

## SOUTH AUSTRALIA

### I. SALIENT GENERAL FEATURES

Capital	:	Adelaide
Area	:	984,000 Sq. km (380,070 Sq. mile)
Population	:	1,497,600
Language	:	English

### II. MINING LEGISLATIVE FRAMEWORK

- A. **Purpose** : This Act may be cited as the *Mining Act 1971*. To regulate and control mining operation, and for other purposes.

#### B. INTERPRETATION/DEFINITIONS

1. In this Act, unless the contrary intention appears—

*Adelaide Dolphin Sanctuary* has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

*appropriate court* means — a) the Supreme Court; or b) the ERD Court; or c) if proceedings do not involve a monetary claim, or a claim for more than \$150 000—the Warden's Court;

*authorised person* means a person authorised in writing by the Director of Mines to exercise the powers conferred by the provisions of this Act in which the expression is used;

*baseline* means the baseline adjacent to the coast of the State (including the coast of any island forming part of the State) for the time being determined under Section 7(1)(b) of the *Seas and Submerged Lands Act 1973* of the Commonwealth;

*council* means a municipal or district council within the meaning of the *Local Government Act 1934* and includes a body corporate that is, by virtue of any Act, deemed to be, or vested with the powers of, a municipal or district council;

*Crown lands* mean lands that are Crown lands within the meaning of the *Crown Lands Act 1929*;

*declared equipment* means — a) a trench digger or excavator; or (b) mechanically driven equipment, equipped with a blade or bucket of a width exceeding 750 mm, capable of ripping, gouging, scooping or digging earth or rock material; or (c) equipment that is capable of digging, boring or tunnelling underground, generally in a horizontal plane, with a cross-sectional dimension greater than 750 mm;

*the Director of Mines* or *the Director* means the person assigned by the Minister to exercise the powers and discharge the duties of the officer so designated by this Act;

*ERD Court* means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*;

*exempt land* means land that is exempt from mining operations under the Act;

*exploration authority* means a) a miner's right; b) a mineral claim; c) an exploration licence; d) a retention lease (but only if the mining operations to which the lease relates are limited to exploratory operations);

*exploring* means operations of any kind in the course of a) exploring for minerals; or b) establishing the extent of a mineral deposit, and includes prospecting, and *to explore* and *exploratory* have corresponding meanings;

*extractive minerals* mean sand, gravel, stone, shell, shale or clay, but does not include a) any such minerals that are mined for a prescribed purpose; or b) fire clay, bentonite or kaolin;

*fossicking* means the gathering of minerals- a) as a recreation; and b) without any intention to sell the minerals or to utilise them for a commercial or industrial purpose, but does not include the gathering of minerals by any means involving disturbance of land or water by machinery or explosives;

*inspector* means a person for the time being holding or acting in the office of inspector of mines under this Act, and includes the Chief Inspector;

*the Land and Valuation Court* means the Land and Valuation Court constituted under the *Supreme Court Act 1935*;

*machinery* means any device operated otherwise than by muscular force exerted by the operator;

*mine* means any place in which mining operations are carried out;

*mineral land* means any land that is mineral land in consequence of a declaration under this Act;

*minerals* mean a) any naturally occurring deposit of metal or metalliferous ore, precious stones or any other mineral (including sand, gravel, stone, shell, coal, oil shale, shale and clay); or b) any metal, metalliferous substance or mineral recoverable from the sea or a natural water supply; or c) any metal, metalliferous ore or mineral that has been dumped or discarded (i) in the course of mining operations or operations incidental to mining operations; or (ii) in other prescribed circumstances; but does not include d) soil or e) petroleum or any other substance, the recovery of which is governed by the *Petroleum Act 1940*;

*mining* or *mining operations* mean all operations carried on in the course of prospecting, exploring or mining for minerals, or quarrying, and includes operations by means of which minerals are recovered from the sea or a natural water supply, but does not include any investigation or survey under the act, or fossicking, and *to mine* has a corresponding meaning;

*mining operator* means a person by whom, or on whose behalf, mining operations are carried out under this Act;

*Mining Register* means the register kept by the Mining Registrar under the act;

*a Mining Registrar* means a person appointed as a Mining Registrar under the Act and includes the Mining Registrar;

*the Mining Registrar* means a person appointed as the Mining Registrar under the Act and includes a person who is acting in the position of Mining Registrar;

*mining tenement* means a claim, lease or licence under this Act;

*Minister for the Adelaide Dolphin Sanctuary* means the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed;

*Minister for the River Murray* means the Minister to whom the administration of the *River Murray Act 2003* is committed;

*Murray-Darling Basin* has the same meaning as in the *Murray-Darling Basin Act 1993*;  
*native title*, *native title holder* and *native title land*-see *Native Title (South Australia) Act 1994*;

*native title mining determination* means a determination authorising a mining operator to enter land and carry out mining operations on the land under the Act;

*opal development area* means an area within a precious stones field declared by the Minister under the Act to be an opal development area;

*owner* of land means- a) a person who holds a registered estate or interest in the land conferring a right to immediate possession of the land; or b) a person who holds native title in the land; or c) a person who has, by statute, the care, control or management of the land; or d) a person who is lawfully in occupation of the land;

*precious stones* has the same meaning as in the *Opal Mining Act 1995*;

*precious stones field* means a precious stones field under the *Opal Mining Act 1995*;

*prescribed notice of entry* --- see the Act;

*production tenement* means a) a mining lease; b) a retention lease (if the mining operations to which the lease relates are not limited to exploratory operations);

*proprietor*, in relation to a private mine, means a person who was, on the commencement of this Act, divested of property in the minerals for the recovery of which the mine is operated, or a person lawfully claiming under that person;

*prospecting* means operations of any kind in the course of exploring for minerals except such as involve the disturbance of land or water by machinery or explosives, and *to prospect* has a corresponding meaning;

*radioactive mineral* means uranium or any other prescribed radioactive mineral;

*registered representative* of native title holders — see Part 4 *Native Title (South Australia) Act 1994*;

*the repealed Act* means the *Mining Act 1930* repealed by this Act;

*River Murray Protection Area* means a River Murray Protection Area under the *River Murray Act 2003*;

*subsurface stratum* means a stratum resulting from the division of mineral land into strata under this Act, being a stratum that lies beneath a surface stratum;

*surface stratum* means a stratum resulting from the division of mineral land into strata under this Act, being a stratum of which the upper surface is the surface of those lands;

*Warden* means a Magistrate nominated by the Attorney-General to exercise the jurisdiction and powers of a Warden under this Act;

*the Warden's Court* means the Warden's Court constituted under the Act.

2. Where mineral land is divided into strata under this Act, a reference to land, or an area, shall, where appropriate, be construed as a reference to the surface stratum or a subsurface stratum, as the case may require.
3. An explanatory note to a provision of this Act forms part of the provision to which it relates.

**C. APPLICATION OF ACT**

1. Except as otherwise provided, this Act applies only in respect of mineral land.
2. This Act does not regulate mining operations for the recovery of extractive minerals, or require payment of royalty in respect of extractive minerals recovered in the course of such operations, where the operations are authorised under some other Act.
3. Except where the operations are being carried out in an opal development area, this Act does not regulate mining operations for the recovery of precious stones if those operations are carried out under the authority of a permit or tenement issued under the *Opal Mining Act 1995*.

**D. DECLARATION OF MINERAL LAND**

1. The Governor may, by proclamation a) declare any land in the State or any land under coastal waters on the landward side of the baseline to be mineral land; or b) (i) divide mineral land into a surface stratum and one or more subsurface strata and fix the depth of the surface stratum and the depth of any subsurface stratum below which lies any further subsurface stratum resulting from the division; or c) reserve from the operation of this Act, or any provisions of this Act, any land specified in the proclamation, and the proclamation shall have effect according to its terms.
2. This Act applies to and in relation to land referred to in the Act to the exclusion of the *Offshore Minerals Act 2000*.
3. A mining tenement is a successive tenement in relation to another tenement, if a) it applies to the same land or to part of the land covered by the other tenement; and b) it takes effect immediately after the other tenement expires or, where there are two or more successive tenements, immediately after the tenement immediately preceding it expires; and c) it is granted to the person who held the other tenement.

**E. OPAL DEVELOPMENT AREAS**

1. The Minister may, by notice in the Gazette, declare mineral land within a precious stones field to be an opal development area for the purposes of this Act, and the declaration will have effect according to its terms.
2. A person must not carry out mining operations in an opal development area except under the authority of miner's right, exploration licence or mining lease under this Act.
3. The Minister may, by subsequent notice in the Gazette, vary or revoke a declaration under subsection (1).

**F. EXEMPT LAND**

1. Subject to this section a) land that is lawfully and genuinely used — (i) as a yard, garden, cultivated field, plantation, orchard or vineyard; (ii) as an airfield, railway or tramway; (iii) as the grounds of a church, chapel, school, hospital or institution; or b) land that constitutes any parklands or recreation grounds under the control of a council; or (b) land — (i) that is dedicated or reserved, pursuant to statute, for the purpose of

waterworks; or (ii) that is vested in the Minister of Public Works for the purpose of waterworks; or (iii) that is comprised within an easement in favour of the Minister of Public Works; or (b) land that constitutes a forest reserve under the *Forestry Act 1950*; or (c) any separate parcel of land of less than 2 000 square metres within any city, town or township; or (d) land that is situated— (i) within 400 metres of a building or structure used as a place of residence (except a building or structure of a class excluded by regulation from the ambit of this paragraph); or (ii) within 150 metres of —

- a building or structure, with a value of \$200 or more, used for an industrial or commercial purpose; or
  - a spring, well, reservoir or dam, (but not if it is an improvement made for the purposes of mining operations), shall be exempt from mining operations in pursuance of this Act and, unless the land ceases to be so exempt, no miner's right, claim, lease or licence shall authorise prospecting, exploring or mining upon such land (but this section does not prevent the pegging out of a claim upon such land).
2. Where any land is subject to a claim, lease or licence under this Act and that land would, but for this subsection, be land exempt from mining operations in pursuance of this Act by reason only of a fact or circumstance occurring or arising subsequent to the pegging out, or granting, of the claim, lease or licence, that land shall not be exempt from operations in pursuance of this Act.
  3. This section does not affect any provision of the *Pastoral Act 1936* prohibiting or restricting the conduct of mining operations on lands subject to that Act.
  4. In this Section — **mining operations** include any operation or activity for which a miscellaneous purposes licence may be granted.

#### **G. MINING IN RESPECT OF PUBLIC ROADS AND PLACES**

Subject to the appropriate regulations for preventing undue interference with public use, the rights conferred by this Act may be exercised in respect of any public road, reserve or place.

#### **H. SPECIAL CONDITIONS ATTACHING TO MINING OF RADIOACTIVE MINERALS**

1. Subject to this Section, no person shall carry out mining operations (other than exploratory operations) for the recovery of any radioactive mineral unless he is the holder of a mining lease or retention lease upon which the Minister has endorsed an authorisation to carry out mining operations for that purpose.
2. An authorisation to carry out mining operations for the recovery of a radioactive mineral may be granted upon such conditions as the Minister thinks fit and may be revoked upon breach of any condition.
3. This Section does not prevent the recovery of any radioactive mineral in the course of mining operations carried out for the recovery of other minerals provided that the radioactive mineral — a) is stockpiled in accordance with conditions stipulated by the Minister; or b) is of such low concentration that it may, in the opinion of the Minister, be safely discarded as waste and is in fact discarded as waste.
4. Notwithstanding any other provision of this Act, the property in any radioactive mineral — a) stockpiled in pursuance of conditions imposed by the Minister under

Subsection (2); or b) stockpiled in pursuance of subsection (3) a), does not pass from the Crown unless and until the Minister, by instrument in writing, authorises the person by whom the radioactive mineral was mined to sell and dispose of the mineral.

## **I. OWNERSHIP RIGHTS AND ADMINISTRATION/CONTROL**

### **1. Interaction with Other Legislation**

The Minister must, in acting in the administration of this Act, take into account-

- a) the objects of the *Natural Resources Management Act 2004*; and b) insofar as they may be relevant—the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*.

### **2. The Minister and the Director to be Corporations Sole**

The Minister and the Director of Mines shall each be a corporation sole.

### **3. Delegation**

1. The Minister may delegate any power or function vested in or conferred on the Minister under this Act.
2. The Director of Mines may, with the Minister's consent, delegate any power or function (including a delegated power or function) vested in or conferred on the Director under this Act.
3. A delegation under this Section — a) may be absolute or conditional; and b) may be made — (i) to a particular person or body; or (ii) to the person for the time being occupying a particular office or position; and c) does not derogate from the power of the delegator to Act in any matter; and d) is revocable at will by the delegator.

### **4. Officers and Employees**

1. For the purposes of the administration of this Act, officers and employees — a) may be appointed to the Public Service subject to, and in accordance with, the *Government Management and Employment Act 1985*; or b) may be appointed on some other basis determined by the Governor or the Minister.
2. A person who is appointed pursuant to the Act is not a member of the Public Service.

### **5. Powers of Minister, Director and authorised persons**

1. For the purpose of making any geological, geophysical or geochemical investigation or survey, the Minister or the Director of Mines, or any person authorised in writing by the Minister or the Director, may — a) enter and remain upon any land with such assistants, vehicles and equipment as may be necessary or expedient for the purposes of the investigation or survey; and b) conduct such an investigation or survey on the land; and c) take, and remove from the land, any geological specimens or samples.
2. A person exercising a power under this section — a) must not recover from any land more minerals than are reasonably necessary for the purpose of making the relevant investigation or survey; and b) must not unnecessarily impede or obstruct the lawful use or enjoyment of any land by an owner of the land.

## J. Entry upon land, compensation and restoration

### a) *Entry on land*

Subject to this Part, a person authorised to prospect, explore or mine for minerals under this Act may enter any mineral land (except exempt land) for the purpose of prospecting, exploring or mining for minerals in accordance with the authorisation; and may enter exempt land for the purpose of pegging out a claim.

### b) *Restoration of land*

Subject to the terms and conditions of any relevant lease, licence, authorisation, agreement or determination under this Act, where a mining operator uses declared equipment in the course of mining operations, an inspector or authorised person may direct the operator, in writing, to restore the ground disturbed by the operations to a condition that is, in the opinion of the inspector or authorised person, satisfactory. A mining operator shall comply with a direction under Subsection above. Maximum penalty: \$750.

### c) *Compensation*

The owner of any land upon which mining operations are carried out in pursuance of this Act shall be entitled to receive compensation for any economic loss, hardship and inconvenience suffered by him in consequence of mining operations.

## K. Mineral Concession

### 1. Prospecting for minerals

#### a) *Registration of claim*

1. Application for registration of a mineral claim must be lodged at the office of the Mining Registrar within 30 days after the day on which the claim is pegged out.
2. A Mining Registrar shall, subject to this Act and any order of the Warden's Court, register a mineral claim upon receipt of due application for registration of the claim in the prescribed form and accompanied by the prescribed particulars.
3. A Mining Registrar may refuse to register a mineral claim (other than a claim that relates solely to extractive minerals) if satisfied that — a) before the claim was pegged out, an application had been lodged for an exploration licence for an area comprising the area of the claim or portion of the area of the claim; and b) the application has not been refused.
4. A Mining Registrar cannot register a mineral claim if to do so would be inconsistent with a public undertaking by the Minister to the mining industry.
5. If application for registration of a mineral claim is not made as required by this Section, or if the Mining Registrar lawfully refuses to register the claim, the claim shall lapse.

#### b) *Rights Conferred By Ownership Of Mineral Claim*

1. A mineral claim confers on the owner of the claim an exclusive right, subject to the provisions of this Act — a) to prospect for minerals in the land comprised in the claim; and b) to carry out such other exploratory operations on, or in respect of, the land comprised in the claim as are approved in writing by the Director of Mines; and c) to

apply for a mining lease or a retention lease in respect of the whole or part of the land comprised in the claim.

2. A person shall not remove from the area of a mineral claim minerals, or soil and minerals, exceeding a mass of 1 tonne unless authorised to do so by the Director of Mines.
3. The ownership of a mineral claim does not confer any right — a) to sell or dispose of any minerals recovered in the course of mining operations; or b) to utilise any such minerals for any commercial or industrial purpose.

**c) *Rights attaching to miner's right***

1. A miner's right shall, subject to this Act, authorise the holder to prospect for minerals and to peg out a mineral claim in accordance with the regulations.

**d) *Area of claim***

1. The area of a mineral claim must not exceed the maximum permissible area stipulated by the regulations.
2. The maximum permissible area of a mineral claim may vary according to the nature of the minerals in respect of which the claim is pegged out.

**e) *Issue, transfer, surrender of miner's right***

1. A Mining Registrar may, upon receipt of an application in the prescribed form containing the prescribed particulars, issue to any person a miner's right.
2. An application for a miner's right must be accompanied by the prescribed fee.
3. A person shall not hold more than 1 miner's right.
4. A miner's right is not transferable.
5. A person shall not — a) lend a miner's right to any other person; or b) permit any other person to make use, or take the benefit, of his miner's right.
6. A miner's right may, subject to this Act and in accordance with the regulations, be surrendered.

**f) *Term and renewal of miner's right***

1. A miner's right shall, subject to this Act, remain in operation for a period of 3 years from the date of issue.
2. A Mining Registrar may, upon receipt of an application in the prescribed form lodged with him within 1 month before the date on which a miner's right is due to expire and accompanied by the prescribed fee, renew the miner's right for a further period of 3 years.

**g) *Mineral claim not transferable***

A mineral claim is not transferable.

**2. *Exploration licence***

**a) *Application for exploration licence***

1. An application for an exploration licence must be made in a manner and form determined by the Minister and must be lodged with the Director of Mines.



2. The applicant shall forward with an application for an exploration licence - the prescribed application fee; and a map on which are delineated the boundaries of the land in respect of which the licence is sought; and a statement outlining the exploratory operations that the applicant proposes to carry out in pursuance of the licence, showing the estimated expenditure to be incurred in carrying out those operations; and a statement of the technical and financial resources available to the applicant; and a statement of the nature of the minerals for which the applicant proposes to explore.
3. An applicant shall, at the request of the Minister, furnish such further information in relation to his application, or such evidence in support of his application, as the Minister may require.

**b) Grant of exploration licence**

1. Subject to this Act, the Minister may grant an exploration licence to any person.
2. An exploration licence authorises the licensee to carry out exploratory operations of a kind described in the licence in respect of land described, or referred to, in the licence.
3. However, an exploration licence does not (and cannot) authorise the licensee to carry out exploratory operations for precious stones on land within a precious stones field that is outside an opal development area, or on land within an exclusion zone under the *Opal Mining Act 1995*.
4. An exploration licence shall not be granted in respect of extractive minerals.
5. The Minister must not grant an exploration licence that authorises the licensee to carry out exploratory operations for precious stones if to do so would be inconsistent with a public undertaking by the Minister to the mining industry.

**c) Area of licence**

1. The area of the land in respect of which an exploration licence is granted must not exceed 1000 square kilometres unless, in the opinion of the Minister, circumstances exist that justify the grant of a licence in respect of a greater area.
2. However, if the exploration licence allows for exploratory operations for precious stones in an opal development area, the area of land in respect of which a licence is granted cannot exceed 20 square kilometres unless, in the opinion of the Minister, circumstances exist that justify the grant of a licence in respect of a greater area.

**d) Term and renewal of licence**

1. An exploration licence is to be granted for a term decided by the Minister of upto five years.
2. If an exploration licence is granted for a term of less than five years, the licence may include a right of renewal but not so the aggregate term of the licence exceeds five years. An exploration licence that does not include in its terms a right of renewal may be renewed at the discretion of the Minister from time to time, but not so the aggregate term of the licence exceeds five years.
3. An application for renewal of an exploration licence must be made to the Minister in a manner and form determined by the Minister at least one month before the date of expiry of the licence, accompanied by the prescribed fee and any information that the Minister may require.

**e) Subsequent exploration licence**

The Minister may, on the expiration of an exploration licence the term or aggregate term of which was five years, grant to the licensee an exploration licence (a *subsequent exploration licence*) over the area of land, or a part of the area of land, to which the former licence applied.

2. An application for a subsequent exploration licence must include the statement outlining the exploratory operations that the licensee has carried out in pursuance of the licence since it was granted (or since it was renewed, if the licence has been renewed), showing the expenditure incurred in carrying out those operations; and a statement that the licensee will (i) carry out exploratory operations of a kind and to an extent agreed between the Minister and the licensee; and (ii) spend an amount of money agreed between the Minister and the licensee in carrying out those operations, and shall pay to the Minister, annually and in advance, such fee as may be prescribed.

**f) Suspension of cancellation**

The holder of exploration licence has contravened, or failed to comply with, any provision of this Act or any condition of the licence, the Minister may suspend the licence (in which case the licence shall, during the period of suspension, be of no force or effect) or cancel the licence.

**3. Mining leases**

**a) Application for lease**

An application for a mining lease must be in the prescribed form and must be accompanied by (i) a statement of the mining operations that the applicant proposes to carry out in pursuance of the lease; and the measures that the applicant proposes to take to remedy damage to land that may result from the proposed mining operations; and such other information as is prescribed; and (ii) the prescribed fee.

**b) Grant of mining lease**

Subject to the relevant provisions in the Act, the Minister may grant a mining lease (i) to the holder of a registered mineral claim, in respect of the whole or part of the land comprised in the claim; or (ii) to the holder of a retention lease, in respect of the whole or part of the land comprised in the lease. The maximum permissible area of the land in respect of which a mining lease may be granted shall be prescribed.

**c) Term and renewal of mining lease**

- (i) A mining lease may be granted for such term, not exceeding 21 years, as may be determined by the Minister and specified in the lease.
- (ii) Subject to the terms and conditions of a mining lease, the holder of the lease shall, if he has complied with the provisions of this Act, and the terms and conditions of the lease during the term for which the lease was granted or last renewed, be entitled, at the expiration of that term, to the renewal of the lease for a further term.
- (iii) A person who is entitled to the renewal of a mining lease under this section makes due application in the prescribed form for the renewal of the lease not more than 6 months, and not less than 3 months, before the date of its expiry, the Minister shall renew the lease for a term, not exceeding 21 years, determined by the Minister.

- (iv) If the application for the renewal of a mining lease is not decided before the date of expiry, the lease continues in operation until the application is decided and, if the lease is renewed, the renewal dated from the date of which the lease would, but for this subsection, have expired.

**d) Rights conferred by lease**

A mining lease confers an exclusive right upon the holder of the lease to conduct mining operations subject to the provisions of this Act and the terms and conditions of the lease for the recovery of minerals from the land comprised in the lease; and (ii) authorises the holder of the lease to sell, or dispose of, minerals recovered in the course of mining operations conducted in pursuance of the lease or to utilise any such minerals for any commercial or industrial purpose.

**e) Rental**

A mining lease shall provide for the payment, by way of rental, of such sum as may be prescribed.

**f) Suspension or cancellation of lease**

The Minister may suspend or cancel a mining lease if the lessee contravenes or fails to comply with a term or condition of the lease or a provision of this Act.

**4. Retention Leases**

**a) Application for retention lease**

An application for a retention lease must be in the prescribed form and accompanied by the prescribed fee. The Minister may require the applicant to furnish him with such information and survey as the Minister thinks fit.

**b) Grant of retention lease**

The Minister may, subject to this Section and other relevant provisions under the Act grant to the holder of a registered mineral claim a retention lease of the whole or part of the land comprised in the claim.

**c) Term and renewal of retention lease**

1. A retention lease shall be granted for a term, not exceeding 5 years, specified in the lease.
2. The holder of a retention lease may, not later than 3 months before the expiration of the term of the lease, apply, in the prescribed manner and form, to the Minister for the renewal of the lease.
3. If the applicant has complied with this Act and with the terms and conditions to which the lease is subject, the Minister may renew the lease for a further term, not exceeding 5 years, on such terms and conditions as he thinks fit.
4. If the application for the renewal of a retention lease is not decided before the date of expiry, the lease continues in operation until the application is decided and, if the lease is renewed, the renewal dated from the date of which the lease would, but for this subsection, have expired.

**d) Rental**

A retention lease shall provide for the payment, by way of rental, of such sum as may be prescribed.

**e) Rights conferred by lease**

A retention lease shall (i) confer an exclusive right upon the holder of the lease to prospect for minerals in the land comprised in the lease; and (ii) confer on the holder of the lease such other rights to conduct mining operations in respect of the land comprised in the lease as may be stipulated in the lease; and (iii) confer on the holder of the lease an exclusive right to apply for a mining lease in respect of the land comprised in the lease.

**5. Miscellaneous purposes licence**

**a) Application for licence**

An application for a miscellaneous purposes licence must be in the prescribed form and (i) must include a statement of the nature and extent of the operations or activity to be carried on in pursuance of the licence; and the measures (if any) that the applicant proposes to take to remedy damage to land that may result from the proposed operations or activity; and such information as is prescribed; and (ii) must be accompanied by the prescribed fee.

**b) Grant of miscellaneous purposes licence**

1. The Minister may grant to any person a miscellaneous purposes licence under this Part in respect of mineral land.
2. A licence may be granted for any of the following purposes :for the carrying on of any business that may conduce to the effective conduct of mining operations or provide amenities for persons engaged in the conduct of mining operations; or for establishing and operating plant for the treatment of ore recovered in the course of mining operations; or for drainage from a mine; or for the disposal of overburden or any waste produced by mining operations; or any other purpose ancillary to the conduct of mining operations, and may be granted upon such terms and conditions as may be determined by the Minister and specified in the licence.
3. A miscellaneous purpose licence cannot granted over an area of land exceeding the maximum permissible area prescribed by the regulations.

**c) Term and renewal of miscellaneous purposes licence**

- (i) A miscellaneous purposes licence may be granted for such term, not exceeding 21 years, as may be determined by the Minister and specified in the licence.
- (ii) The holder of a miscellaneous purposes licence shall, if he has complied with the provisions of this Act and the terms and conditions of the licence during the term for which the licence was granted or last renewed, be entitled, at the expiration of that term, to the renewal of the licence for a further term.
- (iii) A person who is entitled to the renewal of a miscellaneous purposes licence under this section makes due application for the renewal of the licence not more than 6 months and not less than 3 months before the date of its expiry, the Minister shall renew the licence for a term, not exceeding 21 years, determined by the Minister.
- (iv) If the application for the renewal of a miscellaneous purpose licence is not decided before the date of expiry, the lease continues in operation until the application is

decided and, if the lease is renewed, the renewal dated from the date of which the lease would, but for this subsection, have expired.

**d) Suspension and cancellation of licence**

1. The Minister may suspend or cancel a miscellaneous purposes licence if the licensee contravenes, or fails to comply with, a term or condition of the licence or any provision of this Act.
2. If a licence is suspended or cancelled under this Section, the licensee may, within 28 days of the suspension or cancellation, appeal to the ERD Court and the Court may, if satisfied that there is no proper ground for the suspension or cancellation, declare the suspension or cancellation void.

**6. Special mining enterprises**

**a) Object of this Part**

The object of this Part is to facilitate the establishment, development or expansion of mining enterprises of major significance to the economy of this State by allowing greater security and flexibility of tenure.

**b) Special mining enterprises**

1. For the purposes of this Part, a mining enterprise (whether existing or proposed) is a *special mining enterprise* if the person who conducts or proposes to establish the enterprise has made application to the Minister for the exercise of powers under this Part; and the Governor is satisfied that the enterprise is of major significance to the economy of this State; and the Minister and the applicant have entered into an agreement, ratified by the Governor, for the exercise of powers under this Part and the grant of appropriate mining tenements in relation to the enterprise. An application under Subsection (1) must be made in the form approved by the Minister and must be accompanied by a written proposal containing full particulars of the mining enterprise.

**c) Power to exempt from or modify Act**

The Minister may, in accordance with the terms of an agreement under this Part (as ratified by the Governor)- exempt a special mining enterprise from any provision of this Act; or modify the application of a requirement of this Act in relation to the enterprise.

**7. Access to subsurface strata**

**a) Pegging out of access claim**

1. A person who holds a mining tenement in respect of a subsurface stratum may peg out an access claim, in accordance with the regulations, on land above the land comprised in the tenement.
2. The dimensions of an access claim must conform with the requirements of the regulations.
3. No more than 4 access claims may be held at the same time in respect of the same mining tenement.

**b) Registration of access claim**

1. Application for registration of an access claim — (a) must be in the prescribed form; and (b) must be lodged at the office of the Mining Registrar within 14 days after the day on

which the claim is pegged out; and (c) must be accompanied by the prescribed particulars.

2. A Mining Registrar shall, upon receipt of due application for registration of an access claim that has been lawfully pegged out, register the claim.
3. If application for registration of an access claim is not made as required by this Section, or if the Mining Registrar lawfully refuses to register the claim, the claim shall lapse.

**c) Rights conferred by access claim**

An access claim confers on the owner of the claim an exclusive right, subject to the provisions of this Act, to conduct mining operations of the kind authorised by the mining tenement to which the claim relates on the land comprised in the claim. The rights conferred by an access claim are exclusive of the rights of any other person to conduct mining operations on, or in respect of, the land comprised in the claim.

**d) Term etc. of access claim**

An access claim has a renewable term of 12 months. If an application is made in accordance with the regulations for renewal of an access claim, the owner of the claim is entitled to renewal of the claim for a further term of 12 months. An access claim shall lapse if, for any reason, the mining tenement to which it relates ceases to be in force. The holder of an access claim may, subject to this Act, surrender the claim at any time.

**8. Native title land**

**a) Exploration**

**i) Qualification of rights conferred by exploration authority**

1. An exploration authority confers no right to carry out mining operations on native title land unless — a) the mining operations do not affect native title (i.e., they are not wholly or partly inconsistent with the continued existence, enjoyment or exercise of rights deriving from native title); or b) a declaration is made under the law of the State or the Commonwealth to the effect that the land is not subject to native title; or c) an indigenous land use agreement registered under the *Native Title Act 1993* (Cwth) provides that statutory rights to negotiate are not intended to apply in relation to the mining operations.
2. However, a person who holds an exploration authority that would, if land were not native title land, authorise mining operations on the land may acquire the right to carry out mining operations on the land (that affect native title) from an agreement or determination authorising the operations under this Part.

**ii) Exploration rights to be held in escrow in certain circumstances**

1. If an exploration authority is granted in respect of native title land, and the holder of the authority has no right or no substantial right to explore for minerals on the land because of the absence of an agreement or determination authorising mining operations on the land, the exploration authority does nevertheless, while it remains in force, prevent the grant of registration of another exploration authority for exploring for minerals of the same class within the area to which the authority relates.
2. The Minister may revoke an exploration authority that is granted entirely or substantially in respect of native title land if it appears to the Minister that the holder of the authority is

not proceeding with reasonable diligence to obtain the agreement or determination necessary to authorise the effective conduct of mining operations on the land to which the authority relates.

## **b) Production**

### **i) Limits on grant of production tenement**

A production tenement may not be granted or registered over native title land unless the mining operations to be carried out under the tenement are authorised by a pre-existing agreement or determination registered under this Part; or an indigenous land use agreement registered under the *Native Title Act 1993* (Cwth) provides that statutory rights to negotiate are not intended to apply in relation to the mining operations to be carried out under the tenement;<sup>1</sup> or a declaration is made under the law of the State or the Commonwealth to the effect that the land is not subject to native title.

### **ii) Applications for production tenements**

1. The Minister may agree with an applicant for a production tenement over native title land that the tenement will be granted or registered contingent on the registration of an agreement or determination under this Part.
2. The Minister may refuse an application for a production tenement over native title land if it appears to the Minister that the applicant is not proceeding with reasonable diligence to obtain the agreement or determination necessary to the grant or registration of the tenement to which the application relates (and if the application is refused, the applicant's claim lapses).

## **c) Application for declaration/determination**

- i) Application for declaration:** Person who seeks to carry out mining operations on native title land may apply to the ERD Court for a declaration that the land is not subject to native title.
- ii) Application for determination :** If agreement between the proponent and the native title parties is not reached within the relevant period, any party to the negotiations or the Minister may apply to the ERD Court for a determination.
- iii) Ministerial power to overrule determinations :** If the Minister considers it to be in the interests of the State to overrule a determination of the ERD Court under this Part, the Minister may, by notice in writing given to the ERD Court and the parties to the proceedings before the Court, overrule the determination and substitute another determination that might have been made by the Court.

## **9. Assistance to Mining**

### **a) Minister may assist in conduct of mining operations**

1. The Minister may assist in the conduct of mining operations by the loan of mining equipment or of money to be expended in advancing mining operations.
2. Assistance may be provided upon such terms and conditions as may be determined by the Minister, but any money advanced under Subsection (1) shall become a debt due to the Crown, to be repaid in such manner as the Minister may direct.

## 10. Private mines

### a) Interpretation

#### 1. In this Part

*compliance order* — see Section 73I of the Act;

*environment* means land, air, water, organisms and ecosystems, and includes human-made or modified structures or areas;

*general duty* means the duty under Section 73H of the Act;

*mine operations plan* means a mine operations plan under Section 73G of the Act;

*private mine* means an area declared to be a private mine under Section 19 as in force immediately before the commencement of this Part;

*rectification authorisation* — see Section 73K of the Act;

*rectification order* — see Section 73J of the Act.

2. Without derogating from the general meaning of mining operations under this Act, *mining operations* includes, for the purposes of this Part, when carried out within the boundaries of a private mine — a) the treatment, processing or handling of any material recovered in the course of mining operations; and b) any activity ancillary to the conduct of mining operations.

### b) Exemption from Act

1. Subject to this Part, and any other provisions of this Act that explicitly apply to a private mine or the operator of a private mine, a private mine is exempt from the other Parts of this Act.
2. Land comprised within a private mine cannot be subject to a mining tenement under this Act.

### c) Royalty

1. Royalty is, subject to and in accordance with the provisions of this Act, payable on extractive minerals recovered from a private mine, but is not payable on any other minerals so recovered.
2. Subject to Subsection (3), the proprietor of a private mine is liable for royalty payable under this Section.
3. If a) a person other than the proprietor is carrying out mining operations at a private mine; and b) the proprietor gives notice to the Minister in the prescribed form under this Section, the person carrying out the mining operations (rather than the proprietor) is liable for royalty under this Section.

### d) Passing of property in minerals

1. While a mine continues as a private mine under this Act, the property in any minerals recovered from the mine will a) in the case of all minerals except extractive minerals, pass to the person by whom the minerals are lawfully mined on recovery of the minerals; or b) in the case of extractive minerals, pass to the person by whom the minerals are lawfully mined on, and in consideration of, payment of royalty.



2. Subsection (1) operates subject to any contract, agreement, assignment, mortgage, charge or other instrument relating to proprietary rights in the minerals.
3. An interested party may by application to the Warden's Court, seek the determination of any question or dispute as to the effect or enforcement of a contract, agreement, assignment, mortgage, charge or other instrument under Subsection (1).
4. The Court may, on the hearing of an application under Subsection (3), make such orders as it considers necessary or expedient to give effect, consistently with the provisions of this Act, to the intention of the contract, agreement, assignment, mortgage, charge or other instrument or to achieve a just settlement of any matters of dispute.

**e) Powers of inspectors and authorised persons**

1. An inspector, or any person authorised in writing by the Director, may do all or any of the following as may be reasonably required in connection with the administration or operation of this Part:
  - a) enter and inspect any private mine;
  - b) carry out, or cause to be carried out, any investigation, examination, test or survey;
  - c) take, and remove, specimens and samples;
  - d) require a person to produce documents (which may include a written record reproducing in an understandable form information stored by computer, microfilm or other process);
  - e) examine, copy or take extracts from a document or information so produced or require a person to provide a copy of the document or information;
  - f) require a person to answer questions;
  - g) give directions.
2. In the exercise of powers under this Section an inspector or an authorised person may be assisted by such persons as may be necessary or desirable in the circumstances.
3. A person exercising a power under this Section must not unnecessarily impede or obstruct the lawful use or enjoyment of a private mine.
4. Subject to the requirements of Subsection (3), the proprietor or occupier of a private mine must give an inspector or an authorised person, or a person assisting an inspector or an authorised person, such assistance as is reasonably required for the effective exercise of a power conferred by this Section.
5. A person who — a) without reasonable excuse, hinders or obstructs a person in the exercise of powers under this Section; or b) uses abusive, threatening or insulting language to a person exercising a power under this Section; or c) without reasonable excuse, fails to obey a requirement or direction imposed or given under this Section; or d) without reasonable excuse, fails to answer, to the best of the person's knowledge, information and belief, a question put under this Section is guilty of an offence.
6. It is not an excuse for a person to refuse or fail to answer a question or to produce, or provide a copy of, a document or information as required under this Section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

7. However, if compliance by a person with a requirement to answer a question or to produce, or provide a copy of, a document or information might tend to incriminate the person or make the person liable to a penalty, then — a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy, of the document or the information (as distinct from the contents of the document or the information); or b) in any other case—the answer given in compliance with the requirement, is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).
8. An inspector or an authorised person, or a person assisting an inspector or an authorised person, who, in the course of exercising powers under this Act — a) addresses offensive language to another person; or b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to another person, is guilty of an offence.
9. This Section does not limit the action that an inspector may take in order to carry out the requirements of a compliance order or to give effect to a rectification authorisation.

## 11. Miscellaneous

### a) *Penalty for illegal mining*

1. A person who — a) mines; or b) sells, or disposes of, minerals recovered by him in the course of mining operations, or utilises any such minerals for a commercial or industrial purpose, without being duly authorised by or under this Act shall be guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 2 years. A person who encourages, or procures the commission of an offence under Subsection (1) shall be guilty of an offence. Maximum penalty: \$5 000 or imprisonment for 2 years.

### b) *Compliance orders*

1. If a person carries out mining operations without the authority required by this Act, the ERD Court may, on application by the Director or the owner of land on which the operations are carried out, make an order (a *compliance order*) requiring the person (the *respondent*) — a) to stop the operations; and b) if the operations have resulted in damage to land—to take specified action to rehabilitate the land.
2. Before the Court makes a compliance order it must allow the respondent a reasonable opportunity to be heard on the application.
3. A person against whom a compliance order is made must comply with the order.

Maximum penalty: \$100 000.

### c) *Provision relating to certain minerals*

1. No claim or lease may be pegged out or granted in respect of extractive minerals on land granted in fee simple or land in respect of which native title conferring a right to exclusive possession of land exists except with the written consent of the owner of the land.
2. The owner of land does not require a mining tenement under this Act for the recovery of extractive minerals from that land for his own personal use.

**d) Persons under 16 years of age**

1. No person under the age of 16 years is competent to hold a miner's right or mining tenement.
2. The obligations imposed by or under this Act are binding on a minor of or above the age of 16 years who holds a miner's right or mining tenement.

**e) Minister may grant exemption from certain obligations**

1. Where the Minister is satisfied that circumstances exist that justify him in so doing, he may a) exempt the holder of a lease or licence under this Act from the obligation to comply with a condition of the lease or licence; or b) exempt the holder of a mining tenement from the obligation to comply with a provision of this Act (except Part 9B).
2. An exemption under this Section a) may be granted absolutely or on conditions; and b) shall remain in force for a period determined by the Minister.
3. An exemption may not be granted under this Section so as to discriminate against the holders of native title in land.

**f) Surrender of lease or licence**

The Minister may, upon receipt of an application in the prescribed form by the holder of a lease or licence under this Act, consent to the surrender of the lease or licence.

**12. Reservation of minerals and Royalty**

**a) Reservation of minerals**

1. Notwithstanding the provisions of any other Act or law, or of any land grant or other instrument, the property in all minerals is vested in the Crown.
2. This Section applies in respect of all mineral land and in respect of all other land (including reserved land) in the State or under coastal waters on the landward side of the baseline.

**b) Royalty**

1. Subject to this Section, royalty shall be payable to the Minister on all minerals recovered from mineral land and — a) sold or intended for sale; or b) utilised, or to be utilised, for any commercial or industrial purpose.
2. Royalty will be equivalent to the prescribed percentage of the value of the minerals as assessed at the mine gate.
3. The Minister may — a) fix the prescribed percentage by notice published in the Gazette; and b) by subsequent notice in the Gazette, vary the prescribed percentage so fixed.
4. The prescribed percentage must be at least 1.5 per cent but must not exceed 2.5 per cent.

\*\*\*\*

South Australia — Salient features

Type of concessions	Salient features
<p>1. Ownership rights &amp; Administrative control:</p>	<p>The Minister and the Director of Mines shall each be a corporation sole. The Minister may delegate any power or function vested in or conferred on the Minister under this Act. The Director of Mines may, with the Minister's consent, delegate any power or function (including a delegated power or function) vested in or conferred on the Director under this Act.</p>
<p>2. Type of land</p> <p>a) Entry of land</p> <p>b) Restoration of land</p> <p>c) Compensation of land</p>	<p>A person authorised to prospect, explore or mine for minerals under this Act may enter any mineral land (except exempt land) for the purpose of prospecting, exploring or mining for minerals in accordance with the authorisation; and may enter exempt land for the purpose of pegging out a claim.</p> <p>The terms and conditions of any relevant lease, licence, authorisation, agreement or determination under this Act, where a mining operator uses declared equipment in the course of mining operations, an inspector or authorised person may direct the operator, to restore the ground disturbed by the operations to a condition that is, in the opinion of the inspector or authorised person, satisfactory. A mining operator shall comply with a direction under the Act.</p> <p>The owner of any land upon which mining operations are carried out in pursuance of this Act shall be entitled to receive compensation for any economic loss, hardship and inconvenience suffered by him in consequence of mining operations.</p>

<p><b>3 Mineral concessions</b></p> <p><b>A. Prospecting of minerals</b></p> <p>a) Registration of claim</p>          <p>b) Area</p>     <p>c) Period</p>  <p>d) Renewal</p> <p>e) Transfer</p>	<p>Application for registration of a mineral claim must be lodged at the office of the Mining Registrar within 30 days after the day on which the claim is pegged out. A Mining Registrar shall, subject to this Act and any order of the Warden's Court, register a mineral claim upon receipt of due application for registration of the claim in the prescribed form and accompanied by the prescribed particulars. A Mining Registrar may refuse to register a mineral claim (other than a claim that relates solely to extractive minerals) if satisfied that - a) before the claim was pegged out, an application had been lodged for an exploration licence for an area comprising the area of the claim or portion of the area of the claim; and b) the application has not been refused. A Mining Registrar cannot register a mineral claim if to do so would be inconsistent with a public undertaking by the Minister to the mining industry. If application for registration of a mineral claim is not made as required by this Section, or if the Mining Registrar lawfully refuses to register the claim, the claim shall lapse.</p> <p>The area of a mineral claim must not exceed the maximum permissible area stipulated by the regulations. The maximum permissible area of a mineral claim may vary according to the nature of the minerals in respect of which the claim is pegged out.</p> <p>A miner's right shall remain in operation for a period of 3 years</p> <p>The miner's right may be renewed for a further period of 3 years</p> <p>A mineral claim is not transferable.</p>
<p><b>B. Exploration Licence</b></p> <p>a) Area</p>	<p>The area of the land in respect of which an exploration licence is granted must not exceed 1000 square kilometres unless, in the opinion of the Minister, circumstances exist that justify the grant of a licence in respect of a greater area. However, if the exploration licence allows for exploratory operations for precious</p>

	<p>stones in an opal development area, the area of land in respect of which a licence is granted cannot exceed 20 square kilometres unless, in the opinion of the Minister, circumstances exist that justify the grant of a licence in respect of a greater area.</p>
b) Period	<p>An exploration licence is to be granted for a term decided by the Minister of upto five years.</p>
c) Renewal	<p>If an exploration licence is granted for a term of less than five years, the licence may include a right of renewal but not so the aggregate term of the licence exceeds five years.</p>
d) Grant	<p>An application for an exploration licence must be made in a manner and form determined by the Minister and must be lodged with the Director of Mines. The applicant shall forward with an application for an exploration licence - the prescribed application fee; and a map on which are delineated the boundaries of the land in respect of which the licence is sought; and a statement outlining the exploratory operations that the applicant proposes to carry out in pursuance of the licence, showing the estimated expenditure to be incurred in carrying out those operations; and a statement of the technical and financial resources available to the applicant; and a statement of the nature of the minerals for which the applicant proposes to explore. The Minister may grant an exploration licence to any person. An exploration licence authorises the licensee to carry out exploratory operations of a kind described in the licence in respect of land described in the licence.</p>
e) Subsequent exploration licence	<p>The Minister may, on the expiration of an exploration licence the term or aggregate term of which was five years, grant to the licensee an exploration licence (a <i>subsequent exploration licence</i>) over the area of land, or a part of the area of land</p>

<p><b>C. Mining Lease</b></p> <p>a) Area</p> <p>b) Period</p> <p>c) Renewal</p> <p>d) Grant</p> <p>e) Suspension or cancellation</p> <p>f) Rental:</p>	<p>The maximum permissible area of the land in respect of which a mining lease may be granted shall be prescribed.</p> <p>A mining lease may be granted for such term, not exceeding 21 years, as may be determined by the Minister and specified in the lease.</p> <p>The Minister shall renew the lease for a term, not exceeding 21 years, determined by the Minister.</p> <p>The Minister may grant a mining lease to the holder of a registered mineral claim, in respect of the whole or part of the land comprised in the claim; or to the holder of a retention lease, in respect of the whole or part of the land comprised in the lease.</p> <p>The Minister may suspend or cancel a mining lease if the lessee contravenes or fails to comply with a term or condition of the lease or a provision of this Act.</p> <p>A mining lease shall provide for the payment, by way of rental, of such sum as may be prescribed.</p>
<p><b>D. Retention lease</b></p> <p>a) Area</p> <p>b) Period</p> <p>c) Renewal</p> <p>d) Grant</p>	<p>Whole or part of the land comprised in the claim.</p> <p>A retention lease shall be granted for a term, not exceeding 5 years, specified in the lease.</p> <p>If the applicant has complied with this Act and with the terms and conditions to which the lease is subject, the Minister may renew the lease for a further term, not exceeding 5 years, on such terms and conditions as he thinks fit.</p> <p>An application for a retention lease must be in the prescribed form and accompanied by the prescribed fee. The Minister may require the applicant to furnish him with such information and survey as the Minister thinks fit. The Minister may, subject to this Section and other relevant provisions under the Act grant to the holder of a registered mineral claim a retention lease of the whole or part of the land comprised in the claim.</p>

e) Rental	A retention lease shall provide for the payment, by way of rental, of such sum as may be prescribed.
<b>E. Miscellaneous purposes licence</b> a) Area  b) Period  c) Renewal  d) Grant  e) Suspension and cancellation	<p>A miscellaneous purpose licence cannot be granted over an area of land exceeding the maximum permissible area prescribed by the regulations.</p> <p>A miscellaneous purposes licence may be granted for such term, not exceeding 21 years, as may be determined by the Minister and specified in the licence.</p> <p>A person who is entitled to the renewal of a miscellaneous purposes licence under this section makes due application for the renewal of the licence not more than 6 months and not less than 3 months before the date of its expiry, the Minister shall renew the licence for a term, not exceeding 21 years, determined by the Minister.</p> <p>An application for a miscellaneous purposes licence must be in the prescribed form and (i) must include a statement of the nature and extent of the operations or activity to be carried on in pursuance of the licence; and the measures (if any) that the applicant proposes to take to remedy damage to land that may result from the proposed operations or activity; and such information as is prescribed; and (ii) must be accompanied by the prescribed fee. The Minister may grant to any person a miscellaneous purposes licence in respect of mineral land.</p> <p>The Minister may suspend or cancel a miscellaneous purposes licence if the licensee contravenes, or fails to comply with, a term or condition of the licence or any provision of this Act. If a licence is suspended or cancelled under this Section, the licensee may, within 28 days of the suspension or cancellation, appeal to the ERD Court and the Court may, if satisfied that there is no proper ground for the suspension or cancellation, declare the suspension or cancellation void.</p>
<b>F. Special mining enterprises</b>	To facilitate the establishment, development or expansion of mining enterprises of major significance to the economy of this State by



	allowing greater security and flexibility of tenure. The grant of appropriate mining tenements in relation to the enterprise.
<b>G. Access to subsurface strata</b>	
a) Pegging out of access claim	A person who holds a mining tenement in respect of a subsurface stratum may peg out an access claim, in accordance with the regulations, on land above the land comprised in the tenement. The dimensions of an access claim must conform with the requirements of the regulations. No more than 4 access claims may be held at the same time in respect of the same mining tenement.
b) Registration of access claim	Application for registration of an access claim must be in the prescribed form; must be lodged at the office of the Mining Registrar within 14 days after the day on which the claim is pegged out; and must be accompanied by the prescribed particulars. A Mining Registrar shall, upon receipt of due application for registration of an access claim that has been lawfully pegged out, register the claim. If application for registration of an access claim is not made as required by this Section, or if the Mining Registrar lawfully refuses to register the claim, the claim shall lapse.
c) Rights of access claim	An access claim confers on the owner of the claim an exclusive right, subject to the provisions of this Act, to conduct mining operations of the kind authorised by the mining tenement to which the claim relates on the land comprised in the claim. The rights conferred by an access claim are exclusive of the rights of any other person to conduct mining operations on, or in respect of, the land comprised in the claim.
d) Term, lapse, surrender of access claim	An access claim has a renewable term of 12 months. If an application is made in accordance with the regulations for renewal of an access claim, the owner of the claim is entitled to renewal of the claim for a further term of 12 months. An access claim shall lapse if, for any reason, the mining tenement to which it relates ceases to be in force. The holder of an access claim may, subject to this Act, surrender the claim at any time.
<b>4. Native Title land</b>	
a) Exploration	An exploration authority confers no right to

<p>b) Production</p> <p>c) Declaration</p> <p>d) Determination</p>	<p>carry out mining operations on native title land unless- a) the mining operations do not affect native title (i.e. they are not wholly or partly inconsistent with the continued existence, enjoyment or exercise of rights deriving from native title); or b) a declaration is made under the law of the State or the Commonwealth to the effect that the land is not subject to native title; or c) an indigenous land use agreement registered under the <i>Native Title Act 1993</i> (Cwth) provides that statutory rights to negotiate are not intended to apply in relation to the mining operations.</p> <p>The Minister may agree with an applicant for a production tenement over native title land that the tenement will be granted or registered contingent on the registration of an agreement or determination under this Part.. The Minister may refuse an application for a production tenement over native title land if it appears to the Minister that the applicant is not proceeding with reasonable diligence to obtain the agreement or determination necessary to the grant or registration of the tenement to which the application relates (and if the application is refused, the applicant's claim lapses).</p> <p>Person who seeks to carry out mining operations on native title land may apply to the ERD Court for a declaration that the land is not subject to native title.</p> <p>If agreement between the proponent and the native title parties is not reached within the relevant period, any party to the negotiations or the Minister may apply to the ERD Court for a determination.</p>
<p><b>5. Assistance to mining</b></p>	<p>The Minister may assist in the conduct of mining operations by the loan of mining equipment or of money to be expended in advancing mining operations.</p>
<p><b>6. Private mines</b></p> <p>a) Exemption from Act</p> <p>b) Royalty</p>	<p>Any other provisions of this Act that explicitly apply to a private mine or the operator of a private mine, a private mine is exempt from the other Parts of this Act. Land comprised within a private mine cannot be subject to a mining tenement under this Act.</p> <p>Royalty is payable on extractive minerals</p>

	<p>recovered from a private mine, but is not payable on any other minerals so recovered. The proprietor of a private mine is liable for royalty payable under this Section. If a) a person other than the proprietor is carrying out mining operations at a private mine; and b) the proprietor gives notice to the Minister in the prescribed form under this Section, the person carrying out the mining operations (rather than the proprietor) is liable for royalty under this Section.</p>
<p><b>7. Penalty of illegal mining</b></p>	<p>A person who - a) mines; or b) sells, or disposes of, minerals recovered by him in the course of mining operations, or utilises any such minerals for a commercial or industrial purpose, without being duly authorised by or under this Act shall be guilty of an offence. Maximum penalty: \$5 000 or imprisonment for 2 years. A person who encourages, or procures the commission of an offence under Subsection (1) shall be guilty of an offence. Maximum penalty: \$5 000 or imprisonment for 2 years.</p>
<p><b>8. Royalty</b></p>	<p>Subject to this Section, royalty shall be payable to the Minister on all minerals recovered from mineral land and - a) sold or intended for sale; or b) utilised, or to be utilised, for any commercial or industrial purpose. Royalty will be equivalent to the prescribed percentage of the value of the minerals as assessed at the mine gate. The Minister may - a) fix the prescribed percentage by notice published in the Gazette; and b) by subsequent notice in the Gazette, vary the prescribed percentage so fixed. The prescribed percentage must be at least 1.5 per cent but must not exceed 2.5 per cent.</p>