation;
   (ii) when those circumstances arose;

(c) the applicant or an associate of the applicant
has been convicted of an offence against the
Act, including—
   (i) the nature of the offence;
   (ii) when the offence was committed;
   (iii) the penalty imposed;

(d) the applicant or an associate of the applicant
has been convicted of an offence involving
fraud or dishonesty including—
   (i) the nature of the offence;
   (ii) when the offence was committed;
   (iii) the penalty imposed.

(2) The Minister cannot be satisfied under
section 15(6)(a) that an applicant for a licence is
a fit and proper person to hold the licence if the
applicant or an associate of the applicant is an
insolvent under administration.

(3) Subsections (1) and (2) do not limit what
the Minister must be satisfied of under
section 15(6)(a).
(4) In this section associate means a director, partner, trustee, executive officer, secretary or any other officer or person associated or connected with the ownership, administration or management of the applicant's business.

16A Application for mining licence or retention licence where exploration licence or prospecting licence covers same land

(1) This section applies if—

(a) an application is made for a mining licence or retention licence in relation to land covered by an exploration licence or prospecting licence; and

(b) the exploration licence or prospecting licence (as the case may be) will expire before the Minister grants or refuses to grant the mining licence or retention licence.

(2) Despite anything to the contrary in this Act, the part of the exploration licence or prospecting licence that covers the land that is the subject of the application continues in effect after the date it would have otherwise expired until the Minister grants or refuses to grant the mining licence or retention licence (as the case may be).

16B Application for mining licence where retention licence covers same land

(1) This section applies if—

(a) an application is made for a mining licence in relation to land covered by a retention licence; and

(b) the retention licence will expire before the Minister grants or refuses to grant the mining licence.
(2) Despite anything to the contrary in this Act, the part of the retention licence that covers the land that is the subject of the application continues in effect after the date it would have otherwise expired until the Minister grants or refuses to grant the mining licence.

17 Application not transferable

An application for a licence is not transferable.

18 Notice of applications with the highest ranking

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 the highest ranking, 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; and
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(c) if the application is for a mining licence or prospecting licence, the Executive Director (within the meaning of the Heritage Act 2017).

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.

S. 18(c) inserted by No. 63/2006 s. 10(2)(b), amended by Nos 68/2014 s. 22, 7/2017 s. 304.

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

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

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

S. 22 amended by Nos 86/1993 s. 10(a)(b), 76/1998 s. 31(b), repealed by No. 82/2000 s. 17.
23 Ranking 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 rank those applications in accordance with this section.

(2) The Minister must give the highest ranking to the application that he or she believes will best further the objectives of this Act after considering—
   (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 given the highest ranking, any further assessment of the application must be made without regard to anything contained in applications having a lower ranking.

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.

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 or retention licence and, if the applicant is not the holder of the exploration licence, the holder of that licence consents in writing; or

(ba) that is covered by an exploration licence or that is the subject of an application for an exploration licence, unless the application is for a prospecting licence and, if the applicant is not the holder of the exploration licence or the applicant for the exploration licence—

(i) the holder or applicant of the exploration licence consents in writing; or

(ii) in the case of an exploration licence, both of the following conditions apply—

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

(B) the Minister has waived the need for the exploration licence holder's consent under section 25A; or

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

S. 25(1)(b) amended by No. 82/2000 s. 19(a), substituted by No. 59/2010 s. 11(1).

S. 25(1)(ba) inserted by No. 59/2010 s. 11(2).
(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—

(A) mining licences granted by virtue of section 25A before the commencement of section 12 of the Mineral Resources Amendment (Sustainable Development) Act 2010; or

(B) prospecting licences granted by virtue of that section on and after the commencement of section 12 of the Mineral Resources Amendment (Sustainable Development) Act 2010—

over land covered by the exploration licence is more than the number of graticular sections covered by the exploration licence divided by 10; or

(ii) any 2 areas covered by—

(A) mining licences granted by virtue of section 25A before the commencement of section 12 of the Mineral Resources Amendment (Sustainable Development) Act 2010; or

(B) prospecting licences granted by virtue of that section on and after the commencement of section 12 of the Mineral Resources Amendment (Sustainable Development) Act 2010—

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 ranking than the present application; or

(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
(iii) a prospecting licence, if the application is for a prospecting licence; or
(iv) a retention licence, if the application is for a retention 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

* * * * *
(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—

(a) in the case of an exploration licence or a
prospecting licence, within 90 days of the
application being accepted in accordance
with section 15; or

(b) in the case of a retention licence or mining
licence, within 120 days of the application
being accepted in accordance with
section 15.

(2A) For the purposes of subsection (2), the calculation
of the number of days in which a licence may be
granted or refused does not include any day that
occurs within any of the following periods—

(a) from the time that the Minister asks the
applicant under section 15(7) to provide
additional information until that information
is provided;

(b) from the time that a matter relevant to the
application is referred for investigation to the
mining warden under section 25A, 97 or 98
until that investigation is completed;

(c) in the case of an application involving
Crown land, any time taken by the applicant
to comply with the requirements of the
Native Title Act 1993 of the Commonwealth
or the Traditional Owner Settlement
Act 2010.
(3) The Minister may grant a licence if the applicant has substantially complied with this Act and 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.

* * * * *

(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 prospecting 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 38A.
(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.

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25A Waiver of exploration licence holder's consent

(1) This section applies if—

(a) a person applies for a prospecting licence over land that is covered by an exploration licence; and

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

(d) the person is unable 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 prospecting 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.

(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) elimination and minimisation of the risks that the work may pose to the environment, to any member of the public, or to land, property or infrastructure in the vicinity of the work;

(c) protection of groundwater;

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

(da) work undertaken under a licence;

(e) expenditure;

(f) reporting the discovery of minerals;

(g) entering into a rehabilitation bond;

(h) payment of fees;

(ha) payment of an environmental levy;
(i) payment of royalties, other than royalties in respect of lignite;

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

(k) protection of community facilities.

(2A) If, because of section 40(2)(b) or (c), a person holding a mining or prospecting licence is not required to lodge a work plan, the Minister may impose a condition requiring compliance with a Code of Practice on that mining licence or prospecting licence.

(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).

(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.

(4) It is a condition of a licence that the licensee pays rent from the date of registration of the grant of the licence, in accordance with the rate or method of assessment and at the times prescribed.
(4AA) Following consultation with the licensee, the
Minister may by notice in writing require, as a
condition to which a licence is subject, that the
licensee—

(a) submit to the Minister a report on work
undertaken under the licence; and

(b) publish that report.

(4AB) A notice under subsection (4AA) must specify—

(a) the work undertaken under the licence on
which the licensee must report; and

(b) the manner in which the licensee must
submit the report to the Minister; and

(c) the manner in which the licensee must
publish the report; and

(d) the dates by which the report must be
submitted and published.

(4A) It is a condition of a 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.
(7) It is a condition of a licence that the licensee comply with any conditions specified in a land use activity agreement under section 31(3) or 31(3A) of the Traditional Owner Settlement Act 2010 that were accepted by the applicant for the licence.


(8) A licence has no effect until registered.

S. 26(9) inserted by No. 63/2006 s. 11(3).

(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.

S. 26(10) inserted by No. 59/2010 s. 13(2).

(10) On the registration of the grant of a mining licence, any land covered by that licence that was, immediately before the registration, covered by a prospecting licence or retention licence ceases to be covered by that prospecting licence or retention licence.

S. 26(11) inserted by No. 59/2010 s. 13(2).

(11) On the registration of the grant of a retention licence, any land covered by that licence that was, immediately before the registration, covered by an exploration licence or prospecting licence ceases to be covered by that exploration licence or prospecting licence.

26AAA Transfer of consents and approvals to undertake work

The Department Head may approve the transfer of an approved work plan, rehabilitation bond or any other consent or approval in relation to a licence under this Act to any other licence held by the same licensee.

S. 26AAA inserted by No. 10/2014 s. 10.
Division 3—Licence process for direct allocation of licences relating to coal

Subdivision 1—General

26AA Definition

In this Division, *exempted land* means land—

(a) that has been exempted under section 7 from being subject to a licence; and

(b) that is not subject to an exemption under section 6.

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

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

(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.
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(2) Sections 15(1BC) to (1BG), 15(1BH), 15(1C),
15(2), 15(6), 15(6A) to (6C), 15(7), 15(8), 16
and 16A 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).

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.

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

(iii) a prospecting licence, if the application is for a prospecting licence; or

(iv) a retention licence, if the application is for a retention 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), 26(5), 26(7) and 26(8) apply to a licence granted under this Subdivision as if the licence were granted under Division 2.

(5) For the purposes of section 8(1)(k) of the Personal Property Securities Act 2009 of the Commonwealth, a licence granted under this section is declared not to be personal property.

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.

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.

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.
Part 2—Exploration licences, mining, prospecting and retention licences

(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.

Subdivision 3—Licences granted by the Governor in Council

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(1BH), 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.
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.

(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).
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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.

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

(iii) a prospecting licence, if the application is for a prospecting licence; or

(iv) a retention licence, if the application is for a retention 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), 26(5), 26(7) 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.
(5A) In addition, section 26(2) applies to an exploration licence or a mining licence or retention licence granted under this Subdivision (an *initial licence*), and any other mining licence or retention licence granted under the Act covering some or all of the land covered by the initial licence, as if after paragraph (d) there were inserted—

"(da) technology and project development milestones."

(6) For the purposes of section 8(1)(k) of the Personal Property Securities Act 2009 of the Commonwealth, a licence granted under this section is declared not to be personal property.

**26AN Minister must publish reasons for refusal to grant licence**

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**

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.

**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
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(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.

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 3A—Survey of land proposed to be covered by mining licence, prospecting licence or retention licence

26AR Applicant to survey boundary of land

(1) A person who intends to apply for a mining licence, prospecting licence or retention licence must survey the boundaries of the land proposed to be covered by the licence in the manner required by the regulations.

Note
The survey must be included in the licence application—see section 15(1BH).

(2) A person is not entitled to enter land for the purpose of surveying boundaries as required by subsection (1), unless—

(a) the person—

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

(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 person under section 26AS.
(3) For the purposes of subsection (2), **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.

26AS Authority to enter land

(1) The Department Head may grant to a person an authority to enter land for the purposes of section 26AR if the Department Head is satisfied that the person has made reasonable attempts to obtain the consent of the owner or occupier and—

(a) the person 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 the boundaries of the land proposed to be covered by the licence.

(3) An authority to enter land expires—

(a) 12 months after the date on which the authority was granted; or

(b) when the licence application in relation to which the authority was granted is determined— whichever is the earlier.
(4) The Department Head must serve on the owner and occupier of land a copy of an authority that is granted under this section to enter the land as soon as is practicable after the authority is granted.

26AT Offence not to show authority

A person who enters land under an authority to enter land granted under section 26AS 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.

26AU Security

(1) Before granting an authority to enter land under section 26AS, the Department Head must require the person 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 person'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 applicant no later than 30 days after the day on which the authority expires or is withdrawn.

26AV Insurance

A person must not enter any land or carry out any surveying for the purposes of section 26AR unless the person 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 injury as a result of the person'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.

Division 4—Requirements if agricultural land covered by mining licence or prospecting licence

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

(1) This section applies if a licensee holding a mining licence or prospecting licence that covers agricultural land that is not owned by the licensee proposes to carry out mining on that land.

(2) The licensee must prepare a statement of the economic significance of the mining—

(a) that contains an assessment of the benefits to Victoria of the proposed mining, including employment and revenue considerations; and

(b) that contains an assessment of those benefits if it was not possible to carry out the mining on the agricultural land.
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(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 mining 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 application for approval of variation of the work plan under section 41.

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 or prospecting 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

(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—

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

(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.

(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.

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

27 Tendering process

(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 a licence.

27A Acceptance of tender

(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

(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.

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).

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

(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.

(2A) In addition, section 26(2) applies to an exploration licence or a mining licence or retention licence granted to a successful tenderer under this Division (an initial licence), and any other mining licence or retention licence granted under the Act covering some or all of the land covered by the initial licence, as if after paragraph (d) there were inserted—

"(da) technology and project development milestones.".
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(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) and (6A).

(4) In addition, without limiting subsection (2), the Minister must not grant an exploration licence or a mining licence or retention licence to a person who has submitted a tender unless the Minister is satisfied that the person meets the requirements in section 16.

27E Minister may not accept any tenders

(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 a licence, declare by notice published in the Government Gazette that the land is available for applications for licences.
Division 6—Renewals of licences

29 Application for renewal of licence

(1) A licensee (other than a licensee who is a holder of a prospecting licence) may, before a licence expires, apply in accordance with the regulations to the Minister for renewal of the licence.

(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.

31 Renewals of licences

(1) 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) The Minister may refuse to renew a licence if the Minister is satisfied as to any one or more of the following matters—

(a) the applicant as a licensee has not substantially complied with—

(i) subject to subsection (3), this Act or the regulations; or

(ii) any condition to which—

(A) the licence that is the subject of the application for renewal is subject; or

(B) a work plan is subject; or

(iii) any condition specified under section 44; or

(iv) any relevant planning scheme or permit; or

(b) the applicant as a licensee has unreasonably delayed in trying to obtain any necessary consent or other authority;

(c) the applicant as a licensee has not commenced work within the time specified in or allowed under section 42(5);

(d) the applicant as a licensee has endangered the public or an employee on or near the land covered by the licence that is the subject of the application for renewal;

(e) the applicant as a licensee has undertaken work on land otherwise than in accordance with a work plan;

(f) the applicant as a licensee no longer complies with section 15(6)(a), (b), (ba), (c) or (d);
(g) in the case of an application for the renewal of a mining licence, the area covered by the licence is depleted of minerals to the extent that it is no longer feasible to mine that area;

(h) in the case of an application for the renewal of a mining licence or retention licence, 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;

(i) in the case of an application for the renewal of a retention licence, the applicant as a licensee has failed to comply with a requirement under section 112A.

(3) Subsection (2)(a)(i) does not authorise the Minister to refuse to renew a licence if 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.

(4) Otherwise, subject to subsections (5) to (9), the Minister may, by instrument served on the applicant, renew or refuse to renew a licence.

(5) The Minister may only renew an exploration or retention licence twice.

(6) In the case of the application for the second renewal of an exploration licence, the Minister may only renew the licence if the Minister—

(a) considers there are exceptional circumstances to warrant that second renewal; and
(b) is satisfied that there is a likelihood of the licensee identifying minerals in the land covered by the licence during the period for which the licence may be renewed.

Note

See also section 32(2) and (2A).

(7) In the case of a renewal of a retention licence, the Minister may only renew the licence—

(a) in the case of either the first or second renewal, if the Minister is satisfied that the mining of a mineral resource would be economically viable in the future; and

(b) in addition, in the case of the second renewal, only if the licensee has demonstrated to the Minister that there are exceptional circumstances to warrant that second renewal.

(8) In the case of an application for the renewal of a mining licence (including an infrastructure mining licence), the Minister may renew the licence if—

(a) mining is taking place under the licence at the time of the application and the Minister is satisfied that there is a reasonable prospect that mining will continue after that renewal; or

(b) mining had taken place under the licence before the date of the application and the Minister is satisfied that there is a reasonable prospect that mining will recommence within 2 years after renewal of the licence.

(9) 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.
(10) A renewal or refusal to renew has no effect until
the instrument of renewal or refusal to renew is
registered.

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.

(1A) A retention licence that has been renewed has
effect for the period not exceeding 10 years that is
specified in the notice of renewal.

(2) In the case of an application for the first renewal
of an exploration licence, the Minister may renew
the 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.

(2A) In the case of an application for the second
renewal of an exploration licence, the Minister
may only renew the exploration licence for a
period of up to 5 years.

(3) The renewal of a licence takes effect on the
anniversary of the registration under this Act of
the initial licence.
Division 7—Changes to licences

33 Transfer of licence

(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—

(a) the proposed transferee complies with section 15(6)(a), (b), (ba), (c) and (d); and

(b) subject to subsection (3B), the existing licensee has paid all outstanding fees, bonds, royalties and rents in respect of the licence; and

(c) subject to subsection (3C), in the case of an existing licensee who has a work plan, the work plan is adequate.

(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—

(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.
(3B) If the existing licensee has not paid all outstanding fees, bonds, royalties and rents in respect of the licence, the Minister may approve the instrument of transfer subject to the proposed transferee agreeing to pay the amounts outstanding.

(3C) If the existing licensee has a work plan and the Minister is not satisfied that the work plan relating to the licence is adequate, the Minister may approve the instrument of transfer subject to the proposed transferee being required to submit a new work plan for approval by the Department Head within the time specified by the Minister.

(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 or prospecting 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

(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
(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.

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.
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(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

(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.

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

(a) at the request of the licensee; or

(ab) if the Minister decides it is necessary to eliminate or minimise the risks that the work may pose to the environment, to any member of the public, or to land, property or infrastructure in the vicinity of the work; or

(b) if the Minister decides it is necessary for the rehabilitation or stabilisation of the land to which the licence applies; or

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

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

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

(d) in any other circumstances that are prescribed.

(2A) The Minister may also act under subsection (1) to make compliance with the Code of Practice a condition of—

(a) a mining licence that—

(i) covers an area of 5 hectares or less; and

(ii) does not involve underground operations, blasting, clearing of native vegetation or the use of chemical treatments; or

(b) a prospecting licence that does not involve underground operations, blasting, clearing of native vegetation or the use of chemical treatments.

(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.

35 Combined conditions

(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.

(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.

(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.

(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

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

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

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

S. 36(5) inserted by No. 82/2000 s. 31(3).
the amounts that would have been payable for each of the amalgamated licences had they not been amalgamated.

36A Expedition 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

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

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

(i) the licensee has not substantially complied with—

(A) this Act or the regulations; or

(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

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

(iii) the licensee has not commenced work within the time specified in or allowed under section 42(5); or
(iii) subject to subsection (1A), in the case of a licensee who is a holder of a mining licence, the licensee has stopped mining on land covered by the licence and has not carried out any mining on that land for a continuous period of 2 years; or

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

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

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

(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

(viia) in the case of a retention licence, that the mining of a mineral resource to which the retention licence relates would not be economically viable in the future; or

(viib) in the case of a retention licence, the licensee is unlikely to undertake economically viable mining of a mineral resource to which the retention licence relates in the future; or
Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990
Part 2—Exploration licences, mining, prospecting and retention licences

S. 38 (1)(b)(viic) inserted by No. 59/2010 s. 22(2).


S. 38(1AA) inserted by No. 59/2010 s. 22(3).

S. 38(1A) inserted by No. 86/1993 s. 17(2), amended by Nos 82/2000 s. 33(2), 53/2011 s. 5.

S. 38(1B) inserted by No. 86/1993 s. 17(2).

S. 38(1B)(a) amended by No. 82/2000 s. 33(3), substituted by No. 10/2014 s. 12(1).


(viic) in the case of a retention licence, the licensee has failed to comply with a requirement under section 112A; or

(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.

(1AA) Subsection (1)(b)(iiiia) applies only to a period referred to in that subparagraph that commences on or after the day on which section 22(1) of the Mineral Resources Amendment (Sustainable Development) Act 2010 comes into operation.

(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(1) or 33(3A) (as the case requires).

(1B) The Minister may cancel a licence, by instrument served on the licensee—

(a) in the case of a mining licence, if the licensee has not lodged a work plan within 12 months (or any longer period allowed by the Minister) after the licence was granted; or

(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.
(2A) The Minister must, by instrument served on the licensee, cancel a mining licence if a work plan is not approved for that licence within 18 months after the date the approval of the licence is registered, unless the Minister is satisfied that—

(a) the licensee has been unable to obtain the consents and authorities needed to enable the approval of the work plan, despite genuine attempts to do so; or

(b) exceptional circumstances exist that have been instrumental in precluding the approval of the work plan.

(3) A cancellation has no effect until the instrument of cancellation is registered.

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.
(2A) On the seventh 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 20% of the total number of graticular sections (in one or more areas each comprising whole graticular sections only) covered by the licence.

(2B) On the tenth 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 10% of the total number of graticular sections (in one or more areas each comprising whole graticular sections only) covered by the licence.

(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, the combined areas covered by the licences may, at the Minister's discretion, be treated as a single area.

(6) In this section, a reference to the total number of graticular sections covered by a licence is a reference to—

(a) if the licence has not been amalgamated with another licence, the number of graticular sections covered by the licence as originally granted; or

(b) if the licence has been amalgamated with another licence, the total of—

(i) the number of graticular sections covered by the licence as originally granted; and

(ii) the number of graticular sections covered by the licence with which the licence was amalgamated, as originally granted.

Division 9—Mine stability levy for Latrobe Valley

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;

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

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.

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.

38AAD Amount of the mine stability levy

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

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

S. 38AA
inserted by
No. 82/2000
s. 35,
amended by
Nos 53/2011
s. 4, 71/2001
s. 4, repealed
by
No. 68/2014
s. 40.

S. 38AB
inserted by
No. 82/2000
s. 35,
amended by
Nos 64/2012
s. 29, 10/2014
s. 13, repealed
by No.
68/2014 s. 40.

S. 38AC
inserted by
No. 82/2000
s. 35, repealed
by No.
68/2014 s. 40.

S. 38AD
inserted by
No. 82/2000
s. 35, repealed
by No.
68/2014 s. 40.

S. 38AE
inserted by
No. 82/2000
s. 35, repealed
by No.
68/2014 s. 40.
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.
(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.

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

(1) A licensee who proposes to do work under the licence must lodge a work plan with the Department Head.
(2) Subsection (1) does not apply to—

(a) a licensee who proposes to carry out only low impact exploration work; or

(b) a licensee who holds a mining licence that—

(i) covers an area of 5 hectares or less; and

(ii) does not involve underground operations, blasting, clearing of native vegetation or the use of chemical treatments; or

(c) a licensee who holds a prospecting licence that does not involve underground operations, blasting, clearing of native vegetation or the use of chemical treatments—

unless the Department Head declares, in writing, that the licensee must lodge a work plan.

(3) A work plan must—

(a) be appropriate in relation to the nature and scale of the work proposed to be carried out; and

(b) identify the risks that the work may pose to the environment, to any member of the public, or to land, property or infrastructure in the vicinity of the work; and

(c) specify what the licensee will do to eliminate or minimise those risks as far as reasonably practicable; and

(d) if the licence is a mining licence or prospecting licence, in relation to the mining activities proposed to be carried out under the licence, include a plan for consulting with the community that demonstrates that the licence holder will use appropriate and effective measures to consult with the
community throughout the period of the licence and is prepared in accordance with the regulations and any guidelines issued by the Minister relating to such plans (a community engagement plan); and

(e) if the licence is a mining licence or a prospecting licence under which mining activities are proposed to be carried out, include a rehabilitation plan for the land proposed to be covered by the licence; and

(f) if the licence is a mining licence relating to a declared mine, contain the prescribed mine stability requirements and processes; and

(g) contain any other matters required by the regulations.

(4) A specified work plan that is lodged under subsection (1) must be statutorily endorsed.

(5) In the case of a mining licence or prospecting 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.

(6) Subsection (5) 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.

(7) 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.

40A Work plan—approval

(1) The Department Head must—

(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 licensee to be made before the plan will be approved; or

(c) refuse to approve the work plan.

(2) The Department Head must approve the work plan, require changes to the rehabilitation plan or work plan, or refuse to approve the work plan under subsection (1), within 28 days after the last of any of the following events that are applicable occurs—

(a) the licensee notifying the Department Head that all required planning approvals have been granted;

(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(7);

(f) the lodging of the work plan.
(3) 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.

(4) The Department Head must—

(a) notify the licensee of his or her decision on the work plan; and

(b) give the licensee a statement of reasons for the decision.

### 41 Application for variation of work plan

(1) The holder of a licence who—

(a) proposes to vary an approved work plan; or

(b) is directed by the Department Head under section 41AA or clause 3 of Schedule 9 to lodge an application for approval of a variation of a work plan—

must lodge an application for approval of the variation with the Department Head.

(2) An application for approval of a variation must contain the prescribed information.

(3) A proposed specified variation that is the subject of an application must be statutorily endorsed.
(4) In the case of a mining licence or prospecting licence, if any part of the land relating to the proposed variation of the work plan is Crown land, the Department Head must without delay lodge a copy of the application with the Crown land Minister.

(4A) In the case of a mining licence, if any part of the land relating to the proposed variation of the work plan is land that forms part of coal mine land, the Department Head must without delay lodge a copy of the application with the Commissioner.

(5) Subsection (4) 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.

(6) Within 28 days after the application is lodged with the Crown land Minister under subsection (4), 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 proposed variation; and

(b) may recommend changes to be made to the proposed variation before it is approved or conditions to which an approval should be made subject.

(7) Within 28 days after the application is lodged with the Commissioner under subsection (4A), or any longer period allowed by the Minister, the Commissioner—

(a) must give comments to the Minister on the following if affected by the proposed variation—

(i) the rehabilitation plan included in the work plan;
(ii) the community engagement plan included in the work plan in respect of rehabilitation;

(iii) in respect of the work plan, the identification of mining hazards on coal mine land in relation to the ending of mining and the rehabilitation of that land;

(iv) in respect of the work plan, the identification and assessment of risk on coal mine land in relation to the ending of mining and the rehabilitation of that land;

(v) in respect of the work plan, the risk management plan for coal mine land in relation to the ending of mining and the rehabilitation of that land; and

(b) may recommend changes to be made to the proposed variation before it is approved or conditions to which an approval should be made subject.

41AA Department Head may direct licensee to lodge application for variation of work plan

(1) The Department Head may, on his or her 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 lodge an application for approval of the variation.
41AAB Approval of variation of work plan

(1) On application by a licensee under section 41(1) or 41AE for approval of the variation of a work plan, the Department Head must—

(a) approve the variation with or without conditions; or

(b) require the changes specified in a notice to the licensee to be made before the variation will be approved; or

(c) refuse to approve the variation.

(2) The Department Head must approve, require changes, or refuse to approve a variation under subsection (1), within 28 days after the last of any of the following events that are applicable occurs—

(a) the licensee notifying the Department Head that all required planning approvals have been granted;

(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 section 41(6);

(ea) the Commissioner giving the Minister comments under section 41(7);

(f) the lodging of the application for approval.
(3) Once the Department Head has decided to approve a variation, the approved work plan for the licence is the work plan as amended by that variation.

(4) 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.

(5) The Department Head must—
   (a) notify the licensee of his or her decision on the application; and
   (b) give the licensee a statement of reasons for the decision.

41A Minister may require impact statement

(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.

(2) The Minister must, on receipt of the statement, forward a copy to—
   (a) the Minister administering the Planning and Environment Act 1987; and
Part 3—Work under a licence

(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.

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

### 41AB Reporting requirements for declared mines

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.

### 41AC Chief Inspector to be notified of reportable events in relation to exploration or mining

(1) A licensee must report to the Chief Inspector in accordance with the regulations a reportable event as soon as practicable after the reportable event occurs.

(2) In this section, *reportable event* means an event arising out of exploration or mining prescribed as a reportable event for the purposes of this section.

### 41AD Licensee to submit area work plan 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—

* * * * *

(b) approved under section 40.

41AE Variation application must be made if mine is declared

(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) Section 41(2) to (6) apply to an application lodged under this section.

42 Commencement of work under mining licence or prospecting licence

(1) The holder of a mining licence or prospecting licence must not carry out any work on the land covered by the licence unless—

(a) the licensee has an approved work plan if required under this Act; and

Note

Section 40 contains the requirements for a work plan.

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

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

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

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

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

(g) the licensee has given 7 days notice to—

(i) the Chief Inspector; and

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

of the licensee's intention to commence work; and
(h) if the land affected is private land—

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

(iv) the licensee has purchased the land affected.

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) Subsection (1)(h) does not apply if it is waived by the Department Head under subsection (3).
Part 3—Work under a licence

(3) 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)(h) waived.

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

(5) 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.

(6) Despite anything in any planning scheme approved under the Planning and Environment Act 1987, the holder of a mining licence or prospecting 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.

(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 or prospecting 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.

(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 or prospecting 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 or prospecting licence in accordance with that licence.
(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 preparation, adoption and approval of an amendment under subsection (8).

(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".

(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".

(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.

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

43 Commencement of work under exploration licence or retention licence

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

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

(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

(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 affected required by or under this or any other Act; and

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

(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 affected—

of the licensee's intention to commence work; and

(e) if the land affected is private land—

(i) the licensee has obtained the written consent of the owners and occupiers of the land affected; 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 affected—

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

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


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

S. 43(1)(e) substituted by No. 82/2000 s. 42(1)(c), amended by No. 59/2010 s. 36(2).
Part 3—Work under a licence

(1) A person must not carry out work under a licence if—

(ea) the licensee has obtained the written consent or informed verbal consent of the owners and occupiers of the land affected, if the land affected is private land and the work being carried out involves exploring for minerals on land but does not involve—

(i) the use of equipment (other than non-mechanical hand tools) to excavate on the land; or

(ii) the use of explosives on the land; or

(iii) removing or damaging any tree or shrub 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.

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

(1B) Subsection (1)(a), (ab), (b), (ba), (ca) and (d) do not apply to a licensee if the work being carried out involves exploring for minerals on land but does not involve—
(a) the use of equipment (other than non-mechanical hand tools) to excavate on the land; or
(b) the use of explosives on the land; or
(c) removing or damaging any tree or shrub on the land.

(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.

(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.

(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—
(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

S. 43(2) repealed by No. 86/1993 s. 23(b), new s. 43(2) inserted by No. 82/2000 s. 42(2).
S. 43(2A) inserted by No. 82/2000 s. 42(2).
S. 43(2B) inserted by No. 82/2000 s. 42(2).
S. 43(3) substituted by No. 86/1993 s. 23(c), amended by Nos 7/1994 s. 6(a), 64/2012 s. 33.
(b) requires a permit to be obtained for that use or development—

the holder of a 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—

(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 a 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 a licence in accordance with that licence.

(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).
(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".

(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".

(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.

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

**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.
Part 3—Work under a licence

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

(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 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.


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.

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

(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.

* * * * *

(4) A consent under subsection (1) or (2)—

(a) must not be unreasonably withheld; and

(b) may be granted subject to conditions.

(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.

(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.

(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—

(a) by a person or body under subsection (1) or (2)—

(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—

(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.

45 Prohibition of work near dwellings and certain places and sites

(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—

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

* * * * * *

(ii) * * * * *

* * * * *
(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.

(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.

(1B) Subsection (1A) applies regardless of whether the licensee has any of the consents referred to in subsections (2) and (4).
Part 3—Work under a licence

(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.

(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.
(5) An owner who consents under subsection (2) may make the consent conditional on the following matters only—

(a) specified distance restrictions;
(b) specified depth restrictions.

(7) In this section—

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 exploring for minerals on land—

(k) without using equipment (other than non-mechanical hand tools) to excavate on the land; and

(l) without using explosives on the land; and

(m) without removing or damaging any tree or shrub on the land.

(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.

45A Certain exploration and mining work complies with section 45

(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 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 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).
46 Minister may authorise work near dwelling house

(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 after consultation with—

(a) the municipal council in whose municipal district an area is situated; and

(b) 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) 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).

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 if—
Mineral Resources (Sustainable Development) Act 1990  
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(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) or within 100 metres below that area, a permit is required to be obtained under a planning scheme for the new work.

(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 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—

(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

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S. 47(1)(b) amended by No. 10/2014 s. 26(2).

S. 47(1)(c) repealed by No. 10/2014 s. 26(3).

S. 47(2) amended by No. 10/2014 s. 26(1).
(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.

47A Management of worksites

(1) A licensee holding a mining licence must appoint a manager to control and manage the licence worksites.

(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.

(5) The licensee may appoint himself or herself to be the manager of the licence worksites.
Pt 4 (Heading and ss 48–54) amended by Nos 86/1993 s. 27, 46/1998 s. 7(Sch. 1), 76/1998 s. 31(e), 108/2004 s. 117(1) (Sch. 3 items 134.2, 134.3), 80/2006 s. 26(Sch. item 71.1), repealed by No. 59/2010 s. 39.
Part 4A—Advisory panels

Division 1—Appointment of panels

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.

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.

54C Chairperson

If a panel consists of more than one member, the Minister must appoint one of the members to be the chairperson.

54D Terms of reference

On appointing a panel, the Minister must specify the terms of reference of the panel.

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

(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

(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

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

(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.
(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.

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.

54K Panel may regulate its own proceedings
A panel may regulate its own proceedings.

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.

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

(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, prospecting licence or retention licence—

(a) private land, but only with the consent of the owner or occupier; and

(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).

(1A) If the land is covered by a mining licence, prospecting licence or retention 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.

(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.

(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.

(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.

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.

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.

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.
(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

(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, prospecting licence or retention licence—

(a) private land, but only with the consent of the owner or occupier; and
(b) Crown land (other than land exempted under section 6, 6A or 7 of this Act).

(1A) If the land is covered by a mining licence, prospecting licence or retention 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 10 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.

(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.

60 Application for tourist fossicking authority

A person may apply to the Department Head in accordance with the regulations for a tourist fossicking authority.

61 Grant or refusal of tourist fossicking authority

(1) The Department Head may grant or refuse an application.

(2) The Department Head may grant an application on any terms and conditions specified in the authority.

   *       *       *       *       *

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
(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.

(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.
69 Functions of Department Head regarding mining register

(1) The Department Head must establish and maintain a mining register.

(1A) The mining register may be kept in electronic form.

(2) The Department Head must, by any means he or she considers appropriate—

(a) register the following documents—

(i) licences;

(ia) instruments of refusal of applications for licences;

(ii) compensation agreements;

(iii) rehabilitation bonds;

(iiiia) consents given under section 45;

(iiiib) authorisations given under section 46;
(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;

(xii) instruments of variation, suspension, revocation or addition of licence conditions;

(xiii) approved instruments of transfer of licences;

(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;

(xva) instruments (including mortgages) for the termination or cancellation of interests in, or conferred by, licences;

(xvb) written undertakings entered into under section 107;
(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.

(5) The Department Head may refuse to accept for registration an approved instrument of transfer if the proposed transferee has not paid all outstanding fees, bonds, royalties and rents in respect of the licence agreed to under section 33B.
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.

(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—

(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.

(3) The Department Head must notify the licensee of any correction made under this section that affects the licence.
(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.

(5) An application for review 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 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

(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

(ca) provide a copy of a registered consent given under section 45; and

(cba) provide a copy of a registered authorisation given under section 46; and
(d) provide a copy of a registered work plan; and

(e) provide a copy of a registered variation to a work plan—

to any person who pays the prescribed fee.

(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.

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.

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
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evidence to the contrary, is proof of the matters stated in the certificate.

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.

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S. 77 amended by No. 82/2000 s. 72(b).
Part 6A—Extractive industries—Work authorities and other matters

Division 1—Searching for stone

77A Consent to search for stone on certain land

(1) A person who proposes to search for stone on Crown land must obtain the consent of the Crown land Minister.

(2) A person who proposes to search for stone on land that is owned by, vested in or managed or controlled by an Authority under the Water Act 1989 must obtain the consent of that Authority.

(3) A consent under subsection (1) or (2)—

(a) must not be unreasonably withheld; and

(b) may be granted subject to conditions.

(4) The Crown land Minister whose consent is sought under subsection (1) must, within 60 days (or any longer period allowed by the Crown land Minister) after the consent being sought, grant that consent (whether subject to conditions or not) or refuse to consent.

(5) An Authority under the Water Act 1989 whose consent is sought under subsection (2) must, within 60 days after the consent being sought, grant that consent (whether subject to conditions or not) or refuse that consent.

(6) An Authority under the Water Act 1989 that does not comply with subsection (5) is taken to have given the consent sought.
(7) A person or body that refuses to consent must, within 7 days after the decision to refuse, give the person who sought the consent a statement in writing of the reasons for the decision.

Note
Section 6AA sets out land that is not available for searching for stone.

77B Depth restriction on searching for stone on land adjacent to waterways or water infrastructure

A person must not search for stone 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

(b) any main drains, sewers, aqueducts, channels or pipelines of that Authority—

unless the person has first consulted the Authority and searches for stone in compliance with any conditions specified by the Authority.

77C Notice of proposed searching for stone on land on which there are roads etc.

A person who proposes to search for stone on land on which there is a public highway, road or street must give 21 days notice of the proposed searching to the person or body having the care or management of the public highway, road or street.

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Division 2—Work plans and extractive industry work authorities

77G Work plan

(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 not exceeding 5 hectares and at a depth not exceeding 5 metres; and

(b) that does not require blasting or the clearing of native vegetation—

unless the Department Head declares, in writing, that the applicant must lodge a work plan.

(2A) A specified work plan that is lodged under subsection (1) must be statutorily endorsed.
(3) A work plan must—

(a) be appropriate in relation to the nature and scale of the extractive industry activities proposed to be carried out; and

(b) identify the risks that the extractive industry activities may pose to the environment, to any member of the public, or to land, property or infrastructure in the vicinity of the activities; and

(c) specify what the person who proposes to apply for an extractive industry work authority will do to eliminate or minimise those risks as far as reasonably practicable; and

(d) include a rehabilitation plan for the land proposed to be covered by the work authority; and

(e) include a plan for consulting with the community that demonstrates that the extractive industry authority holder will use appropriate and effective measures to consult with the community throughout the period of the extractive industry work authority and is prepared in accordance with the regulations and any guidelines issued by the Minister relating to such plans (a *community engagement plan*); and

(f) if the extractive industry work authority relates to a declared quarry, contain the prescribed mine stability requirements and processes; and

(g) contain any other matters required by the regulations.

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S. 77G(3) amended by No. 55/2010 s. 50, substituted by No. 10/2014 s. 27(1) (as amended by No. 47/2015 s. 4).
(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, and give a statement of reasons for the decision to, the person who lodged the plan.

77H Application for variation of work plan

(1) 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 section 77HA or clause 3A of Schedule 9 to lodge an application for approval of a variation of a work plan—

must lodge an application for approval of the variation with the Department Head.

(2) An application for approval of a variation must contain the prescribed information.

(3) A proposed specified variation that is the subject of an application must be statutorily endorsed.

77HA Department Head may direct holder to lodge application for variation of work plan

(1) The Department Head may, on his or her own initiative, determine that an approved work plan be varied.
(2) On making a determination, the Department Head must give the holder of the extractive industry work authority written notice of the proposed variation, and the reasons for it, and give the holder an opportunity to comment on the proposal.

(3) After considering any comments made by the holder of the work authority, the Department Head may direct the holder to lodge an application for approval of the variation.

**77HB Approval of variation of work plan**

(1) On application by a holder of an extractive industry work authority under section 77H(1) or 77KB for approval of the variation of a work plan, the Department Head must, within 28 days after the application is lodged—

(a) approve the variation with or without conditions; or

(b) require the changes specified in a notice to the licensee to be made before the variation will be approved; or

(c) refuse to approve the variation.

(2) 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.

(3) 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.

(4) The Department Head must—

(a) notify the holder of the work authority of his or her decision on the application; and
(b) give the holder of the work authority a statement of reasons for the decision.

77HC  Planning permits not required for some work variations

(1) This section applies if—

(a) an extractive industry work authority holder 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 77T; 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 extractive industry work authority holder 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 satisfied that the new work will not cause any significant additional environmental impacts, the holder of an extractive industry work authority 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.

### 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.

77J Conditions of extractive industry work authorities

(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) elimination and minimisation of the risks that the work may pose to the environment, to any member of the public, or to land, property or infrastructure in the vicinity of the work;

(e) the protection of groundwater;

(g) the payment of royalties;

(h) the payment of fees (if any) prescribed in the regulations.

(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.

(3) Following consultation with the holder of the extractive industry work authority, the Minister may by notice in writing require, as a condition to which an extractive industry work authority is subject, that the holder—

(a) submit to the Minister a report on work undertaken under the extractive industry work authority; and

(b) publish that report.
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(4) A notice under subsection (3) must specify—

(a) the work undertaken under the extractive
industry work authority on which the holder
must report; and

(b) the manner in which the holder must submit
the report to the Minister; and

(c) the manner in which the holder must publish
the report; and

(d) the dates by which the report must be
submitted and published.

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.

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.
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) and (3) 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.

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 rehabilitation or stabilisation of the land to which the extractive industry work authority applies; or

(c) if the Minister decides it is necessary to eliminate or minimise the risks that the work may pose to the environment, to any member of the public, or to land, property or infrastructure in the vicinity of the work.

(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.

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) in the case of an existing extractive industry work authority holder who has a work plan, the Minister is satisfied that the work plan relating to the extractive industry work authority is adequate.
(3) If the existing extractive industry work authority holder has a work plan and 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

(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 77HB; 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.

### 77OA  Surrender of an extractive industry work authority

The holder of an extractive industry work authority may, with the consent of the Minister, surrender the authority by notice in writing.

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### Division 3—Managers

#### 77Q  Manager must be appointed

(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

(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.

77S Land subject to a licence under Part 2

(1) A person who applies for an extractive industry work authority in respect of land which is the subject of a licence under Part 2 must, on the same day that the applicant lodges the application—

(a) send a copy of the application to any holder of a licence under Part 2 relating to the land or any part of the land to which the application applies; and

(b) send a notice to any holder of a licence referred to in paragraph (a) seeking consent to the granting of the extractive industry work 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)(a) and a notice seeking consent under subsection (1)(b).
(3) If land that is the subject of an application for an extractive industry work authority is also the subject of a 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.

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 6B—Statutory endorsement of work plans

77TA Definitions

In this Part—

referral authority means a person or body that has been specified in a planning scheme under the Planning and Environment Act 1987 as a referral authority under that Act;

statutory endorsement means an endorsement of a work plan or a variation to an approved work plan under section 77TD.

77TB Application of Part

This Part applies to—

(a) a work plan for work in respect of which a planning permit under the Planning and Environment Act 1987 is required; or

(b) a variation of an approved work plan for a variation to work—

(i) that is being carried out in accordance with the approved work plan; and

(ii) in respect of which a planning permit under the Planning and Environment Act 1987 is required.

77TC Giving of work plan or variation to approved work plan for statutory endorsement

A licensee, a holder of an extractive industry work authority or a person who proposes to apply for an extractive industry work authority may, as the case requires, give to the Department Head, for
statutory endorsement, a work plan or a variation to an approved work plan.

**77TD  Department Head may endorse work plan or variation to approved work plan**

(1) Subject to this Part, on receiving a work plan or a variation to an approved work plan, the Department Head must, by written notice within 28 days—

(a) ask for changes to be made to the work plan or variation to an approved work plan; or

(b) endorse or refuse to endorse the work plan or variation to an approved work plan; or

(c) give a copy of the work plan or variation to an approved work plan to a referral authority under section 77TE.

(1A) If the Department Head asks for changes to be made to the work plan or variation to an approved work plan, the licensee, holder of an extractive industry work authority or person proposing to apply for an extractive industry work authority must, in accordance with section 77TC, give to the Department Head, for statutory endorsement, a work plan or variation to an approved work plan that includes those changes.

(2) The Department Head must not make a decision under subsection (1) that is inconsistent with anything that a referral authority tells the Department Head, or any comments the referral authority gives to the Department Head, under section 77TF.

(3) The Department Head may, in a statutory endorsement, specify that certain conditions must be observed in carrying out an approved work plan by—
(a) the licensee; or

(b) the holder of an extractive industry work authority; or

(c) a person who proposes to apply under section 77I for an extractive industry work authority if he or she is subsequently granted the authority by the Minister.

(4) In the case of a statutory endorsement of a variation to an approved work plan, the conditions specified under subsection (3) may include—

(a) in the case of variation to an approved work plan for work under a licence, any of the matters set out in section 26(2);

(b) in the case of variation to an approved work plan for work under an extractive industry work authority, any of the matters set out in section 77J(1).

(5) The Department Head must, as the case requires, give the licensee, holder of an extractive industry work authority or person proposing to apply for an extractive industry work authority who gave the work plan or the variation to an approved work plan, his or her statement of reasons for his or her decision under this section.

77TE Department Head must give work plan or variation application to referral authority

(1) On receiving a work plan or a variation to an approved work plan, the Department Head must, within 28 days, give a copy of the work plan or variation to an approved work plan to every referral authority that the Department Head considers, having regard to the kind of work proposed under the work plan or variation, should be given the work plan or variation.
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(2) Before complying with subsection (1), the Department Head must be satisfied that the work plan or the variation to an approved work plan complies with the regulations.

(3) If the Department Head gives a copy of the work plan or variation to an approved work plan to a referral authority, the Department Head must, by written notice, endorse or refuse to endorse the work plan or the variation to the approved work plan—

(a) within 28 days of being told by a referral authority that it objects or does not object to the endorsement of the work plan or variation of the work plan; or

(b) within 28 days of the expiry of the time specified in section 77TF(2).

77TF Referral authority must consider work plan and variation of approved work plan

(1) A referral authority must consider every work plan and variation to an approved work plan given to it and must—

(a) tell the Department Head in writing that—

(i) it does not object to the endorsement of the work plan or variation to the approved work plan;

(ii) it does not object to the statutory endorsement of the work plan or variation to the approved work plan if the work plan or variation is subject to conditions in the statutory endorsement; or

(iii) it objects to the statutory endorsement of the work plan or variation to the approved work plan on any specified ground; and

S. 77TE(3) inserted by No. 10/2014 s. 34(2).

S. 77TF inserted by No. 59/2010 s. 45.
(b) give the Department Head its comments (if any) in relation to the work plan and variation to an approved work plan, as the case requires.

(2) A referral authority must comply with subsection (1) within 30 days after being given the work plan or variation to an approved work plan, as the case requires.

(3) If a referral authority does not comply with subsection (1) within the time specified under subsection (2), the referral authority is taken to have not objected to the statutory endorsement of the work plan or variation of the approved work plan.

77TG **Interrelationship with the Planning and Environment Act 1987**

(1) Despite anything to the contrary in the Planning and Environment Act 1987, section 55(1) of that Act does not apply to those parts of an application referred to in that section that consist of a work plan or a variation to an approved work plan given to a referral authority under section 77TE.

(2) However, for the purposes of subsection (1), a referral authority does not include the Department Head or Department (as the case requires).
Part 6C—Review

77TI Review by Tribunal

(1) A licensee or 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 40A, 41AAB, 77G or 77HB to refuse to approve a work plan or a variation of an approved work plan; or

(b) a decision of the Department Head under section 40A, 41AAB, 77G or 77HB to approve a work plan or the variation of an approved work plan with conditions.

(2) The holder of an extractive industry work authority may apply to the Tribunal for review of—

(a) a decision of the Minister to impose a condition on the extractive industry work authority under section 77J; or

(b) 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

(c) 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.
(3) A licensee, the holder of an extractive industry work authority or a person proposing to apply for an extractive industry work authority may apply to the Tribunal for review of—

(a) a decision of the Department Head under section 77TD to refuse to statutorily endorse a work plan or variation to an approved work plan; or

(b) a decision of the Department Head under section 77TD to statutorily endorse a work plan or variation to an approved work plan with conditions.

(4) 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.

(5) Subsections (1) and (3) do not apply to a condition that has been imposed on an approval of a work plan or of a variation of 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.

77TJ Application for review

An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made; or
Mineral Resources (Sustainable Development) Act 1990
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Part 6C—Review

(b) either—

(i) the day on which the statement of reasons for the decision is given under section 40A, 41AAB, 77G, 77HB or 77TD to the person entitled to apply for review; or

(ii) if, under the Victorian Civil and Administrative Tribunal Act 1998, the person entitled to apply for review 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.
Part 7—Rehabilitation

77U Definitions

In this Part—

* auditor* means an environmental auditor appointed under section 53S of the Environment Protection Act 1970;

* authority* means—

(a) an exploration licence, a mining licence, a prospecting licence or a retention 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 or prospecting licence must rehabilitate land in accordance with the rehabilitation plan approved by the Department Head.

(2) The holder of an exploration licence or retention licence must rehabilitate land in accordance with the conditions in the licence.

(4) The owner of land may request the licensee to enter into a written agreement as to the rehabilitation plan.
### 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, prospecting licence or extractive industry work authority was granted; and
   (v) any potential long term degradation of the environment; and

(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 or prospecting licence.

79A Rehabilitation liability assessment

(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.
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.

(2) If land covered by a mining licence or prospecting 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.

(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.

(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.

(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 authority holder to enter into a further rehabilitation bond within 28 days after service of that notice, or by a later date specified in the notice, 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 insufficient.
(4A) An authority holder must comply with a requirement to enter into a further rehabilitation bond under subsection (4).

Penalty: In the case of a corporation, 200 penalty units

In any other case, 40 penalty units.

(5) The Minister may serve on an authority holder who has not complied with a requirement under subsection (4) within 28 days 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) An authority holder must comply with a notice under subsection (5)\(^8\).

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

(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.
(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.

(3) While the rehabilitation is being completed, a former authority holder must continue the appointment of—

(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.

81A Certification that land has been rehabilitated

(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

(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—
(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.

(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 prospecting 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.

(3) The Minister may, as a condition of returning a bond or bonds to an 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.

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 7A—Latrobe Valley Mine Rehabilitation Commissioner

Division 1—Preliminary

84AA Definitions

In this Part—

annual report means a report prepared under section 84AZH;

authorised officer means a person authorised under section 84AU;

framework means the framework published under section 84AZD;

Latrobe Valley licensee means the holder or the former holder of—

(a) the mining licence No. 5003; or
(b) the mining licence No. 5004; or
(c) the mining licence No. 5189; or
(d) the mining licence No. 5216; or
(e) the mining licence No. 5304;

public sector body has the meaning given by section 84AB;

public sector employee means a person employed in the Department under Part 3 of the Public Administration Act 2004;

referral investigation means an investigation commenced by the referral of a matter under section 84AQ;

referral report means a report published under section 84AZG;
regulatory framework has the meaning given by section 84AC;

rehabilitation planning activity means an activity carried out by a public sector body or a Latrobe Valley licensee to plan in relation to the rehabilitation of coal mine land including—

(a) the preparation of a research plan; or
(b) the carrying out of research; or
(c) the carrying out of a technical investigation; or
(d) the carrying out of a rehabilitation trial; or
(e) the preparation of a rehabilitation plan or activity to assist the preparation of the regional rehabilitation strategy.

84AB Meaning of public sector body

For the purposes of this Part, a public sector body is one of the following entities—

(a) the Department Head of the Department of Economic Development, Jobs, Transport and Resources;
(b) the Department Head of the Department of Environment, Land, Water and Planning;
(c) the Environment Protection Authority under the Environment Protection Act 1970;
(d) the Victorian WorkCover Authority under the Workplace Injury Rehabilitation and Compensation Act 2013;
(e) a responsible authority within the meaning of the Planning and Environment Act 1987 that performs functions under that Act in the Latrobe Valley region;

(f) an Authority within the meaning of the Water Act 1989 that performs functions under that Act in the Latrobe Valley region;

(g) the Aboriginal Heritage Council under the Aboriginal Heritage Act 2006;

(h) the Victorian Rail Track under the Transport Integration Act 2010;

(i) the V/Line Corporation under the Transport Integration Act 2010;

(j) the Roads Corporation under the Transport Integration Act 2010;

(k) a public sector body (within the meaning of the Public Administration Act 2004) that is prescribed.

84AC Meaning of regulatory framework

For the purposes of this Part, the regulatory framework is—

(a) the provisions of this Act or any regulations made under this Act or any instrument made under this Act that apply to the rehabilitation of and the activities carried out on coal mine land; and

(b) an approval, authority or permission given, granted or issued under another Act relating to activities—

(i) carried out on coal mine land; and

(ii) to which a rehabilitation plan applies.
Division 2—Appointment, terms and conditions

84AD  Latrobe Valley Mine Rehabilitation Commissioner

There is to be a Latrobe Valley Mine Rehabilitation Commissioner.

84AE  Objectives of the Commissioner

The objectives of the Commissioner are—

(a) to provide assurance to the Victorian community that public sector bodies and the Latrobe Valley licensees are—

(i) planning for the rehabilitation of coal mine land; and

(ii) implementing the regional rehabilitation strategy; and

(b) to promote the participation of the community and stakeholders from the Latrobe Valley region in the development and implementation of the regional rehabilitation strategy; and

(c) to promote the effective and consistent rehabilitation of coal mine land in accordance with the regional rehabilitation strategy.

84AF  Appointment

(1) Subject to subsection (2), the Governor in Council, on the recommendation of the Minister, by instrument, may appoint a person as Commissioner.

(2) A person is eligible for appointment as Commissioner if the person has expertise relating to the rehabilitation of mines.
84AG Remuneration

The Commissioner is entitled to the remuneration and allowances determined from time to time by the Governor in Council.

84AH Terms and conditions of appointment

(1) The Commissioner—

(a) holds office for the period, not exceeding 5 years, specified in the instrument of appointment; and

(b) is appointed on a full-time or part-time basis, as specified in the instrument of appointment; and

(c) is eligible to be reappointed; and

(d) holds office on the terms and conditions determined by the Governor in Council.

(2) The Public Administration Act 2004 (other than Part 3 of that Act) applies to the Commissioner in respect of that office.

84AI Acting appointment

(1) The Governor in Council, on the recommendation of the Minister, by instrument, may appoint a person to act as the Commissioner—

(a) during a vacancy in the office of the Commissioner; or

(b) during any period when—

(i) the Commissioner is absent; or

(ii) the Commissioner is for any other reason unable to perform the duties of the office.

(2) An appointment under subsection (1) is for the period, not exceeding 6 months, that is specified in the instrument of appointment.
(3) A person appointed under subsection (1) is entitled to be paid the same remuneration and allowances as the Commissioner.

(4) A person appointed under subsection (1) holds office on the terms and conditions determined by the Governor in Council.

(5) The Public Administration Act 2004 (other than Part 3 of that Act) applies to a person acting as the Commissioner in respect of that office.

(6) While a person is acting as the Commissioner, the person has all the powers and may perform any of the functions of the Commissioner.

(7) The Governor in Council may revoke an appointment under subsection (1) at any time.

84AJ Vacancy and resignation

The Commissioner ceases to hold office if the Commissioner—

(a) resigns by notice given to the Minister; or

(b) is removed from office under section 84AK.

84AK Removal from office

The Governor in Council, on the recommendation of the Minister, at any time may remove or suspend the Commissioner on any of the following grounds—

(a) misconduct;

(b) neglect of duty;

(c) inability to perform the functions and powers of the Commissioner;

(d) any other ground on which the Governor in Council is satisfied that the Commissioner should not be the Commissioner.
Division 3—Functions and powers

84AL Functions and powers of the Commissioner

(1) The Commissioner has the following functions—

(a) to develop and maintain a framework for the monitoring and evaluation of rehabilitation planning activities;

(b) to carry out strategic audits of public sector bodies and Latrobe Valley licensees in relation to rehabilitation planning activities;

(c) to monitor and evaluate rehabilitation planning activities in accordance with the framework;

(d) to review any research plan in relation to the rehabilitation of coal mine land prepared by a Latrobe Valley licensee and make recommendations, if any, following a review to the relevant Latrobe Valley licensee;

(e) to coordinate rehabilitation planning activities;

(f) to engage with the following groups and persons in relation to the rehabilitation of coal mine land—
   (i) the Victorian community;
   (ii) other stakeholders;
   (iii) public sector bodies;
   (iv) the Latrobe Valley licensees;

(g) to conduct and support meetings between the following groups and persons in relation to rehabilitation planning activities that promote communication and the resolution of issues—
(h) to provide advice and recommendations to the Minister in relation to—

(i) the possible changes to the regulatory framework; and

(ii) the outcomes of any engagement by the Commissioner with the Victorian community or stakeholders; and

(iii) the planning for the monitoring, and completion, of the rehabilitation of coal mine land; and

(iv) the planning for the monitoring and maintenance of coal mine land that has been rehabilitated; and

(v) the regional rehabilitation strategy; and

(vi) the rehabilitation plans of the Latrobe Valley licensees;

(i) to provide information and education to the Victorian community about—

(i) the planning for the rehabilitation of coal mine land; and

(ii) the regional rehabilitation strategy;

(j) to carry out investigations on the referral of the Minister under Division 4;

(k) to provide advice, reports and recommendations to the Minister on matters referred to the Commissioner under Division 4;
(l) to provide advice, recommendations and reports to the Minister on the exercise of the Commissioner's functions;

(m) other functions conferred on the Commissioner under this Act.

(2) The Commissioner has all the powers that are necessary or convenient to perform the Commissioner's functions under this Part.

84AM  Commissioner to have regard to objective, regional rehabilitation strategy and regulatory framework

In performing a function or exercising a power under this Part the Commissioner must have regard to—

(a) the objective of the Commissioner; and

(b) the regional rehabilitation strategy; and

(c) the regulatory framework.

84AN  Staff to be provided

The Department Head must ensure that the Commissioner is provided with any public sector employees that are necessary to assist the Commissioner in performing the Commissioner's functions.

84AO  Assistance to be provided by the Department Head

The Department Head must ensure that the Commissioner is provided with any assistance in connection with the performance of the Commissioner's functions that the Commissioner reasonably requires.

84AP  Assistance to be provided by a public sector body and a Latrobe Valley licensee

A public sector body and a Latrobe Valley licensee must ensure that the Commissioner is provided with any assistance in connection with
the reasonable performance of the Commissioner's functions that the Commissioner reasonably requires.

Division 4—Investigations by the Commissioner

84AQ Minister may refer a matter for investigation to the Commissioner

(1) The Minister, by notice published in the Government Gazette, may refer to the Commissioner for investigation a matter that relates to—
   (a) the rehabilitation of coal mine land; or
   (b) the regional rehabilitation strategy; or
   (c) a rehabilitation planning activity.

(2) A notice under subsection (1) must set out—
   (a) the terms of reference of the investigation of the matter; and
   (b) the reporting requirements that will apply, including when a report is to be given to the Minister and whether or not it is to be published.

84AR Power of entry and inspection without consent

(1) This section applies if—
   (a) a matter has been referred to the Commissioner under this Division; and
   (b) the Commissioner believes on reasonable grounds that it is necessary for the Commissioner or an authorised officer to enter coal mine land or any land adjacent to coal mine land for the purposes of investigating the referred matter.
(2) The Commissioner or an authorised officer may enter, without consent, coal mine land or any land adjacent to coal mine land but only between the hours of 9 a.m. and 5 p.m.

(3) The Commissioner or the authorised officer must not, under this section, enter any part of coal mine land or any land adjacent to coal mine land that is residential premises.

(4) On entering the land under this section, the Commissioner or the authorised officer may do all or any of the following—

(a) inspect the land;

(b) take and keep samples (without payment) of any thing found on the land, if the Commissioner or the authorised officer believes on reasonable grounds that the thing is relevant to the referral investigation;

(c) make any still or moving image or audio-visual recording that the Commissioner or the authorised officer believes on reasonable grounds is relevant to the referral investigation;

(d) take measurements of any thing on the land.

(5) The Commissioner or the authorised officer must not enter any land under this section unless, before that entry, the Commissioner or the authorised officer—

(a) has produced the Commissioner's identification or the authorised officer's identity card to the occupier or the apparent occupier for inspection; and
(b) has taken all reasonable steps to notify the occupier or the apparent occupier of the land of the entry.

(6) If the Commissioner or the authorised officer exercises a power of entry under this section without the occupier or the apparent occupier being present the Commissioner or the authorised officer must, on leaving the land, leave a notice setting out—

(a) the time of entry; and

(b) the purpose of entry; and

(c) a description of things done while on the land; and

(d) the time of departure; and

(e) the contact details of the Commissioner or the authorised officer.

84AS Occupier or apparent occupier of land must assist Commissioner or authorised officer to enter

The occupier, or apparent occupier for the time being, of land which the Commissioner or the authorised officer wants to enter under section 84AR must not, without reasonable excuse, refuse or fail to provide such assistance as the Commissioner or the authorised officer may reasonably require to enter the land.

Penalty: In the case of a corporation, 300 penalty units;

In any other case, 60 penalty units.

84AT Occupier or apparent occupier of land must assist Commissioner or authorised officer to inspect

The occupier, or apparent occupier for the time being, of land which the Commissioner or the authorised officer wants to inspect under section 84AR must not, without reasonable
excuse, refuse or fail to provide such assistance as the Commissioner or the authorised officer may reasonably require to inspect the land.

Penalty: In the case of a corporation, 300 penalty units;
In any other case, 60 penalty units.

84AU Authorised officers under this Division

(1) The Department Head, by instrument, may authorise the following persons to be authorised officers for the purposes of all or any specified provisions of this Division applying to an authorised officer—

(a) a public sector employee who assists the Commissioner under section 84AN;

(b) an inspector.

(2) The Department Head may determine the terms and conditions of authorisation of any authorised officer.

(3) The terms and conditions of authorisation of an authorised officer may—

(a) contain general directions as to how the authorised officer's powers may be exercised; or

(b) direct that the exercise of the authorised officer's powers be limited to a specified referral investigation.

(4) The Department Head, in writing, may vary or revoke the authorisation of an authorised officer at any time.
Authorised officer's identity cards

(1) The Department Head must issue an identity card to each authorised officer containing a photograph of the authorised officer and the authorised officer's signature.

(2) Subsection (1) does not apply in respect of an authorised officer who is an inspector.

Note
See section 92 for the issue of an identity card to an authorised officer who is an inspector.

(3) If a person to whom an identity card has been issued under subsection (1) ceases to be an authorised officer, the person must return the identity card to the Department Head as soon as practicable.

Giving of documents or other things

(1) For the purposes of a referral investigation, the Commissioner, by written notice given to a Latrobe Valley licensee, may require the licensee to give to the Commissioner a document or other thing specified in the notice that is held by the Latrobe Valley licensee.

(2) A notice under subsection (1) must specify the time within and manner with which the document or other thing must be given to the Commissioner.

(3) A Latrobe Valley licensee given a notice under subsection (1) must not, without reasonable excuse, refuse or fail to comply with the notice.

Penalty: In the case of a corporation, 300 penalty units; In any other case, 60 penalty units.
(4) A Latrobe Valley licensee must not in purported compliance with a notice under subsection (1) give to the Commissioner a document or information that the licensee knows is false or misleading in a material particular.

Penalty: In the case of a corporation, 300 penalty units;

In any other case, 60 penalty units.

84AX Giving of documents or other things to the Commissioner by public sector bodies

(1) For the purposes of a referral investigation the Commissioner, by written notice given to a public sector body, may require the public sector body to give to the Commissioner any document or other thing specified in the notice that is held by the public sector body.

(2) A notice under subsection (1) must specify the time and manner within which the document or other thing must be given to the Commissioner.

(3) A public sector body must comply with a notice under subsection (1).

84AY Confidentiality of document or other thing given under a notice

(1) A document or thing given under section 84AW or 84AX to the Commissioner is not admissible in evidence in any hearing or proceeding in a court or a tribunal.

(2) This section does not apply to a proceeding for an offence against section 84AW(3) or (4).
Division 6—Information gathering by the Commissioner

84AZ Definition

In this Division—

*non-investigatory function* means a function of the Commissioner under this Part other than a function under Division 4.

84AZA Notice requiring documents or information from public sector body

(1) The Commissioner, by written notice given to a public sector body, may require the body to give to the Commissioner a document or information the Commissioner requires for the purpose of performing a non-investigatory function.

(2) A notice under subsection (1) must specify—

(a) the document or information that is required to be given to the Commissioner; and

(b) the time within and manner with which the document or information must be given to the Commissioner.

84AZB Notice requiring documents or information from Latrobe Valley licensee

(1) The Commissioner, by written notice given to a Latrobe Valley licensee, may require the licensee to give to the Commissioner a document or information the Commissioner requires for the purpose of performing a non-investigatory function.

(2) A notice under subsection (1) must specify—

(a) the document or information that is required to be given to the Commissioner; and
(b) the time within and manner with which the document or information must be given to the Commissioner.

(3) A Latrobe Valley licensee given a notice under subsection (1) must not, without reasonable excuse, refuse or fail to comply with the notice.

Penalty: In the case of a corporation, 100 penalty units;

In any other case, 20 penalty units.

Division 7—Framework for monitoring rehabilitation planning activities

84AZC Commissioner must prepare framework

(1) The Commissioner must prepare a document that sets out a framework for the monitoring and evaluation of rehabilitation planning activities.

(2) Without limiting subsection (1), the framework must provide for—

(a) the outcomes to be achieved including measures to be undertaken to achieve the outcomes and the effectiveness of those measures; and

(b) the carrying out of strategic audits of public sector bodies and Latrobe Valley licensees in relation to the implementation of rehabilitation planning activities.

(3) The Commissioner must prepare the framework in consultation with—

(a) community members and stakeholders of the Latrobe Valley region; and

(b) public sector bodies; and

(c) the Latrobe Valley licensees.
84AZD Making the framework

The Commissioner must cause the framework to be published on an Internet site maintained by the Department as soon as practicable after the framework is made.

S. 84AZD inserted by No. 22/2017 s. 5.

84AZE Amendment of framework

The Commissioner may amend the framework at any time.

S. 84AZE inserted by No. 22/2017 s. 5.

84AZF Making an amendment to the framework

(1) The Commissioner must cause to be published on an Internet site maintained by the Department the framework, as amended under section 84AZE.

(2) As soon as practicable after the amended framework is published under subsection (1), the Commissioner must publish a notice stating the date of the publication of the amended framework under subsection (1) in the Government Gazette.

Division 8—Reports and reviews of the Commissioner

84AZG Report of referral investigation

(1) The Commissioner must cause to be published on an Internet site maintained by the Department a report on a referral investigation after giving the report to the Minister.

(2) Subsection (1) does not apply if the notice making the referral under section 84AQ(2) specifies that the report must not be published.

S. 84AZG inserted by No. 22/2017 s. 5.

84AZH Annual report of Commissioner

(1) The Commissioner by 30 September in each year must make a report on the performance of the Commissioner's functions and the exercise of the Commissioner's powers under this Part during the
financial year ending on the immediately preceding 30 June.

(2) The first report under subsection (1) must relate to the period commencing on the date of commencement of this section and ending on 30 June the following year.

(3) The Commissioner must give a report made under subsection (1) to the Minister.

(4) The Minister must cause a report given to the Minister under subsection (3) to be laid before each House of Parliament within 6 sitting days after the Minister receives the report.

(5) After a report is laid before each House of Parliament under subsection (4), the Commissioner must cause to be published a copy of the report on an Internet site maintained by the Department.

84AZI Consultation

Before publishing a referral report or an annual report, the Commissioner must consult with any public sector body or Latrobe Valley licensee in relation to factual information relating to the public sector body or the Latrobe Valley licensee that is to be contained in the published report.

84AZJ Reports to the Minister

The Commissioner may report to the Minister on any matter relating to the performance of the Commissioner's functions.

84AZK Commissioner review of research plans of a Latrobe Valley licensee

(1) The Commissioner may review a research plan in relation to the rehabilitation of coal mine land prepared by a Latrobe Valley licensee.
(2) The Commissioner on carrying out a review under subsection (1) may make recommendations or provide comments to the Latrobe Valley licensee.

Division 9—Protections for persons acting under this Part

84AZL Protection against self-incrimination

It is a reasonable excuse for a natural person to refuse or fail to give a document or other thing, or do any other thing that the person is required to do under this Part, if the giving of the document or other thing or the doing of that other thing would tend to incriminate the person.
Part 7B—Regional rehabilitation strategy

84AZM Minister must prepare a strategy for the rehabilitation of coal mine land

The Minister by 30 June 2020 must prepare a document that sets out the strategy in relation to the following matters—

(a) the safety, stability and sustainability of coal mine land and any adjacent land;

(b) the planning for the Latrobe Valley region in relation to the rehabilitation of coal mine land and any adjacent land, and the relationship between each mine void;

(c) the development of a plan for the monitoring and evaluation of coal mine land after rehabilitation of that land is complete.

84AZN Publication of regional rehabilitation strategy

(1) The Minister must cause to be published on an Internet site maintained by the Department the regional rehabilitation strategy.

(2) As soon as practicable after the regional rehabilitation strategy is published under subsection (1) the Minister must publish a notice stating the date of that publication in the Government Gazette.

84AZO Review of regional rehabilitation strategy

The Minister must review the regional rehabilitation strategy at least once every 3 years after it is published.
84AZP Amendment of regional rehabilitation strategy
The Minister may amend the regional rehabilitation strategy at any time.

84AZQ Publication of amendment to regional rehabilitation strategy
(1) The Minister must cause to be published on an Internet site maintained by the Department the regional rehabilitation strategy, as amended under section 84AZP.

(2) As soon as practicable after the amended regional rehabilitation strategy is published under subsection (1), the Minister must publish a notice stating the date of the publication of the amended regional rehabilitation strategy under subsection (1) in the Government Gazette.

84AZR Minister must consult
Before publishing the regional rehabilitation strategy under section 84AZN or an amendment under section 84AZQ, the Minister must consult the Commissioner.
Part 8—Compensation

Division 1—General

84A Application of this Division

This Division does not apply in any circumstances in which Division 2 applies.

85 What compensation is payable for

(1) Compensation is payable by the licensee to the owner or occupier of private land that is land affected 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).
(h) loss of opportunity to use tailings disposed of with the consent of the Minister under section 14(2).

(1A) Compensation is payable by the licensee to the owner or occupier of private land that is not land affected 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) damage to the surface of the land; and

(b) damage to any improvements on the land; and

(c) severance of the land from other land of the owner or occupier; and

(d) loss of amenity, including recreation and conservation values; and

(e) loss of opportunity to make any planned improvement on the land; and

(f) any decrease in the market value of the owner or occupier's interest in the land.

(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(1)(h) inserted by No. 82/2000 s. 57(1).

S. 85(1A) inserted by No. 59/2010 s. 46(2).
(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

(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 of land to which this section applies may enter into a written agreement as to the amount or kind of compensation payable by the licensee 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 licensee's licence.

(2) The licensee must lodge an agreement under subsection (1) with the mining registrar for registration.

(2A) A compensation agreement may be about the amount or kind of compensation payable under section 85(1) or (1A).

(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.

(4) This section applies to private land (whether or not that land is land affected).

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—

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.

(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.

S. 87(4) inserted by No. 59/2010 s. 47(3).

S. 88(1) amended by No. 91/1994 s. 28(2)(a), substituted by No. 52/1998 s. 311(Sch. 1 item 64.7).

S. 88(2) amended by Nos 91/1994 s. 28(2)(b)(c), 52/1998 s. 311(Sch. 1 item 64.8).
(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—

(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

(b) section 91(1) provided that the licensee must pay the licensee's own costs and the costs of the other party unless—

(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

(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) or (1A) 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) or (1A)(d) (loss of amenity) is $10 000.

Division 2—Extractive industries search authorities

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 112 to enter for the purpose of searching for stone (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

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.
Part 8A—Codes of Practice

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.

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

(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

The Minister must consider any submissions received by the Minister within the time specified in section 89C(2)(b).
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.

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—

(a) 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); or

(b) the holder of a mining licence that is subject to a condition of compliance with a Code of Practice under section 26(2A); or

(c) the holder of a prospecting licence that is subject to a condition of compliance with a Code of Practice under section 26(2A).

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.
Part 9—Inspectors

Division 1—Employment of inspectors

90 Employment of inspectors

(1) There may be employed under Part 3 of the Public Administration Act 2004—

(a) a Chief Inspector; and

(b) such number of inspectors as are necessary for the purposes of this Act.

(2) A person must not be employed under subsection (1) unless he or she has appropriate qualifications and experience.

(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 2018*—

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.
Division 2—Performance of functions or exercise of powers

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.

Division 3—Powers relating to entry

94 Power to enter

(1) At any time during working hours, an inspector may enter a place that the inspector reasonably believes—

(a) is a worksite; or

(b) is a place where an activity is being or has been conducted in contravention of section 8, 8AA or 8AB.

(2) However, an inspector may enter a place referred to in subsection (1) at any time if the inspector reasonably believes that there is an immediate risk to public safety, the environment, land, property or infrastructure arising from the conduct of an undertaking at the place.
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.

(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.

(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).
Part 9—Inspectors

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).

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

95C Announcement on entry

(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

(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.

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.

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Division 5—Search warrants

95E Definition

In this Division a place includes a worksite, premises and a vehicle.

95F Issue of search warrants

(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.
Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990
Part 9—Inspectors

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
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

95I Places used for residential purposes
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

95J Return of seized things

(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—

(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.
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

95L Power to require name and address

(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.

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 public safety, the environment, land, property or infrastructure.

(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.

Division 9—Other matters

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.

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.
Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990
Part 9—Inspectors

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.

Division 10—Offences

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 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).
Division 11—Protection of privileges

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.
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)(i)), 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.
(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.

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;
(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.

(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, as in force immediately before their repeal.

(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 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.

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.

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

Division 1—Definitions

105A Definitions

In this Part—

authorised person means a person authorised by the Minister under section 110AB(2);

authority means a licence, an extractive industry work authority, a miner’s right or a tourist fossicking authority.

Division 2—Infringements

106 Infringements

(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.

### Division 3—Enforceable undertakings

107 **Enforceable undertakings**

(1) This section applies if—

(a) the Minister believes on reasonable grounds that 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 condition applying to the carrying out of the work plan under the authority; or

(iv) has undertaken work on land otherwise than in accordance with the work plan under the authority; and

(b) the Minister considers that, having regard to the criteria specified in guidelines made under section 120A, an undertaking under this section is an appropriate enforcement mechanism.
(2) If this section applies, the Minister and the holder of the authority may enter into a written undertaking.

(3) The holder of an authority may with the consent of the Minister withdraw or vary an undertaking.

(4) While an undertaking is in force in respect of a contravention or other thing that is an offence, proceedings may not be brought for an offence constituted by the contravention or other thing.

(5) If the holder of an authority withdraws an undertaking in respect of a contravention or other thing that is an offence before the undertaking has been fulfilled, proceedings may be brought for the offence constituted by the contravention or other thing.

(6) If the holder of an authority complies with the requirements of an undertaking in respect of a contravention or other thing that is an offence, no further proceedings may be brought for an offence constituted by the contravention or other thing.

(7) The Minister may publish an undertaking in any manner the Minister considers appropriate.

108 Offence to contravene an undertaking

The holder of an authority must not contravene an undertaking entered into by the holder under section 107 that is in force.

Penalty: In the case of a corporation, 2500 penalty units.

Penalty: In any other case, 500 penalty units.
Division 4—Remedial notices and orders and enforcement orders

110 Notice requiring authority holder to take action or stop work

(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 public safety, the environment, land, property or infrastructure; 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.

(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—
   (i) to remedy the contravention or non-compliance;
   (ii) to avoid the likely contravention or non-compliance;
   (iii) to avoid, minimise or remove the risk to public safety, the environment, land, property or infrastructure;

(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, 2500 penalty units.

In any other case, 500 penalty units.

Default penalty:

In the case of a corporation, 300 penalty units.

In any other case, 60 penalty units.

(3A) If a holder of an authority is found guilty of an offence against subsection (3), the court may, in addition to imposing any penalty, make—

(a) an order that the holder must comply with the notice or take specified action to comply with the notice; or

(b) any other order that it considers appropriate.

(4) Subject to subsection (5A) and section 110AA(4), a person whose interests are affected by a decision of the Minister to serve a notice under subsection (2) or vary a notice under subsection (5) may apply to the Tribunal for review of the decision.

(4A) An application for review must be made within 28 days after the later of—

(a) the day on which the notice, or notice of the variation, 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 or vary 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.

(5) The Minister may, by notice served on the holder of the authority, vary or cancel a notice issued under subsection (2).

(5A) A person cannot apply under subsection (4) for review of the variation of a notice if the purpose of the variation is limited to—

(a) correcting a minor or technical error in the notice; or

(b) extending the period within which an action required by the notice must be taken; or

(c) reducing the period during which the doing of any activity or class of activity is prohibited.

(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(4A)(b) amended by No. 84/2012 s. 6(7)(b).

S. 110(5) substituted by No. 82/2000 s. 64(3), amended by No. 84/2012 s. 6(8).

S. 110(5A) inserted by No. 84/2012 s. 6(9).

S. 110(6) substituted by Nos 82/2000 s. 64(3), 6/2009 s. 36(2).
(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.

110AA Injunction for non-compliance with notice

(1) The Minister may apply to the Supreme Court for an injunction—

(a) compelling the holder of an authority to comply with a notice served on the holder under section 110; or

(b) restraining the holder of an authority from contravening the notice.

(2) The Minister may apply for an injunction under subsection (1) whether or not—

(a) an application has been made under section 110(4) for review of a decision to serve or vary the notice; or

(b) proceedings have been brought for an offence against this Act or the regulations in relation to the notice; or

(c) proceedings have been brought in relation to a matter that gave rise to the decision to serve the notice.
(3) If a holder of an authority has applied under section 110(4) for review of the decision to serve or vary a notice at the time the Minister applies for an injunction under subsection (1) in relation to that notice—

(a) the Tribunal must make an order staying the review proceeding pending the determination of the Minister's application; and

(b) the Tribunal must dismiss the proceeding if the Supreme Court grants an injunction on the Minister's application.

(4) If a holder of an authority has not applied under section 110(4) for review of the decision to serve or vary a notice at the time the Minister applies for an injunction under subsection (1) in relation to that notice, the holder cannot apply for review under section 110(4) in relation to that notice—

(a) while the Minister's application is pending; or

(b) if the Supreme Court grants an injunction on the Minister's application.

110AB Minister may take action required by injunction or order

(1) The Minister may take any action that an order under section 110(3A) or an injunction granted on an application under section 110AA(1) requires to be taken if—

(a) the holder of the authority does not take the action within the time specified in the order or injunction or, if no time is specified in the order or injunction, a reasonable time; and

(b) failure to take the action is likely to result in a serious risk to public safety, the environment, land, property or infrastructure.
(2) The Minister may authorise a person and any person assisting that person to enter any land and do anything that in the Minister's opinion is necessary for the purpose of taking an action under subsection (1).

(3) If it is necessary for an authorised person or a person assisting an authorised person to enter land under subsection (2), the Minister must, except in a case of emergency—

(a) if the land is private land, give reasonable notice of the entry to the owner and the occupier of the land; and

(b) if the land is Crown land, give reasonable notice of the entry to the Crown land Minister; and

(c) ensure that the person enters the land at a reasonable time; and

(d) if the land is used only for residential purposes, obtain, or take all reasonable steps to obtain, the consent of the occupier of the land.

110AC Offence to hinder or obstruct remedial action

(1) A person must not, without reasonable excuse, hinder or obstruct the Minister, an authorised person or a person assisting an authorised person taking action under section 110AB.

Penalty: In the case of a corporation, 300 penalty units.

In any other case, 60 penalty units.

(2) In this section, **authorised person** means a person authorised by the Minister under section 110AB(2).
110AD Immunity for remedial action

(1) An authorised person or a person assisting an authorised person is not personally liable for anything done or omitted to be done in good faith—

(a) in the course of taking action under section 110AB; or

(b) in the reasonable belief that the act or omission was in the course of taking action under section 110AB.

(2) Any liability that would, but for subsection (1), attach to a person attaches instead to the Crown.

(3) In this section, authorised person has the same meaning as in section 110AC.

110AE Compensation for remedial action

(1) Subject to subsection (2), compensation is payable by the Minister to the owner or occupier of private land for any loss or damage sustained as a direct, natural and reasonable consequence of an action taken under section 110AB, 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.
(2) Subsection (1) does not apply if the owner or occupier of the land is the holder of the authority subject to the order or injunction in relation to which the action under section 110AB was taken.

(3) An owner or occupier of land may—

(a) apply to the Tribunal for determination of a disputed claim for compensation under subsection (1); or

(b) refer a disputed claim for compensation under subsection (1) to the Supreme Court for determination—

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 Minister were the Authority referred to in that Part.

(4) In its application to a claim referred under subsection (3), Part 10 of the Land Acquisition and Compensation Act 1986 has effect as if—

(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

(b) section 91(1) of that Act provided that the Minister must pay the Minister's own costs and the costs of the owner or occupier unless the owner or occupier 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.
110AF  When claim for compensation for remedial action can be made

(1) A claim for compensation for any loss or damage may be made under section 110AE at any time until the end of the period of 2 years after the day on which the Minister, an authorised person or a person assisting an authorised person finishes taking the action under section 110AB.

(2) In this section, *authorised person* has the same meaning as in section 110AC.

110AG  Recovery of costs and compensation by Minister

The Minister may recover, as a debt due to the Crown, in a court of competent jurisdiction—

(a) the value of any reasonable costs incurred in taking an action under section 110AB;

(b) any compensation paid under section 110AE in respect of that action—

from the holder of the authority who was subject to the order under section 110(3A) or injunction under section 110AA in relation to which the action was taken.

110A  Enforcement order

(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.

Division 5—General

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—

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.

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, searches 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, geological survey or searching for stone on behalf of the Department.

(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.

(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, search or drilling operations; and

(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, search 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
(e) must leave the land, as nearly as possible, in the condition in which it was immediately before the commencement of the survey, search or drilling operations; and

(f) must use the person's best endeavours to co-operate with the owner and occupier.

(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).

112A Minister may require review of economic viability of mining of minerals to which a retention licence applies

(1) The Minister may require the holder of a retention licence—

(a) to re-evaluate the economic viability of the mining of a mineral to which the licence relates from the land covered by the licence; and

(b) to report to the Minister in writing the results of the re-evaluation.

(2) In making such a requirement, the Minister—

(a) must make the requirement by giving the licensee written notice of the requirement; and
(b) must allow the licensee at least 90 days within which to comply with the requirement.

(3) The Minister may, on the written application of the licensee, allow the licensee more time within which to comply with a requirement made under this section.

(4) The Minister may not make a requirement under this section if the licensee has already complied with a requirement made under this section on 2 occasions in the 5 years immediately before the making of the requirement.

(5) If the licensee fails to comply with a requirement made under this section, the Minister may cancel the licence.

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.

113A Discovery of coal seam gas to be reported

(1) A person who discovers any coal seam gas on any land must report in writing that discovery to the Minister as soon as practicable.

(2) The Minister may, by notice served on the person reporting a discovery under subsection (1), require that person to provide the Minister with further details 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.

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.

(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.

(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 **Wrong 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 does not owe a duty to take care of any person entering those premises for the purposes of surveying the boundaries of land proposed to be covered by a mining licence, prospecting licence or retention licence—

   (a) with the consent of the occupier; or

   (b) under an authority to enter granted under section 26AS.

(3A) Subsection (3) does not apply if the occupier is also the person who intends to apply for the mining licence, prospecting licence or retention licence (as the case requires).

(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—

(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.

**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

(b) an officer of the public service employed in the administration of this Act; or

(c) a Chief Inspector; or

(d) an inspector; or

(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 an authority holder in the course of his or her official duties unless the divulgence, communication or publication is made—

(a) with the written consent of the authority holder or the Minister; or

(b) in connection with the administration of this Act; or

(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 authority holder is unreasonably withholding consent.

(4) In this section—

*authority holder* has the same meaning as in section 77U.
120 Delegation

(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.

(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.

(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.

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.

121A State liability

(1) Despite any Act (other than the Charter of Human Rights and Responsibilities) or law to the contrary, the State is not liable in any way for any loss, damage or injury of any kind resulting directly or indirectly from or arising out of—

(a) the amendments made to this Act by the Resources Legislation Amendment (Fracking Ban) Act 2017; or

(b) the refusal to accept an application for an exploration licence, a mining licence or a retention licence to the extent that the licence specifies that it is to relate to coal seam gas; or

(c) the refusal to grant an exploration licence, a mining licence or a retention licence that would entitle the holder to explore for coal seam gas; or

(d) the imposition of conditions relating to coal seam gas on an exploration licence, a mining licence or a retention licence; or

(e) the variation of conditions relating to coal seam gas on an exploration licence, a mining licence or a retention licence; or
(f) the refusal to approve a work plan under which the exploration for, or the mining of, coal seam gas is proposed to be carried out; or

(g) the refusal to approve a work plan under which hydraulic fracturing is proposed to be carried out; or

(h) a decision under this Act not being made in relation to an application for—

(i) an exploration licence, a mining licence or a retention licence to the extent that the licence specifies that it is to relate to coal seam gas; or

(ii) an exploration licence, a mining licence or a retention licence that would entitle the holder to explore for coal seam gas; or

(iii) the variation of conditions relating to coal seam gas on an exploration licence, a mining licence or a retention licence; or

(iv) the approval of a work plan under which the exploration for, or the mining of, coal seam gas is proposed to be carried out; or

(v) the approval a work plan under which hydraulic fracturing is proposed to be carried out.

(2) Subsection (1)(b), (c), (d), (e), (f) and (g) apply to a refusal, imposition or variation made on or after 24 August 2012 and whether any loss, damage or injury resulting from or arising out of that refusal, imposition or variation is incurred before, on or after the commencement of this section.
(3) Subsection (1)(h) applies whether any loss, damage or injury resulting from or arising out of the fact that a decision is not made is incurred before, on or after the commencement of this section.

121B Minister may pay for surrender of licences

(1) The Minister may pay an amount, determined by Order made under subsection (2), for the surrender within 6 months after the commencement of the Resources Legislation Amendment (Fracking Ban) Act 2017 of any of the following licences if the licence is in force immediately before that commencement—

(a) an exploration licence under which the holder is entitled to carry out exploration for coal seam gas;

(b) a mining licence or retention licence under which the holder is entitled to carry out mining of or exploration for coal seam gas.

(2) The Minister may determine, by Order published in the Government Gazette, the amount for the purposes of subsection (1).

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 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.

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

(aa) methodologies for measuring the net wet specific energy content of lignite;

(ab) the time at which, and the manner in which, lignite may be sampled for the purpose of measuring the net wet specific energy content of lignite;

(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

(c) the advertisement of applications for licences; and

(d) the manner of surveying the boundaries of land; and

(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

...
(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
(m) the method by which the amount of a mine stability levy is determined; and
(n) the date by which the mine stability levy or a part of the mine stability levy must be paid; and
(o) the method by which the mine stability levy or a part of the mine stability levy must be paid; and
(oa) the period to which the mine stability levy will relate; and
(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

(q) the penalties for any infringement; and

(qb) the health and safety of members of the public in relation to work done under a licence or an extractive industry work authority;

(qc) requiring that any information required by the regulations be in the form of, or be supported by, a statutory declaration;

(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

(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.

(4) Regulations made under this Act may be disallowed in whole or in part by resolution of either House of Parliament.

(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.

* * * * *
Part 14—Repeals, amendments, savings and transitionals

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.

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.

131 Saving and transitional provisions—2001 amendments

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

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

(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—
Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990
Part 14—Repeals, amendments, savings and transitionals

(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.

(3) In this section commencement date means the date of commencement of section 34 of the Mineral Resources Development (Sustainable Development) Act 2006.

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.

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.

135A Transitional provision—2010 amendments
abolishing the Mining and Environment Advisory Committee

On the day section 39 of the Mineral Resources Amendment (Sustainable Development) Act 2010 comes into operation—

(a) the Mining and Environment Advisory Committee is abolished; and

(b) a person holding office as a member of the Mining and Environment Advisory Committee ceases to hold office.

136 Saving and transitional provisions—2009 amendments

Schedule 7 has effect.

137 Savings and transitional provisions—2010 amendments

Schedule 8 has effect.

138 Transitional provision—2012 amendments

(1) A court may make an order under section 110(3A) in relation to any offence against section 110(3) committed after the commencement of section 6 of the amending Act, whether or not the notice in respect of which the offence is committed is issued before or after that commencement.
(2) If an offence against section 110(3) is committed between 2 dates and section 6 of the amending Act commences on a date between those 2 dates, for the purposes of subsection (1), the offence is taken to have been committed after that commencement.

(3) The Minister may apply for an injunction under section 110AA(1) in relation to any non-compliance with a notice that occurs after the commencement of section 7 of the amending Act, whether or not the notice is issued before or after that commencement.

(4) If non-compliance with a notice occurs between 2 dates and section 7 of the amending Act commences on a date between those 2 dates, for the purposes of subsection (3), the non-compliance is taken to have occurred after that commencement.

(5) In this section, amending Act means the Mineral Resources (Sustainable Development) Amendment Act 2012.

139 Savings and transitional provisions—2014 amendments

Schedule 9 has effect.

140 Savings and transitional provisions—Resources Legislation Amendment (BTEX Prohibition and Other Matters) Act 2014

(1) A person who made an application for a mining licence, prospecting licence or retention licence (whether or not that application has been granted) immediately before the commencement of section 15(1BH) of the Mineral Resources (Sustainable Development) Act 1990 as inserted by section 20 of the Resources Legislation Amendment (BTEX Prohibition and Other Matters) Act 2014 must continue to comply with
sections 38AA to 38AE of the Mineral Resources (Sustainable Development) Act 1990 (as in force immediately before their repeal).

(2) The requirements of section 15(1BH) of the Mineral Resources (Sustainable Development) Act 1990 as inserted by section 20 of the Resources Legislation Amendment (BTEX Prohibition and Other Matters) Act 2014 do not apply to an application for a mining licence, prospecting licence or retention licence that was made immediately before the commencement of that section.

(3) If, immediately before the commencement of section 37 of the Resources Legislation Amendment (BTEX Prohibition and Other Matters) Act 2014, the Minister received a request to approve an instrument of transfer under section 33 of the Mineral Resources (Sustainable Development) Act 1990, section 33(3) of the Mineral Resources (Sustainable Development) Act 1990 (as in force immediately before that commencement) applies to that request for approval.

(4) A person who complied with the requirements of section 77S(1) of the Mineral Resources (Sustainable Development) Act 1990 (as in force immediately before the commencement of section 48 of the Resources Legislation Amendment (BTEX Prohibition and Other Matters) Act 2014) is not required to comply with section 77S(1) as amended by section 48 of the Resources Legislation Amendment (BTEX Prohibition and Other Matters) Act 2014 in respect of that application for an extractive industry work authority.
Schedules

* * * * *

Sch. 1
amended by
Nos 27/1991
s. 4(6),
29/2006 s. 3,
63/2006 s. 57,
33/2014 s. 12,
repealed by
No. 68/2014
s. 62.
Schedule 2—Savings and transitionals

Section 129

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

(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

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exploration licence</td>
<td>Exploration licence</td>
</tr>
<tr>
<td>Prospecting area licence</td>
<td>Exploration licence</td>
</tr>
<tr>
<td>Searching permit</td>
<td>Exploration licence</td>
</tr>
<tr>
<td>Miner's right</td>
<td>Miner's right</td>
</tr>
<tr>
<td>Development lease</td>
<td>Mining licence</td>
</tr>
<tr>
<td>Licence under section 65</td>
<td>Mining licence</td>
</tr>
<tr>
<td>Mining lease</td>
<td>Mining licence</td>
</tr>
<tr>
<td>Mining purposes licence</td>
<td>Mining licence</td>
</tr>
<tr>
<td>Registration of land as a claim</td>
<td>Mining licence</td>
</tr>
<tr>
<td>Tailings removal licence</td>
<td>Mining licence</td>
</tr>
<tr>
<td>Tailings treatment licence</td>
<td>Mining licence</td>
</tr>
<tr>
<td>Authority under section 46A(1) or 46B(1)</td>
<td>Tourist mine authority</td>
</tr>
</tbody>
</table>

(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.

(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

(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 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.

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.

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.
(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;
(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.
Schedule 3—Restricted Crown land

Section 4(1)

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.
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.

1B. Any land—

(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.
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**.

4AB. Any land described in Division 2A of Part 4A of the Fifth Schedule to the **Crown Land (Reserves) Act 1978**.

4AC. Any land described in Division 6 of Part 4A of the Fifth Schedule to the **Crown Land (Reserves) Act 1978**.

4AD. Any land described in Division 7 of Part 4A of the Fifth Schedule to the **Crown Land (Reserves) Act 1978**.

4B. Any land that is described in Part 8 of Schedule Four to the **National Parks Act 1975**.

4BA. Any land described in Divisions 4 and 5 of Part 4A of the Fifth Schedule to the **Crown Land (Reserves) Act 1978**.

4BB. Any land described in Division 4 of Part 5 of the Fifth Schedule to the **Crown Land (Reserves) Act 1978**.

4C. Any land described in Division 1 or 2 of Part 7 of the Fifth Schedule to the **Crown Land (Reserves) Act 1978**.
4D. Any land described in Divisions 15 to 26 of Part 1 of the Fifth Schedule to the *Crown Land (Reserves) Act 1978*.  

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.

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 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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*Sch. 3 cl. 4D inserted by No. 90/2009 s. 25(2).*  
*Sch. 3 cl. 5 amended by No. 63/2006 s. 58.*  
*Sch. 3 cl. 6 inserted by No. 57/2006 s. 31(3), amended by Nos 70/2013 s. 4(Sch. 2 item 32.3), 53/2017 s. 17.*
Schedule 4—Minerals

1. Bentonite.
2. Fine clay.
4. Lignite.
5. Minerals in alluvial form including those of titanium, zirconium, rare earth elements and platinoid group elements.
6. * * * * * *
7. Quartz crystals.
8. Zeolite.
Schedule 4A—Low impact exploration

Section 4(1)

1 In this Act—

*low impact exploration* means exploration that does not involve any of the following—

(a) the use of explosives;

(b) the taking of flora listed under section 10 or Schedule 2 of the *Flora and Fauna Guarantee Act 1988*, unless that flora is taken from private land that is not owned by a public authority;

(c) the taking of flora from a community listed under section 10 or Schedule 2 of the *Flora and Fauna Guarantee Act 1988*, unless that community is found on private land that is not owned by a public authority;

(d) the taking of fauna listed under section 10 or Schedule 2 of the *Flora and Fauna Guarantee Act 1988*;

(e) the taking of any taxon or community of flora or fauna from any habitat or parts of habitat under section 20 of the *Flora and Fauna Guarantee Act 1988*;

(f) the removal or damaging of more than 1 hectare of native vegetation if that area does not contain any native trees during either the term of the licence or a period of 5 years from the grant of the licence, whichever ends first;
(g) the removal or damaging of more than 15 native trees that have a trunk diameter of less than 40 cm at a height of 1.3 metres above ground level during either the term of the licence or a period of 5 years from the grant of the licence, whichever ends first;

(h) the removal or damaging of more than 5 native trees that have a trunk diameter of 40 cm or more at a height of 1.3 metres above ground level during either the term of the licence or a period of 5 years from the grant of the licence, whichever ends first;

(i) the creation of any road, structure or hardstand area without the consent of the owner or occupier of the land on which it is created;

(j) the use of any closed road without the consent of the owner or occupier of the land on which the road is located, or undertaking works on any road without the consent of the owner or occupier of the land on which the road is located;

(k) ground intrusive work that—

(i) is within 200 metres of a waterway; or

(ii) is on a slope steeper than 1 vertical : 3 horizontal; or

(iii) is of greater than 2 hectares in an area of cultural heritage sensitivity during either the term of the licence or a period of 5 years from the grant of the licence, whichever ends first; or
(iv) involves taking water from an aquifer, hydraulic fracturing, or excavation using heavy earth moving equipment.

2 In this Schedule—

area of cultural heritage sensitivity means an area specified as an area of cultural heritage sensitivity under regulations made under the Aboriginal Heritage Act 2006;

closed road means a road lawfully closed to public access by barriers (including roads closed seasonally, temporarily or permanently, and management vehicle only roads), roads which have been rehabilitated, and roads which are not trafficable due to the regrowth of vegetation;

community has the same meaning as in the Flora and Fauna Guarantee Act 1988;

critical habitat has the same meaning as in the Flora and Fauna Guarantee Act 1988;

damaging, in relation to native trees or vegetation, means all activities that impact native vegetation, but does not include—

(a) lopping or trimming no more than one third of the foliage or a tree or shrub (not including the trunk); or

(b) mowing or slashing native grasses (but not trees, shrubs or groundcovers) to a height greater than 10 cm;

fauna has the same meaning as in the Flora and Fauna Guarantee Act 1988;

flora has the same meaning as in the Flora and Fauna Guarantee Act 1988;
ground intrusive work means work that disturbs the topsoil or surface rock layer of the ground by machinery (other than hand-held machinery) in the course of drilling a hole, ground levelling or augering;

hardstand area means an open ground area with a prepared surface that is used for storing material and standing vehicles;

hydraulic fracturing means the injection of water and other materials into a bore under pressure;

native tree means a tree that is indigenous to Victoria;

native vegetation means plants indigenous to Victoria including trees, shrubs, herbs and grasses;

public authority has the same meaning as in the Flora and Fauna Guarantee Act 1988;

road means a road within the meaning of the Road Management Act 2004 and includes Crown land permanently or temporarily formed for the passage of motor vehicles having four or more wheels, and land specified as an unused road under section 400 of the Land Act 1958;

structure means materials that have been erected for the purpose of facilitating exploration activities and includes, but is not limited to, facilities associated with exploratory team members, sound attenuation devices to minimise noise disturbance from exploration activities, and ancillary storage facilities;

take has the same meaning as in the Flora and Fauna Guarantee Act 1988;
taxon has the same meaning as in the *Flora and Fauna Guarantee Act 1988*;

waterway means—

(a) a river, creek, stream or watercourse the name of which is registered under the *Geographic Place Names Act 1998*; or

(b) a natural channel the name of which is registered under the *Geographic Place Names Act 1998* in which water regularly flows, whether or not the flow is continuous; or

(c) a lake, lagoon, swamp or marsh, being—

(i) a natural collection of water (other than water collected and contained in a private dam or a natural depression on private land) into, through or out of which a current that forms the whole or part of the flow of a river, creek, stream or watercourse passes, whether or not the flow is continuous; or

(ii) a collection of water (other than water collected and contained in a private dam or a natural depression on private land) that the Governor in Council declares under section 4(1) of the *Water Act 1989* to be a lake, lagoon, swamp or marsh; or

(d) land which is regularly or intermittently covered by water from a waterway as described in paragraph (a), (b) or (c) but does not include—
(i) any artificial channel or work which diverts water away from such a waterway; or

(ii) an area covered by the floodwaters of a waterway; or

(iii) an area, other than the waterway, designated on a planning scheme as being a floodway or liable to flooding or as being subject to inundation; or

(e) if any land described in paragraph (d) forms part of a slope rising from the waterway to a definite lip, the land up to that lip.
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.
Schedule 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.

(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

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—
(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—
Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990
Schedule 7—Saving and transitional provisions arising from the Resources Industry Legislation Amendment Act 2009

(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.
1 Definitions

In this Schedule—

amending Act means the Mineral Resources Amendment (Sustainable Development) Act 2010;

specified licence means an exploration licence to which clause 7 or 8 applies.

2 Mining licence applications

(1) To avoid doubt, Part 2, as amended by Part 2 of the amending Act, applies to—

(a) an application for a mining licence made on and after the commencement of section 7 of the amending Act; and

(b) subject to subclause (2), an application for the renewal of a current mining licence made on or after the commencement of that section.

(2) Despite anything to the contrary in Part 2, an application for a mining licence or for the renewal of a current mining licence that is made within 12 months after the commencement of section 7 of the amending Act is not required to include a mineralisation report at the time the application is made.

(3) However, a mineralisation report must be provided to the Minister within 12 months after the application is made.
(4) Despite anything to the contrary in this Act, the Minister—

(a) cannot make a decision on the application until the Minister receives a mineralisation report under subclause (3); and

(b) may refuse the application if the Minister is not provided a mineralisation report within the time specified under subclause (3).

(5) In this clause—

*current mining licence* means a mining licence that is in effect immediately before the commencement of section 7 of the amending Act;

*mineralisation report* means a report referred to in section 15(1BE).

3 Mining licensees and others may apply for retention licence in certain cases

(1) This clause applies to—

(a) a holder of a mining licence who wishes to apply for a retention licence over land that is covered by the mining licence; or

(b) an applicant for a mining licence who wishes to apply for a retention licence over land that is covered by the application for the mining licence; or

(c) a person who—

(i) wishes to apply for a retention licence over land that is covered by a mining licence or that is the subject of an application for a mining licence; and

(ii) has the consent of the holder of that mining licence or the applicant for that mining licence to apply for the retention licence.
(2) Despite anything to the contrary in Part 2, a person to whom this clause applies may apply for the retention licence (the retention licence application) within 12 months after the commencement of section 7 of the amending Act.

(3) A retention licence application is not required to include a mineralisation report at the time the retention licence application is made.

(4) However, a mineralisation report must be provided to the Minister within 12 months after the retention licence application is made.

(5) Despite anything to the contrary in this Act, the Minister—

(a) cannot make a decision on the retention licence application until the Minister receives a mineralisation report under subclause (4); and

(b) may refuse the retention licence application if the Minister is not provided with a mineralisation report within the time specified under subclause (4).

(6) On the taking of effect of a retention licence that is granted on a retention licence application—

(a) the land to which the retention licence application relates is taken to be covered by that retention licence, if the land does not constitute the whole of the land covered by the mining licence or the application for the mining licence;

(b) the mining licence is taken to be cancelled if the land to which the retention licence application relates constitutes the whole of the land covered by the mining licence;
(c) the application for the mining licence is taken to be ineffective if the land to which the retention licence application relates constitutes the whole of the land covered by the application for the mining licence—
as the case requires.

(7) Subclauses (6)(a) and (6)(b) apply despite anything to the contrary in the mining licence.

4 Exploration licences in effect that have not been renewed

(1) This clause applies—

(a) to an exploration licence (other than a specified licence)—

(i) that is in effect on the commencement of section 19 of the amending Act; but

(ii) has not been renewed before that commencement; and

(b) whether or not an application has been made to renew that licence before the commencement of section 19 of the amending Act.

(2) Despite anything to the contrary in the exploration licence, sections 31 and 32 apply to an application for any renewal of the exploration licence.

5 Exploration licences in effect for 10 years or less and that have been renewed at least once

(1) This clause applies—

(a) to an exploration licence (other than a specified licence)—

(i) that is in effect on the commencement of section 19 of the amending Act; and
(ii) that has been, at the time of that commencement, in effect for a period of 10 years or less and renewed at least once; and

(b) whether or not an application has been made to renew that licence before the commencement of section 19 of the amending Act.

(2) Subject to subclause (3), sections 31 and 32 apply to an application for the renewal of the exploration licence.

(3) Despite section 31(5) and (6), and the periods specified in section 32(2) or (2A), the Minister may renew the exploration licence—

(a) for one period that does not exceed 2 years; and

(b) after that, for another period not exceeding 2 years but only if the Minister—

(i) considers there are exceptional circumstances to warrant that renewal; and

(ii) is satisfied that there is a likelihood of the licensee identifying minerals in the land covered by the licence during the period for which the licence may be renewed.

6 Exploration licences in effect for more than 10 years

(1) This clause applies—

(a) to an exploration licence (other than a specified licence)—

(i) that is in effect on the commencement of section 19 of the amending Act; and
Sch. 8
cl. 6(1)(a)(ii)
amended by
No. 64/2012
s. 40(3).

(ii) that has been, before or at the time of
that commencement, in effect for a
period of more than 10 years; and

(b) whether or not an application has been made
to renew that licence before the
commencement of section 19 of the
amending Act.

(2) Subject to subclause (3), sections 31 and 32 apply
to an application for the renewal of the
exploration licence.

(3) Despite section 31(5) and (6), and the periods
specified in section 32(2) or (2A), the Minister
may renew the exploration licence—

(a) as many times as is necessary so that the
aggregate number of years that the
exploration licence is renewed does not
exceed 2 years; and

(b) after that, for a period not exceeding 2 years
but only if the Minister—

(i) considers there are exceptional
circumstances to warrant that renewal;
and

(ii) is satisfied that there is a likelihood of
the licensee identifying minerals in the
land covered by the licence during the
period for which the licence may be
renewed.

7 Applications relating to specified exploration
licences

(1) This clause applies to the following exploration
licences (whether or not an application has been
made to renew any of the licences before the
commencement of section 19 of the amending
Act)—
(a) exploration licence No. 3327 granted on 16 September 1982 to the extent that the licence covers land not within the outer boundaries of the land described in mining licences No. 5344 granted on 10 August 1987 and No. 5364 granted on 16 November 1989;

(b) exploration licence No. 3008 granted on 16 December 1988 to the extent that the licence covers land not within the outer boundaries of the land described in the mining licence No. 5260 granted on 31 May 1985;

(c) exploration licence No. 3018 granted on 5 September 1989 to the extent that the licence covers land not within the outer boundaries of the land described in any of the following mining licences—
   (i) No. 4847 granted on 3 November 1989;
   (ii) No. 5396 granted on 5 October 1988;
   (iii) No. 5444 granted on 5 April 2006;

(d) exploration licence No. 3310 granted on 17 September 1993 to the extent that the licence covers land not within the outer boundaries of the land described in the mining licence No. 4644 granted on 25 February 1986;

(e) exploration licence No. 3539 granted on 3 June 1994 to the extent that the licence covers land not within the outer boundaries of the land described in the mining licence No. 5404 granted on 24 August 1990;
(f) exploration licence No. 3903 granted on 4 October 1996 to the extent that the licence covers land not within the outer boundaries of the land described in mining licences No. 5458 granted on 9 August 2006 and No. 5497 granted on 26 August 2009;

(g) exploration licence No. 4282 granted on 30 April 1998 to the extent that the licence covers land not within the outer boundaries of the land described in mining licences No. 5367 granted on 24 May 2002 and No. 5506 granted on 17 December 2008;

(h) exploration licence No. 3242 granted on 24 April 1987 to the extent that the licence covers land not within the outer boundaries of the land described in the mining licence No. 4470 granted on 14 August 1979;

(i) exploration licence No. 3422 granted on 31 January 1994 to the extent that the licence covers land not within the outer boundaries of the land described in the mining licence No. 5146 granted on 17 December 1996;

(j) exploration licence No. 3640 granted on 15 September 1994 to the extent that the licence covers land not within the outer boundaries of the land described in the mining licence No. 4756 granted on 17 January 1989.

(2) Subject to subclause (3), sections 31 and 32 apply to an application for the renewal of an exploration licence to which this clause applies.

(3) Despite section 31(5) and (6), and the periods specified in section 32(2) or (2A), the Minister may renew an exploration licence to which this clause applies—
(a) as many times as is necessary so that the aggregate number of years that the exploration licence is renewed does not exceed 5 years; and

(b) after that, as many times as is necessary so that the aggregate number of years that the exploration licence is renewed does not exceed 2 years but only if the Minister, each time—

(i) considers there are exceptional circumstances to warrant that renewal; and

(ii) is satisfied that there is a likelihood of the licensee identifying minerals in the land covered by the licence during the period for which the licence may be renewed.

(4) In addition, section 38A(2A) and (2B) do not apply to the exploration licence.

8 Specified exploration licences with parts within outer boundaries of mining licences

(1) This clause applies to the following exploration licences (whether or not an application has been made to renew any of the licences before the commencement of section 19 of the amending Act)—

(a) exploration licence No. 3327 granted on 16 September 1982 to the extent that the licence covers land within the outer boundaries of the land described in mining licences No. 5344 granted on 10 August 1987 and No. 5364 granted on 16 November 1989;
(b) exploration licence No. 3008 granted on 16 December 1988 to the extent that the licence covers land within the outer boundaries of the land described in the mining licence No. 5260 granted on 31 May 1985;

(c) exploration licence No. 3018 granted on 5 September 1989 to the extent that the licence covers land within the outer boundaries of the land described in any of the following mining licences—
   (i) No. 4847 granted on 3 November 1989;
   (ii) No. 5396 granted on 5 October 1988;
   (iii) No. 5444 granted on 5 April 2006;

(d) exploration licence No. 3242 granted on 24 April 1987 to the extent that the licence covers land within the outer boundaries of the land described in mining licence No. 4470 granted on 14 August 1979;

(e) exploration licence No. 3422 granted on 31 January 1994 to the extent that the licence covers land within the outer boundaries of the land described in the mining licence No. 5146 granted on 17 December 1996;

(f) exploration licence No. 3539 granted on 3 June 1994 to the extent that the licence covers land within the outer boundaries of the land described in the mining licence No. 5404 granted on 24 August 1990;

(g) exploration licence No. 3640 granted on 15 September 1994 to the extent that the licence covers land within the outer boundaries of the land described in the mining licence No. 4756 granted on 17 January 1989.
(2) Sections 31 and 32, as in force immediately before the commencement of section 19 of amending Act, apply to an application for the renewal of an exploration licence to which this clause applies.

(3) In addition, section 38A(2A) and (2B) do not apply to the exploration licence.

9 Decreases in area under current exploration licences—first renewal after amending Act

(1) This clause applies—

(a) to an exploration licence to which clause 4 of this Schedule applies; and

(b) in respect of which an application is made after the commencement of section 21 of the amending Act for the first renewal of that licence.

(2) Section 38A(2A) applies to the exploration licence.

10 Decreases in area under current exploration licences—second renewal after amending Act

(1) This clause applies—

(a) to an exploration licence to which clause 4 of this Schedule applies; and

(b) in respect of which an application is made after the commencement of section 21 of the amending Act for the second renewal of that licence.

(2) Section 38A(2A) and (2B) apply to the exploration licence.
11 Decreases in area under current exploration licences that have been renewed at least once

(1) This clause applies—

(a) to an exploration licence to which clause 5 or 6 of this Schedule applies; and

(b) in respect of which an application is made after the commencement of section 21 of the amending Act for a renewal of that licence.

(2) Section 38A(2A) and (2B) apply to the exploration licence.
Section 139

1 Definition

In this Schedule—

amending Act means the Mineral Resources (Sustainable Development) Amendment Act 2014.

2 Grant or refusal of licence

The amendments made by section 8 of the amending Act do not apply to an application for a licence that was accepted before the commencement of that section in accordance with section 16 of this Act as in force before that commencement.

3 Work plans—licences

(1) This clause applies to—

(a) a licensee who has an approved work plan immediately before the commencement of section 16 of the amending Act; or

(b) a licensee who, before that commencement, lodged a work plan or a variation of an approved work plan under section 40 or 41 as in force before that commencement.

(2) Despite anything to the contrary in Part 3 of this Act, a person to whom this clause applies is not required to comply with the requirements for an approved work plan as in force after the commencement of section 16 of the amending Act if the approved work plan has not been varied after that commencement.
Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990
Schedule 9—Savings and transitional provisions arising from the Mineral Resources (Sustainable Development) Amendment Act 2014

(3) Part 3 of this Act as in force immediately before the commencement of section 16 of the amending Act continues to apply to the approval of a work plan to which subclause (1)(b) applies.

(4) Despite subclauses (2) and (3), if the Department Head is satisfied that work set out in a work plan described in subclause (1)(a) or (b) may pose an unacceptable risk to the environment, to any member of the public, or to land, property or infrastructure in the vicinity of that work, the Department Head may direct that the work plan be varied so that it complies with section 40(3) as amended by section 16 of the amending Act.

(5) On making a determination under subclause (4), 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.

(6) After considering any comments made by the licensee, the Department Head may direct the licensee to lodge an application under section 41 for approval of the variation.

3A Work plans—extractive industry work authorities

(1) This clause applies—

(a) to the holder of an extractive industry work authority who has an approved work plan immediately before the commencement of section 27 of the amending Act; or

(b) to a person who, before the commencement of section 27 of the amending Act, lodged a work plan under section 77G as in force before that commencement; or
(c) to the holder of an extractive industry work authority who, before the commencement of section 27 of the amending Act, lodged an application for the variation of an approved work plan under section 77H as in force before that commencement.

(2) Despite anything to the contrary in Part 6A of this Act, a person to whom this clause applies is not required to comply with the requirements for an approved work plan as in force after the commencement of section 27 of the amending Act if the approved work plan has not been varied after that commencement.

(3) Part 6A of this Act as in force immediately before the commencement of section 27 of the amending Act continues to apply to the approval of a work plan to which subclause (1)(b) applies.

(4) Despite subclauses (2) and (3), if the Department Head is satisfied that work set out in a work plan described in subclause (1)(a), (b) or (c) may pose an unacceptable risk to the environment, to any member of the public, or to land, property or infrastructure in the vicinity of that work, the Department Head may direct that the work plan be varied so that it complies with section 77G(3) as amended by section 27 of the amending Act.

(5) On making a determination under subclause (4), the Department Head must give the person who holds the extractive industry work authority or lodged the work plan written notice of the proposed variation, and the reasons for it, and give the person an opportunity to comment on the proposal.
(6) After considering any comments made by the person who holds the extractive industry work authority or lodged the work plan, the Department Head may direct the person to lodge an application under section 77H for approval of the variation.

4 Endorsement of work plan or variation to approved work plan

Section 77TD(1) of this Act as in force immediately before the commencement of section 33(1) of the amending Act continues to apply to a work plan or variation of an approved work plan received but not endorsed before that commencement.
Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990

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).

Section 126(4) not yet proclaimed.

Schedule 1 item 17 was never proclaimed, repealed by No. 29/2006 section 3(Schedule 1 item 23.1).

Schedule 1 item 24 was never proclaimed, repealed by No. 33/2014 section 12.


INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the
insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

• **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

• **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

• **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

• **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

• **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

• **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).
## Table of Amendments

This publication 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
- **Assent Date:** 12.6.91
- **Commencement Date:** All of Act (except s. 4 (3)–(6)) on 12.6.91: s. 2(1); s. 4(3)–(6) on 18.12.90: s. 2(2)
- **Current State:** All of Act in operation

### Mineral Resources Development (Amendment) Act 1993, No. 86/1993
- **Assent Date:** 3.11.93
- **Commencement Date:** 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)
- **Current State:** All of Act in operation

### Building Act 1993, No. 126/1993
- **Assent Date:** 14.12.93
- **Commencement Date:** S. 264(Sch. 5 item 16) on 1.7.94: Special Gazette (No. 42) 1.7.94 p. 1
- **Current State:** 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
- **Assent Date:** 27.4.94
- **Commencement Date:** All of Act (except s. 6) on 27.4.94: s. 2(1); s. 6 on 17.1.94: s. 2(2)
- **Current State:** All of Act in operation

### Valuation of Land (Amendment) Act 1994, No. 91/1994
- **Assent Date:** 6.12.94
- **Commencement Date:** S. 28 on 23.1.95: Government Gazette 19.1.95 p. 121
- **Current State:** This information relates only to the provision/s amending the **Mineral Resources (Sustainable Development) Act 1990**

### Electricity Industry (Amendment) Act 1995, No. 56/1995
- **Assent Date:** 20.6.95
- **Commencement Date:** Ss 40, 42 on 20.6.95: Special Gazette (No. 52) 20.6.95 p. 1
- **Current State:** 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
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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

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: 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

Assent Date: 19.5.98
Commencement Date: S. 18 on 26.6.98: Government Gazette 25.6.98 p. 1561
Current State: All of Act in operation

Assent Date: 26.5.98
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

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

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

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

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. 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

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
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<td>National Parks (Marine National Parks and Marine Sanctuaries) Act 2002, No. 40/2002</td>
<td>18.6.02</td>
<td>S. 29 on 16.11.02: s. 2</td>
<td>This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990</td>
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<td>National Parks (Box-Ironbark and Other Parks) Act 2002, No. 50/2002</td>
<td>29.10.02</td>
<td>Ss 20–24 on 30.10.02: s. 2</td>
<td>This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990</td>
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<td>Fisheries (Amendment) Act 2003, No. 56/2003</td>
<td>16.6.03</td>
<td>S. 11(Sch. item 12) on 17.6.03: s. 2</td>
<td>This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990</td>
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<td>National Parks (Additions and Other Amendments) Act 2004, No. 64/2004</td>
<td>12.10.04</td>
<td>S. 34 on 13.10.04: s. 2(1)</td>
<td>This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990</td>
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<td>Primary Industries Legislation (Further Miscellaneous Amendments) Act 2004, No. 69/2004</td>
<td>19.10.04</td>
<td>S. 50 on 20.10.04: s. 2(1); s. 55 on 1.4.05: Government Gazette 24.3.05 p. 546</td>
<td>This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990</td>
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<td>Public Administration Act 2004, No. 108/2004</td>
<td>21.12.04</td>
<td>S. 117(1)(Sch. 3 item 134) on 5.4.05: Government Gazette 31.3.05 p. 602</td>
<td>This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990</td>
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<td>Legal Profession (Consequential Amendments) Act 2005, No. 18/2005</td>
<td>24.5.05</td>
<td>S. 18(Sch. 1 item 69) on 12.12.05: Government Gazette 1.12.05 p. 2781</td>
<td>This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990</td>
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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


- **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


- **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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Authorised by the Chief Parliamentary Counsel
Mineral Resources (Sustainable Development) Act 1990
No. 92 of 1990

Endnotes

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

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

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

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
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 (as amended by No. 29/2011)
Assent Date: 14.9.10
Commencement Date: Ss 37, 41, 42, 51 on 14.10.10: Government Gazette 14.10.10 p. 2405; ss 4–36, 38–40, 43–50 on 1.2.12: s. 2(2)
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

Personal Property Securities (Statute Law Revision and Implementation) Act 2010, No. 74/2010
Assent Date: 19.10.10
Commencement Date: S. 28 on 30.1.12: Special Gazette (No. 423) 21.12.11 p. 3
Current State: This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990

Subordinate Legislation Amendment Act 2010, No. 78/2010
Assent Date: 19.10.10
Commencement Date: S. 24(Sch. 1 item 20) on 1.1.11: s. 2(1)
Current State: 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

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Statute Law Revision Act 2011, No. 29/2011
Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 items 60.1, 60.2) on 1.1.10: s. 2(2)(e);
s. 3(Sch. 1 item 60.3) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s
amending the Mineral Resources (Sustainable Development) Act 1990

Resources Legislation Amendment Act 2011, No. 53/2011 (as amended by
No. 43/2012)
Assent Date: 18.10.11
Commencement Date: Ss 3–6 on 20.3.12: Special Gazette (No. 91) 20.3.12
p. 1
Current State: This information relates only to the provision/s
amending the Mineral Resources (Sustainable Development) Act 1990

Water Amendment (Governance and Other Reforms) Act 2012, No. 17/2012
Assent Date: 3.4.12
Commencement Date: S. 92 on 1.7.12: Special Gazette (No. 172) 29.5.12 p. 1
Current State: This information relates only to the provision/s
amending the Mineral Resources (Sustainable Development) Act 1990

Statute Law Revision Act 2012, No. 43/2012
Assent Date: 27.6.12
Commencement Date: S 3(Sch. item 30) on 28.6.12: s. 2(1)
Current State: This information relates only to the provision/s
amending the Mineral Resources (Sustainable Development) Act 1990

Resources Legislation Amendment (General) Act 2012, No. 64/2012 (as amended
by No. 70/2013)
Assent Date: 30.10.12
Commencement Date: Ss 13–40 on 1.12.12: Special Gazette (No. 399)
27.11.12 p. 1
Current State: This information relates only to the provision/s
amending the Mineral Resources (Sustainable Development) Act 1990

Mineral Resources (Sustainable Development) Amendment Act 2012,
No. 84/2012 (as amended by No. 70/2013)
Assent Date: 18.12.12
Commencement Date: Ss 4–8 on 1.2.13: Special Gazette (No. 27) 29.1.13
p. 1
Current State: This information relates only to the provision/s
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<td><strong>Commencement Date:</strong> S. 160(Sch. 2 item 64) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1</td>
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<th>Sale of Land Amendment Act 2014, No. 33/2014</th>
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<td><strong>Assent Date:</strong> 13.5.14</td>
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<td><strong>Commencement Date:</strong> S. 33(Sch. item 16) on 30.6.14: s. 2(5)</td>
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Resources Legislation Amendment (BTEX Prohibition and Other Matters) Act 2014, No. 68/2014
Assent Date: 23.9.14
Commencement Date: Ss 14–24, 26–62, 65 on 1.9.15: s. 2(3)
Current State: This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990

Resources Legislation Amendment Act 2015, No. 47/2015
Assent Date: 22.9.15
Commencement Date: Ss 5–16 on 23.9.15: s. 2
Current State: This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990

Assent Date: 5.4.16
Commencement Date: Ss 11–13 on 5.8.16: Special Gazette (No. 239) 2.8.16 p. 1
Current State: This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990

State Taxation and Other Acts Amendment Act 2016, No. 40/2016
Assent Date: 28.6.16
Commencement Date: S. 31 on 29.6.16: s. 2(1)
Current State: This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990

Assent Date: 23.8.16
Commencement Date: S. 30 on 7.9.16: Special Gazette (No. 278) 6.9.16 p. 1
Current State: This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990

Heritage Act 2017, No. 7/2017
Assent Date: 15.3.17
Commencement Date: S. 304 on 1.11.17: s. 2(2)
Current State: This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990

Resources Legislation Amendment (Fracking Ban) Act 2017, No. 8/2017
Assent Date: 15.3.17
Commencement Date: Ss 3–7 on 16.3.17: s. 2
Current State: This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990
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Mineral Resources (Sustainable Development) Amendment (Latrobe Valley Mine Rehabilitation Commissioner) Act 2017, No. 22/2017

Asent Date: 30.5.17
Commencement Date: Ss 4, 5, 9, 10 on 15.6.17; Special Gazette (No. 195) 14.6.17 p. 1
Current State: This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990


Asent Date: 24.10.17
Commencement Date: Ss 15–17 on 15.12.17; Special Gazette (No. 433) 12.12.17 p. 1
Current State: This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990

Parks Victoria Act 2018, No. 19/2018

Asent Date: 5.6.18
Commencement Date: S. 247 on 12.9.18; Special Gazette (No. 386) 21.8.18 p. 1
Current State: This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990

Authorised by the Chief Parliamentary Counsel
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3 Amendments Not in Operation

This publication does not include amendments made to the Mineral Resources (Sustainable Development) Act 1990 by the following Act/s.

Mineral Resources (Sustainable Development) Amendment (Latrobe Valley Mine Rehabilitation Commissioner) Act 2017, No. 22/2017

- **Assent Date:** 30.5.17
- **Commencement Date:** Ss 6–8 on 1.7.20: s. 2(2)
- **Current State:** This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990

Oaths and Affirmations Act 2018, No. 6/2018

- **Assent Date:** 27.2.18
- **Commencement Date:** S. 68(Sch. 2 item 89) not yet proclaimed
- **Current State:** This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990

Environment Protection Amendment Act 2018, No. 39/2018

- **Assent Date:** 28.8.18
- **Commencement Date:** Ss 24–27, 44 not yet proclaimed
- **Current State:** This information relates only to the provision/s amending the Mineral Resources (Sustainable Development) Act 1990

At the date of this publication, the following provisions amending the Mineral Resources (Sustainable Development) Act 1990 were Not in Operation:

Amending Act/s:

Mineral Resources (Sustainable Development) Amendment (Latrobe Valley Mine Rehabilitation Commissioner) Act 2017, No. 22/2017

6 Definitions

(1) In section 84AA of the Principal Act—

(a) the definition of framework is **repealed**;

(b) **insert** the following definition—

"**monitoring framework** means the framework published under section 84AZD;".
(2) In section 84AA of the Principal Act, in the definition of rehabilitation planning activity, in paragraph (e), for "to assist the preparation of" substitute ", including for the purposes of implementing".

7 Functions and powers of the Commissioner

(1) For section 84AL(1)(a) of the Principal Act substitute—

"(a) to monitor and evaluate the implementation of the regional rehabilitation strategy in accordance with the monitoring framework;".

(2) In section 84AL(1)(b) of the Principal Act, for "rehabilitation planning activities" substitute "the implementation of rehabilitation planning activities and the regional rehabilitation strategy".

(3) In section 84AL(1)(c) of the Principal Act, for "rehabilitation planning activities in accordance with the framework" substitute "implementation and effectiveness of rehabilitation planning activities and the regional rehabilitation strategy in accordance with the monitoring framework".

(4) In section 84AL(1)(m) of the Principal Act, for "Act." substitute "Act;".

(5) After section 84AL(1)(m) of the Principal Act insert—

"(n) to develop and maintain, in consultation with the community, stakeholders, public sector bodies and Latrobe Valley licensees, a framework for—

(i) the monitoring and evaluation of the implementation and effectiveness of rehabilitation planning activities and the regional rehabilitation strategy; and
(ii) the achieving of the outcomes set out in the framework; and

(iii) the carrying out of strategic audits of public sector bodies and Latrobe Valley licensees in relation to the implementation of rehabilitation planning activities and the regional rehabilitation strategy;

(o) to monitor and report, in accordance with the monitoring framework, on—

(i) the implementation by public sector bodies and Latrobe Valley licensees of the regional rehabilitation strategy; and

(ii) the effectiveness of the regional rehabilitation strategy."

8 Division 7 of Part 7A substituted

For Division 7 of Part 7A of the Principal Act substitute—

"Division 7—Monitoring framework

84AZC Commissioner must prepare monitoring framework

(1) The Commissioner must prepare a document that sets out a framework for the monitoring and evaluation of the implementation and effectiveness of—

(a) rehabilitation planning activities; and

(b) the regional rehabilitation strategy.

(2) Without limiting subsection (1), the monitoring framework must provide for—

(a) the outcomes to be achieved, including measures to be undertaken to achieve the outcomes and the effectiveness of those measures; and
(b) the carrying out of strategic audits of public sector bodies and Latrobe Valley licensees in relation to the implementation of the regional rehabilitation strategy.

(3) The Commissioner must prepare the monitoring framework in consultation with—

(a) community members and stakeholders of the Latrobe Valley region; and

(b) public sector bodies; and

(c) the Latrobe Valley licensees.

84AZD Making the monitoring framework
The Commissioner must cause the monitoring framework to be published on an Internet site maintained by the Department as soon as practicable after the framework is made.

84AZE Amendment of monitoring framework
The Commissioner may amend the monitoring framework at any time.

84AZF Making an amendment to the monitoring framework

(1) The Commissioner must cause to be published on an Internet site maintained by the Department the monitoring framework, as amended under section 84AZE.

(2) As soon as practicable after the amended monitoring framework is published under subsection (1), the Commissioner must publish a notice stating the date of the
publication of the amended monitoring framework under subsection (1) in the Government Gazette."

Oaths and Affirmations Act 2018, No. 6/2018

Schedule 2—Further consequential amendments

89 Mineral Resources (Sustainable Development) Act 1990

89.1 In sections 95F(2) and 100(2)(b), after "oath" insert "or by affirmation".

Environment Protection Amendment Act 2018, No. 39/2018

24 Definitions

In section 77TA of the Mineral Resources (Sustainable Development) Act 1990 for the definition of referral authority substitute—

"referral authority" means—

(a) in the case of a work plan, or a variation of an approved work plan, for work proposed to be done under an extractive industry work authority, a person or body that has been specified in a planning scheme under the Planning and Environment Act 1987 as a referral authority under that Act; and

(b) in the case of a work plan, or a variation of an approved work plan, for mining work proposed to be done under a mining licence—
(i) the Environment Protection Authority under the Environment Protection Act 2017; and
(ii) any other person or body referred to in paragraph (a);”.

25 Department Head may endorse work plan or variation to approved work plan

For section 77TD(1)(c) of the Mineral Resources (Sustainable Development) Act 1990 substitute—

"(c) give a copy of the work plan or variation to an approved work plan—

(i) to each relevant referral authority in accordance with section 77TE(1); and

(ii) in the case of a work plan (or a variation of an approved work plan) for mining work proposed to be done under a mining licence, to the Environment Protection Authority under the Environment Protection Act 2017 and each other relevant referral authority in accordance with section 77TE(1A).”.

26 Department Head must give work plan or variation application to referral authority

(1) After section 77TE(1) of the Mineral Resources (Sustainable Development) Act 1990 insert—

"(1A) In the case of a work plan (or a variation of an approved work plan) for mining work proposed to be done under a mining licence, in addition to complying with the requirement set out in subsection (1), the Department Head must give a copy of the work plan or variation to the Environment Protection Authority under the Environment Protection Act 2017 within 28 days after
receiving the work plan or variation of an approved work plan.

(2) In section 77TE(2) of the Mineral Resources (Sustainable Development) Act 1990, after "subsection (1)" insert "or (1A)".

27 Meaning of public sector body

In section 84AB(c) of the Mineral Resources (Sustainable Development) Act 1990, for "1970" substitute "2017".

44 Mineral Resources (Sustainable Development) Act 1990

(1) In section 43B(2) of the Mineral Resources (Sustainable Development) Act 1990, for "Protection Act 1970" substitute "Protection Act 2017".

(2) In the definition of auditor in section 77U of the Mineral Resources (Sustainable Development) Act 1990, for "appointed under section 53S of the Environment Protection Act 1970" substitute "within the meaning of the Environment Protection Act 2017".
4 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*.


5 S. 43(1)(e): See note 2.


8 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".