



New South Wales

Mining Amendment Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Mining Act 1992* (the **Principal Act**) for the following purposes:

- (a) to make it an offence to carry out certain mining purposes without a mining lease, exploration licence, assessment lease, mineral claim, opal prospecting licence or an environmental assessment permit (an **authorisation**),
 - (b) to require mining of private minerals to be carried out under the authority of an authorisation and to create a new class of authority for mineral owners (a **mineral owner authority**) and to make other provisions relating to such authorities,
 - (c) to enable the Director-General (rather than the mining registrar) to grant mineral claims, opal prospecting licences and mineral owner authorities and to confer functions currently exercised by mining registrars on the Director-General,
 - (d) to enable an existing authorisation and a new authorisation granted over the same land to both apply to the land in certain circumstances,
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- (e) to remove the current limitations on the area of land over which an exploration licence may be granted and to enable regulations to be made with respect to the shape and size of land required,
- (f) to provide for the kinds of prospecting or prospecting operations permitted under an authorisation to be determined by the Minister by order published in the Gazette, with additional operations to be approved on application,
- (g) to limit protections relating to the exercise of mining rights on land on which residences, gardens and improvements are situated to things that are not owned by holders of authorisations or related corporations,
- (h) to confer jurisdiction as to certain disputes on a Warden's Court,
- (i) to make it a condition of a mining lease that the holder must comply with an approved rehabilitation and environmental management plan, to enable such a condition to be imposed on other authorisations and to provide for requirements for rehabilitation and environmental management plans,
- (j) to enable conditions relating to cores and samples obtained in the course of mining operations to be imposed on mining leases, assessment leases and exploration licences,
- (k) to make certain current obligations of holders of authorisations, relating to fencing and gates, offences,
- (l) to require mining subleases to be registered for the purposes of recognition under the Principal Act and to make other provision with respect to the registration of mining subleases and the payment of royalties by holders of mining subleases,
- (m) to provide that fees under the Principal Act are to be prescribed by regulation rather than determined by the Minister,
- (n) to extend the grounds on which an application for renewal or transfer of a mining lease, assessment lease or exploration licence may be granted or refused or on which such authorisations may be cancelled,
- (o) to prevent a notice of withdrawal of an application from being challenged later than one month after it is given,
- (p) to require coal miners to apply for registration of colliery holdings and to make other provision with respect to the registration of colliery holdings,
- (q) to provide for the amendment of authorisations to remove inconsistencies with subsequent development approvals,
- (r) to confer immunity on the Crown, the Minister or a person administering the Principal Act from claims for damages resulting from the exercise of rights under certain authorisations,
- (s) to require mineral claims to be situated within mineral claims districts,

- (t) to require the effect on the environment of approving applications relating to authorisations, and the environmental performance of an applicant, to be taken into account when decisions about applications are made,
 - (u) to enable conditions relating to environment protection, reporting and mandatory audits to be imposed on authorisations,
 - (v) to empower the Director-General and inspectors to issue directions requiring compliance with the conditions of an authorisation and work to be done to address the adverse environmental impact of activities carried out under an authorisation,
 - (w) to expand the powers of the Director-General to suspend an authorisation,
 - (x) to establish a scheme for the declaration and rehabilitation of derelict mine sites,
 - (y) to establish the Derelict Mine Sites Fund and the Mineral Claims Districts Compensation Fund,
 - (z) to provide for the forfeiture of mining plant that is not removed after the end of an authorisation,
 - (aa) to re-enact provisions conferring powers on, and providing for the appointment of, inspectors under the Principal Act,
 - (ab) to expand provisions relating to requirements for security deposits,
 - (ac) to make it clear that an agreement as to compensation of landholders is required before compensable work can be undertaken under a mining lease or an assessment lease,
 - (ad) to enact in statutory form the current administrative compensation scheme for landholders affected by work carried out under mineral claims or opal prospecting licences,
 - (ae) to make it an offence to fail to pay royalty and to insert offences relating to other matters, including providing false or misleading information and contravening conditions of authorisations,
 - (af) to re-enact provisions relating to the liability of directors and other persons for offences committed by corporations under the Principal Act,
 - (ag) to make other provision relating to proceedings for offences and enforcement of the Principal Act,
 - (ah) to enact savings and transitional provisions consequent on the proposed Act.
- The proposed Act also makes consequential amendments to other Acts and a regulation.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to Schedule 1 which sets out the amendments to the *Mining Act 1992*.

Clause 4 is a formal provision that gives effect to Schedule 2 which sets out the amendments to other Acts and an instrument.

Clause 5 repeals the *Mining Amendment (Miscellaneous Provisions) Act 2004*.

Clause 6 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Mining Act 1992

Objects

Schedule 1 [1] inserts section 3A into the Principal Act. The proposed section sets out the objects of the Principal Act.

Mining offences and privately owned minerals

Schedule 1 [2] omits sections 5–9 and inserts proposed sections 5 and 6 into the Principal Act. The effect of the amendment is to make it an offence to carry out certain mining purposes except in accordance with an authorisation, as well as to re-enact the existing offence of carrying out mining except in accordance with an authorisation. A daily penalty is imposed for continuing offences.

The amendment also repeals provisions relating to mining of private minerals, for which an authorisation will now be required to be held. The Director-General will determine applications for these authorisations (*mineral owner authorities*).

Schedule 1 [3] substitutes section 10 of the Principal Act to make it a defence to an offence under proposed section 5 or 6 if a person was carrying out an activity permitted under section 81 of the Principal Act and to re-enact the existing defence of fossicking.

Schedule 1 [7] amends sections 12B, 12C and 12D of the Principal Act to amend penalties for the offences of stealing minerals, or fraudulently removing and concealing minerals, in line with the proposed penalties for proposed sections 5 and 6.

Schedule 1 [9] amends section 14 of the Principal Act to make it clear that tenders may not be called for exploration (mineral owner) licences. **Schedule 1 [15]** makes a consequential amendment. **Schedule 1 [44]** makes an amendment (similar to the

amendment made by Schedule 1 [9]) in relation to mining (mineral owner) leases and **Schedule 1 [49]** makes a consequential amendment.

Schedule 1 [13], [14], [31], [48], [67] and [73] amend various sections of the Principal Act to change references to “Minister” to references to “decision-maker” (which may refer to the Minister or the Director-General) because mineral owner authorities will be issued by the Director-General, while other authorities will continue to be issued by the Minister.

Schedule 1 [19], [36], [55] and [139] omit provisions as a result of the introduction of mineral owner authorities.

Schedule 1 [23] amends section 24 of the Principal Act to limit the grant of exploration (mineral owner) licences to the owner of privately owned minerals in respect of those minerals. **Schedule 1 [39], [60] and [63]** make similar amendments in relation to assessment (mineral owner) leases and mining (mineral owner) leases.

Schedule 1 [25] amends section 25 of the Principal Act to make it clear that the limitations on the size of an exploration licence do not apply to an exploration (mineral owner) licence.

Mining activities

Schedule 1 [4] amends section 11A of the Principal Act to enable regulations to be made providing for declarations by the Minister that specified activities, or a specified class or classes of activities, are not prospecting or mining for the purposes of the Principal Act. **Schedule 1 [5] and [282]** make consequential amendments.

Applications for authorisations

Schedule 1 [8] inserts proposed sections 13–13B, relating to applications for exploration licences, into the Principal Act. The amendment re-enacts the current application provisions and also provides for applications by owners of privately owned minerals for exploration (mineral owner) licences. Notice of an application is to be published in a newspaper circulated State-wide. A person will not be able to apply for an exploration (mineral owner) licence within 2 years of a prior refusal or cancellation of such a licence. **Schedule 1 [10]** makes a consequential amendment. **Schedule 1 [30]** makes similar provision with respect to applications for assessment leases (proposed sections 33–33B). **Schedule 1 [43]** makes similar provision with respect to applications for mining leases (proposed sections 51–51B) and **Schedule 1 [45]** makes a consequential amendment.

Schedule 1 [12] amends section 15 of the Principal Act to enable the tender invitation for an exploration licence to require additional information to be provided by a tenderer.

Schedule 1 [16] amends section 19 of the Principal Act to remove the requirement for an existing prior applicant for an exploration licence to consent to the grant of an exploration licence, if the application does not relate to a group of minerals covered by the licence to be granted. **Schedule 1 [32], [51] and [134]** amend various sections of the Principal Act to make similar amendments in relation to assessment leases, mining leases and mineral claims.

Schedule 1 [18] amends section 19 of the Principal Act to enable an existing authorisation relating to land over which an exploration licence is granted to continue to apply if the decision-maker determines that it is not likely to make the exercise of rights under the licence or the other authorisation impracticable. **Schedule 1 [17]** makes a consequential amendment. **Schedule 1 [33] and [34], [52] and [53] and [135] and [136]** make similar amendments in relation to assessment leases, mining leases and mineral claims.

Schedule 1 [20] amends section 22 of the Principal Act to make it clear that an exploration licence may be granted for all or part of the land the subject of the application for the licence. **Schedule 1 [37], [57] and [142]** amend various sections of the Principal Act to make similar changes in relation to assessment leases, mining leases and mineral claims.

Schedule 1 [21] amends section 22 of the Principal Act to extend the grounds on which an application for an exploration licence may be refused to include the conviction of a director of an applicant corporation for an offence against the Principal Act or the regulations or for any other offence relating to mining or minerals and providing false or misleading information in the application. **Schedule 1 [22], [38], [58], [61], [143] and [191]** amend various sections of the Principal Act to make similar changes in relation to applications for tenders for exploration licences, assessment leases, mining leases, tenders for mining leases, mineral claims and opal prospecting licences.

Schedule 1 [24] amends section 25 of the Principal Act to remove the current minimum specification for the area of an exploration licence and replaces it with a power for regulations to be made as to the shape and size of areas for licences. **Schedule 1 [257], [275] and [284]** make consequential amendments.

Schedule 1 [26] re-enacts section 27 of the Principal Act. The new provision specifies that the term of an exploration (mineral owner) licence is to be 2 years. **Schedule 1 [40]** re-enacts section 45 to make similar provision with respect to assessment leases.

Schedule 1 [35] amends section 38 of the Principal Act to enable wardens, rather than inspectors, to investigate and report on objections by holders of existing exploration licences to applications for assessment leases over the same land. **Schedule 1 [54] and [138]** amend various sections of the Principal Act to make similar changes in relation to applications for mining leases and mineral claims.

Schedule 1 [47] amends section 53 of the Principal Act to enable the tender invitation to specify additional information to be provided with a tender.

Schedule 1 [50] omits a provision that permitted mining lease applications to be dealt with, at the applicant's request, as if they were applications for other authorisations.

Schedule 1 [62] amends section 66 of the Principal Act to replace the obligation on the Director-General to ensure that land is properly surveyed before a mining lease is granted with an obligation to be satisfied that it has been so surveyed.

Schedule 1 [129] amends section 178 of the Principal Act to require an application for a mineral claim to be lodged with the Director-General rather than a mining registrar and makes other amendments relating to making such applications.

Schedule 1 [149] omits a provision that continues a mineral claim in force until an application made by the holder for an assessment lease or a mining lease is determined.

Schedule 1 [268] amends Schedule 1 to the Principal Act to remove the requirement to notify a landholder of a relevant application for a mining lease if the landholder is the applicant or a related corporation of the applicant.

Conditions and rights of authorisations

Schedule 1 [26] re-enacts section 26 of the Principal Act. The new provision enables a condition to be imposed on an exploration licence relating to cores and samples obtained in the course of drilling. **Schedule 1 [40]** re-enacts section 44 of the Principal Act to make similar provision with respect to assessment leases.

Schedule 1 [27] inserts proposed sections 29 and 30 into the Principal Act. The proposed sections provide for the prospecting and prospecting operations that may be carried out under an exploration licence to be determined by the Minister by order published in the Government Gazette. Additional kinds of prospecting or prospecting operations may be authorised by the decision-maker. An unsuccessful applicant for such an authorisation may apply to the decision-maker for a review. **Schedule 1 [41]** inserts similar provisions relating to assessment leases (proposed sections 47 and 48).

Schedule 1 [69] and [70] insert similar provisions relating to mining leases (proposed sections 73 (2)–(9) and 74).

Schedule 1 [28] amends section 31 of the Principal Act to clarify that a holder of an exploration licence, or a related corporation, that is the owner of a dwelling-house, garden or improvement on land on which rights under an exploration licence are exercised is not required to consent to the exercise of those rights. The amendment also confers on a Warden's Court, rather than a warden and the Minister, jurisdiction relating to disputes about such land. **Schedule 1 [42], [56] and [141]** amend various sections of the Principal Act to make similar changes with respect to assessment leases, mining leases and mineral claims.

Schedule 1 [29] inserts proposed section 32EA into the Principal Act, to confer on the holder of a low-impact exploration licence a right to seek a review of a determination of an application to vary the prospecting operations permitted under the licence.

Schedule 1 [64] amends section 70 of the Principal Act to impose on the holder of a mining lease a condition that the holder must comply with a rehabilitation and environmental management plan in carrying out activities authorised by the lease or other activities authorised under the Act. The amendment also re-imposes the condition that a holder must not suspend mining operations without the written consent of the decision-maker. **Schedule 1 [66]** makes a consequential amendment.

Schedule 1 [65] amends section 70 of the Principal Act to enable a condition to be imposed on a mining lease relating to cores and samples obtained in the course of mining or mining operations.

Schedule 1 [68] amends section 72 of the Principal Act to remove the requirement for a mining lease to be in a form approved by the Minister.

Schedule 1 [69] amends section 73 of the Principal Act to enable entry onto a mining area by a mining lease holder for the purpose of a requirement or activity authorised by the lease or by any person for the purpose of delivering goods or providing services to the holder.

Schedule 1 [72] amends section 77 of the Principal Act to prohibit a direction from being given that a mining (mineral owner) lease applies to an additional mineral unless the additional mineral is owned by the holder of the lease.

Schedule 1 [74] amends section 81 of the Principal Act to permit additional activities prescribed by the regulations to be carried out by the holder of a mining lease on the surface of the land subject to the lease, with the consent of the landholder or the holder of an authorisation. **Schedule 1 [75], [76] and [263]** make consequential amendments.

Schedule 1 [99] substitutes section 140 to make it clear that an access arrangement for prospecting titles may be agreed on before or after the title is granted and to apply arrangements applicable to previous authorisations in certain circumstances. **Schedule 1 [264]** makes a consequential amendment.

Schedule 1 [115] amends section 164 of the Principal Act to make it clear that the holder of a mineral owner authority is not entitled to a right of way between the land subject to the authority and a public road.

Schedule 1 [116] and [117] amend section 164 of the Principal Act to make it an offence to fail to provide substantial gates or grids at the intersection of fences with a right of way of a holder of an exploration licence, assessment lease or mining lease or to fail to provide rabbit-proof, marsupial-proof or dog-proof gates for any such fences. **Schedule 1 [174], [175], [199] and [200]** amend various sections of the Principal Act to make similar changes in relation to the holders of mineral claims and opal prospecting licences.

Schedule 1 [118] amends section 165 of the Principal Act to confer on a Warden's Court, rather than a warden and the Minister, jurisdiction relating to a dispute between the holder of an authority and a landholder over access to water.

Schedule 1 [119] inserts proposed section 168A into the Principal Act. The proposed section enables the conditions of an authorisation to be amended to remove an inconsistency between an authorisation and a development consent or approval under Part 3A of the *Environmental Planning and Assessment Act 1979*, if the inconsistency arises because of a consent or approval, or a modification of a consent or approval, given after the authorisation was granted.

Schedule 1 [121] substitutes section 170 of the Principal Act to confer on a Warden's Court, rather than a warden and the Minister, jurisdiction relating to a dispute

between the holder of 2 or more authorities concerning rights in relation to land or minerals. **Schedule 1 [179]** inserts new section 217 for the same purpose.

Schedule 1 [124] amends section 173 of the Principal Act to remove the requirement that the area of a mineral claim be wholly within a single mining division. **Schedule 1 [128]** makes a consequential amendment to section 176.

Schedule 1 [132] amends section 180 of the Principal Act to prohibit a mineral claim from being granted over land that is not within a mineral claims district. **Schedule 1 [140], [144], [146], [153], [173] and [176]** make consequential amendments.

Schedule 1 [133] repeals a provision that required the consent of a body controlling a reserve or other similar land to the grant of a mineral claim on that land.

Schedule 1 [148] amends section 195 of the Principal Act to make it clear that all activities authorised by that section are subject to the conditions of the mineral claim concerned. **Schedule 1 [147]** makes a consequential amendment.

Schedule 1 [156] substitutes section 202 of the Principal Act to confer on the Director-General, rather than a mining registrar, the power to register a change in the name of the person on whom the rights of the holder of a mineral claim have devolved by operation of law.

Schedule 1 [177] amends section 212 of the Principal Act to confer on a Warden's Court, rather than a warden and the Minister, jurisdiction to determine disputes about a landholder's access to water on land subject to a mineral claim.

Schedule 1 [178] amends section 213 of the Principal Act to make it an offence for the holder of a mineral claim to fail to comply with obligations relating to the use of water, the felling of trees, fencing or removing rock or earth.

Fees

Currently, section 382A of the Principal Act enables the Minister, with the concurrence of the Treasurer, to determine lodgment fees and mining lease fees. Various amendments to the Principal Act provide for fees to be prescribed instead by regulations. See **Schedule 1 [11]** (lodgment fees for tenders for exploration licences), **Schedule 1 [46]** (lodgment fees for tenders for mining leases), **Schedule 1 [59]** (lodgment fees for mining leases), **Schedule 1 [80]** (application fees for renewals of authorities), **Schedule 1 [86]** (lodgment fees for caveats), **Schedule 1 [100]** (fees for applications to appoint arbitrator), **Schedule 1 [104]** (fees for applications to register interests), **Schedule 1 [154]** (fees for applications to transfer mineral claims) and **Schedule 1 [189]** (fees for applications for opal prospecting licences).

Schedule 1 [259] replaces section 382A with a provision that enables the Director-General to refund or waive payment of fees under the Principal Act.

Mining subleases

Schedule 1 [77] substitutes section 83A of the Principal Act to remove the restriction on the amount of land that may be subleased and requires any sublease to be registered under proposed section 163A to have effect for the purposes of the Principal Act. **Schedule 1 [105]** makes a consequential amendment.

Schedule 1 [106] amends section 161 of the Principal Act to make it clear that the section (which enables the registration of legal and equitable interests in exploration licences, assessment leases and mining leases) does not apply to mining subleases.

Schedule 1 [107] amends section 162 of the Principal Act to make it clear that the granting or registration of a mining sublease does not result in the devolution of the rights of the holder of the head lease to any person.

Schedule 1 [114] inserts proposed sections 163A–163C into the Principal Act. Proposed sections 163A and 163B provide for applications for registration of mining subleases, registration of mining subleases by the Director-General and applications for removal of registration of subleases.

Renewals, transfers, cancellation and suspension of authorisations

Schedule 1 [80] amends section 113 of the Principal Act to remove the requirement that an application for renewal of an exploration licence, an assessment lease or a mining lease (having a term of less than one year) must be made not later than one month before the licence or lease ceases to have effect. It also re-enacts requirements for the periods within which applications relating to such other authorisations must be made. **Schedule 1 [95]** makes a consequential amendment.

Schedule 1 [81] amends section 113 of the Principal Act to make it clear that a holder of an exploration licence may apply for a renewal even if the holder is an applicant for or is granted an assessment lease or mining lease with respect to some or all of the land in the exploration area.

Schedule 1 [82] amends section 114 of the Principal Act to expand the grounds on which an application for the renewal of an exploration licence, assessment lease or mining lease may be refused. **Schedule 1 [152]** amends section 198 of the Principal Act to make similar provision with respect to applications for renewals of mineral claims.

Schedule 1 [83] amends section 114 of the Principal Act to limit the area of land for which an exploration licence may be renewed to not more than half of the area of the licence unless the decision-maker is satisfied that special circumstances exist.

Schedule 1 [84] amends section 118 of the Principal Act to enable the renewal of an exploration licence, assessment lease or mining lease to take effect on the occurrence of a specified event.

Schedule 1 [85] inserts proposed sections 120–122 into the Principal Act. The proposed sections set out the requirements for an application for transfer of an exploration licence, assessment lease or mining lease, the powers of the decision-maker with respect to applications and the procedures for registration of transfers.

Schedule 1 [88] amends section 125 of the Principal Act to expand the grounds on which an exploration licence, assessment lease or mining lease may be cancelled.

Schedule 1 [159] and [194] amend various sections of the Principal Act to make similar provision with respect to mineral claims and opal prospecting licences.

Schedule 1 [196] makes a consequential amendment.

Schedule 1 [87], [91]–[94], [161]–[168] and [170] amend various sections to remove references to suspension of authorities which is being dealt with in other provisions.

Schedule 1 [89] amends section 125 of the Principal Act to make it clear that action may be taken to cancel an exploration licence, assessment lease or mining lease whether or not any other action has been taken in respect of the licence or lease under the Principal Act.

Schedule 1 [90] substitutes section 126 of the Principal Act to remove references to suspension of authorities which is being dealt with in other provisions.

Schedule 1 [96] amends section 136 of the Principal Act to require notice of the refusal of a transfer application relating to an exploration licence, an assessment lease or a mining lease to be published in the Gazette.

Schedule 1 [97] amends section 136 of the Principal Act to require notice of a request for the cancellation of an exploration licence, an assessment lease or a mining lease to be published in the Gazette.

Schedule 1 [98] substitutes section 137 of the Principal Act to extend the limitation on challenges to decisions to limit challenges on refusals of applications and notices of withdrawal of an application. The amendment also makes it clear that the proposed section does not affect the operation of section 128 of the Principal Act (which relates to appeals to the District Court). **Schedule 1 [172]** substitutes section 210B of the Principal Act to make a similar change in relation to refusals and withdrawals of applications for mineral claims.

Schedule 1 [151] amends section 197 of the Principal Act to re-enact provisions setting out requirements for applications for renewals of mineral claims, with changes so that the fees are to be prescribed by the regulations and existing mineral claims stay in force while the applications are being determined only to the extent that the application covers the same land.

Schedule 1 [155] amends section 201 of the Principal Act to expand the grounds on which an application for the transfer of a mineral claim may be refused.

Schedule 1 [190] amends section 227 of the Principal Act to prohibit an opal prospecting licence from being granted to a person who already holds an opal prospecting licence.

Schedule 1 [197] inserts proposed section 234A into the Principal Act to prevent a challenge to the cancellation or grant or refusal of an opal prospecting licence later than 3 months after the relevant decision.

Protection of the environment, rehabilitation and directions relating to authorisations

Schedule 1 [204] substitutes Divisions 1 and 2 of Part 11 of the Principal Act (proposed sections 237–239D). The proposed sections require the Minister or Director-General, when making a decision about granting, renewing, transferring, suspending or cancelling an authorisation, imposing or varying authorisation conditions, registering mining subleases or approving rehabilitation and

environmental management plans, to consider the environmental impact of the decision, the environmental performance of the applicant or holder and any guidelines approved by the Director-General. In considering this, the Director-General is not required to consider matters already considered by a Minister or other public authority. Environmental performance is to include whether or not there have been contraventions of environment protection legislation. Proposed section 239B enables conditions to be imposed on holders of authorisations that require conservation and protection of the environment from harm, rehabilitation of land or water, afforestation and offsetting the effect of mining activities by the dedication of land or rehabilitation of other land or water. Proposed section 239C enables conditions requiring reports to be made to the Director-General relating to breaches to be imposed on holders of authorisations. Proposed section 239D enables information provided under a reporting condition to be used for the purposes of the Principal Act and to be admissible in evidence in a prosecution under the Principal Act or the regulations.

Schedule 1 [206] inserts proposed sections 239E–240E into the Principal Act. The proposed sections confer on the Director-General the power to direct a responsible person for an authorisation (that is, the holder, an operator of a mine subject to a sublease or a former holder) to give effect to a condition of an authorisation (other than royalty or security deposit conditions), to address the adverse environmental impact of activities or risk of such an impact, to conserve or protect the environment from harm resulting from activities under the authorisation or to prevent, control or mitigate any such harm. The proposed sections also confer on the Director-General power to direct the suspension of operations under an authorisation in the event of a contravention of an authorisation (including a condition), an access arrangement or a compensation agreement or assessment. Provision is made for the revocation or variation of directions and it will be an offence to fail to comply with a direction without a reasonable excuse. The administrative costs of directions are to be payable by persons given directions. **Schedule 1 [205]** makes a consequential amendment.

Schedule 1 [207] amends section 241 of the Principal Act to permit a person taking steps to enforce a direction to enter land and do anything necessary to carry out the direction but requires the entry to be after reasonable notice, at a reasonable time, without force and only with permission (in the case of residential premises). Compensation is payable to a person taking the steps if the person suffers damage because of taking them.

Schedule 1 [213] inserts proposed Division 5 of Part 11 (proposed sections 246F–246L) into the Principal Act. The proposed sections enable a condition to be imposed on an authorisation (other than a mining lease) to require the holder to comply with an approved rehabilitation and environmental management plan. The proposed sections also set out the procedures for applications for and approval of rehabilitation and environmental management plans and specify a term of 7 years for such plans. There will be a right to apply to the Minister for a review of a refusal to approve a rehabilitation and environmental management plan. Rehabilitation conditions under the proposed sections or proposed section 70 (which applies to

mining leases) continue to apply if an authorisation expires or is cancelled, subject to a determination by the Minister.

Schedule 1 [254] amends section 362 of the Principal Act to protect certain officers exercising powers in good faith from personal liability.

Derelict mine sites and removal of mining plant

Schedule 1 [208] inserts proposed Division 3A of Part 11 into the Principal Act (proposed sections 242A–242C). The proposed sections enable the Minister to declare land as a derelict mine site and enables the Director-General to cause steps to be taken to have a derelict mine site fully or partially rehabilitated. The Derelict Mine Sites Fund is to be established to enable compensation to be paid to landholders affected by rehabilitation measures for derelict mine sites and for the payment of other costs associated with their rehabilitation.

Schedule 1 [213] inserts proposed sections 245–246E into the Principal Act. The proposed sections expand the existing provisions enabling the clearing away of mining plant after the end of an authorisation and the sale of mining plant that is not removed to establish a scheme for the forfeiture of mining plant. The mining plant is to be forfeited to a person who has the right to its control, use or benefit or, if there is no such person, to the Crown or a landholder on whose land the plant is situated. It will be an offence to dispose of mining plant that is subject to a forfeiture order unless it has vested in the person concerned. Sale proceeds of mining plant disposed of by the Crown are to be paid to the Derelict Mine Sites Fund. Former holders of authorisations and affected landholders are to be given written notice of removal directions and forfeiture orders and there will be a right to seek a review of a forfeiture order by a Warden's Court. Forfeiture of mining plant may not be challenged later than 3 months after a forfeiture order is published in the Government Gazette and a person who becomes the owner of mining plant as a result of a forfeiture order is not liable to pay compensation to any person. **Schedule 1 [209]–[212]** make consequential amendments.

Audits

Schedule 1 [213] inserts proposed Division 6 of Part 11 into the Principal Act (proposed sections 246M–246X). The proposed sections are based on Chapter 6 (Environmental audits) of the *Protection of the Environment Operations Act 1997*. The proposed sections describe the process of an audit, provide for the accreditation and regulation of auditors and enable the Director-General to impose conditions requiring mandatory audits on authorisations. New offences are created relating to the provision of false or misleading information for audits and failing to provide information or retain information required for audit purposes. Information must be supplied for audit purposes whether or not it might incriminate the person providing it and information provided may be supplied by the Director-General for the purposes of the Principal Act or for the purposes of the environment protection legislation. Documents prepared for the purposes of voluntary audits are protected from use for enforcement purposes and from inspection and seizure on behalf of the Department of Primary Industries or by other authorities. The protection is lifted if

the person asserting or relying on the protection seeks to rely on the documents in proceedings connected with the Principal Act.

Entry and inspection powers

Schedule 1 [215] inserts proposed Divisions 1–1E of Part 12 into the Principal Act (proposed sections 247–248V). The proposed sections are based on Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997*.

Proposed Division 1 (proposed sections 247 and 248) sets out the purposes for which investigation powers may be exercised and makes it clear that nothing in Part 12 of the Principal Act affects any other functions under the Act or limits the conditions that may be imposed on an authorisation.

Proposed Division 1A (proposed sections 248A and 248B) enables inspectors to require, by written notice, information and records to be provided in connection with any matter related to the administration of the Principal Act.

Proposed Division 1B (proposed sections 248C–248J) sets out the powers of inspectors to enter premises at which prospecting operations, mining operations or mining purposes are carried on or that are or are likely to be affected by such operations or purposes. Residential premises may only be entered with the occupier's consent or under the authority of a search warrant. Inspectors who lawfully enter premises are empowered to exercise specified powers, including powers to examine things, take photographs and make other records and seize things connected with offences under the Principal Act. Inspectors may use assistants. The Director-General may, by written notice, require an owner or occupier of premises to provide reasonable assistance and specified facilities to an inspector. The Crown must compensate all interested parties for damage caused by the exercise of a power to enter premises under the proposed Division.

Proposed Division 1C (proposed sections 248K–248O) confers on inspectors additional powers relating to particular offences. The powers include power to require persons to answer questions about matters in respect of which information is reasonably required for the purposes of the Principal Act, power to record any such questions and answers and power to request a person reasonably suspected of committing an offence under the Principal Act to state his or her full name and residential address. An additional power of entry is also conferred.

Proposed Division 1D (proposed sections 248P–248R) confers power on inspectors to inspect and test articles.

Proposed Division 1E (proposed sections 248S–248V) inserts offences relating to failure to comply with a requirement made by an inspector and delaying, obstructing or impersonating an inspector and exonerates from the firstmentioned offence a person who is not warned that failure to comply with a requirement is an offence. The proposed sections also remove the privilege against self-incrimination in relation to records, information or answers given under the proposed provisions but make information or answers given in response to such a requirement inadmissible in criminal proceedings unless the person concerned has failed to object to that use after

being given the opportunity to object to the relevant requirements on the ground of incrimination.

Schedule 1 [214], [216], [217], [220] and [245] make consequential amendments.

Schedule 1 [221] substitutes sections 256 and 257 of the Principal Act. Proposed section 256 re-enacts the existing provision preserving the requirement to obtain the permission of the occupier before entering residential premises with consequential changes to reflect the removal of functions from royalty officers and the insertion of new Divisions. Proposed section 257 re-enacts the offence of obstructing, hindering or restricting, without reasonable excuse, a person with consequential changes arising from the insertion of new Divisions and new provisions about derelict mine sites.

Schedule 1 [222] amends section 258 of the Principal Act to make it an offence to contravene a condition of a permit issued under Part 12.

Schedule 1 [223] amends section 261 of the Principal Act to confer on the Director-General, rather than a mining registrar, the power to cancel a permit issued under Part 12 of the Act and prevents a cancellation from being challenged later than 3 months after the cancellation.

Schedule 1 [253] inserts proposed sections 361–361B into the Principal Act. The proposed sections provide for inspectors to be appointed by the Director-General and require inspectors to be provided with an identity card. The Minister is empowered to enter into arrangements with Ministers of other States and Territories to enable functions under this Act to be exercised in other States or Territories.

Security deposits

Schedule 1 [224] inserts proposed Part 12A (proposed sections 261A–261I) into the Principal Act. The proposed Part contains a single regime for security deposits for all authorisations. It enables a condition requiring a security deposit to be provided to be imposed on an authorisation and sets out the matters that may be included in any such condition. A security deposit may take the form of a bank guarantee, cash, a bond or other appropriate form and one security deposit may apply to more than one authorisation. The Minister may claim on or realise a security deposit if an authorisation ceases to be in force and an obligation under it remains unfulfilled or if a direction given under proposed section 240 is not complied with. Any part of a security deposit not used must be repaid to the person who provided it or, if the person cannot be found, into the Derelict Mine Sites Fund. Actions under the proposed Part will not affect any other liability under the Principal Act or any other action that may be taken under that Act. Regulations may be made with respect to the administration of funds obtained by the Minister under a security deposit.

Schedule 1 [66], [73], [79], [120], [126], [145], [150], [179], [184], [192] and [193] make consequential amendments.

Compensation to landholders for mining activities

Schedule 1 [225] amends section 263 of the Principal Act to prohibit the holder of an exploration licence from exercising a right under the licence that may result in a

loss for which compensation may be paid to a landholder unless there is in existence an access arrangement or other agreement as to the amount of compensation payable. **Schedule 1 [226]** makes a similar amendment to section 264 of the Principal Act in relation to the holder of an assessment lease.

Schedule 1 [226] amends section 264 of the Principal Act to continue in force existing agreements as to the amount of compensation payable to landholders when an assessment lease is granted to the holder of an authorisation to which an existing agreement applied. **Schedule 1 [227]** makes a similar amendment to section 265 in relation to mining leases.

Schedule 1 [228] inserts proposed sections 266–267 into the Principal Act, relating to compensation arising under mineral claims and opal prospecting licences. Proposed section 266 entitles a landholder to compensation for loss suffered as a result of the exercise of rights under the relevant authority. Compensation is to be an agreed amount or an amount determined by the Minister, by order, under proposed section 266A or as assessed by a warden under proposed section 266B. Proposed section 266A enables the Minister, by order, to set the amount of compensation payable by holders of authorities, after obtaining a warden's assessment of compensation. Proposed section 266B enables a landholder or holder of an authority to apply to a warden to assess the compensation payable where they cannot reach agreement or do not consider the amount in the Minister's order appropriate. Proposed section 267 provides for a landholder who is not initially entitled to compensation to apply to a Warden's Court for an order for payment of compensation. **Schedule 1 [229] and [239]** make consequential amendments.

Schedule 1 [232] amends section 273 of the Principal Act to require compensation payments by holders of mineral claims to be paid to the Director-General for payment to the Mineral Claims Districts Compensation Fund. **Schedule 1 [231] and [233]–[235]** make consequential amendments.

Schedule 1 [237] amends section 276 of the Principal Act to require a warden who is assessing the amount of additional compensation payable for further loss to consider matters in addition to compensation agreements, including access arrangements and previous compensation assessments.

Schedule 1 [240] inserts Division 6 of Part 13 (proposed sections 281C and 281D) into the Principal Act. The proposed sections establish the Mineral Claims Districts Compensation Fund, from which compensation will be payable to landholders affected by mineral claims or opal prospecting titles. Regulations may be made with respect to the administration of the Fund and reviews of payments out of the Fund.

Royalties

Schedule 1 [6] amends section 11A of the Principal Act to enable regulations to be made for the purpose of applying the provisions of that Act relating to royalties payable under authorisations to royalties payable in respect of activities prescribed not to be mining.

Schedule 1 [241] amends section 282 of the Principal Act to make the holder of a mining sublease liable to pay royalty on publicly owned minerals recovered from the

sublease area and removes the liability of the holder of the head lease to the extent that royalty is paid by the sublessee.

Schedule 1 [242] amends section 284 of the Principal Act to make the holder of a mining sublease liable to pay royalty on privately owned minerals recovered from the sublease area and removes the liability of the holder of the head lease to the extent that royalty is paid by the sublessee.

Schedule 1 [243] amends section 284 of the Principal Act as a consequence of the introduction of mining (mineral owner) leases.

Schedule 1 [244] substitutes section 288 of the Principal Act to remove references to securities for the payment of royalties and to make it an offence to fail to establish a trust fund to meet royalty payments if required to do so by the Minister.

Schedule 1 [246] amends section 291 of the Principal Act to make it an offence to fail to pay royalty.

Enforcement

Schedule 1 [250] amends section 339 of the Principal Act as a consequence of the insertion of proposed section 378ZF.

Schedule 1 [258] inserts proposed Part 17A into the Principal Act.

Proposed Division 1 (proposed sections 378A–378G) re-enacts the offences relating to obstruction of wardens and holders of authorisations, providing false or misleading information and contravening an authorisation, with consequential changes arising from amendments made by the proposed Act. Daily penalties are now payable for breaches of authorisations (including by sublessees). New defences are established for a contravention of an authorisation, including that the contravention was necessary to comply with other specified legislation. Directors and managers of corporations will be liable for contraventions by those corporations unless they satisfy the court that they were not in a position to influence the relevant conduct of the corporation or that they used all due diligence to prevent the contravention. Continuing liability is established for continuing offences (that is, offences that provide for a penalty for a continuing offence).

Proposed Division 2 (proposed sections 378H–378K) provides for the taking of proceedings, the time within which proceedings may be brought and the persons who may bring proceedings. Provisions enabling offences to be dealt with by way of penalty notice are re-enacted.

Proposed Division 3 (proposed sections 378L–378X) establishes a scheme, modelled on Division 4 of Part 8.2 of the *Protection of the Environment Operations Act 1997*, for the making and enforcement of restraining orders preventing the disposal of property by a defendant, if a court is satisfied that the offence was committed by the defendant and that it is likely that an order will be made against the defendant for payment of costs or compensation. If such an order is made, a charge is imposed over the property concerned. It will be an offence to contravene a restraining order.

Proposed Division 4 (proposed sections 378Y–378ZF) is modelled on Part 8.3 of the *Protection of the Environment Operations Act 1997* and enables various orders to be

made against persons found guilty of offences under the Principal Act. An order may be made for repayment or payment of compensation to the Crown, a public authority or other person of costs and expenses, or for loss or damage incurred, in connection with action taken against environmental damage arising from the offence that is incurred before or after the time the offence is found to be committed. An order may also be made for repayment of the costs and expenses incurred by the Crown or a public authority in investigating the offence concerned, for payment of an additional monetary penalty representing the amount of any monetary benefits accruing to the offender as a result of the offence concerned and requiring the offender to take specified actions. It will be an offence to fail to comply with an order under the proposed Division.

Proposed Division 5 (proposed section 378ZG) enables the use of certificates issued by the Director-General (or an officer designated by the Director-General) as evidence of various matters specified in the certificates in proceedings. Matters that may be the subject of such certificates include evidence that a person was or was not the holder of a specified authorisation at a specified time and that land was at a specified time a specified authorisation area.

Schedule 1 [274] inserts Schedule 7 into the Principal Act. The proposed Schedule specifies the conditions of an authorisation which, if breached, attract a higher maximum penalty than other breaches and sets out the offences under the Act that are to be dealt with on indictment. The proposed Schedule also specifies the offences for which there is a 3 year period within which proceedings may be commenced.

Miscellaneous

Schedule 1 [71] amends section 76 of the Principal Act to make it an offence to fail to fence a shaft, mining machinery or other works if required to do so by the landholder or the Minister (in the case of Crown land).

Schedule 1 [78] makes a statute law revision amendment.

Schedule 1 [101] amends section 144 of the Principal Act to remove the requirement to consult with the Heads of the Departments of Aboriginal Affairs and Agriculture before the appointment of an arbitrator to resolve a dispute about an access arrangement for a prospecting title.

Schedule [103] amends section 159 of the Principal Act to remove the requirement that the form of the record of applications relating to exploration licences, assessment leases and mining leases be prescribed by the regulations and instead enables it to be approved by the Minister.

Schedule 1 [108] amends section 163 of the Principal Act to require the register of colliery holdings to include the names of the colliery holding and colliery holder and location plans for the holding.

Schedule 1 [109] amends section 163 of the Principal Act to expand the provisions relating to the registration of colliery holdings, applications for registration and the directions that may be made by the Minister, including a new power to direct that a colliery holding be registered with a specified name or a specified person be

registered as a colliery holder. **Schedule 1 [110]–[112]** make consequential amendments.

Schedule 1 [113] amends section 163 of the Principal Act to require the register of colliery holdings to be made publicly available free of charge.

Schedule 1 [114] inserts proposed section 163C into the Principal Act. The proposed section requires the holders of authorisations to prepare and lodge reports about prospecting activity. **Schedule 1 [102]** makes a consequential amendment.

Schedule 1 [122] substitutes section 171 of the Principal Act to exclude the Crown, the Minister or any person administering the Act from any action in respect of loss or injury suffered or incurred in relation to the exercise of a right conferred by an authority (other than an exploration licence held by the Director-General on behalf of the Crown).

Schedule 1 [123], [181] and [201] omit provisions as a result of the insertion of proposed section 378ZG (which relates to evidentiary certificates).

Schedule 1 [125], [127], [183], [218], [267], [276], [279] and [280] amend various sections of the Principal Act to change terminology.

Schedule 1 [130], [137], [144], [157], [158], [160], [169], [171], [180], [185], [186], [187] and [195] amend various sections of the Principal Act to confer powers that are currently exercised by mining registrars on the Director-General.

Schedule 1 [131], [188], [202], [203], [236], [238], [252], [265] and [270] make statute law revision amendments.

Schedule 1 [182] and [269] amend section 222 of, and Schedule 1 to, the Principal Act as a consequence of administrative changes relating to the former Department of Agriculture.

Schedule 1 [198] inserts proposed section 235A into the Principal Act to insert an additional requirement for the Director-General to keep a record of the amendment of any opal prospecting licence.

Schedule 1 [219] omits section 255 of the Principal Act to remove a provision relating to royalty officers.

Schedule 1 [230] makes a consequential amendment.

Schedule 1 [247] and [248] amend section 296 of the Principal Act to recognise the additional jurisdiction conferred on Wardens' Courts under amendments made by the proposed Act.

Schedule 1 [249] amends section 334 of the Principal Act to make it clear that the section does not confer power on the Minister to direct a warden to hold an inquiry into a matter over which express jurisdiction is conferred on a Warden's Court or into other specified matters where the Principal Act makes express provision for a warden's inquiry.

Schedule 1 [251] amends section 360 of the Principal Act to omit references to royalty officers. **Schedule 1 [283]** makes a consequential amendment.

Schedule 1 [255] amends section 363 of the Principal Act to enable the Minister to delegate his or her functions under the *Environmental Planning and Assessment Act 1979*.

Schedule 1 [256] amends section 365 of the Principal Act to permit the disclosure of information obtained in connection with the Act to officers or authorities engaged in administering or executing the environment protection legislation, the *Environmental Planning and Assessment Act 1979*, the occupational health and safety legislation and any other legislation prescribed by the regulations.

Schedule 1 [260] amends section 383 of the Principal Act to extend the methods of service of documents under the Act. **Schedule 1 [261]** makes a consequential amendment.

Schedule 1 [262] amends section 383 of the Principal Act to make it clear that the section does not affect any other means of issuing, giving or serving notices or other documents under any other law.

Schedule 1 [266] amends section 387A of the Principal Act to provide that a mining lease or mineral claim in respect of a substance that was a mineral under the Act continues in force and that the holder remains bound by its conditions.

Schedule 1 [271] amends Schedule 4 to the Principal Act to remove the power to make regulations about the qualifications and functions of mining registrars, as a result of amendments conferring their functions on the Director-General.

Schedule 1 [272] amends Schedule 6 to the Principal Act to enable savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [273] inserts a new Part into Schedule 6 to the Principal Act, which contains provisions of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [277] updates a reference to a Government Department.

Schedule 1 [278] amends the Dictionary to the Principal Act to expand references to development consents in the Act to include references to approvals under Part 3A of the *Environmental Planning and Assessment Act 1979*.

Schedule 1 [281] and [285] amend the Dictionary to the Principal Act as a consequence of other amendments made by the proposed Act.

Schedule 2 Amendment of other Acts and instrument

Schedule 2.1 amends the *Coal Mine Health and Safety Act 2002* as a consequence of amendments made to the provisions of the *Mining Act 1992* relating to colliery holdings.

Schedule 2.2 amends the *Criminal Procedure Act 1986* to enable indictable offences under the *Mining Act 1992* to be dealt with summarily on election.

Schedule 2.3 makes a consequential amendment to the *Environmental Planning and Assessment Regulation 2000*.

Schedule 2.4 amends the *Fines Act 1996* to apply the provisions of that Act to penalty notices issued under the *Mining Act 1992*.

Schedule 2.5 amends the *Mine Health and Safety Act 2004* to omit provisions relating to the registration of mine holdings under the *Mining Act 1992* and to make consequential and minor amendments. The amendments that inserted such provisions into that Act are being repealed by the proposed Act.

Schedule 2.6 amends the *Mine Subsidence Compensation Act 1961* as a consequence of amendments made to the provisions of the *Mining Act 1992* relating to colliery holdings.

Schedule 2.7 amends the *National Parks and Wildlife Act 1974* to prohibit the granting of authorisations under the *Mining Act 1992* on land within a state conservation area without obtaining certain approvals.

Schedule 2.8 amends the *Petroleum (Onshore) Act 1991* to insert proposed sections 29 and 29A (**Schedule 2.8 [2]**). The proposed sections provide for the prospecting operations that may be carried out under an exploration licence to be specified by the Minister by order published in the Government Gazette. Additional kinds of prospecting may be authorised by the Minister. An unsuccessful applicant for such an authorisation may apply to the Minister for a review. **Schedule 2.8 [1]** makes a consequential amendment.

Schedule 2.9 amends the *Protection of the Environment Operations Act 1997* as a consequence of the repeal of section 8 of the *Mining Act 1992* by the proposed Act.