

Version No. 033
Mineral Resources Development Act 1990

Act No. 92/1990

Version incorporating amendments as at 1 December 1998

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The Parliament of Victoria enacts as follows:

PART 1—INTRODUCTION

1. Purpose

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

2. Objectives

- (1) The objectives of this Act are—
- (a) to encourage and facilitate exploration for minerals and foster the establishment and continuation of mining operations by providing for—
 - (i) an efficient and effective system for the granting of licences and other approvals; and
 - (ii) a process for co-ordinating applications for related approvals; and
 - (iii) an effective administrative structure for making decisions concerning the allocation of mineral resources for the benefit of the general public; and
 - (iv) an economically efficient system of royalties, rentals, fees and charges; and

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- (b) to establish a legal framework aimed at ensuring that—
- (i) mineral resources are developed in ways that minimise impacts on the environment; and
 - (ii) consultation mechanisms are effective and appropriate access to information is provided; and
 - (iii) land which has been mined is rehabilitated; and
 - (iv) just compensation is paid for the use of private land; and
 - (v) conditions in licences and approvals are enforced; and
 - (vi) dispute resolution procedures are effective; and
 - (vii) the health and safety of people is protected in relation to work being done under a licence.

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

S. 2(1)(b)(vii)
inserted by
No. 86/1993
s. 4.

- (2) For the purpose of achieving the objective of providing for a process for co-ordinating applications for related approvals the Minister may—
- (a) in respect of any project, convene meetings of representatives of relevant Ministers, municipal councils and other public bodies;
or
 - (b) after consultation with each relevant Minister and subject to the provisions of any other Act, do anything else that is necessary or convenient to be done for or in connection with the achievement of that objective.

3. Commencement

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

4. Definitions

- (1) In this Act—

"Aboriginal object" means an object (including Aboriginal remains) that is of particular significance to Aboriginals in accordance with Aboriginal tradition;

"Aboriginal place" means an area in relation to which a declaration of preservation is in force under section 21C, 21D or 21E of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 of the Commonwealth (as amended and in force from time to time);

"accident" means an accident on any land on which work is being done, including an accident—

- (a) resulting in serious injury or loss of life; or
- (b) resulting in work time being lost by an employee because of an injury, being time lost from work of one day or more, with the day on which the injury occurred not being counted as a day lost; or

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- (c) involving a serious malfunction of any winding arrangements, treatment plant or mine buildings; or
 - (d) involving explosives; or
 - (e) involving collapse of the ground; or
 - (f) involving rock falls;

"agricultural land" means private land that is used primarily for—

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

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

"chief administrator" means the head of the Department;

S. 4(1) def. of "chief administrator" amended by No. 86/1993 s. 5(1)(b).

"chief mining inspector" means the chief mining inspector employed under section 90(1)(a);

S. 4(1) def. of "chief mining inspector" amended by No. 46/1998 s. 7(Sch. 1).

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S. 4(1) def. of "Code of practice" repealed by No. 86/1993 s. 5(1)(a).

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

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

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

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

"Department" means the Department of Natural Resources and Environment;

S. 4(1) def. of "Department" substituted by No. 86/1993 s. 5(1)(c), amended by No. 46/1998 s. 7(Sch. 1).

"dispute" means a dispute arising under this Act between—

S. 4(1) def. of "dispute" amended by No. 46/1998 s. 7(Sch. 1).

- (a) a member of the public, a licensee or an applicant and the chief administrator or an employee of the Department; or
- (b) a licensee or an applicant and the holder of a miner's right; or
- (c) a licensee or an applicant and the owner or occupier of land; or

(d) a licensee and another licensee or an applicant for a licence; or

(e) an applicant and another applicant—

and includes a dispute—

(f) about the existence of a licence, miner's right, tourist fossicking authority or tourist mine authority; or

(g) about the boundaries of land covered by a licence or an application—

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

"exploration" means exploration for minerals and includes—

(a) conducting geological, geophysical and geochemical surveys; and

(b) drilling; and

(c) taking samples for the purposes of chemical or other analysis; and

(d) extracting minerals from land, other than for the purpose of producing them commercially; and

(e) in relation to an exploration licence, anything else (except mining) that is specified in the licence;

"graticular section" means the 1000 metre interval block based on the Australian Geodetic Datum 1966, as shown on the National Topographic Map Series published by the National Mapping Council;

"infringement" means a mining infringement;

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"inspector" means inspector of mines employed under section 90(1)(b);

S. 4(1) def. of "inspector" amended by No. 46/1998 s. 7(Sch. 1).

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

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

"licensee" means the holder of a licence;

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

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

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

S. 4(1) def. of "mineral" amended by No. 7/1994 s. 4.

(a) including—

(i) oil shale and coal; and

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

(iii) any substance specified in Schedule 4;

(b) excluding water, stone or petroleum;

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

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

"mining infringement" means an offence against this Act or the regulations that is prescribed for the purposes of Part 12;

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

"occupier" means—

- (a) in relation to private land, any person lawfully in possession of the land; and
- (b) in relation to Crown land, the Director-General (as defined in the **Conservation, Forests and Lands Act 1987**);

"owner" means—

- (a) in relation to Crown land, the Ministers administering the **Crown Land (Reserves) Act 1978** and the **Forest Act 1958**; and

* * * * *

- (d) in relation to private land under the **Transfer of Land Act 1958**, the person who is registered or entitled to be registered as the proprietor of the land; and

(e) in relation to other private land—

- (i) if the land is mortgaged, the mortgagor; and

- (ia) if the land is subject to a licence granted under Part 3A of the **Victorian Plantations**

S. 4(1) def. of "owner" amended by Nos 86/1993 s. 5(1)(d), 35/1998 s. 18(b).

Corporation Act 1993, the licensee, under that Part, of the land; and

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

"petroleum"¹ means—

- (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state; or
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and one or more of the following, that is to say, hydrocarbon sulphide, nitrogen, helium and carbon dioxide—

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

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

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

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

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

"private land" means any land that is not Crown land;

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

"registered" means registered in the mining register;

"registrar" means the mining registrar employed under section 68;

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

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

"stone"² means—

- (a) sandstone, freestone or other building stone; or
- (b) basalt, granite, limestone or rock of any kind ordinarily used for building, manufacturing or construction purposes; or
- (c) quartz (other than quartz crystals); or
- (d) slate or gravel; or
- (e) clay (other than fine clay, bentonite or kaolin); or

S. 4(1) def. of "registrar" amended by No. 46/1998 s. 7(Sch. 1).

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

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(f) sand, earth or soil; or

(g) other similar materials;

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

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

"tailings" means any waste mineral or stone produced in the course of doing work under a licence or a former licence or a former title within the meaning of clause 2 of Schedule 2 (whether before or after 6 November 1991) and includes any mineral or stone that is discarded from plant or machinery used for extracting minerals;

S. 4(1) def. of "tailings" amended by No. 86/1993 s. 5(1)(g)(i)(ii).

"tourist mine" means a mine, part of a mine or any other location in which the principal activities conducted are activities promoting interest in the practice and history of prospecting or mining;

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

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

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

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

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

(b) restricted Crown land;

"work" means, in relation to a licence, any work that the licensee is entitled to do under the licence;

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"work plan" means a work plan lodged under section 40;

S. 4(1) def. of "worksite" inserted by No. 86/1993 s. 5(1)(i).

"worksite" means any place where work is being done under a licence.

S. 4(2) substituted by No. 86/1993 s. 5(2), amended by No. 46/1998 s. 7(Sch. 1).

(2) If under the **Public Sector Management and Employment Act 1998** the name of the Department is changed, a reference in the definition of "Department" in sub-section (1) to the "Department of Natural Resources and Environment" must, from the date when the name is changed, be treated as a reference to the Department by its new name.

S. 4(3) inserted by No. 86/1993 s. 5(2).

(3) If under a provision of this Act the Ministers administering the **Crown Land (Reserves) Act 1978** and the **Forests Act 1958** are—

- (a) given a function, power or duty in relation to a matter; or
- (b) required to be consulted about, or given notice of, a matter; or
- (c) required to be given a copy of any document—

that function, power or duty may be exercised by, that consultation is only required to be with, and that notice or copy is only required to be given to, whichever of those Ministers is responsible in the relevant respect for the land concerned if both of them are not so responsible and the provision has effect accordingly.

5. Act to bind the Crown

(1) This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of

Parliament permits, the Crown in all its other capacities.

- (2) Nothing in this Act makes the Crown in any of its capacities liable to be prosecuted for an offence.

6. *Land not available for exploration, mining and searching*

The following land is exempted from being subject to a licence or other authority under this Act:

- (a) Land that is a reference area under the **Reference Areas Act 1978**;
- (b) Land that is a national park, wilderness park or State park under the **National Parks Act 1975**, unless the land is covered by—
 - (i) a lease, licence, permit or authority under the **Mines Act 1958** that must, by virtue of this Act, be treated as a mining licence or an exploration licence (including such a lease, licence, permit or authority that is renewed under this Act); or
 - (ii) a licence under this Act granted before the declaration of the national park, wilderness park or State park (including such a licence that is renewed after that declaration); or
 - (iii) a mining licence that is granted over land that was, immediately before the granting of the mining licence, covered by an exploration licence that was granted before the declaration of the national park, wilderness park or State park (including such a mining licence that is renewed after that declaration);

- (c) Land that is an Aboriginal place, to the extent of any terms of the declaration in force under the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 of the Commonwealth (as amended and in force from time to time);
- (d) Land that is an archaeological area under the **Archaeological and Aboriginal Relics Preservation Act 1972** or that contains relics the occurrence of which is registered under section 10(a) of that Act;
- (e) Land that is, under section 7 or by or under any other Act, exempted from mining, or from being subject to a licence or other authority under this Act.

7. Minister may exempt land from exploration or mining licence

- (1) The Minister may exempt any land from being subject to an exploration licence or a mining licence, or both.
 - (2) The Minister may grant an exemption for any reason he or she decides to be appropriate, including but not limited to the following reasons:
 - (a) If, in the Minister's opinion, the exemption is required to protect land that is of significant environmental importance;
 - (b) If, in the Minister's opinion, the exemption is required for the implementation of a recommendation of the Land Conservation Council of which notice has been given under section 10(3) of the **Land Conservation Act 1970**.
 - (3) In deciding whether to grant an exemption the Minister must take into account the social and economic implications of the decision.
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- (4) The Minister must make sure that notice of an exemption is—
- (a) published in the Government Gazette; and
 - (b) recorded in the mining register.
- (5) The Minister may revoke an exemption by notice—
- (a) published in the Government Gazette; and
 - (b) recorded in the mining register.

8. *Offence to search for minerals or do work without authority*

- (1) A person, other than the Crown, must not search for minerals or do work or carry out any activity on any land unless the person—
- (a) acts in accordance with a licence, a miner's right, a tourist fossicking authority or a tourist mine authority; or
 - (b) benefits from a relevant minerals exemption.

Penalty: 100 penalty units.

- (2) The owner of minerals that are taken from land in contravention of sub-section (1) may recover from the person taking them, as a debt due to the owner of the minerals and recoverable in a court of competent jurisdiction, the value of the minerals taken.
- (3) Sub-section (1) applies to the extraction or removal of stone under a work authority under the **Extractive Industries Development Act 1995** which would necessarily involve the mining of a mineral.

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

9. Ownership of minerals

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

10. Tailings

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

11. Transfer of property in minerals

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

12. Royalties³

- (1) The holder of a mining licence must pay royalties in accordance with the rate or method of assessment and at the times—
 - (a) specified in the licence, after consultation by the Minister with the licensee; or
 - (b) prescribed, if not specified in the licence.
- (2) Without limiting sub-section (1), the holder of a mining licence must, unless the Minister decides otherwise, pay royalties in respect of the disposal of tailings under section 14(2)(b) in accordance with the rate or method of assessment and at the times prescribed.

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

S. 12(2)
inserted by
No. 86/1993
s. 6(b).

**PART 2—EXPLORATION LICENCES AND MINING
LICENCES**

13. *Exploration licences*

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

14. *Mining licences*

- (1) The holder of a mining licence who obtains an authority to commence work is entitled to carry out mining on the land covered by the licence and—
 - (a) to explore for minerals; and
 - (b) to construct any facilities specified in the licence, including drives, roads, water races, tailing dumps, tailing dams, drains, dams, reservoirs and pipe-lines; and
 - (c) to do anything else that is incidental to that mining.
 - (2) The licensee may—
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- (a) use, for any mining purpose, any tailings produced by the licensee during work under the licence or a former licence or a former title within the meaning of clause 2 of Schedule 2 (whether before or after 6 November 1991); or
- (b) with the consent of the Minister and in accordance with any conditions imposed by the Minister on that consent, dispose of any tailings referred to in paragraph (a).
- (2A) A licensee must not dispose of any tailings referred to in sub-section (2)(a) otherwise than with the consent of the Minister under sub-section (2)(b) and in accordance with any conditions imposed by the Minister on that consent.
- Penalty applying to this sub-section: 60 penalty units.
- (3) A mining licence—
- (a) is current for the time specified in the licence, not exceeding 20 years from the date on which it is registered unless the Minister decides otherwise; and
- (b) may be renewed in accordance with the provisions of this Part; and
- (c) applies to the land described in the licence.
- (4) The area of the land described in a licence must not exceed 260 hectares, unless the Minister decides otherwise.

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

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

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

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

14A. *Licence may be limited to stratum of land?*⁴

An exploration licence or a mining licence may be granted—

- (a) for a stratum of land; or

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

(b) without being limited to a particular stratum—

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

15. Application for a licence

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

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

(1A) An application for a licence is ineffective, and must not be accepted by the Minister, to the extent that it is for⁵—

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

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

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

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

(ii) the holder of the exploration licence has consented in writing to the granting of the licence or the applicant has obtained the Minister's consent under section 16; or

(d) a licence over land that is the subject of any other application (whether made before or after the commencement of section 9 of the **Mineral Resources Development (Amendment) Act 1993**) that has, because of section 23, a higher priority than the present application unless that other applicant has consented in writing to the application being accepted by the Minister; or

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

(1B) An application of a kind described in paragraph (a), (b), (c), (d) or (e) of sub-section (1A) must be taken to be an application for an exploration licence or a mining licence (as the case requires) over any other land to which it relates.⁶

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

(2) A person must not apply for a mining licence over more than 260 hectares unless the Minister has consented to the lodging of the application.

(3) On the receipt of an application the chief administrator must—

(a) if, because of section 23, the application has a lower priority than another application, notify the applicant that another application has priority; and

(b) in any other case, notify the applicant that the application has priority.

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

(5) An applicant for a licence must, within 14 days after being notified under sub-section (3)(b) or (4) that the application has priority, advertise the application in accordance with the regulations and, if the application is for a mining licence, give notice of it in accordance with the regulations to the owner and occupier of the land affected.⁷

(5A) The Minister must, as soon as practicable after an applicant for a licence covering unrestricted Crown land is notified under sub-section (3)(b) or (4) that the application has priority, consult with the Ministers administering the **Crown Land (Reserves) Act 1978** and the **Forests Act 1958** in

S. 15(5A)
inserted by
No. 86/1993
s. 9(2).

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relation to the carrying out of work on that land and those Ministers may recommend to the Minister conditions to which the licence should be made subject.⁸

- (6) An applicant for a licence must satisfy the Minister that the applicant—
- (a) is a fit and proper person to hold the licence; and
 - (b) intends to comply with this Act; and⁹

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

(ba) genuinely intends to do work; and¹⁰

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

- (c) has an appropriate program of work; and
- (d) is likely to be able to finance the proposed work and rehabilitation of the land.

- (7) An applicant for a licence must provide any additional information about the application that is requested in writing by the Minister, within 14 days after receipt of the request or any longer time allowed by the Minister.
- (8) An applicant for a mining licence over land that is the subject of an exploration licence held by another person must also—
- (a) lodge with the application the written consent of that other person; or
 - (b) if section 16 applies, obtain the consent of the Minister under that section.
- (9) A licensee who consents under sub-section (8)(a) may make that consent conditional on specified depth restrictions.

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- (10) An applicant for a mining licence over agricultural land that is not owned by the applicant must also—
- (a) lodge with the application a statement of the economic significance of the proposed work; and
 - (b) give a copy of the statement to the owner and occupier of the land affected¹¹ within 7 days after being notified under sub-section (3)(b) or (4) that the application has priority.
- (11) An owner or occupier who is given a copy of the statement must not divulge or communicate to any person (other than a professional advisor retained by the owner or occupier) or publish any information contained in the statement unless the divulgence, communication or publication is made with the written consent of the applicant.
- Penalty: 100 penalty units.
- (12) A professional advisor to whom any information is divulged or communicated under sub-section (11) must not divulge or communicate that information to any person (for any purpose other than advising the owner or occupier), or publish it.
- Penalty: 100 penalty units.
- (13) A statement of economic significance must—
- (a) contain an assessment of the benefits to Victoria of the proposed work, including employment and revenue considerations; and
 - (b) apportion the economic significance between any properties that are in different ownership.
- (14) An owner of land may dispute a statement of economic significance on the ground that there would be greater economic benefit to Victoria in

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continuing the use of the land as agricultural land than in carrying out the proposed work.

(15) An owner of land who disputes a statement of economic significance must, within 30 days after receiving a copy of the statement under sub-section (10)(b), give notice in writing to—

(a) the applicant; and

(b) the President of the Australian Institute of Valuers and Land Economists; and

(c) the Minister.

(16) As soon as possible after receiving notice under sub-section (15), the President must appoint a person who is appropriately qualified, in the President's opinion, to act as an independent expert to consider the statement of economic significance.

(17) The independent expert must consider the statement of economic significance and any submissions made by the owner of the land and the applicant, and must, within 60 days after his or her appointment, report to the Governor in Council as to whether there would be greater economic benefit to Victoria in continuing the use of the land as agricultural land than in carrying out the proposed work.

(18) The decision of the Governor in Council, after considering the report, as to the relative economic significance of the proposed work and of continuing the existing use of the land is final and binding on the applicant and the owner of the land.

(19) The President of the Australian Institute of Valuers and Land Economists, after considering the advice of the independent expert, may direct

S. 15(15)(b)
amended by
No. 27/1991
s. 4(3).

S. 15(19)
amended by
No. 27/1991
s. 4(3).

that the applicant or the owner of the land shall pay the whole or any part of the reasonable fees and expenses of the independent expert.

16. *Minister may consent in some cases*

- (1) An applicant for a mining licence covering 5 hectares or less of land that is covered by an exploration licence which has been in operation for 2 years or more may, if the applicant cannot obtain the written consent of the holder of the exploration licence, notify the chief administrator that the applicant has been unable to obtain that consent.
- (2) The chief administrator must, if the granting of the licence would not mean that the limit imposed by section 25(1)(c)(i) or (ii) would be exceeded, notify the mining warden that the applicant has been unable to obtain that consent.
- (3) The mining warden must make a recommendation to the Minister about consenting or refusing to consent to an application if the mining warden is notified under sub-section (2).
- (4) The mining warden may propose specified depth restrictions in making a recommendation.
- (5) If the Minister consents he or she may make the consent conditional on specified depth restrictions.

17. *Application not transferable*

An application for a licence is not transferable.

18. *Notice to Aboriginal people*

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

- (a) any person or body nominated by the Minister administering the **Archaeological and Aboriginal Relics Preservation Act 1972**; and
- (b) any person or body nominated in relation to the application by the Minister to whom a power has been delegated under section 21B of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 of the Commonwealth (as amended and in force from time to time).

19. *Marking out and surveying the boundaries of land*

- (1) An applicant for a mining licence must mark out and survey the boundaries of the land covered by the application, in the prescribed manner and within the prescribed time after lodging the application.
- (2) An applicant for a mining licence is not entitled to enter land for the purpose of marking out or surveying boundaries as required by sub-section (1), unless—
 - (a) the owner or occupier of the land consents in writing; or
 - (b) the chief administrator grants an authority in writing.

20. *Authority to enter land*

- (1) The chief administrator may grant to an applicant for a mining licence an authority to enter land if he or she is satisfied that the applicant has made reasonable attempts to obtain the consent of the owner or occupier and—
 - (a) the applicant has been unable to contact the owner or occupier; or

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- (b) the owner or occupier has refused or failed to consent.
 - (2) A person does not trespass on land only because the person exercises reasonable access to the land—
 - (a) in accordance with an authority to enter the land; and
 - (b) for the purpose of marking out or surveying the boundaries of the land covered by the application for the mining licence.
 - (3) An authority to enter land expires when the application for the mining licence is granted or refused.
 - (4) The chief administrator must serve on the owner and occupier of land a copy of any authority that is granted to enter the land.

21. *Offence not to show authority*

A person who enters land under an authority to enter land must, on request by the owner or occupier of the land, show a copy of the authority to the person making the request.

Penalty: 10 penalty units.

22. *Security*

- (1) The chief administrator must, before granting an authority to enter land, require an applicant—
 - (a) to provide evidence of the existence of, and to undertake to maintain during the currency of the authority, an appropriate policy insuring the applicant against the risk of personal injury to the owner or occupier of the land; and

S. 22(1)
substituted by
No. 86/1993
s. 10(a).

(b) to provide a security of an amount and kind specified by the chief administrator against the risk of damage to the property of the owner or occupier of the land—

arising from the entry by the applicant or the activities of the applicant on the land.

(2) The chief administrator—

(a) may use the security, or part of it, to compensate the owner or occupier for any damage resulting from that entry or those activities; and

(b) must return the balance of the security to the applicant no later than 30 days after the day on which the application for the licence is granted or refused.

S. 22(2)(a)
amended by
No. 86/1993
s. 10(b).

23. *Priority of applications*

(1) If more than one application for a licence in respect of the same land has been received, the Minister must determine those applications in order of priority.

(2) The order of priority—

(a) of applications received on different days, is according to the day of receipt; and

(b) of applications received on the same day, is according to the Minister's opinion of their relative merits.

(3) An application that has priority over another application or other applications in respect of the same land must be determined without reference to that other application or those other applications.

24. *Objections to licence*

(1) Any person may object to a licence being granted.

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

25. *Grant or refusal of licence*

- (1) The Minister must not grant a licence over land—
- (a) that is covered by a mining licence; or
 - (b) that is covered by an exploration licence, unless the application is for a mining licence and, if the applicant is not the holder of the exploration licence—
 - (i) the holder of that licence consents in writing; or
 - (ii) the applicant has obtained the Minister's consent under section 16; or
 - (c) that has been covered by an exploration licence for at least 2 years, if the granting of the licence would mean that—
 - (i) the number of mining licences which each cover 5 hectares or less granted by virtue of section 16 over land covered by the exploration licence is more than the number of graticular sections¹² covered by the exploration licence divided by 10; or

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- (ii) any 2 areas of 5 hectares or less covered by mining licences granted by virtue of section 16 within the exploration licence would be 1 kilometre or less apart at the closest points; or
 - (d) that is the subject of any other application that—
 - (i) has not been determined; and
 - (ii) has, because of section 23, a higher priority than the present application; or
 - (e) that is exempted under this or any other Act from being subject to—
 - (i) an exploration licence, if the application is for an exploration licence; or
 - (ii) a mining licence, if the application is for a mining licence; or
 - (f) that is subject to a current minerals exemption; or
 - (g) that is subject to the tender process under section 27, unless the applicant is the successful tenderer; or
 - (h) if, after considering an expert's report under section 15, the Governor in Council has decided that there would be greater economic benefit to Victoria in continuing the use of the land as agricultural land than in carrying out the proposed work; or¹³
 - (i) that is limited to a particular stratum unless the Minister is satisfied that the applicant can obtain reasonable access to and use of the land.¹⁴

S. 25(1)(h)
amended by
No. 86/1993
s. 11(1).

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

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- (2) Otherwise, the Minister may grant or refuse a licence after considering any objections made under section 24.
- (3) The Minister may grant a licence if the applicant has substantially complied with this Act or the regulations (provided that the applicant complies with section 15(6)(a), (b), (c) and (d)), and may refuse to grant a licence even though the applicant has complied with this Act and the regulations.¹⁵
- (3A) The Minister must refuse to grant a licence if the applicant does not satisfy the Minister as to the matter specified in section 15(6)(ba) unless the applicant satisfies the Minister that the applicant has identified minerals in the land to be covered by the licence and that¹⁶—
- (a) additional time is necessary to assess the economic viability of mining those minerals; or
 - (b) it is not at present economically viable to mine those minerals but it may become so in the future.
- (4) Sub-section (3) does not authorise the Minister to grant a licence if the applicant has not complied with this Act or the regulations unless the Minister is satisfied that the non-compliance is not likely to affect adversely any person's rights under this Act or the regulations or to result in any person being deprived of information necessary for the effectual exercise of those rights.
- (5) For the purposes of sub-section (1)(c)(i), any part of a graticular section covered by the licence, and any fraction of a graticular section that remains after dividing the number of graticular sections covered by the licence by 10, must be treated as a whole graticular section.

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

S. 25(3A)
inserted by
No. 86/1993
s. 11(3).

- (6) In determining whether the limit imposed by subsection (1)(c)(i) or (ii) would be exceeded by the granting of a mining licence, regard must be had to the area covered by the exploration licence after excluding any area—
- (a) excluded on a renewal of the exploration licence; or
 - (b) identified for exclusion in an application lodged for renewal of the exploration licence—
- on account of section 30.
- (7) On granting a licence over land the Minister must refuse any other application for a similar type of licence that has been received to the extent that it relates to land covered by the licence being granted.

26. *Grant of licence*

- (1) The Minister may grant a licence over an area that is smaller than the area in respect of which the application is made.
- (2) The Minister may impose conditions to which a licence is subject, including but not limited to conditions about—
- (a) rehabilitation of the land;
 - (b) protection of the environment;
 - (c) protection of groundwater;
 - (d) employment;
 - (e) expenditure;
 - (f) reporting the discovery of minerals;
 - (g) entering into a rehabilitation bond;
 - (h) payment of fees;
 - (i) payment of royalties;
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- (j) access to and use of the land by the holder of another licence that is limited to a particular stratum.
- * * * * *
- (3) The Minister must impose, as conditions to which a licence is subject, any conditions subject to which consent to an application was obtained under section 15(9) or 16(5).
- (4) It is a condition of a mining licence that the licensee pays rent from the date of registration of the authority to commence work, in accordance with the rate or method of assessment and at the times prescribed.¹⁷
- (5) The Minister must, subject to sub-section (6), determine the application within 3 months after the applicant has been notified under section 15(3)(b) or (4) that the application has priority, and advise the applicant.
- (6) If the Minister decides that an application cannot for any reason be determined within the time applicable under sub-section (5), he or she must before that time expires notify the applicant of the decision and of the reason or reasons for it.
- (7) An applicant for a licence may, within 28 days after receiving notice of a decision of the Minister under sub-section (6), apply to the Tribunal for review of the decision.
- (8) A licence has no effect until registered.
- S. 26(2)(j) substituted by No. 86/1993 s. 12(1).
S. 26(2)(k) repealed by No. 86/1993 s. 12(1).
S. 26(4) amended by No. 86/1993 s. 12(2).
S. 26(7) substituted by No. 52/1998 s. 311(Sch. 1 item 64.2).

27. Tenders

- (1) The Minister may call for tenders to undertake exploration or mining on land that is not the subject of a licence or an application.
- (2) The Minister may decide which tenderer is successful, and must notify all tenderers of the decision.
- (3) If the successful tenderer does not, within the time allowed by the Minister, apply for a licence the Minister may—
 - (a) invite any other tenderer to apply for a licence; or
 - (b) call for tenders again; or
 - (c) abandon the tender system and notify the unsuccessful tenderers.

28. *Moratorium after exploration licence ceases to apply*

A person may not apply for an exploration licence over land which was covered by a previous exploration licence until at least 3 months after the previous licence has ceased to apply to the land.

29. *Application for renewal of licence*

- (1) A licensee may apply, in accordance with the regulations, and not later than 3 months before the licence expires, to the Minister for renewal of the licence.
- (2) If an application for renewal of a licence is lodged before the licence expires (whether within the time limit specified in sub-section (1) or not), the licence continues in operation until the application is granted and registered or refused.

30. *Decrease in area under exploration licence*

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- (1) An application for the first renewal of an exploration licence must, unless the Minister decides otherwise, identify at least 25% of the total number of graticular sections (in one or more areas each comprising whole graticular sections only) covered by the original licence to be excluded from the licence as renewed.
- (2) An application for the third renewal of an exploration licence must, unless the Minister decides otherwise, identify at least a further 35% of the total number of graticular sections (in one or more areas each comprising whole graticular sections only) covered by the original licence to be excluded from the licence as renewed.
- (3) In calculating the area to be excluded—
 - (a) any part of a graticular section covered by the licence, and any fraction of a graticular section that remains after calculating the area to be excluded, must be treated as a whole graticular section; and
 - (b) if the applicant holds two or more exploration licences with a common expiry date over adjoining areas, the combined areas covered by the licences may, at the Minister's discretion, be treated as a single area.

31. *Minister may renew or refuse to renew a licence*

- (1) The Minister must refuse to renew a licence if the applicant does not satisfy the Minister as to the matters specified in section 15(6)(a), (b), (c) and (d).¹⁸
- (1A) The Minister must refuse to renew a licence if the applicant does not satisfy the Minister as to the matter specified in section 15(6)(ba) unless the applicant satisfies the Minister that the applicant

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

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

has identified minerals in the land covered by the licence and that¹⁹—

- (a) additional time is necessary to assess the economic viability of mining those minerals; or
 - (b) it is not at present economically viable to mine those minerals but it may become so in the future.
- (2) Otherwise, the Minister may, by instrument served on the applicant, renew or refuse to renew a licence.
- (3) The Minister may renew a licence—
- (a) subject to any conditions specified in the renewal; or
 - (b) to cover a smaller area than that covered by the application for renewal.
- (4) The Minister may renew a licence if the licensee has substantially complied with this Act or the regulations (provided that the licensee complies with section 15(6)(a), (b), (c) and (d)), and may refuse to renew a licence even though the licensee has complied with this Act and the regulations.²⁰
- (5) Sub-section (4) does not authorise the Minister to renew a licence if the licensee has not complied with this Act or the regulations unless the Minister is satisfied that the non-compliance is not likely to affect adversely any person's rights under this Act or the regulations or to result in any person being deprived of information necessary for the effectual exercise of those rights.
- (6) A renewal or refusal to renew has no effect until the instrument of renewal or refusal to renew is registered.

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

32. *Period of renewal*

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

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

(2) An exploration licence that has been renewed has effect for 1 year or any longer period, not exceeding 4 years, that is specified in the notice of renewal, but the maximum total period for which an exploration licence, together with renewals, has effect is 5 years unless the Minister decides otherwise²¹—

S. 32(2)
amended by
No. 86/1993
s. 14.

(a) because he or she is satisfied that the licensee has identified minerals in the land covered by the licence and that—

(i) additional time is necessary to assess the economic viability of mining those minerals; or

(ii) it is not at present economically viable to mine those minerals but it may become so in the future; or

(b) for any other reason.

(3) The renewal of a licence takes effect on the anniversary of the registration under this Act of the initial licence.

33. *Transfer of licence*

(1) An exploration licence must not be transferred during its first year, and a purported transfer during that time has no effect.

(2) A licence (other than an exploration licence during its first year) may be transferred by an instrument approved by the Minister and not otherwise.

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s. 34

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

(3) Before approving an instrument of transfer, the Minister must be satisfied that the proposed transferee complies with section 15(6)(a), (b), (c) and (d).²²

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

(3A) The Minister may approve an instrument of transfer even if he or she is not satisfied as to the matter specified in section 15(6)(ba) if the Minister is satisfied that minerals have been identified in the land covered by the licence and that²³—

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

(4) A transfer—

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

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

34. *Variation of licence*

S. 34(1)
amended by
No. 86/1993
s. 16(1).

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

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- (2) The Minister may act under sub-section (1)—
- (a) at the request of the licensee; or
 - (b) if the Minister decides it is necessary for the protection of the environment or the rehabilitation or stabilisation of the land to which the licence applies; or
 - (c) if the Minister decides it is necessary—
 - (i) for the excision of any area from the land covered by an exploration licence, if a mining licence covering 5 hectares or less is granted over that area on the consent of the Minister under section 16; or
 - (ii) for the inclusion in land covered by an exploration licence of any area that was excised under sub-paragraph (i), when the mining licence ceases to apply to that area; or
 - (ca) if the Minister decides it is necessary for the purpose of allowing access to and use of the land to which the licence applies by the holder of another licence that is limited to a particular stratum; or
 - (cb) if the Minister decides it is necessary because of any condition imposed on the approval of a work plan under section 40(4)(a); or
 - (d) in any other circumstances that are prescribed.
- (3) A variation of a licence or a variation, suspension, revocation or addition of a licence condition has no effect until the instrument by which it was done is registered.

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

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

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

35. Combined conditions

The Minister may, at the request of the licensee, treat two or more licences of the same type held by the same person over adjoining areas as a single licence over the combined areas for the purpose of determining whether conditions of any of those licences about employment or expenditure have been complied with.

36. Amalgamation of licences

- (1) The Minister may, at the request of the licensee and by instrument served on the licensee, determine that one of two or more licences of the same type held by the same person over adjoining areas applies to the combined areas.
- (2) The Minister may nominate which licence covers the combined areas and must cancel the other licence or licences.
- (3) An amalgamation has no effect until the instrument of amalgamation is registered.
- (4) A cancellation has no effect until the instrument of cancellation is registered.

37. Surrender of licence

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

38. Cancellation of licence

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

(a) the Minister has given the licensee 28 days' written notice of his or her intention to cancel the licence and has, in that notice, requested the licensee to provide reasons why the licence should not be cancelled; and

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

(i) has not substantially complied with—

(A) this Act or the regulations; or

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

(C) any relevant planning scheme or permit; or

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

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

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

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

(vi) subject to sub-section (1A), no longer complies with section 15(6)(a) to (d).

S. 38(1)(b)(i)
amended by
No. 86/1993
s. 17(1)(a).

S. 38(1)(b)(vi)
amended by
No. 86/1993
s. 17(1)(b).

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

(1A) The Minister must not cancel a licence under subsection (1) because of non-compliance with section 15(6)(ba) if the Minister waived compliance by the licensee with that section under section 25(3A), 31(1A) or 33(3A) (as the case requires).

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

- (1B) The Minister may cancel a licence, by instrument served on the licensee—
- (a) in the case of a mining licence, if—
 - (i) the licensee has not applied for an authority to commence work within 12 months (or any longer period allowed by the Minister) after the licence was granted; or
 - (ii) an authority to commence work has been refused or has lapsed;
 - (b) in the case of an exploration licence if the licensee has not commenced work within 3 months (or any longer period allowed by the Minister) after notifying the chief mining inspector under section 43(1)(d)(i) of the licensee's intention to commence work.
- (2) The Minister must, by instrument served on the holder of an exploration licence, cancel that licence in relation to any land covered by it over which a mining licence is granted, unless the exploration licence is varied under section 34(2)(c).
- (3) A cancellation has no effect until the instrument of cancellation is registered.

PART 3—WORK UNDER A LICENCE

39. *Work must be approved*

- (1) A person, other than the Crown, must not do work otherwise than—
- (a) in accordance with a licence; or
 - (b) as authorised by a minerals exemption.

(1A) A licensee and the manager of a worksite must comply with this Act and the regulations in doing work.

S. 39(1A)
inserted by
No. 86/1993
s. 18(a).

- (2) The holder of a mining licence must not do work unless the chief administrator has granted an authority to commence work and it is registered.

* * * * *

S. 39(3)
repealed by
No. 86/1993
s. 18(b).

- (4) A licensee must not do work unless the chief administrator—
- (a) is satisfied that the licensee is insured under a policy of public liability insurance for an amount determined by the chief administrator; and
 - (b) has notified the licensee of that fact.

Penalty: 100 penalty units.

40. *Work plan*

- (1) A licensee who proposes to do work must lodge a work plan with the chief administrator.
- (2) If—
- (a) an applicant for an exploration licence indicates in the application that the program

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s. 40

of work referred to in section 15(6)(c) will be the work plan for the licence; and

(b) that program of work complies with sub-section (3); and

S. 40(2)(c) repealed by No. 86/1993 s. 19(a).²⁴

* * * * *

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

S. 40(2A) inserted by No. 86/1993 s. 19(b).

(2A) If any part of the land covered by a mining licence is Crown land, the chief administrator must without delay lodge a copy of the work plan with the Ministers administering the **Crown Land (Reserves) Act 1978** and the **Forests Act 1958**.²⁵

S. 40(3) amended by No. 86/1993 s. 19(c).

(3) A work plan must contain the prescribed information, and must, if the licence is a mining licence, include a rehabilitation plan for the land.²⁶

S. 40(3A) inserted by No. 86/1993 s. 19(d).

(3A) Within 28 days after the work plan was lodged with them, or any longer period allowed by the Minister, the Ministers administering the **Crown Land (Reserves) Act 1978** and the **Forests Act 1958**²⁷ —

(a) must give comments to the Minister on the rehabilitation plan included in the work plan; and

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

S. 40(4) amended by No. 86/1993 s. 19(e).

(4) The chief administrator must, within 1 month after the work plan is lodged (or, if sub-section (2) applies, within 1 month after the grant of the

licence or, if sub-section (2A) applies, within 1 month after comments are given under sub-section (3A)(a) or, if section 41A applies, within 1 month after the date specified by the Minister under section 41A(2)—

(a) approve the plan with or without conditions;
or²⁸

S. 40(4)(a)
amended by
No. 86/1993
s. 19(f).

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

(c) refuse to approve the plan—

and notify the licensee.

41. *Variation of work plan*

(1) A licensee who proposes to vary an approved work plan must lodge notice of the proposed variation with the chief administrator.

(2) A notice of variation must contain the prescribed information.

(3) The chief administrator must, within 1 month after the notice of variation is lodged—

(a) approve the variation with or without conditions; or²⁹

S. 41(3)(a)
amended by
No. 86/1993
s. 20.

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

(c) refuse to approve the variation—

and notify the licensee.

(4) The chief administrator must not approve a variation that affects a rehabilitation plan unless the Director-General (as defined in the

Conservation, Forests and Lands Act 1987) has agreed to the variation.

- (5) Once a variation has been approved, the approved work plan for the licence is the work plan as amended by that variation.

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

41A. Minister may require impact statement³⁰

- (1) If a work plan or notice of a proposed variation to an approved work plan lodged with the chief administrator by the holder of an exploration licence indicates that it is proposed—
- (a) to make roads to gain access to Crown land;
or
 - (b) to do bulk sampling—

and the Minister is of the opinion that the proposed work will have a material impact on the environment, he or she may, in writing, require the licensee to submit a statement, in the form specified by the Minister, assessing the impact of the proposed work on the environment.

- (2) The Minister must, on receipt of the statement, forward a copy to the Ministers administering the **Planning and Environment Act 1987**, the **Crown Land (Reserves) Act 1978** and the **Forests Act 1958** and request comments on it by the date specified by the Minister.
- (3) The Minister must consider any comments received under sub-section (2) by the specified date before a decision is made under section 40(4) on the plan or under section 41(3) on the proposed variation (as the case requires).

42. Commencement of work under mining licence

- (1) The holder of a mining licence may apply to the chief administrator for an authority to commence work.

-
- (2) The chief administrator must grant that authority, if he or she is satisfied—
- (a) that the licensee—
 - (i) has an approved work plan; and
 - (ii) has entered into a rehabilitation bond in accordance with section 80; and
 - (iii) has obtained all the necessary consents and other authorities required by or under this or any other Act; and
 - (b) that 21 days have passed since the licensee notified—
 - (i) the chief mining inspector; and
 - (ii) the owners and occupiers of the land affected³¹—of the licensee's intention to commence work; and
 - (c) if the land affected³² is private land, that—
 - (i) the licensee has obtained the consent of the owners and occupiers of the land affected³³; or
 - (ii) the licensee has made compensation agreements with those owners and occupiers; or
 - (iii) the amount of compensation payable to those owners and occupiers has been determined under Part 8; or
 - (iv) the licensee has purchased the land affected³⁴—but must otherwise refuse to grant that authority.
- (3) An authority to commence work has no effect until it is registered.

- (4) Once registered, an authority to commence work—
- (a) is not invalid only because one or more of the necessary consents and other authorities were not obtained; and
 - (b) does not relieve the licensee from the requirement to obtain any consents or other authorities made necessary by a variation of the approved work plan; and
 - (c) does not relieve the licensee from liability under any other Act for a failure to obtain any necessary consent or other authority; and
 - (d) authorises the licensee to carry out work in accordance with the approved work plan.
- (5) An authority to commence work lapses if the licensee does not commence work within 6 months after the authority was registered, or any longer period allowed by the Minister.
- (6) Despite anything in any planning scheme approved under the **Planning and Environment Act 1987**, the holder of a mining licence may be granted a permit under the scheme for carrying out mining on the land covered by the licence even if the scheme prohibits that use or development of the land (whether absolutely or unless specified conditions are complied with) and does not provide for the granting of a permit for that use or development.
- (7) If under sub-section (6) or any planning scheme a permit is required to be obtained for carrying out mining on the land covered by a mining licence in accordance with that licence, the licensee is not required to obtain a permit for that work if—
- (a) an Environment Effects Statement has been prepared under the **Environment Effects**

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

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

-
- Act 1978** on the work proposed to be done under the licence; and
- (b) an assessment of that Statement by the Minister administering the **Environment Effects Act 1978** has been submitted to the Minister; and
 - (c) an authority to commence work has been granted by the chief administrator with the approval of the Minister.
- (8) In addition to any other power to prepare, adopt or approve amendments to planning schemes, the Minister administering the **Planning and Environment Act 1987** may—
- (a) on the recommendation of the Minister prepare; and
 - (b) adopt and approve—
- amendments to any planning scheme to facilitate the carrying out of mining on land covered by a mining licence in accordance with that licence.
- (9) Without limiting what an amendment may include, an amendment prepared under sub-section (8) may provide that, in the circumstances set out in sub-section (7), no permit is required to carry out mining on land covered by a mining licence in accordance with that licence.
- (10) The **Planning and Environment Act 1987** (except section 12(2), Divisions 1 and 2 of Part 3 and section 39(1) to (6) and any regulations made for the purposes of those provisions) applies to the preparation, adoption and approval of an amendment under sub-section (8).
- (11) Section 39(7) of the **Planning and Environment Act 1987** applies to an amendment prepared, adopted or approved under sub-section (8) as if
- S. 42(8) inserted by No. 86/1993 s. 22.**
- S. 42(9) inserted by No. 86/1993 s. 22.**
- S. 42(10) inserted by No. 86/1993 s. 22.**
- S. 42(11) inserted by No. 86/1993 s. 22.**

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before "Division 1" there were inserted "section 12(1) or".

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

(12) Section 39(8) of the **Planning and Environment Act 1987** applies to an amendment prepared or adopted under sub-section (8) as if—

- (a) the expression "Except for an application under this section," were deleted; and
- (b) before "Division 1" there were inserted "section 12(1) or".

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

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

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

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

43. Commencement of work under exploration licence

S. 43(1)
amended by
No. 86/1993
s. 23(a)(i)(iii).

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

- (a) the licensee has an approved work plan; and
- (b) the licensee has entered into a rehabilitation bond in accordance with section 80; and
- (c) the licensee has obtained all the necessary consents and other authorities relating to the land affected³⁵ required by or under this or any other Act; and

- (d) the licensee has given—
- (i) 21 days' notice to the chief mining inspector; and
 - (ii) 21 days' notice (or any shorter period agreed between the licensee and the owners and occupiers of the land affected) to the owners and occupiers of the land affected³⁶—
- of the licensee's intention to commence work; and
- (e) if the land affected³⁷ is private land—
- (i) the licensee has obtained the consent of the owners and occupiers of the land affected³⁸; or
 - (ii) the licensee has made compensation agreements with those owners and occupiers; or
 - (iii) the amount of compensation payable to those owners and occupiers has been determined under Part 8; or
 - (iv) the licensee has purchased the land affected³⁹; and

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

Penalty: 100 penalty units.

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S. 43(2)
repealed by
No. 86/1993
s. 23(b).

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s. 43

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

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

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

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

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

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

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

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

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

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

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- (6) The **Planning and Environment Act 1987** (except section 12(2), Divisions 1 and 2 of Part 3 and section 39(1) to (6) and any regulations made for the purposes of those provisions) applies to the preparation, adoption and approval of an amendment under sub-section (4). S. 43(6)
inserted by
No. 86/1993
s. 23(c).
- (7) Section 39(7) of the **Planning and Environment Act 1987** applies to an amendment prepared, adopted or approved under sub-section (4) as if before "Division 1" there were inserted "section 12(1) or". S. 43(7)
inserted by
No. 86/1993
s. 23(c).
- (8) Section 39(8) of the **Planning and Environment Act 1987** applies to an amendment prepared or adopted under sub-section (4) as if— S. 43(8)
inserted by
No. 86/1993
s. 23(c).
- (a) the expression "Except for an application under this section," were deleted; and
- (b) before "Division 1" there were inserted "section 12(1) or".
- (9) Section 46 of the **Planning and Environment Act 1987** does not apply to a planning scheme to the extent to which, because of an amendment prepared, adopted or approved under sub-section (4), it is expressed or purports to deal with any land that has been permanently reserved for any purpose set out in section 4 of the **Crown Land (Reserves) Act 1978** in any manner inconsistent with that reservation. S. 43(9)
inserted by
No. 86/1993
s. 23(c).
- (10) Nothing in this section prevents either House of Parliament exercising its power under section 38 of the **Planning and Environment Act 1987**. S. 43(10)
inserted by
No. 86/1993
s. 23(c).

43A. Effect of contraventions

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

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

s. 43B

any condition specified under section 44 or with the approved work plan for the licence does not constitute a contravention of the **Planning and Environment Act 1987** or any planning scheme, despite anything in that Act or scheme.

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

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

- (1) Despite any provision to the contrary made by or under any Act (being an Act that relates to access to, or the doing of work on, unrestricted Crown land) other than this Act that requires a person to obtain any consent or other authority under that provision before carrying out exploration or mining on unrestricted Crown land but subject to any conditions imposed by the Minister on the exploration licence or mining licence (as the case requires), it is not necessary for a licensee to obtain any such consent or other authority before carrying out exploration or mining on unrestricted Crown land.
- (2) Sub-section (1) does not apply to the **Environment Protection Act 1970**, the **Flora and Fauna Guarantee Act 1988** or the Fire Protection Regulations 1992.

44. *Particular consents etc. required*

S. 44(1)
amended by
No. 86/1993
s. 25(a)(b).

- (1) A licensee who proposes to do work on restricted Crown land must obtain the consent of the Ministers administering the **Crown Land (Reserves) Act 1978** and the **Forests Act 1958**.

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

- (2) A licensee who proposes to do work on land—
* * * * *

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- (b) that is owned by, vested in or managed or controlled by the Melbourne and Metropolitan Board of Works⁴⁰ or an Authority under the **Water Act 1989** must obtain the consent of that Board or Authority; and
- (c) on which there is a public highway, road or street must give 21 days' notice of the proposed work to the person or body having the care or management of the public highway, road or street.
- * * * * *
- (4) A consent under sub-section (1) or (2)—
- (a) must not be unreasonably withheld; and
- (b) may be granted subject to conditions.
- (5) A person or body whose consent is sought under sub-section (1) or (2) must, within 28 days (or any longer period allowed by the Minister) after the consent being sought, grant that consent (whether subject to conditions or not) or refuse to consent.
- (6) A person or body that does not comply with sub-section (5) must be taken to have consented.
- (7) A person or body that refuses to consent under sub-section (1) or (2) must, within 7 days after the decision to refuse, give the licensee a statement in writing of the reasons for the decision.
- (8) A licensee may only do work at a depth of more than 0.75 metres below any land that is within 100 metres of—
- (a) a waterway that is owned by, vested in or managed or controlled by the Melbourne and
- S. 44(2)(c) amended by No. 86/1993 s. 25(d).
- S. 44(3) repealed by No. 86/1993 s. 25(e).
- S. 44(4) amended by No. 86/1993 s. 25(f).
- S. 44(5) amended by No. 86/1993 s. 25(f)(g).
- S. 44(7) amended by No. 86/1993 s. 25(f).

Metropolitan Board of Works or an Authority under the **Water Act 1989**; or

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

after consultation with the Board or Authority and in compliance with any conditions specified by the Board or Authority.

S. 44(9) amended by No. 52/1998 s. 311(Sch. 1 item 64.3).

- (9) A licensee may apply to the Tribunal for review of a decision—

S. 44(9)(a) amended by No. 86/1993 s. 25(f).

- (a) by a person or body under sub-section (1) or (2)—

(i) to refuse to consent; or

(ii) to consent subject to conditions; or

- (b) under sub-section (8) by the Board or an Authority to specify a condition with which the licensee must comply in doing work.

S. 49(10) inserted by No. 52/1998 s. 311(Sch. 1 item 64.4).

- (10) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made;

(b) either—

(i) in the case of a decision under sub-section (1) or (2), the day on which the statement of reasons for the decision is given to the licensee under sub-section (7); or

(ii) in the case of a decision under sub-section (8), if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the licensee requests a statement of reasons for the decision, the day on which the statement of

reasons is given to the licensee or the licensee is informed under section 46(5) of that Act that a statement of reasons will not be given.

45. Protection of buildings and sites

(1) A licensee must not, except as provided by subsection (2), (3), (4), (4A) or (4B) do any work—

S. 45(1)
amended by
No. 18/1997
s. 3(1)(a).

(a) within 100 metres laterally of—

- (i) a dwelling house; or
- (ii) a substantial farm building; or
- (iii) a factory; or
- (iv) a windmill, a bore, a spring or a dam (not including a dam that is being used for mining or a dam that has a capacity of less than 0.3 megalitres); or
- (v) a garden, an orchard or a vineyard; or
- (vi) a reservoir or a lake; or
- (vii) a church; or
- (viii) a hospital; or
- (ix) a public building; or
- (x) a cemetery; or
- (xi) a building that is specified in the Register of the National Estate, or specified as a notable building or as a building of significance in a planning scheme or any land within the curtilage of the building; or
- (xii) an archaeological and Aboriginal site specified in the site register of the Victorian Archaeological Survey; or

S. 45(1)(a)(xi)
amended by
Nos 93/1995
s. 218(1)(Sch.
2 item 5.1),
18/1997
s. 3(1)(b),
93/1995
s. 218(2)(Sch.
2 item 9.1).

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s. 45

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

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

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

Penalty: 100 penalty units.

(2) A licensee may, with the consent of the owners and occupiers of the land on which anything referred to in sub-section (1)(a)(i) to (v) is situated, do work within the area prohibited by sub-section (1)(a) in relation to that thing or within 100 metres below that area.

(3) A licensee may—

S. 45(3)(a)
substituted by
No. 93/1995
s. 218(1)(Sch.
2 item 5.3),
amended by
No. 18/1997
s. 3(2),
repealed by
No. 93/1995
s. 218(2)(Sch.
2 item 9.2) (as
amended by
No. 66/1997
s. 10).

* * * * *

(b) with the consent of the Australian Heritage Commission in respect of a building that is specified in the Register of the National Estate; and

(c) with the consent of the responsible authority in respect of a building that is specified as a

notable building or as a building of
significance in a planning scheme—

do work within the area that is prohibited in
relation to that building by sub-section (1)(a)(xi)
or within 100 metres below that area.

(4) A licensee may, with the consent of any person or
body nominated under section 18(a) in relation to
the application for the licence, do work within the
area prohibited by sub-section (1)(a)(xii) or within
100 metres below that area.

(4A) A licensee may, with the consent of the Heritage
Council in respect of a place or object that is
included in the Heritage Register established
under the **Heritage Act 1995**, do work within the
area that is prohibited in relation to that place or
object by sub-section (1)(a)(xiii), or within 100
metres below that area.

S. 45(4A)
inserted by
No. 18/1997
s. 3(3).

(4B) A licensee may, with the consent of the Executive
Director (within the meaning of the **Heritage Act
1995**), in respect of an archaeological site on the
Heritage Inventory established under the **Heritage
Act 1995**, other than an archaeological site which
is a place or object to which sub-section (4A)
applies, do work within the area that is prohibited
in relation to that archaeological site by sub-
section (1)(a)(xiii) or within 100 metres below
that area.

S. 45(4B)
inserted by
No. 18/1997
s. 3(3).

(5) An owner or occupier who consents under sub-
section (2), or a person or body that consents
under sub-section (3) (4), (4A) or (4B), may make
that consent conditional on specified distance or
depth restrictions.

S. 45(5)
amended by
No. 18/1997
s. 3(4).

(6) A licensee must not do any work in an area that is
an Aboriginal place if the doing of that work
would contravene any terms of the declaration in
force under the Aboriginal and Torres Strait

Islander Heritage Protection Act 1984 of the Commonwealth (as amended and in force from time to time).

Penalty: 100 penalty units.

46. Minister may limit protection

- (1) The Minister may, after considering the advice of the Mining and Environment Advisory Committee, authorise a licensee to do work within the area prohibited by section 45(1)(a)(i) to (x) or within 100 metres below that area.
- (2) A licensee who does work in accordance with an authority under sub-section (1) is not guilty of an offence under section 45(1).
- (3) A licensee who does work in accordance with an authority under sub-section (1), or with the consent of a person or body under section 45(3) or (4), must repair any damage caused to the protected building or site by the work.

47. Plan of mine

- (1) A licensee who undertakes mining must give the chief mining inspector a detailed current plan of the mine—
 - (a) within 6 months after the mine is opened; and
 - (b) within 6 months after the end of each subsequent 6 month period during which the mine is open; and
 - (c) at any time, if requested by the chief mining inspector.
- (2) A licensee must provide to the chief mining inspector any further information required by the chief mining inspector.

Penalty: 10 penalty units.

47A. Management of worksite

S. 47A
inserted by
No. 86/1993
s. 26.

- (1) Unless the Minister determines otherwise under sub-section (3), the holder of a mining licence must employ a person holding a mine manager's certificate to manage the worksite.

Penalty: 100 penalty units.

- (2) The Minister may require the holder of an exploration licence to employ a person who holds a mine manager's certificate to manage any worksite if the Minister is satisfied that the nature of the work is such as to require the employment of such a person.
- (3) If the Minister is of the opinion that, having regard to the nature of the work at a worksite, it is not necessary for it to be managed by a person who holds a mine manager's certificate, he or she may determine that it may be managed by a person who does not hold a mine manager's certificate but who is authorised by the Minister in writing for the purpose and notify the licensee accordingly.
- (4) If—
- (a) a licensee is, for any reason beyond the licensee's control, unable for more than one week to employ a person holding a mine manager's certificate to manage any worksite; or
- (b) the manager is absent on leave or because of sickness or any other reasonable cause for more than one week—

the Minister may, at the request of the licensee, authorise in writing a person who does not hold a mine manager's certificate to perform the duties of a manager for the period specified by the Minister and notify the chief mining inspector of that person's name and address.

- (5) The Minister may only authorise a person under sub-section (3) or (4) if he or she is satisfied that the person—
- (a) has an appropriate level of competence and appropriate experience; and
 - (b) has adequate knowledge of this Act and the regulations and any other relevant legislation; and
 - (c) if relevant, has the same qualifications to administer first-aid as the holder of a mine manager's certificate is required to have under the regulations.
- (6) The Minister may cancel the authorisation of a person under sub-section (3) or (4) if he or she is satisfied that the person—
- (a) is incapable, incompetent or unfit to manage a worksite; or
 - (b) has contravened this Act or the regulations.
- (7) A person authorised under sub-section (4) has the same duties and is subject to the same liabilities as a manager.
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**PART 4—MINING AND ENVIRONMENT ADVISORY
COMMITTEE**

48. *Establishment of the Committee*

There is established a committee called the
Mining and Environment Advisory Committee.

49. *Functions of the Committee*

(1) The functions of the Committee are—

- (a) to advise the Minister about amendments to
planning schemes relating to exploration or
mining; and
- (b) to advise the Minister about authorising
work under section 46(1); and

* * * * *

S. 49(1)(c)
repealed by
No. 86/1993
s. 27.

- (d) to investigate, and to report and make
recommendations to the Minister on, any
matter referred to it by the Minister.

(2) In exercising its functions the committee may—

- (a) obtain information from a licensee in any
form appropriate to the committee's
operations; and
- (b) consider expert advice relevant to its
deliberations.

50. *Members of the Committee*

(1) The Committee consists of 7 members appointed
by the Minister of whom—

- (a) one is the chief administrator or an
employee in the Department; and

S. 50(1)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

Mineral Resources Development Act 1990

Act No. 92/1990

s. 50

S. 50(1)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

(b) one is nominated by the Minister administering the **Conservation, Forests and Lands Act 1987** and is the chief administrator, or an employee in the Department, as defined in that Act; and

S. 50(1)(c)
substituted by
No. 46/1998
s. 7(Sch. 1).

(c) one is nominated by the Minister administering the **Planning and Environment Act 1987** and is the Secretary to the Department of Infrastructure or a person employed in that Department; and

(d) one, in the opinion of the Minister, is capable of representing the interest of the sector of the mining industry holding licences covering land of 5 hectares or less; and

(e) one is selected by the Minister from a panel of 3 names submitted by the Victorian Chamber of Mines; and

(f) one is selected by the Minister from a panel of 3 names submitted by the Victorian Farmers Federation; and

(g) one, in the opinion of the Minister, is capable of representing environmental interests.

(2) If a body referred to in sub-section (1)(e) or (f)—

(a) fails to submit a panel of 3 names on or before the date specified by the Minister when requesting a panel; or

(b) ceases to exist—

the Minister may appoint a member who, in the opinion of the Minister, is capable of representing the persons represented or previously represented by that body.

51. Terms and conditions of office of member

- (1) A member holds office for the term, not exceeding 3 years, that is specified in the instrument of appointment, and is eligible for re-appointment.
- (2) The office of a member becomes vacant if—
 - (a) the member becomes bankrupt; or
 - (b) the member is convicted of an offence which is, or which would if committed in Victoria be, an indictable offence; or
 - (c) the member is absent from 4 consecutive meetings of the Committee without the Committee's leave.
- (3) A member may resign his or her office in writing delivered to the Minister.
- (4) The Minister may suspend a member or remove a member from office.
- (5) A member (other than a person who holds a full-time statutory office within the meaning of the **Public Sector Management and Employment Act 1998** or is employed full-time in the public service or holds an office with or is employed by a statutory authority and whose travelling and personal expenses are met through that office or employment) is entitled to be paid any remuneration and travelling and other allowances specified in the instrument of appointment or fixed from time to time by the Governor in Council.
- (6) A member is not subject to the **Public Sector Management and Employment Act 1998** in respect of his or her office as member.

S. 51(5)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 51(6)
amended by
No. 46/1998
s 7(Sch. 1).

52. *Chairperson and deputy chairperson*

- (1) The Minister may appoint a member to be chairperson of the Committee and a member to be deputy chairperson.
- (2) The chairperson or deputy chairperson may resign that office in writing delivered to the Minister.

53. *Meetings of the Committee*

- (1) The quorum of the Committee is 4 members of whom one is the chairperson or deputy chairperson.
- (2) The chairperson (or in his or her absence, the deputy chairperson) must preside at a meeting of the Committee.
- (3) The person presiding has a deliberative vote and a casting vote.
- (4) Otherwise, the Committee may regulate its own procedure.

54. *Validity of acts or decisions of the Committee*

An act or decision of the Committee is not invalid only because of—

- (a) a vacancy in the office of member; or
 - (b) a defect or irregularity in or in connection with the appointment of a member.
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PART 5—OTHER AUTHORITIES

Division 1—Miner's rights

55. *Miner's right*

- (1) A miner's right entitles the holder to search for minerals on—
 - (a) private land (other than land covered by a mining licence) with the consent of the owner or occupier; or
 - (b) Crown land, other than—
 - (i) land exempted under section 6 or 7 of this Act or nominated under section 7(1) of the **Crown Land (Reserves) Act 1978**; and
 - (ii) land covered by a mining licence.
- (2) A consent granted under sub-section (1)(a) by an owner or occupier may be—
 - (a) granted subject to conditions; and
 - (b) withdrawn at any time by the owner or occupier.
- (3) A miner's right is current for the time, not exceeding 2 years, specified in the miner's right.

56. *Application for a miner's right*

A person may apply to the chief administrator in accordance with the regulations for a miner's right.

57. *Grant or refusal of miner's right*

- (1) The chief administrator must refuse an application if he or she believes on reasonable grounds that the applicant is—

S. 57(1)(a)
substituted by
No. 27/1991
s. 4(4).

- (a) likely to search for minerals on—
 - (i) land covered by a mining licence; or
 - (ii) private land without the consent of the owner or occupier; or
 - (iii) Crown land exempted under section 6 or 7; or
 - (iv) Crown land nominated under section 7(1) of the **Crown Land (Reserves) Act 1978**; or
 - (b) unlikely to comply with section 58.
- (2) Otherwise, the chief administrator must grant the application.

58. Obligations of holder

- (1) The holder of a miner's right who searches on land under that right must not—
- (a) use any equipment for the purposes of excavation on the land, other than non-mechanical hand tools; or
 - (b) use explosives on the land; or
 - (c) remove or damage any tree or shrub on the land; or
 - (d) disturb any Aboriginal place or Aboriginal object on the land.

Penalty: 100 penalty units.

- (2) The holder of a miner's right must repair any damage to the land arising out of the search.

Penalty: 10 penalty units.

Division 2—Tourist fossicking authorities

59. *Tourist fossicking authority*

- (1) A tourist fossicking authority entitles the holder and any person accompanied by the holder to search for minerals—
 - (a) with the consent of the owner or occupier, on the private land (other than land covered by a mining licence unless with the consent of the licensee); or
 - (b) on the Crown land (other than land exempted under section 6 or 7 and, unless with the consent of the licensee, land covered by a mining licence)—that is specified in the authority, at the times and subject to the conditions specified.
- (2) A tourist fossicking authority is current for the time, not exceeding 2 years, specified in the authority.
- (3) A consent granted under sub-section (1)(a) by an owner or occupier may be—
 - (a) granted subject to conditions; and
 - (b) withdrawn at any time by the owner or occupier.

60. *Application for tourist fossicking authority*

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

61. *Grant or refusal of tourist fossicking authority*

- (1) The chief administrator may grant or refuse an application.

- (2) The chief administrator may grant an application on any terms and conditions specified in the authority.
- (3) The chief administrator must, in determining the land to be specified in a tourist fossicking authority, consult with the Director-General (as defined in the **Conservation, Forests and Lands Act 1987**).

62. Obligations of holder

- (1) The holder of a tourist fossicking authority must not—
 - (a) use any equipment for the purposes of excavation on the land, other than non-mechanical hand tools; or
 - (b) use explosives on the land; or
 - (c) remove or damage any tree or shrub on the land; or
 - (d) disturb any Aboriginal place or Aboriginal object on the land.

Penalty: 100 penalty units.

- (2) The holder of a tourist fossicking authority must make sure that a person who searches for minerals under that authority does not do anything specified in sub-section (1)(a), (b), (c) or (d).

Penalty: 100 penalty units.

- (3) The holder of a tourist fossicking authority must repair any damage to the land arising out of the searching for minerals under that authority by any person.

Penalty: 10 penalty units.

Division 3—Tourist mine authorities

63. *Offence to operate tourist mine without authority*

A person must not operate a tourist mine otherwise than in accordance with a tourist mine authority.

64. *Application for tourist mine authority*

- (1) A person may apply to the Minister in accordance with the regulations for a tourist mine authority.
- (2) An applicant must lodge with the application the written consent of—
 - (a) the owner and occupier of the land; and
 - (b) if the land is subject to a licence held by another person, the licensee.

65. *Grant or refusal of tourist mine authority*

- (1) The Minister may grant or refuse an application.
- (2) The Minister may grant an application on any terms and conditions specified in the authority.

66. *Obligations of holder*

- (1) The holder of a tourist mine authority must—
 - (a) comply with the terms and conditions of the authority; and
 - (b) if the land is subject to a mining licence, comply with any instructions given by the mine manager.

Penalty: 100 penalty units.

- (2) The Minister may cancel the authority and, if the holder is also the licensee, cancel the licence if the holder fails to comply with—
 - (a) sub-section (1); or

Mineral Resources Development Act 1990
Act No. 92/1990

s. 67

S. 66(2)(c)
amended by
No. 86/1993
s. 28.

- (b) this Act or the regulations; or
- (c) any relevant planning permit or scheme.

67. *Commencing activity in a tourist mine*

The holder of a tourist mine authority must not commence activity in the mine until—

- (a) the chief mining inspector has approved the proposed activity; and
- (b) the holder has obtained all necessary consents and other authorities.

Penalty: 100 penalty units.

PART 6—MINING REGISTER

68. *Employment of registrar*

There is to be a mining registrar employed under Part 3 of the **Public Sector Management and Employment Act 1998**.

S. 68
amended by
No. 46/1998
s. 7(Sch. 1).

69. *Functions of registrar*

- (1) The registrar must establish and maintain a mining register.
- (2) The registrar must, by any means he or she considers appropriate—
 - (a) register the following documents—
 - (i) licences;
 - (ii) compensation agreements;
 - (iii) rehabilitation bonds;
 - (iv) approved work plans;
 - (v) authorities to commence work;
 - (vi) instruments of renewal of licences, including notice of decreased area and of any changed conditions;
 - (vii) instruments of refusal to renew licences;
 - (viii) instruments of variation of licences;
 - (ix) instruments of amalgamation of licences;
 - (x) notices of surrender of licences;
 - (xi) instruments of cancellation of licences;
 - (xii) instruments of variation, suspension, revocation or addition of licence conditions;

S. 69(2)(a)(xii)
amended by
No. 86/1993
s. 29.

Mineral Resources Development Act 1990

Act No. 92/1990

s. 69

S. 69(2)(a)(xvi)
amended by
Nos 91/1994
s. 28(1),
52/1998
s. 311(Sch. 1
item 64.5).

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- (xiii) approved instruments of transfer of licences;
 - (xiv) instruments for creating, assigning or affecting interests in, or conferred by, licences;
 - (xv) instruments for the devolution of licences or interests in, or conferred by, licences;
 - (xvi) determinations of the Tribunal or the Supreme Court as to the amount of compensation payable;

 - (xvii) any other prescribed documents; and
- (b) record in the register the prescribed information contained in—
- (i) any document registered under paragraph (a); and
 - (ii) any other document that is required to be lodged under this Act; and
- (c) endorse on the document and in the register the date and time of registration.
- (3) The registrar may—
- (a) approve forms of documents referred to in sub-section (2)(a) for registration; and
 - (b) register a document by registering either the original or a copy; and
 - (c) determine the form of an extract from the register.
- (4) The registrar may refuse to accept for registration any document referred to in sub-section (2)(a) that does not contain the prescribed information or that is not in an approved form.

70. *Effect of registration*

- (1) A document referred to in section 69(2)(a) (other than one referred to in sub-paragraph (xiv), (xv) or (xvi)) has no effect until it is registered.
- (2) A document referred to in section 69(2)(a)(xiv) or (xv) is ineffective for creating, assigning or affecting any interest in or conferred by a licence, or for the devolution of a licence or any interest in or conferred by a licence, until it is registered.
- (3) A licence, on registration, confers on the licensee a proprietary interest in the land covered by the licence and attaches to the licensee all rights and obligations under the licence.
- (4) A proprietary interest in land is conferred by a licence only for the purpose of assisting the licensee to exercise the rights and discharge the obligations under the licence.
- (5) A licence or renewal when registered is not invalid only because of any defect or irregularity (other than one resulting from fraud) in any application or process leading up to the grant or renewal of the licence.
- (6) The registrar must make sure that documents relating to the same licence are registered in the order in which they are lodged.
- (7) The approval or registration of a document does not give any right, interest or dealing that is evidenced by that document any force or effect that the right, interest or dealing would not have had if this Part had not been enacted.

71. *Creation etc. of interests in licences*

A purported creation or assignment of an interest in, or conferred by, a licence, and any purported dealing affecting an interest in, or conferred by, a

licence, has no effect until an instrument in an approved form evidencing the creation, assignment or other dealing is registered.

72. Devolution of rights of licensee

- (1) The devolution of any rights under a licence, or any interest in, or conferred by, a licence, that would, but for this section, occur by operation of law has no effect until an instrument in the approved form evidencing the devolution is registered.
- (2) Sub-section (1) applies despite anything in any Act or rule of law to the contrary.

73. Correction of register

- (1) The registrar may correct any error or omission in the register by—
 - (a) inserting an entry; or
 - (b) amending an entry; or
 - (c) omitting an entry—
 if he or she decides that the correction is necessary.
- (2) The registrar may make the correction on his or her initiative or on the application of any person.
- (3) The registrar must notify the licensee of any correction made under this section that affects the licence.
- (4) A person whose interests are affected by a decision of the registrar to correct the register may apply to the Tribunal for review of the decision.

S. 73(4)
substituted by
No. 52/1998
s. 311(Sch. 1
item 64.6).

S. 73(5)
substituted by
No. 52/1998
s. 311(Sch. 1
item 64.6).

- (5) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
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- (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

74. Disclosure of registered information

- (1) The registrar must—
- (a) allow access at all reasonable times to the register; and
 - (b) provide information from the register; and
 - (c) provide a copy of a registered licence—
- to any person who pays the prescribed fee.
- (2) The registrar may provide information to a prescribed person in connection with—
- (a) the establishment of; or
 - (b) the operation of; or
 - (c) the satisfaction of enquiries to—
- the integrated computerised information retrieval project, relating to information about land, its ownership and use, that is known as Landata.

75. Survey standards

The registrar may, subject to the regulations, specify standards for surveys and the circumstances in which surveys must be carried out before documents will be registered.

76. Evidence

A certificate in the prescribed form purporting to be issued by the registrar certifying as to any matter that appears in or can be ascertained from

the register or other records kept by the registrar under this Act is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

77. Offences

A person must not knowingly make, or cause or allow to be made, a false or unauthorised entry in the register.

Penalty: 100 penalty units.

PART 7—REHABILITATION

78. Licensee must rehabilitate land

- (1) The holder of a mining licence must rehabilitate land in accordance with the rehabilitation plan approved by the chief administrator.
- (2) The holder of an exploration licence must rehabilitate land in accordance with the conditions in the licence.

S. 78(2)
amended by
No. 86/1993
s. 30(1).

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S. 78(3)
repealed by
No. 86/1993
s. 30(2).

- (4) The owner of land may request the licensee to enter into a written agreement as to the rehabilitation plan.

79. Rehabilitation plan

A rehabilitation plan must—

- (a) take into account—
 - (i) any special characteristics of the land; and
 - (ii) the surrounding environment; and
 - (iii) the need to stabilise the land; and
 - (iv) the desirability or otherwise of returning agricultural land to a state that is as close as is reasonably possible to its state before the mining licence was granted; and
- (b) be prepared by the licensee after consultation with—

- (i) the owner of the land, if the land is private land and the licence is a mining licence; or
- (ii) the Director-General (as defined in the **Conservation, Forests and Lands Act 1987**) if the land is—
 - (A) private land and the licence is an exploration licence; or
 - (B) Crown land.

80. Rehabilitation bond

- (1) A licensee must enter into a rehabilitation bond for an amount determined by the Minister.
 - (2) The Minister must, before determining the amount of a rehabilitation bond—
 - (a) if the land is Crown land, obtain the agreement of the Director-General (as defined in the **Conservation, Forests and Lands Act 1987**) as to—
 - (i) the amount of the bond; and
 - (ii) any changes to be required under section 40(4)(b) to the rehabilitation plan; and
 - (b) if the land is private land, consult with—
 - (i) the council in whose municipal district the land is situated; and
 - (ii) where the licence is a mining licence, the owner of the land.
 - (3) The condition of a rehabilitation bond is that the licensee rehabilitates the land as required by section 78 to the joint satisfaction of the Minister and the Director-General (as defined in the **Conservation, Forests and Lands Act 1987**).
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- (4) The Minister may, at any time after a rehabilitation bond is entered into and after consultation with the licensee, by notice served on the licensee require the licensee to enter into a further rehabilitation bond for an amount determined by the Minister if he or she is of the opinion that the amount of the bond already entered into is insufficient.
 - (5) The Minister may serve on a licensee who has not complied with a requirement under sub-section (4) within 1 month after service of notice of the requirement, a notice prohibiting the licensee from doing any work until the licensee has entered into the further rehabilitation bond.
 - (6) The licensee must comply with a notice under sub-section (5).

Penalty applying to this sub-section: 100 penalty units.

81. Rehabilitation

The licensee must rehabilitate land in the course of doing work and must, as far as practicable, complete the rehabilitation of the land before the licence or any renewed licence ceases to apply to that land.

82. Return of bond if rehabilitation satisfactory

- (1) The Minister must return the bond or bonds to the licensee or former licensee as soon as possible if the Minister and the Director-General (as defined in the **Conservation, Forests and Lands Act 1987**) are satisfied—
 - (a) that the land has been rehabilitated as required by section 78; and
 - (b) that the rehabilitation is likely to be successful.

- (2) If the land is private land the Minister must not return the bond or bonds to the holder or former holder of a mining licence until after the owner of the land and the council in whose municipal district the land is situated have been consulted.

83. Minister may carry out rehabilitation

- (1) The Minister may take any necessary action to rehabilitate land if he or she—
- (a) is not satisfied that the land has been rehabilitated as required by section 78; or
 - (b) is satisfied that further rehabilitation of the land is necessary; or
 - (c) is requested to do so by the owner of the land.
- (2) The Minister must, if he or she refuses to act on a request under sub-section (1)(c), inform the owner of the land of the reasons for that refusal.
- (3) The Minister may only take action under sub-section (1) if he or she has requested the licensee or former licensee to rehabilitate the land and the licensee or former licensee has failed to do so within a reasonable period after the request.
- (4) The Minister may recover as a debt due to the Crown in a court of competent jurisdiction any amount by which the cost incurred under sub-section (1) exceeds the amount of the bond or bonds.
- (5) The Minister must, if satisfied that no further rehabilitation of the land is likely to be necessary, return to the licensee or former licensee as soon as possible any balance of the bond or bonds after any cost incurred under sub-section (1) is deducted.
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- (6) The Minister must return to the licensee or former licensee as soon as possible after the end of the period of 6 years after the licence ceased to be in force any part of the amount of the bond or bonds that has not been returned or spent under subsection (1).

84. *Payment out of Consolidated Fund*

Any money required by the Minister under this Part is payable out of the Consolidated Fund, which is appropriated to the necessary extent.

PART 8—COMPENSATION

85. *What compensation is payable for*

- (1) Compensation is payable by the licensee to the owner or occupier of private land for any loss or damage that has been or will be sustained as a direct, natural and reasonable consequence of the approval of the work plan or the doing of work under the licence including—
 - (a) deprivation of possession of the whole or any part of the surface of the land; and
 - (b) damage to the surface of the land; and
 - (c) damage to any improvements on the land; and
 - (d) severance of the land from other land of the owner or occupier; and
 - (e) loss of amenity, including recreation and conservation values; and
 - (f) loss of opportunity to make any planned improvement on the land; and
 - (g) any decrease in the market value of the owner or occupier's interest in the land.
- (2) The amount of compensation payable under subsection (1)—
 - (a) must, if it is necessary for the owner or occupier of land to obtain replacement land, take account of the reasonable incidental expenses incurred in obtaining and moving to that land; and
 - (b) may be increased by up to 10% by way of solatium to compensate the owner or occupier for intangible and non-pecuniary disadvantages that are not otherwise

compensable and that result from the approval of the work plan or the doing of work under the licence.

- (3) Compensation is not payable for the value of any mineral in or under the surface of land covered by a licence.
- (4) Any amount of compensation paid, agreed to be paid or determined under this Part is not affected by any subsequent change in the ownership or occupancy of the land.
- (5) A licensee is not liable to pay any greater total amount of compensation because of a change in the ownership or occupancy of the land.
- (6) Compensation is not payable in respect of any land which only became private land after the commencement of work on that land under the licence.

86. *When a claim can be made*

A claim for compensation for any loss or damage under section 85 which is not the subject of a registered compensation agreement may be made at any time until the end of the period of three years—

- (a) after the loss or damage occurred; or
- (b) after the licence expires—

whichever is the earlier.

87. *Compensation agreement*

- (1) The licensee and the owner or occupier may enter into a written agreement as to the amount of compensation payable under section 85.
- (2) The licensee must lodge an agreement under subsection (1) with the mining registrar for registration.

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- (3) A compensation agreement may include (among other things)—
- (a) a description of the licensee's proposed work, including the location and area of that work; and
 - (b) the anticipated date of commencement and anticipated duration of the proposed work; and
 - (c) agreed points of entry onto and exit from the land for the purposes of the proposed work; and
 - (d) the number and type of vehicles, plant and equipment involved in the proposed work; and
 - (e) a description of the facilities, including sanitary arrangements, which the licensee will be providing on the land.

88. *Determination of compensation disputes*

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

- (1) The owner or occupier or the licensee may—
- (a) apply to the Tribunal for determination of a disputed claim for compensation; or
 - (b) refer a disputed claim for compensation to the Supreme Court for determination—

in accordance with Part 10 of the **Land Acquisition and Compensation Act 1986** as if it were a claim for compensation under that Act and the licensee were the Authority referred to in that Part.

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

- (2) A party who applies to the Tribunal in respect of a claim or refers a claim to the Court under subsection (1) is only entitled to have that claim determined by the Tribunal or the Court (as the case requires) if the Tribunal or the Court is satisfied, after considering evidence produced to
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it, that the party has attempted to settle the claim by conciliation but has not been able to do so because the other party has refused to negotiate a settlement or because both parties are unable to agree.

(3) In its application to a claim referred under subsection (1) Part 10 of the **Land Acquisition and Compensation Act 1986** has effect as if—

(a) it required the Tribunal or the Court (as the case requires) in determining the compensation payable to have regard to the provisions of this Part; and

S. 88(3)(a)
amended by
No. 91/1994
s. 28(2)(b).

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

S. 88(3)(b)
amended by
No. 91/1994
s. 28(2)(b).

(i) the other party is not the owner or occupier of land covered by the licence; or

(ii) the other party has been frivolous or vexatious or has otherwise acted unreasonably—

in which case the Tribunal or the Court (as the case requires) may, subject to that section, award such costs as it thinks proper.

(4) The licensee must lodge a copy of a determination under this section with the mining registrar for registration.

89. Limit on total amount of compensation

(1) The total amount of compensation payable under section 85(1) in respect of any land must be no greater if the land is not owned and occupied by the same person than if it is.

s. 89

Mineral Resources Development Act 1990

Act No. 92/1990

- (2) Nothing in sub-section (1) limits the amount of solatium payable to the owner or occupier under section 85(2).
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PART 9—INSPECTORS

90. *Employment of inspectors*

(1) There may be employed under Part 3 of the **Public Sector Management and Employment Act 1998**—

S. 90(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (a) a chief mining inspector; and
- (b) such number of inspectors of mines as are necessary for the purposes of this Act.

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

S. 90(2)
amended by
No. 46/1998
s. 7(Sch. 1).

(3) The chief mining inspector has all the powers of an inspector.

91. *Delegation by chief mining inspector*

The chief mining inspector may, by instrument—

- (a) delegate to an inspector any power of the chief mining inspector; or
- (b) delegate to any person holding an office in the public service any power of an inspector—

other than this power of delegation.

92. *Powers of inspectors*

(1) An inspector may for the purpose of ascertaining whether or not the provisions of this Act or the regulations have been or are being complied with—

S. 92(1)
amended by
No. 86/1993
s. 31(a).

- (a) enter and inspect any mine at any reasonable time; and
- (b) examine any plant or any other thing whatsoever in the mine; and

Mineral Resources Development Act 1990

Act No. 92/1990

s. 92

S. 92(1)(c)
amended by
No. 86/1993
s. 31(b).

- (c) seize anything or any part of anything by means of or in relation to which the inspector believes on reasonable grounds that the provisions of this Act or the regulations have been contravened; and
 - (d) require the production of any relevant documents and inspect, examine and make copies of, or extracts from, them or remove them to make a copy or extract; and
 - (e) take any photographs or audio or video recordings that the inspector considers necessary; and
 - (f) require a person to whom this paragraph applies to state his or her full name and address and to produce evidence of its correctness if the inspector suspects on reasonable grounds that a name or address so stated is false.
- (2) Sub-section (1)(f) applies to—
- (a) a person found committing an offence against this Act or the regulations; and
 - (b) a person who the inspector believes on reasonable grounds has committed an offence against this Act or the regulations; and
 - (c) a person whose name and address are in the opinion of the inspector reasonably required.
- (3) The licensee and the mine manager must allow an inspector access to the mine and give the inspector any assistance that he or she may require to enable him or her to carry out his or her duties.

93. Offence to obstruct inspector etc.

- (1) A person must not—
- (a) wilfully assault, obstruct or attempt to obstruct, threaten, intimidate or attempt to intimidate an inspector in the exercise of the inspector's powers or the discharge of the inspector's duties; or
 - (b) contravene or fail to comply with any lawful requirement of an inspector; or
 - (c) refuse or neglect, when required by this Act to do so, to render assistance or furnish information to an inspector; or
 - (d) when required by an inspector to state his or her full name and address—
 - (i) fail to do so; or
 - (ii) state a false name or address; or
 - (e) make to an inspector exercising a power or discharging a duty under this Act a statement knowing it to be false or misleading in any particular.

Penalty: 100 penalty units.

- (2) A reference in sub-section (1) to an inspector includes a reference to a person acting under an instrument of delegation under section 91(b).
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PART 10—MINE MANAGERS' CERTIFICATES

94. *Application for mine manager's certificate*

- (1) A person may apply to the chief administrator in the prescribed form for a mine manager's certificate.
- (2) The chief administrator may, on the recommendation of the Mine Managers Board, grant a certificate if he or she is satisfied that the applicant—
 - (a) has paid the prescribed application fee; and
 - (b) has appropriate qualifications and experience; and
 - (c) has adequate knowledge of this Act and the regulations and any other relevant legislation; and
 - (d) if relevant, is qualified in accordance with the regulations to administer first-aid; and
 - (e) if relevant, is qualified in accordance with the regulations to use explosives.
- (3) A mine manager's certificate—
 - (a) authorises the person to whom it is granted to manage the mine or class of mine specified in the certificate; and
 - (b) remains in force until cancelled under section 95(3); and
 - (c) is subject to any conditions that are prescribed and to any other conditions specified in the certificate.

(4) A person may apply to the Tribunal for review of a decision by the chief administrator not to grant him or her a mine manager's certificate or to make a mine manager's certificate subject to a condition other than a prescribed condition.

S. 94(4) amended by No. 52/1998 s. 311(Sch. 1 item 64.9).

(4A) An application for review must be made within 28 days after the later of—

S. 94(4A) inserted by No. 52/1998 s. 311(Sch. 1 item 64.10) (as amended by No. 101/1998 s. 22(1)(j)).

(a) the day on which the decision is made;

(b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

(5) The chief administrator must keep a register of the names of holders of certificates and the classes of mines specified in the certificates.

95. *Inquiry by panel*

(1) If an inspector of mines reports to the chief administrator that the holder of a mine manager's certificate—

(a) is incapable, incompetent or unfit to manage a mine; or

(b) has contravened this Act or the regulations, whether or not he or she has been charged with or convicted of an offence arising out of the contravention—

the chief administrator may appoint a panel to inquire into the matter in accordance with the regulations.

(2) A panel must consist of—

Mineral Resources Development Act 1990

Act No. 92/1990

s. 95

S. 95(2)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

- (a) a person nominated by the chief administrator as chairperson; and
- (b) an employee in the Department who has experience in mining engineering; and

- (c) a person who has experience as a mine manager.

(3) The panel may decide to cancel, suspend for a period specified by it or impose any conditions that it thinks fit on a mine manager's certificate if it finds that the person to whom it was granted—

- (a) is incapable, incompetent or unfit to manage a mine; or
- (b) has contravened this Act or the regulations.

S. 95(4)
amended by
No. 52/1998
s. 311(Sch. 1
item 64.11).

(4) The holder or former holder of the mine manager's certificate may apply to the Tribunal for review of a decision by a panel under this section.

S. 95(5)
inserted by
No. 52/1998
s. 311(Sch. 1
item 64.12).

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

- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
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PART 11—MINING WARDENS

96. *Appointment of mining wardens*

- (1) The Governor in Council may appoint as many persons to be mining wardens as are required for the purposes of this Act.
- (2) The appointment of a person as a mining warden is subject to any terms and conditions that are specified in the instrument of appointment.
- (3) A mining warden holds office for the term, not exceeding 3 years, that is specified in the instrument of appointment and is eligible for re-appointment.
- (4) A mining warden is entitled to be paid—
 - (a) the remuneration fixed from time to time by the Governor in Council; and
 - (b) the travelling and other allowances fixed from time to time by the Governor in Council.
- (5) A mining warden is not, in respect of the office of mining warden, subject to the **Public Sector Management and Employment Act 1998**.
- (6) A mining warden may resign from office by delivering to the Governor in Council a signed letter of resignation.
- (7) The Governor in Council may at any time remove a mining warden from office.
- (8) If a mining warden was, immediately before his or her appointment, an officer within the meaning of the **State Superannuation Act 1988**, he or she continues, subject to that Act, to be an officer within the meaning of that Act while he or she continues in the appointment.

S. 96(5)
amended by
No. 46/1998
s. 7(Sch. 1).

97. Disputes

- (1) A party to a dispute may refer the dispute to a mining warden.
- (2) The mining warden must investigate the dispute, attempt to settle, or arbitrate in relation to, the matters in dispute and, where appropriate, make recommendations to the Minister concerning those matters.

98. Matters referred to mining warden

The Minister or the chief administrator may refer a matter to a mining warden for investigation, report and recommendations.

99. Powers of mining warden

- (1) In investigating a dispute or other matter referred to him or her, a mining warden has power to do all or any of the following—
 - (a) conduct a hearing;
 - (b) enter and inspect any relevant land;
 - (c) make an order for the inspection, detention, custody or preservation of any relevant minerals, whether or not in the possession, custody or power of a party to the dispute or other matter;
 - (d) make an order restraining a person from removing from Victoria or otherwise dealing with any minerals specified in the order, whether or not that person is domiciled, resident or present within Victoria;
 - (e) require an employee of the Department to produce any record or other document kept by, or in the custody, possession or control of, the Department and give any other information or assistance that the mining

S. 99(1)(e)
amended by
No. 46/1998
s. 7(Sch. 1).

warden requests and the employee is able to give.

- (2) For the purpose of an investigation a mining warden has the powers conferred on a board appointed by the Governor in Council by sections 14, 15, 16 and 21A of the **Evidence Act 1958**.
- (3) An order made by a mining warden under subsection (1)(c) or (d) may be enforced as if it were an order made by the Magistrates' Court in a civil proceeding.

100. *Conduct of hearing*

- (1) In conducting a hearing, a mining warden—
 - (a) is not bound by rules of evidence but may inform himself or herself on any matter in any manner that he or she thinks fit; and
 - (b) is bound by the rules of natural justice; and
 - (c) is not required to conduct the hearing in a formal manner.
- (2) Evidence in a hearing—
 - (a) may be given orally or in writing; and
 - (b) if the mining warden so requires, must be given on oath or by affidavit.
- (3) A party may appear before a mining warden in person or may be represented by an agent.
- (4) A party may only be represented by an agent who is admitted as a barrister and solicitor of the Supreme Court if—
 - (a) the other parties to the matter agree; or
 - (b) the mining warden grants leave.
- (5) Otherwise, the procedure of the mining warden is in his or her discretion.

101. *Evidence not admissible in other proceedings*

Evidence given to a mining warden must not be used in any proceedings (whether civil or criminal) before a court or tribunal except proceedings for an offence against this Act or for perjury.

102. *Validity of acts or decisions*

An act or decision of a mining warden is not invalid only because there was a defect or irregularity in or in connection with his or her appointment.

103. *Discontinuance of investigation*

A mining warden must discontinue the investigation of a dispute or other matter if—

- (a) it appears to him or her that the interests of the person or body that referred the dispute to the mining warden are not directly and substantially affected by the dispute; or
- (b) it appears to him or her that the dispute or other matter is the subject of proceedings before a court or tribunal; or
- (c) the person or body that referred the dispute or other matter to the mining warden requests the mining warden in writing to discontinue the investigation.

104. *Costs*

- (1) The costs of, and incidental to, an investigation by a mining warden are in the discretion of the mining warden and he or she has power to determine by whom, to whom and to what extent the costs are to be paid.

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- (2) A determination by a mining warden as to costs may be enforced as if it were an order made by the Magistrates' Court in a civil proceeding for the payment of money.
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PART 12—SAFETY AND ENFORCEMENT

105. *Occupational health and safety*

S. 105(1)
repealed by
No. 86/1993
s. 32.

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- (2) The **Occupational Health and Safety Act 1985** does not apply to—
- (a) any place in which work is being done under a licence; or
 - (b) any person who is doing work under a licence; or
 - (c) any person who employs (whether under a contract of employment or apprenticeship) another person to do work under a licence.
- (3) The Minister may, by notice served on the holder of a licence granted in accordance with section 47A of the **Electricity Industry Act 1993**, direct that the **Occupational Health and Safety Act 1985** is, despite anything to the contrary in sub-section (2), to apply to any place or person referred to in that sub-section to the extent and with effect from the date specified in the notice and that Act then applies to that place or person accordingly.
- (4) A notice under sub-section (3) must not specify a date that is not at least 14 days after the date of service of the notice.

S. 105(3)
inserted by
No. 56/1995
s. 42.

S. 105(4)
inserted by
No. 56/1995
s. 42.

106. *Mining infringements*

- (1) An inspector who has reason to believe that a person has committed a mining infringement may, in accordance with the regulations, serve on that person a mining infringement notice.

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- (2) An infringement notice must be in the prescribed form and must contain the prescribed particulars.
 - (3) An infringement notice may be withdrawn, whether the appropriate penalty has been paid or not, at any time within 28 days after the service of the notice, by serving on the alleged offender, in accordance with the regulations, a withdrawal notice which is in the prescribed form.
 - (4) If the appropriate amount specified in the notice as the penalty for the infringement has been paid before the notice is withdrawn, the amount so paid must be refunded on the notice of withdrawal being given.
 - (5) The penalty for the purposes of this section in respect of an infringement is the amount prescribed in respect of that infringement.

107. *Payment of penalty*

- (1) If before the end of the period specified in the infringement notice for the payment of the penalty or, where the inspector giving the notice so allows, at any time before the service of a summons in respect of the infringement, the amount of the penalty specified in the notice is paid at the place so specified then, subject to subsection (4)—
 - (a) the offender must be taken to have expiated the infringement by payment of the penalty; and
 - (b) no further proceedings may be taken in respect of the infringement; and
 - (c) a conviction for the infringement must not be regarded as having been recorded.
 - (2) Every penalty paid under this section must be applied in the same manner as if the offender had been convicted of the infringement in the
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Magistrates' Court on a charge filed by the inspector who served the infringement notice or caused it to be served.

- (3) Payment of any penalty under this section may be effected in accordance with the regulations.
- (4) Proceedings for an infringement may be brought if an infringement notice served in respect of the infringement is withdrawn or the penalty specified in it is not paid before the end of the period specified in it for payment.
- (5) In a proceeding for an infringement if the court is satisfied that an infringement notice was served in respect of the infringement and has not been withdrawn, the conviction imposed by the court must not be taken to be a conviction for any purpose (including, but not limited to, the purposes of any enactment imposing, authorising or requiring the imposition of any disqualification, disability or higher penalty on convicted persons or persons convicted on more than one occasion) except in relation to—
 - (a) the making of the conviction itself; and
 - (b) any subsequent proceedings which may be taken in respect of the conviction itself, including proceedings by way of appeal.

108. *Proof of prior convictions*

- (1) If a person is served with a summons for an infringement and it is alleged that the person has been previously convicted of any infringement or infringements there may be served with the summons a separate document in the prescribed form signed by the informant setting out particulars of the alleged prior convictions.
 - (2) The document setting out the alleged prior convictions—
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- (a) must be endorsed with a notice in the prescribed form; and
 - (b) may be served in any manner in which the summons for the infringement may be served.
- (3) If the court by which any person has been convicted is satisfied that a copy of any such document was served on that person at least 14 days before the hearing of the charge, the document is admissible in evidence and, in the absence of evidence to the contrary, is proof—
- (a) that the person was convicted of the offences alleged in the document; and
 - (b) of the particulars relating to the convictions set out in the document.
- (4) Any such document may not be tendered in evidence without the consent of the defendant if the defendant is present at the hearing of the charge.
- (5) If any evidence of prior convictions is tendered under this section, the court may set aside, on any terms as to costs or otherwise that the court decides, any conviction or order if it has reasonable grounds to believe that the document tendered in evidence was not in fact brought to the notice of the defendant or that the defendant was not in fact convicted of the offences as alleged in the document.
- (6) Sub-section (5) does not limit the generality of Division 5 of Part 4 of the **Magistrates' Court Act 1989**.

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S. 109
repealed by
No. 86/1993
s. 33.⁴¹

110. Order to cease work etc.

- (1) The Minister may, in the circumstances referred to in sub-section (2), by notice served on the licensee or mine manager—
- (a) require the taking within a specified period of any action necessary to remedy the contravention or non-compliance; or
 - (b) prohibit the doing of any work or any class of work in the mine or any part of the mine for a specified period or until the occurrence of a specified event.
- (2) Sub-section (1) applies if the Minister is satisfied that the licensee—
- (a) has contravened this Act or the regulations; or
 - (b) has not complied with any condition to which the licence is subject or any condition specified under section 44; or
 - (c) has not complied with any relevant planning scheme or permit.

S. 110(2)(c)
amended by
No. 86/1993
s. 34.

- (3) The licensee and mine manager must comply with a notice under sub-section (1).

Penalty: 100 penalty units.

- (4) A person whose interests are affected by a decision of the Minister to serve a notice under sub-section (1) may apply to the Tribunal for review of the decision.

S. 110(4)
substituted by
No. 52/1998
s. 311(Sch. 1
item 64.13).

- (4A) An application for review must be made within 28 days after the later of—

S. 110(4A)
inserted by
No. 52/1998
s. 311(Sch. 1
item 64.13).

- (a) the day on which the notice is served;

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- (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision to serve the notice, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
- (5) The Minister may, by notice served on the licensee or mine manager, cancel a notice under sub-section (1).
- (6) In this section—
- "licensee"** includes the holder of a tourist fossicking authority or a tourist mine authority;
- "work"** includes anything that the holder of a tourist fossicking authority or a tourist mine authority is entitled to do under that authority.

111. Offences by corporations

- (1) In this section, **"officer"**—
- (a) in relation to a corporation within the meaning of the **Companies (Victoria) Code**, has the same meaning as in section 5(1) of that Code; and
- (b) in relation to a corporation which is not a corporation within the meaning of that Code, means any person (by whatever name called) who is concerned or takes part in the management of the corporation—
- but does not include an employee of the corporation.
- (2) If a corporation is guilty of an offence against this Act or a regulation, any officer of the corporation

who was in any way, by act or omission, knowingly concerned in or party to the commission of the offence is also guilty of that offence and liable to the penalty for that offence.

- (3) If in a proceeding for an offence against this Act or a regulation it is necessary to establish the intention of a corporation, it is sufficient to show that a servant or agent of the corporation had that intention.
- (4) A statement made by an officer of a corporation is admissible as evidence against the corporation in any proceeding against the corporation for an offence against this Act or a regulation.
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PART 13—MISCELLANEOUS

112. *Surveys and boring operations*

- (1) The Minister may authorise in writing any person to enter any land for the purpose of making—
 - (a) a land survey; or
 - (b) a mining survey; or
 - (c) a geological survey.
- (2) The Minister may authorise in writing any person to enter any land for the purpose of the carrying out by the Department of any boring operations for minerals.
- (3) A person authorised to enter land under subsection (1) or (2)—
 - (a) may do any thing on the land that is necessary for the purposes of the survey or boring operations; and
 - (b) must cause as little harm and inconvenience and do as little damage as possible to the land and anything on or growing on the land; and
 - (c) must remain on the land only for so long as is reasonably necessary; and
 - (d) must remove from the land on completion of the survey or boring operations all plant, machinery, equipment, goods or buildings brought onto, or erected on, the land other than any of those things that the owner or occupier agrees may be left on the land; and
 - (e) must leave the land, as nearly as possible, in the condition in which it was immediately before the commencement of the survey or boring operations; and

- (f) must use the person's best endeavours to co-operate with the owner and occupier.
- (4) A person authorised to enter land under sub-section (2) is liable to pay compensation to the owner or occupier of that land in accordance with Part 8 as if—
 - (a) any reference in that Part to the licensee were a reference to the person authorised to enter the land under sub-section (2); and
 - (b) any reference in that Part to the approval of the work plan or the doing of work under the licence were a reference to the carrying out of the boring operations.
- (5) Compensation is not payable for any loss or damage arising from the making of a survey under sub-section (1).

113. *Discovery of uranium or thorium to be reported*

- (1) A person who discovers any uranium or thorium in or on any land in Victoria must immediately report in writing that discovery to the Minister.
Penalty: 100 penalty units.
- (2) The Minister may, by notice served on the person reporting a discovery under sub-section (1), require that person to give him or her the further particulars relating to the discovery specified in the notice within the period specified in the notice.
- (3) A person must comply with a notice served on that person under sub-section (2).
Penalty: 50 penalty units.

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- (4) A person must not possess, use, sell or otherwise dispose of any uranium or thorium except under and in accordance with an authority granted by the Minister.

Penalty: 100 penalty units.

- (5) An authority granted by the Minister under sub-section (4) may contain any terms and conditions that the Minister thinks fit.
- (6) The Minister may, by notice served on a person who is unlawfully in possession of any uranium or thorium, require that person to deliver the uranium or thorium to the Minister at the time and place specified in the notice.
- (7) A person must comply with a notice served on that person under sub-section (6).

Penalty: 100 penalty units.

114. *Abandoned plant becomes property of the Crown*

- (1) If the licensee does not remove any plant from any land before, or within the period of 6 months after, the licence ceases to apply to that land, the plant becomes the absolute property of the Crown at the end of that period of 6 months.
- (2) Sub-section (1) does not apply to plant brought onto land in connection with the rehabilitation of the land.
- (3) The Minister may direct the former licensee to remove plant referred to in sub-section (2) and if the former licensee does not do so within the period of 6 months after the giving of that direction, the plant becomes the absolute property of the Crown at the end of that period of six months.

- (4) Plant that becomes the property of the Crown may be disposed of, or otherwise dealt with, by the Minister.
- (5) Any money received by the Minister on the sale of property under sub-section (4) must be paid into the Consolidated Fund.

115. Occupiers liability

- (1) For the purposes of Part IIA of the **Wrongs Act 1958** and the rules of common law with respect to the liability of occupiers to persons entering on their premises, the licensee is the occupier of that part of any premises on which work is being done under a licence and not any other person.
 - (2) An occupier of any premises covered by a licence does not, unless the occupier is also the licensee, owe a duty to take care of any person entering on those premises for the purpose of doing work under the licence.
 - (3) An occupier of any premises covered by an application for a mining licence does not, unless the occupier is also the applicant, owe a duty to take care of any person entering on those premises for the purpose of marking out or surveying the boundaries of the land covered by the application—
 - (a) with the consent of the occupier; or
 - (b) under an authority to enter granted by the chief administrator.
 - (4) Sub-sections (2) and (3) apply despite anything to the contrary in Part IIA of the **Wrongs Act 1958** or the rules of common law with respect to the liability of an occupier to a person entering on the occupier's premises.
 - (5) Nothing in sub-section (2) or (3) limits any other duty owed by an occupier to a person entering on
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the occupier's premises in the circumstances described in that sub-section.

116. *Licensee must supply information*

- (1) A licensee must in the prescribed form and at the prescribed times furnish to the Minister the prescribed information relating to work done under the licence.

Penalty: 20 penalty units.

- (2) A document furnished under sub-section (1) is the property of the Crown and may be made available by the Minister for inspection by the public at any time after the licence ceases to be in force.
- (3) The Minister must not under sub-section (2) make a document available for inspection after an exploration licence ceases to be in force until any mining licence covering the same land that is then in force ceases to be in force, unless he or she has first consulted with the holder of the mining licence.

117. *Obtaining licence or other authority dishonestly*

A person must not, by any false statement, misrepresentation or other dishonest means, obtain or attempt to obtain a licence or other authority, or the renewal of a licence or other authority.

Penalty: 50 penalty units.

118. *Pecuniary interests*

- (1) This section applies to a person who is for the time being—
- (a) the chief administrator; or
 - (b) an officer of the public service employed in the administration of this Act; or
 - (c) a chief mining inspector; or

(d) an inspector of mines; or

(e) a mining warden.

- (2) A person to whom this section applies must comply with any of the requirements of the regulations with respect to disclosure of interests.

Penalty: 50 penalty units.

119. *Secrecy*

- (1) This section applies to a person who has at any time—

(a) exercised a power or discharged a function under this Act or the regulations; or

(b) been employed for the purposes of, or in connection with, the administration of this Act.

- (2) A person to whom this section applies must not divulge or communicate to any person or publish any information obtained by him or her from a licensee in the course of his or her official duties unless the divulgence, communication or publication is made—

(a) with the written consent of the licensee or the Minister; or

(b) in connection with the administration of this Act; or

(c) for the purpose of any legal proceedings under this Act.

Penalty: 100 penalty units.

- (3) The Minister may only consent under sub-section (2)(a) if he or she is of the opinion that the licensee is unreasonably withholding consent.

120. *Delegation*

Mineral Resources Development Act 1990

Act No. 92/1990

(1) The Minister may, by instrument, delegate to the chief administrator or any employee in the Department any power of the Minister under this Act or the regulations, other than this power of delegation.

S. 120(1)
amended by
No. 46/1998
s. 7(Sch. 1).

(2) The chief administrator may, by instrument, delegate to any employee in the Department any power of the chief administrator under this Act or the regulations, other than this power of delegation and a power delegated to him or her by the Minister.

S. 120(2)
amended by
No. 46/1998
s. 7(Sch. 1).

121. *Immunity*

(1) Nothing done or omitted to be done by the chief administrator or an employee of the Department or a mining warden in good faith in the exercise or purported exercise of a power or the discharge or purported discharge of a duty under this Act or the regulations subjects him or her personally to any liability.

S. 121(1)
amended by
No. 46/1998
s. 7(Sch. 1).

(2) Any liability that would, but for sub-section (1), attach to a person attaches instead to the Crown.

122. *Service of documents*

(1) If by or under this Act a document is required or permitted to be served on a person then, unless otherwise provided by this Act, the document may be served—

(a) by delivering it personally to the person to be served; or

(b) by leaving it at that person's usual or last known place of residence with a person apparently over the age of 16 years and apparently residing there; or

(c) by sending it by post addressed to the person to be served at that person's usual or last known place of residence; or

- (d) in the case of service on an owner of any land or premises whose name and address are not known to the server, by serving it on the occupier of the land or premises concerned in accordance with paragraph (a) or (b) or, if there is no occupier, by posting it up on a conspicuous part of the land or premises; or
- (e) in the case of service on an occupier of any land or premises whose name and address are not known to the server, by posting it up on a conspicuous part of the land or premises.
- (2) A document that is to be served on the owner or occupier of any land or premises may be addressed by the description of "the owner" or "the occupier" of the land or premises concerned (naming it or them), without further name or description.
- (3) The provisions of this section are additional to and do not take away from the provisions of sections 528, 529 and 530 of the **Companies (Victoria) Code**.
- (4) If a document is properly served on the owner or occupier of any land or premises, that service is binding on every subsequent owner or occupier to the same extent as if it had been served on that subsequent owner or occupier.

S. 123
amended by
No. 27/1991
s. 4(5).

123. *Calculating periods*

In calculating a period of 3 months for the purposes of section 26(5), the time between the day on which the Minister requests any additional information under section 15(7) and the day on which that information is provided must not be included in the period.

124. Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) the rate or method of assessment, and the times of payment, of royalties; and
 - (b) applications for a licence and renewal of a licence; and
 - (c) the advertisement of applications for licences and renewals of licences; and
 - (d) the manner of marking out and surveying the boundaries of land and the time within which it must be done; and
 - (e) securities under section 22; and
 - (f) the information to be contained in a work plan or in a notice of variation of an approved work plan; and
 - (g) applications for a miner's right; and
 - (h) applications for a tourist fossicking authority; and
 - (i) applications for a tourist mine authority; and
 - (j) the mining register; and
 - (k) prescribing documents that may be registered; and
 - (l) the qualifications of mine managers with respect to the administration of first-aid and the use of explosives; and
 - (m) the establishment, constitution and powers of the Mine Managers Board; and
 - (n) conditions to which a mine manager's certificate is subject; and
 - (o) the procedure of a panel under section 95; and

Mineral Resources Development Act 1990
Act No. 92/1990

s. 124

S. 124(1)(qa)
inserted by
No. 86/1993
s. 35(1).

- (p) prescribing—
 - (i) infringements for which an infringement notice may be served; and
 - (ii) the particulars to be contained in an infringement notice; and
 - (iii) the method of service of an infringement notice or of a withdrawal notice; and
- (q) the penalties for any infringement and the method of their payment; and
- (qa) the occupational health, safety and welfare of people at a worksite including but not limited to—
 - (i) regulating or prohibiting—
 - (A) the manufacture or supply of any plant for use on a worksite;
 - (B) the use of any plant at a worksite;
 - (C) the manufacture or supply of any substance for use on a worksite;
 - (D) the storage or use of any substance at a worksite;
 - (E) the carrying on of any process or the carrying out of any operation at a worksite;
 - (ii) regulating the design, guarding, siting, construction, installation, bringing into operation, examination, repair, maintenance, alteration, adjustment, dismantling or testing of any plant used, or to be used, on a worksite;
 - (iii) requiring licensees or other prescribed people at such times and in such manner as are prescribed to examine,

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- test, dismantle, repair, alter or adjust any plant used, or to be used, on a worksite;
- (iv) regulating the examination, testing, analysis, labelling or marking of any substance used, or to be used, on a worksite;
 - (v) requiring licensees or other prescribed people at such times and in such manner as are prescribed to examine, test, analyse, label or mark any substance used, or to be used, on a worksite;
 - (vi) regulating the siting, examination, repair, alteration, adjustment, dismantling, maintenance, care or use of, and the conditions at, a worksite;
 - (vii) inspections by inspectors;
 - (viii) requiring any plant or substance used, or to be used, on a worksite to be registered or licensed by the Minister or by any other prescribed person or body of people;
 - (ix) prohibiting the use of any plant or substance on a worksite unless it is registered or licensed;
 - (x) prescribing the people who may apply for the registration of, or any licence or permit in respect of, any plant or substance used, or to be used, on a worksite;
 - (xi) prescribing the terms and conditions of registration of any plant or substance used, or to be used, on a worksite or of
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- any licence or permit in respect of any such plant or substance;
- (xii) prescribing the circumstances in which the registration of, or any licence or permit in respect of, any plant or substance used, or to be used, on a worksite may be cancelled or suspended;
 - (xiii) providing for the variation of the terms and conditions of the registration of, or any licence or permit in respect of, any plant or substance used, or to be used, on a worksite;
 - (xiv) prescribing the manner of application for the granting, renewal or transfer of registration of, or any licence or permit in respect of, any plant or substance used, or to be used, on a worksite;
 - (xv) prohibiting the carrying on of prescribed activities at a worksite or the performance of prescribed work at a worksite except under the supervision of, or by, people with prescribed qualifications or experience;
 - (xvi) requiring the holding of certificates of competency by people engaged in prescribed work or activities on a worksite;
 - (xvii) requiring in prescribed circumstances licensees or other prescribed people to employ or appoint people, whether or not they are people with prescribed qualifications or experience, to perform prescribed functions at, or in relation to, a worksite and imposing duties or conferring powers on such people;
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- (xviii) regulating or prohibiting on, or in relation to, a worksite the employment in prescribed activities or work of all people or any class of people;
 - (xix) regulating or requiring the instruction, training and supervision of people at a worksite;
 - (xx) requiring licensees or other prescribed people to bring to the notice of employees or other people on, or entering, worksites such of the provisions of this Act or the regulations as are prescribed;
 - (xxi) regulating, prohibiting or requiring the taking of any action or precautions to avoid, or in the event of, any accident or dangerous occurrence at a worksite;
 - (xxii) regulating or requiring the provision and use of protective clothing or equipment and rescue equipment at a worksite;
 - (xxiii) prescribing standards in relation to the use of, including standards of exposure to, any physical, biological, chemical or psychological hazard at a worksite;
 - (xxiv) regulating or requiring the monitoring by licensees or other prescribed people of conditions at a worksite;
 - (xxv) regulating or requiring the monitoring by licensees or other prescribed people of the health of employees at a worksite;
 - (xxvi) regulating or requiring the provision by licensees or other prescribed people of

- prescribed facilities for the welfare of people at a worksite;
- (xxvii) regulating or requiring the keeping and preservation by licensees or other prescribed people of records of prescribed activities, matters or things at, or in relation to, a worksite;
 - (xxviii) requiring notice to be given of prescribed activities, matters or things at, or in relation to, a worksite to the Minister, an inspector or other prescribed person;
 - (xxix) providing for the establishment and operation of worksite safety representatives and worksite safety committees and specifying the powers (including powers of inspection) and functions of such representatives and committees;
 - (xxx) imposing any obligation in the regulations that may be placed on a licensee on any person employing another person at a worksite;
 - (xxxi) imposing obligations on any designer or manufacturer of any plant that is to be designed or manufactured for use on a worksite;
 - (xxxii) imposing obligations on any person working at a work site and on any person on, or wishing to enter, a worksite;
- (qb) the health and safety of members of the public in relation to work done under a licence;

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- (qc) requiring that any information required by the regulations be in the form of, or be supported by, a statutory declaration;
 - (r) the disposal of, or otherwise dealing with, by the Minister of plant that becomes the property of the Crown under section 114; and
 - (s) the information to be furnished to the Minister under section 116(1) and the times at which it must be furnished; and
 - (t) requirements with respect to the disclosure of interests by persons to whom section 118 applies; and
 - (u) applications under clause 2(10) of Schedule 2; and
 - (v) prescribing fees; and
 - (w) prescribing forms; and
 - (x) any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) A power conferred by this Act to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, with respect to the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or

S. 124(1)(qc)
inserted by
No. 86/1993
s. 35(1).

different provisions for the same case or class of case for different purposes; or

- (ii) any such provision either unconditionally or subject to any specified condition.

(3) Regulations made under this Act may be made—

(a) so as to apply—

- (i) at all times or at a specified time; or
- (ii) throughout the whole of the State or in a specified part of the State; or
- (iii) as specified in both sub-paragraphs (i) and (ii); and

(b) so as to require a matter affected by the regulations to be—

- (i) in accordance with a specified standard or specified requirement; or
- (ii) approved by or to the satisfaction of a specified person or a specified class of persons; or
- (iii) as specified in both sub-paragraphs (i) and (ii); and

(c) so as to apply, adopt or incorporate (with or without modification) any matter contained in any document as at the time the regulations are made or at any time before then; and

(d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons; and

(e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from

any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and

- (f) so as to impose a penalty not exceeding 100 penalty units for a contravention of the regulations and, in the case of a contravention of a continuing nature, a further penalty not exceeding 40 penalty units for each day during which the contravention continues after conviction.

- (3A) Regulations made under sub-section (1)(qa) or (qb) must not be inconsistent with any provision of the **Dangerous Goods Act 1985** or the regulations made under that Act and any regulation made under that sub-section that is so inconsistent is, to the extent of the inconsistency, of no effect.

S. 124(3A)
inserted by
No. 86/1993
s. 35(2).

- (4) Regulations made under this Act may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 6(2) of the **Subordinate Legislation Act 1962**.
- (5) Disallowance of a regulation under sub-section (4) must be taken to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1962**.
- (6) If, under sub-section (4), either House of Parliament disallows a regulation, no regulation which is the same in substance as the disallowed regulation may be made within 6 months after the date of the disallowance, unless the resolution to disallow the regulation has been rescinded by the House of Parliament by which it was passed.
- (7) Any regulation made in contravention of sub-section (6) is void.
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Mineral Resources Development Act 1990
Act No. 92/1990

S. 125
repealed by
No. 86/1993
s. 36.

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**PART 14—REPEALS, AMENDMENTS, SAVINGS AND
TRANSITIONALS**

126. Repeal and amendment of Mines Act 1958

No. 6320.

- (1) The **Mines Act 1958** (except sections 1 and 66A and Divisions 2 and 6 of Part III) is **repealed**.
- (2) Section 66A of the **Mines Act 1958** is **repealed**.
- (3) Division 2 of Part III of the **Mines Act 1958** is **amended** as follows—
 - (a) in section 369(1), in the definition of "Mine", paragraphs (a) and (d) are **repealed**;
 - (b) in section 369(1), in the definition of "Mining" and "Mining operations", paragraphs (a), (b), (c) and (g) are **repealed**;
 - (c) in section 369(1), in the definition of "Owner"—
 - (i) paragraph (a) is **repealed**; and
 - (ii) in paragraph (b) **omit** "of any other kind";
 - (d) in section 369(3), for "(c) or (d)" **substitute** "or (c)";
 - (e) sections 378, 379 and 381 are **repealed**;
 - (f) in section 383(3), paragraph (b) is **repealed**;
 - (g) section 383AA is **repealed**;
 - (h) in section 386(1)(a) **omit** ", not being a mine within the meaning of paragraph (a) of the interpretation of "**Mine**" in section 369(1)".
- (4) Section 1 and Division 2 of Part III of the **Mines Act 1958** are **repealed**.
- (5) Division 6 of Part III of the **Mines Act 1958** is **repealed**.

127. *Validation of existing titles*

- (1) A lease, licence, claim, right, permit or other authority granted, issued or renewed under the **Mines Act 1958** is not invalid only because there was a failure to comply with any requirement of that Act or of the regulations made under that Act specifying a time before which any act or thing must be done or not done.
- (2) An instrument referred to in sub-section (1) has, and must be taken always to have had, the same operation and effect that it would have had if this section had been in operation at the time it was granted, issued or renewed, as the case requires.
- (3) The rights of the parties to any proceeding commenced in a court before 2 November 1989 must be determined as if this section had not been enacted.

128. *Consequential amendments*

On the coming into operation of an item in Schedule 1 the Act specified in the heading to that item is amended as set out in that item.

129. *Savings and transitionals*

- (1) Schedule 2 contains saving and transitional provisions.
 - (2) The provisions of Schedule 2 are additional to and do not take away from the provisions of the **Interpretation of Legislation Act 1984**.
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SCHEDULES

SCHEDULE 1

Section 128

CONSEQUENTIAL AMENDMENTS

1. *Aboriginal Land (Northcote Land) Act 1989*

1. In section 5(4), for "**Mines Act 1958**" substitute "**Mineral Resources Development Act 1990**".

2. *Coroners Act 1985*

2. In section 45(4)—
 - (a) for paragraph (a) substitute—

"(a) An inspector of mines;" and
 - (b) in paragraph (c), for "mining manager of the mine" substitute "mine manager"; and
 - (c) in paragraph (f), for "**Mines Act 1958**" substitute "**Mineral Resources Development Act 1990**".

3. *County Court Act 1958*

3. Section 53B is **repealed**.

4. *Crown Land (Reserves) Act 1978*

4. For section 7 substitute—
 - "7. (1) The Governor in Council may, by the Order reserving any land or by any subsequent Order published in the Government Gazette, nominate any specified part of reserved land for which consent of the person or manager administering or managing the land is required before work may be done on that land in accordance with the **Mineral Resources Development Act 1990**.
 - (2) The Governor in Council may revoke any nomination under sub-section (1) by Order published in the Government Gazette."

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5. Dangerous Goods Act 1985

- 5.1 In section 9(b), for "**Mines Act 1958**" substitute "**Mineral Resources Development Act 1990**".
- 5.2 In section 37(4), for "**Mines Act 1958**" substitute "**Mineral Resources Development Act 1990**".

6. Drainage Areas Act 1958

6. In section 28(1), for "except from occupation for mining purposes" substitute "exempt from being subject to a mining licence under the **Mineral Resources Development Act 1990**".

7. Electric Light and Power Act 1958

7. For section 62, substitute—

"62. Protection of mining rights

Nothing in this Act limits or interferes with any rights of a licensee under the **Mineral Resources Development Act 1990** to carry out work in respect of any minerals lying under or adjacent to any street along or across which any electric line is laid."

8. Environment Protection Act 1970

- 8.1 After section 19B(3)(a)(iii) insert—
- "(iv) the Minister administering the **Mineral Resources Development Act 1990**, if the application relates to exploration for minerals or mining; and".
- 8.2 After section 19B(4B) insert—
- "(4C) The Minister administering the **Mineral Resources Development Act 1990** must advise the Authority within 21 days after he or she receives a copy of an application under sub-section (3)(a)(iv)—
- (a) whether the proposed works are prohibited by the planning scheme; and
- (b) if so, whether an amendment to the planning scheme is to be prepared to allow the proposed works to proceed."
- 8.3 In section 19B(5)(c), after "approval" insert ", unless the Authority has been advised under sub-section (4C)(b) that an amendment to the planning scheme is to be prepared".
- 8.4 After section 19B(5) insert—
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"(5A) The Authority may issue a works approval for proposed mining or exploration works that will require an amendment to the planning scheme on the condition that the works approval does not take effect until the Minister approves the required amendment."

8.5 In section 20AA—

(a) for "any notice" **substitute** "any notice—

(a) "; and

(b) after "proposal" insert "; or

(b) of the preparation of an amendment to a planning scheme—".

8.6 In section 33, after sub-section (3) **insert**—

"(3A) Sub-section (3) does not apply to an applicant for a works approval or the transfer of a works approval if that works approval is—

(a) issued—

(i) on an application which is jointly advertised under section 20AA with a notice of preparation of an amendment to a planning scheme under the **Planning and Environment Act 1987**; or

(ii) on an application that is so advertised and after the report of any panel appointed under that Act to consider submissions about a proposed amendment to a planning scheme; and

(b) substantially in accordance with the application."

8.7 In section 33B, after sub-section (1) **insert**—

"(1A) Sub-section (1) does not apply to the issue of a works approval if that works approval is—

(a) issued—

(i) on an application which is jointly advertised under section 20AA with a notice of preparation of an amendment to a planning scheme under the **Planning and Environment Act 1987**; or

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- (ii) on an application that is so advertised and after the report of any panel appointed under that Act to consider submissions about a proposed amendment to a planning scheme; and
- (b) substantially in accordance with the application."

9. Extractive Industries Act 1966

- 9.1 In section 3(1), for "land occupied by the holder of a miner's right under the **Mines Act 1958**" substitute "land covered by a mining licence under the **Mineral Resources Development Act 1990**".
- 9.2 In section 9A(1)—
 - (a) for "**Mines Act 1958**" (wherever occurring) substitute "**Mineral Resources Development Act 1990**"; and
 - (b) for "mining tenement" substitute "mining licence".
- 9.3 Section 9A(2) is repealed.
- 9.4 In section 11A(1)—
 - (a) for "**Mines Act 1958**" (wherever occurring) substitute "**Mineral Resources Development Act 1990**"; and
 - (b) for "mining tenement" substitute "mining licence".
- 9.5 In section 11A(2)—
 - (a) for "**Mines Act 1958**" (wherever occurring) substitute "**Mineral Resources Development Act 1990**"; and
 - (b) for "mining tenement" substitute "mining licence".
- 9.6 Section 11A(3) is repealed.
- 9.7 In section 17B(1) and (2), for "**Mines Act 1958**" substitute "**Mineral Resources Development Act 1990**".

10. Fences Act 1968

- 10. In section 3, in the definition of "Occupier"—
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- (a) for "comprised in a gold mining or mineral lease" **substitute** "covered by a mining licence under the **Mineral Resources Development Act 1990**"; and
 - (b) in paragraph (a) following "but does not include—", for "Part I. of the **Mines Act 1958**" **substitute** "a licence under the **Mineral Resources Development Act 1990**".

11. *Flora and Fauna Guarantee Act 1988*

- 11. In section 37(b), for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

12. *Forests Act 1958*

- 12.1 In section 6, **omit** "Nothing" and **insert** "(1) Apart from section 7, nothing".
- 12.2 In section 6, for "mining" **substitute** "doing work as defined in the **Mineral Resources Development Act 1990**".
- 12.3 In section 6, **omit** "for gold or silver or other metals or minerals".
- 12.4 In section 7(1), for "Notwithstanding anything in the **Mines Act 1958** or any lease licence right or authority thereunder" **substitute** "Despite the **Mineral Resources Development Act 1990** or any licence, right or authority under that Act".
- 12.5 In section 7(2), for "Notwithstanding anything in the **Mines Act 1958** or any lease licence" **substitute** "Despite the **Mineral Resources Development Act 1990** or any licence,".
- 12.6 In section 7(2), for "as to mining" **substitute** "to do work as defined in that Act".
- 12.7 In section 7(2), for "and maintenance of the forest" **substitute** "of the ecological condition of native forests".
- 12.8 In section 49(1), for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

13. *Land Act 1958*

- 13.1 In section 2(3), for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

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- 13.2 In section 81, for "or licence to search for metals and minerals or a holder of a gold mining or mineral lease" **substitute** ", mining licence or exploration licence under the **Mineral Resources Development Act 1990**".
- 13.3 In section 125(i)—
- (a) for "any person holding a miner's right or a gold mining lease or a mineral lease" **substitute** "a licensee under the **Mineral Resources Development Act 1990**"; and
 - (b) for "gold or minerals (as the case may be) within the meaning of the **Mines Act 1958**" **substitute** "any mineral within the meaning of the **Mineral Resources Development Act 1990**".
- 13.4 In section 171, for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".
- 13.5 In section 173(2)—
- (a) for "on the ground of it being auriferous or for any other" **substitute** "for any"; and
 - (b) **omit** ", subject to the provisions of section 25 of the **Mines Act 1958**".
- 13.6 In section 174(2)—
- (a) for "on the ground that it is auriferous or for any other" **substitute** "for any"; and
 - (b) **omit** ", subject to the provisions of section 25 of the **Mines Act 1958**".
- 13.7 In section 190, for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".
- 13.8 In section 204—
- (a) for "any person being the holder of a miner's right or of a mining lease or mineral lease under the **Mines Act 1958**" **substitute** "a licensee under the **Mineral Resources Development Act 1990**"; and
 - (b) for "mine for gold or minerals" **substitute** "do work"; and
 - (c) for "mine for gold and silver" **substitute** "do such work"; and
 - (d) for "Part II." **substitute** "Part 8"; and
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(e) for "mining thereon" **substitute** "doing such work on it".

13.9 In section 205(2)—

- (a) **omit** "County Court or the Magistrates' Court in"; and
- (b) for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

13.10 Sections 205(3), 205(4) and 205(5) are **repealed**.

13.11 In section 212(1), for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

13.12 In section 217—

- (a) for "gold or minerals" **substitute** "any mineral"; and
- (b) for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

13.13 Section 243(2) is **repealed**.

13.14 In section 337, for "mining lease or miner's right" (wherever occurring) **substitute** "mining licence".

13.15 In section 340—

- (a) **omit** "(not being solely a mining lease or licence)"; and
- (b) before "remain" **insert** ", subject to the **Mineral Resources Development Act 1990**,".

14. Land Acquisition and Compensation Act 1986

14.1 For section 38(1) **substitute**—

"38. (1) For the purposes of this Act, a licensee under the **Mineral Resources Development Act 1990** is not entitled to compensation for the value of any mineral in or under the surface of any acquired land."

14.2 In section 38(3)—

- (a) for "an occupier of land held by virtue of a miner's right" **substitute** "a licensee under the **Mineral Resources Development Act 1990**"; and
- (b) for "occupied by virtue of" **substitute** "covered by".

15. Land Tax Act 1958

15. In section 9(3), in the definition of "Mine"—

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- (a) for "land held as a claim under a miner's right for mining purposes, or included in any lease or licence granted by the Crown for mining purposes" **substitute** "part of the land covered by a mining licence under the **Mineral Resources Development Act 1990**"; and
- (b) for "lease or claim" **substitute** "licence".

16. Lifts and Cranes Act 1967

16. In section 3, in paragraph (ii) of the definition of "Crane"—
- (a) for "paragraph (a), (b), (c) or (d)" **substitute** "paragraph (b) or (c)"; and
- (b) after "1958" **insert** "or being used in connection with work being done under a licence within the meaning of the **Mineral Resources Development Act 1990**".

17. Local Government Act 1989

- 17.1 In section 11, after sub-section (5) **insert**—
- "(6) A person who on the entitlement date—
- (a) is not a person referred to in sub-section (1), (2) or (4); and
- (b) is not less than 18 years of age; and
- (c) is the holder of a mining licence granted under Part 2 of the **Mineral Resources Development Act 1990** covering any rateable land on which work (as defined in section 4(1) of that Act) is being done under the licence; and
- (d) is not a resident of the ward in which that rateable land is located—
- is entitled without application to be enrolled on the voters' roll in respect of that rateable land."
- 17.2 In section 13, after sub-section (3) **insert**—
- "(4) A reference in this section to the owner or occupier of any rateable land is, if work (as defined in section 4(1) of the **Mineral Resources Development Act 1990**) is being done on the land under a mining licence granted under Part 2 of that Act, a reference to the holder of the mining licence."
- 17.3 In section 14(1), after "11(4)," **insert** "11(6),".

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17.4 In section 22(2), after "11(4)," **insert** "11(6),".

17.5 Section 154(2)(e) is **repealed**.

17.6 In section 156, after sub-section (2) **insert**—

"(2A) If work (as defined in section 4(1) of the **Mineral Resources Development Act 1990**) is being done on land under a mining licence granted under Part 2 of that Act, the licensee is liable to pay the rates and charges."

18. *Mines (Miscellaneous Amendments) Act 1987*

18.1 In section 2(1)—

- (a) **omit** "8,"; and
- (b) for "a day to be proclaimed" **substitute** "the day on which the **Mineral Resources Development Act 1990** receives the Royal Assent".

18.2 Section 8 is **repealed**.

19. *National Parks Act 1975*

19.1 In section 40(1)—

- (a) for "**Mines Act 1958** or" **substitute** "**Mineral Resources Development Act 1990** or"; and
- (b) **omit** "and land which is part of a park shall not be registered as a claim under the **Mines Act 1958**".

19.1A In section 40(1A)—

- (a) for "Part V of the **Mines Act 1958**" **substitute** "the **Mineral Resources Development Act 1990**"; and
- (b) for "under the **Mines Act 1958**" **substitute** "under the **Mineral Resources Development Act 1990**".

19.2 In section 40(1AA)—

- (a) **omit** paragraph (b); and
- (b) in paragraph (c), for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".

20. *National Parks (Alpine National Park) Act 1989*

20. Section 15 is **repealed**.

21. *Nuclear Activities (Prohibitions) Act 1983*

21.1 In section 2, in the definition of "Mining title"—

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19.1A
inserted by
No. 27/1991
s. 4(6).

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- (a) **omit** "any claim marked out or registered under the **Mines Act 1958**, and"; and
 - (b) for "granted under the **Mines Act 1958**" **substitute** "granted under the **Mineral Resources Development Act 1990**".
- 21.2 In section 9(1)(i), for "the provisions of section 511(2) or 511(3) of the **Mines Act 1958**" **substitute** "section 113 of the **Mineral Resources Development Act 1990**".

22. Petroleum Act 1958

- 22.1 In section 3(1), in the definition of "mineral lease", for "mineral lease within the meaning of the **Mines Act 1958**" **substitute** "mining licence under the **Mineral Resources Development Act 1990**".
- 22.2 For section 3(2) **substitute**—
- "(2) Expressions not defined in sub-section (1) have the same meanings as in the **Mineral Resources Development Act 1990**".
- 22.3 In section 5(1), **omit** "the **Mines Act 1958** or".
- 22.4 In section 28(1)(a), for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".
- 22.5 In section 41(2) before "warden" **insert** "mining".
- 22.6 In section 55(1)—
- (a) for "or searching permit under Part V. of the **Mines Act 1958**" **substitute** "under the **Mineral Resources Development Act 1990**"; and
 - (b) for "under the **Mines Act 1958**" **substitute** "under the **Mineral Resources Development Act 1990**".
- 22.7 In section 55(2), for "**Mines Act 1958**" **substitute** "**Mineral Resources Development Act 1990**".
- 22.8 For section 59(2) and (3) **substitute**—
- "(2) If the parties are unable to agree within the prescribed time on the amount of compensation to be paid, section 88 of the **Mineral Resources Development Act 1990** applies as if the dispute were a disputed claim for compensation under that Act."
- 22.9 In section 60(2), before "warden" **insert** "mining".
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22.10 In section 78, for "**Mines Act 1958**" substitute "**Mineral Resources Development Act 1990**".

22.11 In section 79(1)(c), before "warden" (wherever occurring) insert "mining".

23. Planning Appeals Act 1980

23.1 Section 35A is repealed.

23.2 In section 52(1)(b), omit "or a person who makes a determination or fails to make a determination, being a determination or failure to which section 512G of the **Mines Act 1958** applies".

23.3 In the Schedule, omit "Division 2 of Part IVA of the **Mines Act 1958**".

24. Sale of Land Act 1962

24. In section 32(2), after paragraph (i) insert—

"(j) In the case of land that is within a municipal district specified for the purposes of this paragraph by the Minister administering the **Mineral Resources Development Act 1990** by notice published in the Government Gazette, a description of any mining licence granted under that Act that covers the land."

25. Scaffolding Act 1971

25. In section 3(1), in paragraph (a) of the definition of "scaffolding", after "1958" insert "or in connection with work being done under a licence within the meaning of the **Mineral Resources Development Act 1990**".

26. Stamps Act 1958

26.1 In the Second Schedule, for "6. **Mines Act 1958**" substitute "6. **Mineral Resources Development Act 1990**".

26.2 In the Third Schedule after exemption (17) under the heading "XXIV DEED of ANY KIND WHATEVER (Not otherwise chargeable with duty)" insert—

"(18) Any document referred to in section 69(2)(a) of the **Mineral Resources Development Act 1990**."

27. State Electricity Commission Act 1958

Mineral Resources Development Act 1990
Act No. 92/1990

27.1 In section 69D—

- (a) **omit** "(1)"; and
- (b) **omit** "lease,"; and
- (c) **omit** ", permit"; and
- (d) for "**Mines Act 1958**" substitute "**Mineral Resources Development Act 1990**"; and
- (e) **omit** sub-section (2).

27.2. After section 108 **insert**—

"108A. Commission not subject to Mineral Resources Development Act 1990 within Latrobe area

- (1) In this section "Latrobe area" has the same meaning as in Part VIA.
- (2) The Commission is not subject to the **Mineral Resources Development Act 1990** in exercising any rights, powers or authorities or discharging any duties within the Latrobe area."

28. Summary Offences Act 1966

28. In section 50(4), for "**Mines Act 1958**" substitute "**Mineral Resources Development Act 1990**".

29. Transfer of Land Act 1958

29. In section 4(1), in the definition of "Land", after "in land" **insert** "but does not include an interest in land arising under the **Mineral Resources Development Act 1990**".

30. Trustee Act 1958

30. In section 3, in the definition of "Land"—

- (a) **omit** ", and mines and minerals, whether or not severed from the surface,"; and
- (b) **omit** the expression beginning "and in this definition" and ending "an undivided share thereof;".

31. Underseas Mineral Resources Act 1963

31. In section 2, for "**Mines Act 1958**" (wherever occurring) substitute "**Mineral Resources Development Act 1990**".

32. Vagrancy Act 1966

Mineral Resources Development Act 1990

Act No. 92/1990

32. In section 7(1)(i), for "in or upon a mine or claim within the meaning of the **Mines Act 1958**" substitute "in a mine within the meaning of the **Mineral Resources Development Act 1990**".

33. *Wildlife Act 1975*

33. In section 19(1), for "**Mines Act 1958**" (wherever occurring) substitute "**Mineral Resources Development Act 1990**".

SCHEDULE 2

Section 129

SAVINGS AND TRANSITIONALS

1. (1) Subject to anything provided by this Act expressly or by necessary implication, the repeal by this Act of a provision of the Mines Act 1958 does not disturb the continuity of status, operation or effect of—
 - (a) any lease, licence, claim, right, permit, certificate or authority granted, issued, given or renewed; or
 - (b) any application for, or for the renewal of, a lease, licence, claim, right, permit, certificate or authority made; or
 - (c) any objection made or lodged; or
 - (d) any agreement (including a tribute agreement) or appointment made; or
 - (e) any Order made; or
 - (f) any approval, consent or other authority granted or given; or
 - (g) any money borrowed, lent or appropriated or any amount payable; or
 - (h) any bond or security lodged; or
 - (i) any surety or security given; or
 - (j) any charge on property created; or
 - (k) any property vested; or
 - (l) any notice given or served; or
 - (m) any liability incurred; or
 - (n) any power conferred; or
 - (o) any entitlement granted; or
 - (p) any right or privilege given or acquired; or
 - (q) any exemption or immunity granted or conferred; or
 - (r) any circumstances created; or
 - (s) any other thing done—by or under that provision before its repeal.

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- (2) The repeal by this Act of a provision of the **Mines Act 1958** does not disturb the continuity of status, operation or effect of the registration under the **Transfer of Land Act 1958** of any document existing for the purposes of, or in connection with, that provision or the capacity of any such document to be registered under the **Transfer of Land Act 1958**.
2. (1) In this clause—
- "corresponding new title"**, in relation to a former title, means the licence, right or authority of the kind specified opposite the former title in column 2 of the Table in sub-clause (2);
- "former title"** means lease, licence, claim, right, permit or authority of a kind specified in column 1 of the Table in sub-clause (2).
- (2) A lease, licence, claim, right, permit or authority under the **Mines Act 1958** of a kind specified in column 1 of the Table that is in force immediately before the commencement of this clause has effect, subject to this clause, for the remainder of the term or period for which it was granted, issued or renewed (as the case requires) as if it were a licence, right or authority under this Act of the kind specified opposite it in column 2 of the Table.

TABLE

<i>Column 1</i>	<i>Column 2</i>
Exploration licence	Exploration licence
Prospecting area licence	Exploration licence
Searching permit	Exploration licence
Miner's right	Miner's right
Development lease	Mining licence
Licence under section 65	Mining licence
Mining lease	Mining licence
Mining purposes licence	Mining licence
Registration of land as a claim	Mining licence
Tailings removal licence	Mining licence
Tailings treatment licence	Mining licence
Authority under section 46A(1) or 46B(1)	Tourist mine authority

- (3) A former title that, by virtue of sub-clause (2), continues in force as if it were a new title—

- (a) subject to paragraph (b), continues in force subject to the same covenants, conditions, restrictions, limitations, reservations, exceptions or other provisions to which it was subject immediately before the commencement of this clause; and
 - (b) may be renewed (subject to sub-clause (12)), transferred, varied, amalgamated, surrendered or cancelled only in accordance with this Act, despite anything to the contrary in the former title or in the **Mines Act 1958** or in the regulations made under that Act.
- (4) An application for the grant, issue or renewal of a former title made before the commencement of this clause and not determined at that commencement has effect as if it were an application for the corresponding new title.
- (5) A former title continues in operation until the determination of an application for its renewal that, by virtue of sub-clause (4), has effect as an application for the corresponding new title.
- (6) Section 23 applies to an application that, by virtue of sub-clause (4), has effect as an application for the corresponding new title as if it had been on the day of its receipt an application for a licence under this Act.
- (7) Section 26(5) applies to an application that, by virtue of sub-clause (4), has effect as an application for the corresponding new title as if for the reference to 3 months there were substituted a reference to 12 months.
- (8) This Act applies to an application for the renewal of an exploration licence under the **Mines Act 1958** that, by virtue of sub-clause (4), has effect as an application for an exploration licence under this Act as if—
- (a) the reference in section 13(3)(a) to 2 years were a reference to 1 year; and
 - (b) it did not contain section 28.
- (9) If by virtue of sub-clause (4) an exploration licence under this Act is granted on an application for the renewal of an exploration licence under the **Mines Act 1958** then—
- (a) in calculating, for the purposes of sections 16(1), 25(1)(c), 32(2) and 33, the period for which an exploration licence has been in operation account must be taken of the period for which the former licence was in operation; and
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- (b) if the application was for the first or third renewal of the former licence, section 30 applies as if the grant of the new licence was the first or third renewal (as the case requires) of the former licence.
- (10) The holder of a former title may apply to the Minister in accordance with the regulations to have that former title converted into the corresponding new title.
- (11) The Minister may, subject to this Act, grant or refuse an application under sub-clause (10).
- (12) Despite sub-clause (3)(b), when a former title is renewed as provided for in this Schedule, the Minister may approve the continued operation of any underground workings, surface workings or open cut operations that were, immediately before the commencement of this sub-clause, in operation in accordance with the former title.
- (13) A person who continues any operation with the approval of the Minister under sub-clause (12) is not guilty of an offence under section 45(1) in respect of that operation.
- 2A. (1) Section 10 applies to tailings produced before the commencement of this clause and to which a former title within the meaning of clause 2 does not apply at that commencement.
- (2) Any tailings to which sub-clause (1) applies that are situated on land covered by a former title within the meaning of clause 2 that is in force immediately before the commencement of this clause must be taken to be included in the corresponding new title within the meaning of that clause.
- (3) Despite sub-clause (2), the Minister may after the day on which the **Mineral Resources Development (Amendment) Act 1993** receives the Royal Assent grant a licence over tailings referred to in that sub-clause on an application made before that day as if those tailings were not included in the corresponding new title and, if the Minister does so, those tailings must be taken not to be, and to have never been, included in the corresponding new title by virtue of that sub-clause.
- (4) On the expiry without renewal of a licence referred to in sub-clause (3), the tailings covered by that licence must be taken to be included in any licence in which they would have been included at that time by virtue of sub-clause (2) but for sub-clause (3).
3. (1) The person nominated under section 413(1)(a) of the **Mines Act 1958** to perform the duties of the Chief Mining Inspector immediately before the commencement of section 90 of this Act

Sch. 2 item 2A
inserted by
No. 86/1993
s. 37.

holds office as chief mining inspector under and subject to this Act and the **Public Service Act 1974** on and from that commencement without any further appointment.

- (2) A person nominated under section 413(1)(b) of the **Mines Act 1958** to perform the duties of an inspector of mines immediately before the commencement of section 90 of this Act holds office as an inspector of mines under and subject to this Act and the **Public Service Act 1974** on and from that commencement without any further appointment.
 - (3) The person who holds office as the mining warden immediately before the commencement of section 96 holds office as a mining warden under and subject to this Act on and from that commencement for the balance of his or her term of appointment without any further appointment.
4. (1) Any land excepted as described in section 7(1) or 347(1) of the **Mines Act 1958** immediately before the commencement of this clause must be taken to be exempted under this Act from being subject to an exploration licence and a mining licence.
 - (2) Any land excepted as described in section 514(17) of the **Mines Act 1958** immediately before the commencement of this clause must be taken to be exempted under this Act from being subject to an exploration licence.
 - (3) The Governor in Council may, by Order published in the Government Gazette, vary or revoke either in whole or in part an exception that, by virtue of sub-clause (1) or (2), must be taken to be an exemption under this Act.
5. A person who holds a permit under section 386 of the **Mines Act 1958** immediately before the commencement of section 94 of this Act must be taken to hold a mine manager's certificate for the period and subject to the conditions specified in or prescribed by or under that Act.
 6. An authority granted under section 511(2) of the **Mines Act 1958** must be taken for the purposes of section 113(4) of this Act to have been granted by the Minister under that section of this Act.
 7. Section 114 applies to plant left on land after an instrument referred to in section 59(1) of the **Mines Act 1958** ceases to apply to that land in the same way that it applies to plant left on land after a licence ceases to apply to that land with the modification that for any reference to a period of 6 months there is to be substituted a reference to the period that was applicable in relation to the instrument under section 59(1) of the **Mines Act 1958**.
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8. Any provision of the **Mines Act 1958** that is repealed by this Act continues, despite its repeal, to apply to and in relation to—
- (a) any proceeding or appeal under that provision pending before a court or the Administrative Appeals Tribunal; or
 - (b) any dispute or other matter under that provision pending before a Land Valuation Board of Review established under Part III of the **Valuation of Land Act 1960**; or
 - (c) any investigation or inquiry under that provision pending before the mining warden; or
 - (d) any inquiry under that provision pending before the Board of Examiners for Mine Managers; or
 - (e) any inquiry or other matter under that provision pending before the Minister; or
 - (f) any arbitration under that provision pending—
immediately before that repeal as if this Act had not been enacted.
9. Division 1A of Part III of the **Mines Act 1958** continues, despite its repeal, to apply with respect to any tribute agreement in force immediately before that repeal.
10. Section 527 of the **Mines Act 1958** continues, despite its repeal, to apply with respect to returns furnished under sub-section (1) of that section or any corresponding previous enactment.
11. (1) Any drainage board appointed under Division 4 of Part III. of the **Mines Act 1958** is abolished and its members go out of office on the commencement of this sub-clause.
- (2) Any sludge abatement trust appointed under Subdivision 3 of Division 5 of Part III. of the **Mines Act 1958** is abolished and its members go out of office on the commencement of this sub-clause.
- (3) The Mining Consultative Committee established under Division 1 of Part IVA of the **Mines Act 1958** is abolished and its members go out of office on the commencement of this sub-clause.
12. Any land that was, immediately before the commencement of item 4 of Schedule 1, reserved under section 7 of the **Crown Land (Reserves) Act 1978** must for the purposes of this Act be taken, on and after that commencement, to be nominated under that section as substituted by that item.
13. (1) In this clause—
- (a) "**extractive industry title**" means a lease, licence or permit—

Sch. 2 cl. 13
inserted by
No. 7/1994
s. 7.

- (i) granted or issued under the **Extractive Industries Act 1966** and in force in respect of a substance immediately before that substance became a mineral within the meaning of this Act; or
 - (ii) granted or issued in respect of a substance under that Act on an extractive industry title application after that substance became a mineral within the meaning of this Act;
- (b) "**extractive industry title application**" means an application for the grant or issue of a lease, licence or permit under the **Extractive Industries Act 1966** in respect of a substance where the application is made before, but not determined at, the date on which that substance became a mineral within the meaning of this Act;
- (c) a reference to a substance becoming a mineral within the meaning of this Act is a reference to it becoming such a mineral by virtue of being specified in Schedule 4 to this Act.
- (2) The fact that a substance has become a mineral within the meaning of this Act does not disturb the continuity of status, operation or effect of—
- (a) an extractive industry title; or
 - (b) an extractive industry title application; or
 - (c) an application for the assignment, transfer, consolidation, variation or renewal of an extractive industry title; or
 - (d) any right to make an application of a kind referred to in paragraph (c); or
 - (e) an assignment of an interest in an extractive industry title application or any right to make such an assignment.
- (3) An extractive industry title may be varied, renewed, assigned, transferred, consolidated, suspended, cancelled or revoked in accordance with the **Extractive Industries Act 1966** as if the substance to which the title applies were not a mineral within the meaning of this Act.
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SCHEDULE 3

Section 4(1)

**Sch. 3
inserted by
No. 86/1993
s. 38.**

RESTRICTED CROWN LAND

1. Any land that is, or has been, the subject of a recommendation made by the Land Conservation Council under section 5(1)(a) of the **Land Conservation Act 1970** of which notice has been given by the Governor in Council under section 10(3) of that Act and that proposes that the land is to be reserved under the **Crown Land (Reserves) Act 1978** for any of the following purposes—
 - (a) regional parks;
 - (b) coastal parks including Gippsland Lakes Reserve;
 - (c) marine parks;
 - (d) flora and flora and fauna reserves;
 - (e) wildlife reserves including Wildlife Management Co-operative Areas;
 - (f) natural features and scenic reserves including caves and geological reserves;
 - (g) bushland reserves;
 - (h) historic areas and reserves;
 - (i) public land water frontage reserves;
 - (j) streamside reserves including River Murray Reserve;
 - (k) coastal reserves.
2. Any land that is an alpine resort within the meaning of the **Alpine Resorts Act 1983**.
3. Any land that is a heritage river area under section 5 of the **Heritage Rivers Act 1992** other than land to which paragraph (a) or (b) of section 6 of this Act applies.
4. Any land that is a natural catchment area under section 6 of the **Heritage Rivers Act 1992** other than land to which paragraph (a) or (b) of section 6 of this Act applies.

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5. Any other Crown land (other than land to which paragraph (a) or (b) of section 6 applies) that the Minister and the Ministers administering the **Crown Land (Reserves) Act 1978** and the **Forests Act 1958**, by notice published in the Government Gazette, declare to be restricted Crown land for the purposes of this Act.
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SCHEDULE 4

Sch. 4
inserted by
No. 7/1994
s. 5.

MINERALS

1. Bentonite.
 2. Fine clay.
 3. Kaolin.
 4. Lignite.
 5. Minerals in alluvial form including those of titanium, zirconium, rare earth elements and platinoid group elements.
 6. Peat.
 7. Quartz crystals.
 8. Zeolite.
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NOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 29 May 1990

Legislative Council: 27 November 1990

The long title for the Bill for this Act was "A Bill to provide a new legislative framework for the use of mineral resources in the State, to repeal the **Mines Act 1958**, to make consequential amendments to other legislation and for other purposes."

The **Mineral Resources Development Act 1990**, No. 92/1990 was assented to on 18 December 1990 and came into operation as follows:

Section 126(2) on 1 November 1990: section 3(3); Schedule 1 item 18 on 1 December 1987: section 3(4); sections 1–125, 126(1)(3), 127, 128 (*except* Schedule 1 items 17, 24), 129 (Schedule 2 items 1–12) on 6 November 1991: Government Gazette 30 October 1991 page 2970; section 126(5) on 1 November 1997: Government Gazette 23 October 1997 page 2899; section 126(4), Schedule 1 items 17, 24 not yet proclaimed.

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Notes

2. Table of Amendments

This Version incorporates amendments made to the **Mineral Resources Development Act 1990** by Acts and subordinate instruments.

Extractive Industries (Further Amendment) Act 1991, No. 27/1991

Assent Date: 12.6.91
Commencement Date: All of Act (*except* s. 4 (3)–(6)) on 12.6.91: s. 2(1);
s. 4(3)–(6) on 18.12.90: s. 2(2)
Current State: All of Act in operation

Mineral Resources Development (Amendment) Act 1993, No. 86/1993

Assent Date: 3.11.93
Commencement Date: Ss 1–3, 32, 35, 42, 43 on 3.11.93: s. 2(1); ss 8, 11(1),
37 on 6.11.91: s. 2(2); ss 4, 5, 7, 9, 10, 11(2)(3),
12–17, 18(b), 19–25, 27–31, 33, 34, 36, 38–41, 44 on
17.1.94: Government Gazette 16.12.93 p. 3317;
ss 18(a), 26 on 1.2.94: Special Gazette (No. 3) 1.2.94
p. 1; s. 6 on 3.11.94: s. 2(4)
Current State: All of Act in operation

Building Act 1993, No. 126/1993

Assent Date: 14.12.93
Commencement Date: S. 264(Sch. 5 item 16) on 1.7.94: Special Gazette
(No. 42) 1.7.94 p. 1
Current State: This information relates only to the provision/s
amending the **Mineral Resources Development Act
1990**

Mineral Resources Development (Further Amendment) Act 1994, No. 7/1994

Assent Date: 27.4.94
Commencement Date: All of Act (*except* s. 6) on 27.4.94: s. 2(1); s. 6 on
17.1.94: s. 2(2)
Current State: All of Act in operation

Valuation of Land (Amendment) Act 1994, No. 91/1994

Assent Date: 6.12.94
Commencement Date: S. 28 on 23.1.95: Government Gazette 19.1.95 p. 121
Current State: This information relates only to the provision/s
amending the **Mineral Resources Development Act
1990**

Electricity Industry (Amendment) Act 1995, No. 56/1995

Assent Date: 20.6.95
Commencement Date: Ss 40, 42 on 20.6.95: Special Gazette (No. 52) 20.6.95
p. 1
Current State: This information relates only to the provision/s
amending the **Mineral Resources Development Act
1990**

Extractive Industries Development Act 1995, No. 67/1995

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Assent Date: 17.10.95
Commencement Date: S. 60(2) on 17.10.95: s. 2(1); s. 60(3) on 1.6.96:
Special Gazette (No. 60) 31.5.96 p. 4
Current State: This information relates only to the provision/s
amending the **Mineral Resources Development Act
1990**

Heritage Act 1995, No. 93/1995 (as amended by No. 66/1997)

Assent Date: 5.12.95
Commencement Date: S. 218(1)(Sch. 2 items 5.1–5.3) on 23.5.96:
Government Gazette 23.5.96 p. 1248; s. 218(2)(Sch. 2
items 9.1, 9.2) on 23.5.98: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Mineral Resources Development Act
1990**

Heritage (Amendment) Act 1997, No. 18/1997

Assent Date: 6.5.97
Commencement Date: S. 4 on 5.12.95: s. 2(2); rest of Act on 6.5.97: s. 2(1)
Current State: All of Act in operation

Victorian Plantations Corporation (Amendment) Act 1998, No. 35/1998

Assent Date: 19.5.98
Commencement Date: S. 18 on 26.6.98: Government Gazette 25.6.98 p.
1561
Current State: This information relates only to the provision/s
amending the **Mineral Resources Development Act
1990**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Mineral Resources Development Act
1990**

**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No.
52/1998** (as amended by No. 101/1998)

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 64) on 1.7.98: Government Gazette
18.6.98 p. 1512
Current State: This information relates only to the provision/s
amending the **Mineral Resources Development Act
1990**

3. Explanatory Details

¹ S. 4(1) def. of "petroleum": See also **Petroleum Act 1958**.

² S. 4(1) def. of "stone": See also **Extractive Industries Act 1966**.

³ S. 12: Section 44(1) of the **Mineral Resources Development (Amendment) Act 1993**, No. 86/1993 reads as follows:

44. Transitional provisions

- (1) The amendment of the Principal Act made by section 6 applies with respect to the disposal of tailings after the commencement of that section, whether the consent of the Minister to that disposal was given under section 14(2)(b) of the Principal Act before or after that commencement.

⁴ S. 14A: section 43 of the **Mineral Resources Development (Amendment) Act 1993**, No. 86/1993 reads as follows:

43. Validation of certain licences

A licence granted under the Principal Act before the day on which this Act receives the Royal Assent is not invalid only because it was limited to a particular stratum of land but has, and must be taken always to have had, the same force and effect that it would have had if this Act had been passed at the time at which the licence was granted or purports to have been granted.

⁵ S. 15(1A): Section 44(2) of the **Mineral Resources Development (Amendment) Act 1993**, No. 86/1993 reads as follows:

44. Transitional provisions

- (2) The amendments of the Principal Act made by section 9, 11, 13, 14 or 15 apply to applications made before the commencement of that section but not determined at that commencement.

⁶ S. 15(1B): See note 5.

⁷ S. 15(5): See section 4(1) def. of "land affected".

⁸ S. 15(5A): See note 5.

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⁹ S. 15(6)(b): See note 5.

¹⁰ S. 15(6)(ba): See note 5.

¹¹ S. 15(10)(b): See note 7.

¹² S. 25(1)(c)(i): See section 25(5).

¹³ S. 25(1)(h): See note 5.

¹⁴ S. 25(1)(i): See note 5.

¹⁵ S. 25(3): See note 5.

¹⁶ S. 25(3A): See note 5.

¹⁷ S. 26(4): Section 44(3) of the **Mineral Resources Development (Amendment) Act 1993**, No. 86/1993 reads as follows:

44. Transitional provisions

(3) The amendment of the Principal Act made by section 12(2) has effect only with respect to mining licences granted after the commencement of that section.

¹⁸ S. 31(1): See note 5.

¹⁹ S. 31(1A): See note 5.

²⁰ S. 31(4): See note 5.

²¹ S. 32(2): See note 5.

²² S. 33(3): See note 5.

²³ S. 33(3A): See note 5.

²⁴ S. 40(2)(c)(repealed): Section 44(4) of the **Mineral Resources Development (Amendment) Act 1993**, No. 86/1993 reads as follows:

44. Transitional provisions

(4) The amendments of the Principal Act made by section 19, 20 or 21 apply to work plans and notices of a proposed variation to an approved work plan lodged before the commencement of that section but with respect to which the licensee has not been notified by the chief administrator before that commencement.

²⁵ S. 40(2A): See note 24.

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- ²⁶ S. 40(3): See note 24.
- ²⁷ S. 40(3A): See note 24.
- ²⁸ S. 40(4)(a): See note 24.
- ²⁹ S. 41(3)(a): See note 24.
- ³⁰ S. 41A: See note 24.
- ³¹ S. 42(2)(b)(ii): See note 7.
- ³² S. 42(2)(c): See note 7.
- ³³ S. 42(2)(c)(i): See note 7.
- ³⁴ S. 42(2)(c)(iv): See note 7.
- ³⁵ S. 43(1)(c): See note 7.
- ³⁶ S. 43(2)(d)(ii): See note 7.
- ³⁷ S. 43(1)(e): See note 7.
- ³⁸ S. 43(1)(e)(i): See note 7.
- ³⁹ S. 43(1)(e)(iv): See note 7.
- ⁴⁰ S. 44(2)(b): Now referred to as the Melbourne Water Corporation—see **Melbourne Water Corporation Act 1992**.
- ⁴¹ S. 109 (repealed): Section 44(5) of the **Mineral Resources Development (Amendment) Act 1993**, No. 86/1993 reads as follows:

44. Transitional provisions

- (5) The amendment of the Principal Act made by section 33 has effect only with respect to civil proceedings commenced before a court or tribunal after the commencement of that section.

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