MINING AMENDMENT BILL 2004

General Outline

This is a Bill to amend the *Mining Act 1978* and contains important and strategic changes to ensure the effective operation of the legislation:

**Part 1** introduces the Bill and provides for commencement of the various provisions.

**Part 2** provides changes to prospecting licence provisions by re-introducing an ability to extend the term of a prospecting licence, as well as including an additional condition concerning the use of mechanized equipment.

**Part 3** rationalises the operation of special prospecting licences. The number an individual may hold is being increased from 3 to 10 and the restriction on the number allowed per primary tenement is being lifted. However, the primary tenement holder will control this potential increase as subsequent applications will need the primary tenement holder’s consent before they may be granted.

**Part 4** provides for changes to exploration licence provisions, including a variation to extension of term, larger licences to be allowed in certain areas and replacing the ability to obtain exemption from compulsory partial surrender with deferment of compulsory partial surrender in respect to new licences.

**Part 5** introduces a new concept to enable the holder of a prospecting or exploration licence to apply for the licence to be approved “retention status” where a resource has been identified, but is not economic at present. This will essentially mirror current retention licence provisions, but a new title will not be required.

**Part 6** provides for changes to mining lease provisions. Primarily the changes will ensure a mining lease is only applied for when accompanied by a notice of intent to commence productive mining operations or a statement that significant mineralisation exists.

**Part 7** provides for a standard security to be lodged in respect to all tenements; at present this only applies to prospecting and exploration licences.

**Part 8** introduces a requirement to lodge geological samples (including drill core) collected from tenements, when requested.

**Part 9** rationalises the different roles of the warden and the warden’s court. At present the Act empowers a warden with both administrative and judicial powers, however the *Mining Act 1978* is unclear as to when and in what circumstances a warden acts judicially as opposed to acting in an administrative capacity, and as distinct from the role of the warden’s court.

Inconsistent terminology used throughout the Act further clouds the issue. What powers a warden has impacts on such issues as to whether costs may be
awarded to parties to a dispute and in what circumstances, the issue of subpoenas and summons for witnesses in what instances security for costs may be ordered.

This Part therefore amends the Act to distinguish between the roles of the warden and warden’s court and provides for the warden’s separate powers and functions to be prescribed in the regulations.

Part 10 contains miscellaneous but important amendments to various provisions of the Mining Act 1978, including a scheme to allow current applicants for mining leases to revert title back to exploration title.

Part 11 has some minor amendments to Mining Amendment Act 1996 which was passed in December 1996, most of which is not yet operational. This previous Amendment Act contains important changes to the caveat and registration of dealings provisions of the Mining Act 1978.

Part 12 provides for transitional regulations to be made in the event that anomalies arise in the implementation of these amendments.

**Part 1 – Preliminary**

**Clause 1 – Short title**
The title of the Act is the Mining Amendment Act 2004.

**Clause 2 – Commencement**
The amendments will come into effect on a day fixed by proclamation published in the Government Gazette or different days may be fixed for some provisions, if necessary.

**Clause 3 – The Act amended**
The Act amends the Mining Act 1978 and also Mining Amendment Act 1996 passed in 1996, but the majority is yet to be operational.

**Part 2 -Amendments about prospecting licences**

**Clause 4 – Section 43 amended**
Section 43 provides that when an application for a prospecting licence includes land already the subject of a granted mining tenement, the grant of the licence shall not include that land. This section is being amended to reflect the intent of new section 56B introduced by clause 7 which will enable the holders of certain existing prospecting licences to make application for a new prospecting licence over the same land while that existing licence remains in force.

**Clause 5 – Section 45 amended and savings provision**
The ability to extend the term of a prospecting licence was removed from the Act in 1994, however subclause (1) re-introduces the option to extend the term for one further period of 4 years. Extension is re-included to enable prospecting to continue for longer before conversion to a mining lease, if justified. For
prospecting licences where “retention status” has been approved (see clause 17) more than 1 extension will be possible.

Subclause (2) provides that the new extension provisions will only apply to the grant of prospecting licences applied for after commencement of these amendments.

Clause 6 – Section 46 amended and transitional provision
Subclause (1) adds a new statutory condition to require prior approval for any proposed use of mechanised equipment on a prospecting licence. Currently this condition is applied administratively on the grant of all prospecting licences. Reference to the State Mining Engineer is being removed from the same section to better reflect that an officer responsible for environmental management, or the Minister, will now be responsible for certain environmental approvals.

Subclause (2) provides that this statutory condition does not apply retrospectively to existing granted prospecting licences, however the same condition has been applied administratively to these licences in any event.

Clause 7 – Section 56B inserted
This clause adds new section 56B to provide that the holder of a prospecting licence within 12 months of the end of its term may re-apply for the ground as a new prospecting licence. Previously these holders could automatically apply to convert a licence to a mining lease, but this will no longer be the case.

This provision is being added to recognise that the new criteria for applying for a mining lease in Part 6 of this Bill has the potential to adversely affect current prospecting licences nearing the end of their term. The holders of these licences will have limited time to identify a resource or be in a position to lodge a mining proposal with a mining lease application. The same situation will not arise in respect to exploration licences as the term of these titles may be extended.

Part 2 – Amendments about special prospecting licences

Clause 8 – Section 56A amended
Subclause (1) removes the 14 day period specified for the service required by the applicant for a special prospecting licence (SPL) on the holder of the underlying primary tenement (that is, an existing “normal” prospecting licence). For consistency with other provisions, the period will be prescribed in the Regulations. Service is not required if new subsection (5a) applies to the application.

Subclause (2) introduces new subsections (5a) and (5b) which provide that, where an SPL or SPL application is already present within the primary tenement, the applicant for any successive SPL must obtain the written consent of the primary tenement holder. This provision is added to give an underlying primary tenement holder control over the number of SPL’s that may be present on a “primary” prospecting licence.
Subclause (3) deletes reference to the warden granting a SPL as under subsection (5) a warden’s role is to hear objections to SPL applications and may only recommend the application to the Minister or refuse the application.

Subclause (4) increases the number of SPL’s an individual may hold from 3 to 10.

Subclause (5) compliments subclause (2) by removing the reference to only one SPL being allowed per primary prospecting licence.

Subclause (6) amends section 56A(8) by making it clear that, although more than one SPL may be on a primary tenement, only one may be converted to a mining lease for gold.

Subclause (7) introduces a new subsection to recognise the new provisions that apply to the grant of a mining lease. That is, the new requirement to lodge either a mining proposal or a statement concerning mineralisation also applies to a mining lease applied for as a conversion of a special prospecting licence,

Clause 9 – Section 70 amended
Subclause (1) has the same effect as subclause (1) of clause 8 above, except that the primary tenement referred to is an exploration licence instead of a prospecting licence.

Subclause (2) introduces new subsections (5a) and (5b) which provide that, where the number of SPL or SPL applications within the primary tenement is already at the limit of one for every 200 hectares (on aggregate) of the exploration licence, the applicant for any successive SPL must obtain the written consent of the primary tenement holder. This provision is added to give an underlying primary tenement holder control over the number of SPL’s that may be present on a “primary” exploration licence.

Subclauses (3) and (4) have the same effect as subclauses (3) and (4) of Clause 4 above, except that the primary tenement is an exploration licence.

Subclause (5) compliments subclause (2) by removing the reference to only one SPL being allowed for every 200 hectares of the primary exploration licence.

Subclause (6) amends section 70(8) by making it clear that, although more than one SPL per 200 hectares may be on a primary tenement, only one per 200 hectares may be converted to a mining lease for gold.

Subclause (7) introduces a new subsection to recognise the new provisions that apply to the grant of a mining lease. That is, the new requirement to lodge either a mining proposal or a statement concerning mineralisation also applies to a mining lease applied for as a conversion of a special prospecting licence,

Clause 10 – Section 85B amended
Subclause (1) increases the limit of 3 SPL’s per person to 10.
Subclause (2) deletes paragraphs relating to the obtaining of a report concerning the existence of gold when an objection is lodged as subclause (3) introduces an alternate provision.

Subclause (3) introduces a new subsection to recognise the new provisions that apply to the grant of a mining lease. That is, the new requirement to lodge either a mining proposal or a statement concerning mineralisation also applies to a mining lease applied for as a conversion of a special prospecting licence.

Clause 11 – Transitional provision
This clause provides that an application for a special prospecting licence or mining lease for gold applied for before commencement will be processed in accordance with the provisions that were in effect before these amendments became operational.

Part 4 – Amendments about exploration licences

Clause 12 – Section 57 amended
The nominated maximum size of an exploration licence is 70 blocks, which is roughly equivalent to 215 square kilometres. This section is being amended to provide for exploration licence up to 200 blocks (approx. 620km²) in areas established under new section 57A inserted by clause 13.

Clause 13 – Section 57A inserted
This clause provides that the Minister may designate areas of the State that may be made the subject of applications for exploration licences up to 200 blocks. The intention is that the more remote or relatively unexplored areas of the State will be made the subject of this provision as a measure to encourage exploration in these areas.

Clause 14 – Section 61 amended
Subclause (1) provides that the Minister may extend the term of an exploration licence for one period of 5 years, followed by further periods of 2 years, provided the reason for extension is within grounds to be prescribed in the regulations. This replaces the existing provision where extension could be for 2 periods of 2 years, followed by further periods of 1 year.

Subclause (2) restructures subsection 61(3) to provide for application for extension to be as prescribed in the regulations and subsection (3a) provides for the exploration licence to remain in force until the extension application is determined.

Clause 15 – Section 63 amended and transitional provision
Similar to clause 6, subclause (1) adds a statutory condition to require prior approval for any proposed use of mechanised equipment on an exploration licence. Currently this condition is applied administratively on the grant of all exploration licences. Reference to the State Mining Engineer is being removed from the same section to better reflect that an officer responsible for
environmental management, or the Minister, will now be responsible for certain environmental approvals.

Subclause (2) provides that this statutory condition does not apply retrospectively to existing granted exploration licences, however the same condition has been applied administratively to these licences in any event.

Clauses 16– Section 65 amended
This section is being amended to reflect that:-
• Compulsory surrender will now be due once at the end of the 5th year of term (currently at end of 3rd and 4th years);
• The partial surrender required will be 40% in lieu of the present 50%;
• The grounds for obtaining exemption from compulsory partial surrender are being moved from this section to the regulations; and
• an ability to defer a partial surrender requirement will replace exemption from partial surrender for exploration licences applied for and granted after commencement of this Amendment Act.

Subclause (1) introduces definitions to clarify when a partial surrender is required to be lodged, the new requirement for a once only 40% surrender at the end of year 5 of the term and the ability for the Minister to defer the partial surrender requirement for 12 months.

Subclause (2) replaces the existing “deemed” surrender provision where a compulsory partial surrender of an exploration licence is not lodged with a provision enabling the Minister to compel the surrender. This provision meshes with the amendment in clause 89 which renders the licence liable for forfeiture for non-lodgement of the surrender.

Clauses 17 – Section 68 amended
This clause removes the monetary penalty provided, as failure to lodge required reports and geological samples will render an exploration licence liable for forfeiture under clause 89.

Clauses 18 – Section 69 amended
The term “relinquished” is being replaced with “surrendered” as this is the more correct term.

Clauses 19 – Transitional and savings provisions
This clause is necessary to qualify which of the new provisions apply to exploration licences and applications for exploration licences in existence at the commencement of these amendments and subclause (1) provides definitions for this purpose.

Subclause (2) provides that, for current granted exploration licences and the grant of applications for exploration licences made before commencement of these amendments, the existing compulsory partial surrender requirement at the end of the 3rd and 4th year of term continues to apply. However, the “deemed” surrender provision for failure to lodge a partial surrender within time is replaced for all exploration licences with a provision rendering such a licence liable for forfeiture.
Subclause (3) has the same effect as new subsection 65(4) introduced by subclause 16(2) of this Bill, but applies to existing exploration licences. That is, it allows the Minister to require a compulsory partial surrender to be lodged where one is not lodged, and links in with the new forfeiture provision replacing the current “deemed” surrender option.

Subclause (4) provides that failure to lodge a compulsory partial surrender renders existing exploration licences liable for forfeiture.

Subclauses (5) and (6) make the grounds for exemption from compulsory partial surrender required for existing exploration licences the same as the grounds for deferral of compulsory partial surrender to be prescribed in the regulations for licences applied for and granted after these amendments.

Part 5 – Amendments about retention status

Clause 20 – Section 8 amended
Section 8 is the definitions section of the Act and subclause (1) adds two further definitions:

- “identified mineral resource” applies to retention status licences as well as the existing retention licence provisions.

- “retention status” is a term introduced by the inclusion of this Part.

Subclause (2) further defines what retention status means.

Clause 21 - Section 50 amended
This clause adds a new subsection to section 50 to take into account that a prospecting licence that has retention status approved is no longer subject to annual expenditure requirements.

Clause 22 – Section 53 to 53B inserted
New section 53 introduces the retention status concept to prospecting licences. Subsection (2) of that section provides that the ability to obtain retention status will only apply to the grant of prospecting licences applied for after commencement of these amendments (see clause 25 and the new definition of what a “primary tenement” is in relation to retention licences).

New section 54 outlines the approval process to gain retention status for a prospecting licence and substantially follows the criteria under Division 2A and the treatment of retention licences. Subsection (3) provides for the approval of retention status to be Gazetted, so that the public is aware because any ground within a licence not part of the retention status approval becomes available for further application.

Subsection (4) provides that the whole of a prospecting licence may not be granted retention status, as the Minister may only approve an area sufficient for
the resource located as well as for infrastructure and future mining requirements.

Where a lesser area is granted retention status, subsection (5) provides that the lesser area to which the licence would then relate must be marked out.

Subsection (6) provides that land not included in retention status becomes available from the day the approval takes effect under subsection (3).

New section 55 provides that an application for retention status that affects reserved land must be referred for the recommendation of relevant Ministers. Although a new title is not being created, referral will make relevant Ministers aware of current proposals for a licence.

New section 55A provides that the Minister may impose a condition requiring compliance with a specified work program. This section is consistent with a similar provision that currently applies to retention licences (section 70IA).

New section 55B is the same as current section 70M, which applies to retention licences – the Minister may ask the holder of a prospecting licence with retention status to show cause why a mining lease or leases should not be applied for over the land. The intention of this provision is to force a licence holder to apply for a lease in instances where it is apparent the ore body located should now be mined, rather than be kept under the current “holding” title.

Clause 23 – Section 62 amended
This clause adds a new subsection to section 62 to take into account that an exploration licence that has retention status approved is no longer subject to annual expenditure requirements.

Clause 24 - Sections 69A to 69E added
These new sections have the same effect on exploration licences as new sections 53 to 53B have on prospecting licences.

New section 69A introduces the retention status concept to exploration licences. Subsection (2) of that section provides that the ability to obtain retention status will only apply to the grant of exploration licences applied for after commencement of these amendments (see clause 20 and the new definition of what a “primary tenement” is in relation to retention licences).

New section 69B outlines the approval process to gain retention status for an exploration licence and substantially follows the criteria under Division 2A and the treatment of retention licences. Subsection (3) provides for the approval of retention status to be Gazetted, so that the public is aware as any ground within a licence not part of the retention status approval becomes available for further application.

Subsection (4) provides that the whole of an exploration licence may not be granted retention status, as the Minister may only approve an area sufficient for the resource located as well as infrastructure and for future requirements.
Subsection (5) provides that land not included in retention status becomes available from the day the approval takes effect under subsection (3).

New section 69C provides that an application for retention status that affects reserved land must be referred for the recommendation of relevant Ministers. Although a new title is not being created, referral will make relevant Ministers aware of current proposals for a licence.

New section 69D provides that the Minister may impose a condition requiring compliance with a specified work program. This section is consistent with a similar provision that currently applies to retention licences (section 70IA).

New section 69E is the same as current section 70M, which applies to retention licences – the Minister may ask the holder of an exploration licence with retention status to show cause why a mining lease or leases should not be applied for over the land. The intention of this provision is to compel a licence holder to convert to lease in instances where it is apparent the ore body located should now be mined, rather than be kept under the current “holding” title.

**Clause 25 – Section 70A replaced.**

The effect of this clause is to make it clear that a “primary tenement” for the purposes of the retention licence provisions means all mining leases as well as those prospecting or exploration licences in force at the commencement of these amendments or the grant of a licence application that was applied for before commencement.

That is, only licences granted as a result of applications made after commencement are subject to the “retention status” system and existing licences and all mining leases may be made the subject of a retention licence under the existing retention licence provisions.

**Part 6 – Amendments about mining leases**

**Clause 26 – Section 6 amended**

Under clause 29 an application for a mining lease must be accompanied by either a mining proposal or a “statement” outlining mining intentions. New subsection 6(1a) qualifies that a lease application accompanied by a “statement” is not a proposal for the purposes of referral to the Environmental Protection Authority (Authority) pursuant to the *Environmental Protection Act 1986* (EP Act), however the ability of the Authority or the Minister for Environment to instigate an assessment remains.

New subsection (1b) gives “proposal” the same meaning as under the EP Act.

New subsection (1c) qualifies that, unlike subsection (1a) and a mining lease application lodged pursuant to the *Mining Act 1978*, an Agreement Act mining lease application that is accompanied by a statement outlining mining intentions is a proposal for the purposes of the EP Act.
Where a mining lease is granted based on the “statement”, new subsection (1d) provides that the referral process required under the EP Act applies to any subsequent proposal to mine or use mechanised equipment.

**Clause 27 – Sections 70O and 70P inserted**
New section 70O inserts definitions of a “mining proposal” and “significant mineralisation”, terms used in this Division.

New section 70P is added to ensure that guidelines for preparing a mining proposal, approved under this Division, are publicly available.

**Clause 28 – Section 73 replaced**
Subclause (1) removes the current size restriction of 10km² for a mining lease and replaces it with a discretion for the Minister to grant a mining lease for a lesser area than was applied for. Effectively a mining lease will be granted over an area sufficient for mining and associated operations.

Subclause (2) provides for re-marking of the lease boundaries in instances where a lesser area is granted under subclause (1).

**Clause 29 – Section 74 amended**
Subclause (1) provides that either a mining proposal or a statement and a mineralisation report as outlined in new subsection (1a) must accompany an application for a mining lease.

Subclause (2) adds new subsection (1a) to outline what information the statement introduced by subclause (1) must contain.

Subclause (3) adds new subsections (5) and (6) to provide that a mining proposal or a statement and mineralisation report required to accompany a mining lease application are documents available to the public for a fee, to be prescribed in the Regulations.

Subclause (3) also adds new subsection (7) to provide definitions to specify what “likely” means in the context of when mining operations may occur, what a “mineralisation report” must include and who a “qualified person” is in terms of the person required to prepare the report.

**Clause 30 – Section 74A inserted**
In instances where a statement and a mineralisation report are lodged with a mining lease application, subsection (1) requires the Director, Geological Survey to report to the Minister whether or not significant mineralisation to sustain a mining operation exists in, on or under the land the subject of the application.

Subsection (2) allows the Director to request further information from the applicant in relation to the mineralisation report.

Subsection (3) provides that the report of the Director is to be based on information contained in the mineralisation report and any further information
subsequently lodged by the applicant arising from a request from the Director under subsection (2).

Subsection (4) requires the Director to give a copy of the report required by subsection (1) to the mining registrar and warden as the report affects the ability of these persons to recommend a tenement application or hear an objection, as outlined in clause 31 below.

Subsections (5) and (6) provide that the Director's report is available to the public for a fee, to be prescribed in the Regulations.

Subsection (7) defines a "mineralisation report" as the report required to be lodged with some mining lease applications pursuant to new subsection 74(1)(ca)(ii).

Clause 31 – section 75 amended
Subclause (1) removes the ability to object to a mining lease application based on the level of mineralisation as this assessment rests solely with the Director, Geological Survey.

Subclauses (2) to (5) add new subsections to provide that, unless the report of the Director, Geological Survey states there is significant mineralisation, a recommendation by a warden or mining registrar is not required and the warden is not required to hear any objection that may have been lodged against the tenement application. The need for a recommendation is obviated by a requirement of the Minister to refuse a mining lease application where the Director has assessed there is no significant mineralisation indicated (see new subsection (8) introduced by subclause (7)).

Subsection 75(7) provides that the Minister shall grant a mining lease application where it is a conversion of an existing licence. Subclause (6) qualifies this provision by including reference to the need for a positive mineralisation report under new subsection (8) before grant may occur, added by subclause (7) below.

Subclause (7) provides that the Minister must not grant a mining lease application where the report required from the Director, Geological Survey does not confirm significant mineralisation is indicated in, on or under the land applied for.

Subclause (8) adds a new subsection (10) to define what a "section 74A report" means.

Clause 32 – Section 82 amended and transitional provision
Similar to clauses 6 and 15, subclause (1) adds a statutory condition to require prior approval for any proposed use of mechanised equipment on a mining lease. Currently this condition is applied administratively on the grant of all mining leases.

New subsection (1a) introduced by subclause (2) defines a "relevant mining proposal" to mean either a mining proposal that accompanied a mining lease
application or was approved subsequently as a result of the “statement” option outlined in clause 29.

New subsection (1b) removes the need to lodge either a mining proposal or a “statement” in accordance with the Mining Act 1978 in respect to a mining lease granted pursuant to a State Agreement Act as each Agreement provides for its own proposal lodgement and approval process.

Subclause (3) provides that this statutory condition does not apply retrospectively to existing granted mining leases, however the same condition has been applied administratively to these leases in any event.

Clause 33 – Section 82A inserted
Subsection (1) provides that the condition introduced by this section applies in instances where a statement and a mineralisation report (i.e. not a mining proposal) are lodged with an application for a mining lease and to any lease application undetermined at the commencement of these amendments.

Subsection (2) provides that every mining lease to which this section applies is deemed to be granted subject to a condition that mining operations of a prescribed kind are prohibited until a prescribed official has given written approval. The type of prescribed mining operations to be included in the regulations will include open cut or underground operations as well as tailings storage facilities, mine plant and mine waste dumps and would generally be a separate consideration to the use of mechanised equipment outlined in clause 32.

Clause 34 – Section 85 amended
Section 85 sets out the rights of the holder of a mining lease. This clause qualifies the section by recognising that a condition restricting certain mining operations may be imposed pursuant to new section 82A.

Clause 35 – Transitional provision
This clause provides that current sections 74 and 75 (relating to application for and determination of lease applications) which applied before commencement of these amendments will continue to apply to an application for a mining lease lodged and undetermined before commencement.

Part 7 – Amendments about securities

Clause 36 – Section 70F replaced and transitional provision
Subclause (1) replaces the existing security provision in respect to retention licences. An applicant for a retention licence will be required to lodge a standard security before the application may be granted, as well as the existing provision that may require the lodgement of additional securities during the life of the tenement for compliance with conditions applicable to the title.

As the requirement for a security to be lodged before grant is a new provision, subclause (2) provides that the provision will not apply to applicants for retention licences lodged before commencement of this amendment.
Clause 37 – Section 70K amended
This provision is amended to reflect that previous section 70F(1) is now section 70F(2).

Clause 38 – Section 82 amended
This provision is amended to reflect that previous section 84A(1) is now section 84A(2).

Clause 39 – Section 84A replaced and transitional provision
Similar to clause 36 this provision introduces a new requirement for an applicant for a mining lease to lodge a standard security before the application may be granted, as well as the existing provision that may require the lodgement of additional securities during the life of the tenement for compliance with conditions applicable to the title.

As the requirement for a security to be lodged before grant is a new provision, subclause (2) provides that the provision will not apply to applicants for mining leases lodged before commencement of this amendment.

Clause 40 – Section 92 amended
Reference to subsection (1a) as part of section 52 is being removed as the whole of section 52 is now applicable to an application for a miscellaneous licence, which will now include lodgement of a standard security on application.

Clause 41 – Section 126 amended
Subclause (1) amends section 126 to take into account the amendments made to section 70F and 84A by clauses 36 and 39.

Subclause (2) introduces a new subsection to provide for the discharge of securities that apply to mining tenements one year after the surrender, forfeiture or expiry of a tenement where payment of the security has not been requested.

Part 8 – Amendments about geological samples

Clause 42 – section 8 amended
A new definition is being included to make clear that drill core is classed as a geological sample.

Clause 43 – Section 51A inserted
A new section is being added to provide that geological samples collected from a prospecting licence may be requested by the Minister. This provision compliments the existing provision applicable to exploration licences (s.68 (2)).

Clause 44 – Section 70H amended
This clause adds a provision similar to clause 36 to require lodgement of geological samples collected on a retention licence when requested by the Minister.
Clause 45 – Section 82 amended
This clause is similar to clause 37, but applies to mining leases.

Clause 46 – Section 96 amended
This section is being amended to provide that a request for geological samples that is not complied with renders a prospecting licence liable for forfeiture.

Part 9 – Amendments about wardens and wardens’ courts

Clause 47 – Section 8 amended
The reference to an acting warden is being removed as it is not required.

Clause 48 – Section 13 amended
The appointment of persons other than stipendiary magistrates as wardens is being removed as this provision is no longer required.

Clause 49 – Section 14 repealed
The provision giving power to appoint acting wardens is being removed as it has not been used and is therefore not required.

Clause 50 – Section 20 amended
The ability of a warden to issue a Miner's Right is being removed as it is unnecessary. It is the mining registrar who issues Miner's Rights.

Clause 51 – Section 28 amended
To date persons within the Department of Industry and Resources have been appointed as wardens for the purpose of issuing permits to enter private land, however under clause 53 of this Bill these officers will now be referred to as “prescribed officials”.

Clause 52 – Section 29 amended
Section 29(4) has been reworded to better reflect the intent. Under section 29 access to private land on which a substantial improvement exists is only possible with the written consent of the owner and occupier. If contested, this amendment provides that the warden is to determine whether an improvement is a substantial improvement for the purposes of the provision.

Clause 53 – Section 30 amended
Subclause (1) deletes reference to applying to a warden for a permit to enter private land as application is made to the mining registrar.

Subclause (2) rewords subsection 30(2) to require an application for a permit to enter private land to contain sufficient details to enable identification of the land.

Subclause (3) adds a “prescribed official” as a person who may issue permits.

Subclause (4) adds a “prescribed official” as a person who may fix a sum of money to be paid to the owner or occupier of land as compensation for likely damage, such sum to be held by the Director General of Mines.
Subclause (5) inserts new subsections to expand on the procedure should money be required to be paid:-

- subsection (5) outlines the reason for fixing the sum of money, that is, for any damage that is likely to be caused during the operation of the permit.

- subsection (6) allows the owner or occupier of private land to apply to the warden’s court for the disbursement of any sum paid pursuant to subsection (5). The provision previously referred to the warden disbursing the money.

- subsections (6a) to (6c) provide for the warden’s court to hear any application for the payment of money to the owner or occupier of land. This is consistent with section 123 and the determination of compensation issues by the warden’s court.

- Subsection (6d) provides for the Director General to subsequently disburse the money.

Subclause (6) introduces a definition of “prescribed official”, as referred to previously.

**Clause 54 – Section 32 amended**
Includes a “prescribed official” as a person who grants or refuses permits to enter private land.

**Clause 55 – Section 33 amended**
This clause provides that any costs awarded by a warden in respect to an objection by an owner or occupier of private land are recoverable in a manner to be prescribed in the regulations.

**Clause 56 – Section 42 amended**
The effect of subclause (1) is that the mining registrar determines applications in instances where an objection has been withdrawn.

Subclause (2) removes the words: “in open court” to reflect that a warden determining an objection against the grant of a prospecting licence is acting administratively, not in the warden’s court.

**Clause 57 – Section 47 amended**
Subclause (1) replaces “order” with “require” to better reflect the administrative role envisaged.

Subclause (2) replaces subsection 47(2) to reflect that the arrangement of surveys is to be in accordance with the manner outlined in the regulations.

**Clause 58 – Section 58 amended**
Subclause (1) reorganises subsection 58(2) and replaces “order” with “require” to better reflect the administrative role envisaged.
Subclause (2) adds subsection (2b) to reflect that the arrangement of surveys is to be in accordance with the regulations.

**Clause 59 – Section 59 amended**
The effect of subclause (1) is that the mining registrar determines applications in instances where an objection has been withdrawn.

Subclause (2) removes the words: “in open court” to reflect that a warden determining an objection against the grant of a prospecting licence is acting administratively, not in the warden’s court.

**Clause 60 – section 67A amended**
Deletes reference to a warden having the function of recommending an application to amalgamate tenements or land as the decision is solely with the Minister.

**Clause 61 – Section 70D amended**
The effect of subclause (1) is that the mining registrar determines applications in instances where an objection has been withdrawn.

Subclause (2) removes the words: “in open court” to reflect that a warden determining an objection against the grant of a prospecting licence is acting administratively, not in the warden’s court.

**Clause 62 – Section 70G amended**
Subclause (1) replaces “order” with “require” to better reflect the administrative role envisaged.

Subclause (2) replaces subsection (2) to reflect that the arrangement of surveys is to be in accordance with the regulations.

**Clause 63 – Section 75 amended**
The effect of subclause (1) is that the mining registrar determines applications in instances where an objection has been withdrawn.

Subclause (2) removes the words: “in open court” to reflect that a warden determining an objection against the grant of a prospecting licence is acting administratively, not in the warden’s court.

**Clause 64 – Section 97A amended**
Subclause (1) removes the reference to applying to the warden for restoration of a forfeited tenement as application is made to the Department.

Subclause (2) removes the words: “in open court” to reflect that a warden determining an application for restoration of a forfeited tenement is acting administratively, not in the warden’s court.

**Clause 65 – Section 98 amended**
Subclause (1) removes the reference to applying to the warden for forfeiture of a tenement as application is made to the Department.
Subclause (2) removes the words: “in open court” to reflect that a warden determining a plaint for forfeiture is acting administratively, not in the warden’s court.

Subclause (3) removes reference to an “order” by a warden to better reflect the administrative role envisaged.

Clause 66 – Section 102 amended
The words: “in open court” are being removed to reflect that a warden determining an objection against the grant of expenditure exemption is acting administratively, not in the warden’s court.

Clause 67 – Section 105A amended
Subclause (1) removes the words: “in open court” to reflect that a warden when conducting a ballot for applications lodged at the same time is acting administratively, not in the warden’s court.

Subclause (2) adds a provision to provide that ballots are to be conducted in public.

Clause 68 – Section 130 amended
The section refers to where a warden’s court may be held. The words: “before the warden” are being removed as they are considered unnecessary in the provision.

Clause 69 – Section 131 amended
Section 131 currently refers to section 13(2) and the appointment of people as wardens, other than a Stipendiary Magistrate. Section 13(2) is being repealed by clause 41 of this Bill.

Clause 70 – Section 132 amended
This section outlines the jurisdiction of the warden’s court therefore subclause (1) removes reference to the warden as the warden’s administrative jurisdiction is separate from the warden’s court and will be outlined in the regulations.

Section 132(2) currently refers to the warden’s court having jurisdiction to hear all proceedings under the Act. Subclause (2) clarifies that the warden’s court has jurisdiction to conduct certain proceedings but is now worded to take into account that the warden when acting administratively also has jurisdiction for certain proceedings.

Subclause (3) removes the gender-specific “his” and “he” and replaces it with references to the court rather than the warden.

Clause 71 – Section 134 amended
Subclause (1) removes “the determination of applications and objections” from the powers of a warden’s court as this is a function of the warden in the warden’s administrative capacity.

Subclause (2)(a) replaces “warden” with “court” in section 134(2) to properly reflect that the section deals with warden’s court powers, not those of a warden.
Subclause (2)(b) clarifies that a warden or a mining registrar may tax costs awarded. Subclause (2)(c) removes reference to applications and objections from this section dealing with the powers of the warden’s court as these matters are dealt with by the warden in the warden’s administrative capacity.

Subclause (3) similarly removes reference to the warden as the provision concerns the warden’s court.

**Clause 72 – Section 135 amended**

Subclauses (1) to (3) remove reference to the warden as the provision related to a function of the warden’s court.

Subclause (4) is being repealed as it makes reference to the grant of a mining tenement, which is a function of the warden and not the warden’s court, as referred to in this section.

**Clause 73 – Section 137 amended**

Section 137(1) refers to recording of evidence of witnesses before a warden. Subclause (1) replaces this provision by referring to evidence recorded in a warden’s court.

Subclause (2) repeals sections 137(2) and (3) as they are obsolete. These subsections refer to the reading of evidence to a witness, on request.

Subclause (3) amends section 137(4) to provide for copies of evidence taken to be available to any party to proceedings in a form to be prescribed in the regulations.

Subclause (4) removes reference to a decision of a warden as section 137(5) relates to decisions of a warden’s court. The requirement to record decisions in a register is also being removed as it is an unnecessary requirement.

**Clause 74 – Section 138 amended**

Section 138 refers to mode of trial and this clause amends section 138(4) by restricting the provision to proceedings in the warden’s court and not those heard by a warden acting administratively. The conduct of hearings before a warden will be addressed in the regulations.

**Clause 75 – Section 142 amended**

Subclause (1) amends subsection 142(1) to reflect that the provision refers to a warden’s court.

Subsections 142(2) and (5) presently include a mining registrar as having the ability to amend any defect in proceedings. Subclauses (2) and (3) amend these provisions to reflect that only a warden’s court or warden has this power.

**Clause 76 – Sections 144 and 145 repealed**

Sections 144 and 145 relate to the swearing of affidavits and proof of judgements or warden’s orders and are currently in Part VIII, which relates to the warden’s court and the administration of justice. These provisions are being
moved to Part IX so that Part VIII only deals with matters specific to the warden’s court and not the separate functions of the warden.

**Clause 77 – Section 146 amended**
Section 146 provides for referral to the Supreme Court questions of law arising during proceedings before the warden. Subclauses (1) to (3) amend the provision to provide that a warden’s court is able to refer questions of law.

Section 146(7) presently allows the warden to make orders for injunctions and other things as part of the process of referring a question of law to the Supreme Court. Subclause (4) amends this provision by referring to the warden’s court as having the power to make such orders.

**Clause 78 – Section 147 amended**
Section 147 provides for appeal to the Supreme Court in certain circumstances. Subclause (1) adds section 135(2) as a consent determination by a warden’s court is not appealable.

Subclause (2) removes the requirement to serve a notice of appeal on the warden as this is not considered necessary.

Subsections 147(4) and (5) provide for a security for costs to be lodged with the warden. Subclause (3) repeals these subsections as, in other jurisdictions, a security is normally paid to the court to which the appeal is made.

Subclause (4) is amended to reflect that the warden’s court may make orders relating to a notice of appeal.

**Clause 79 – section 148 amended**
As per clause 71(2), this clause removes reference to the need to serve a notice of appeal on the warden as this is not considered necessary as it is already filed with the warden’s court.

**Clause 80 – section 151 amended**
Section 151 outlines limitations on the right of appeal and this clause removes reference to decisions of the Minister, warden or mining registrar as this part of the Act relates to the warden’s court only.

**Clause 81 – section 156 amended**
Acting warden is removed from the provision as the ability to appoint an acting warden is being removed by clause 42 of this Bill.

**Clause 82 – Sections 160C and 160D inserted**
To compliment clause 73, new section 160C is adding a provision to limit the right of appeal against a decision of the warden, mining registrar or Minister. In essence, the effect of paras (b) and (c) of current section 151 is being relocated to this new section.

New section 160D complements the repealing of section 144 by clause 76 by reinserting the affidavit provisions in a different Part.
Clause 83 – Section 161 amended
To compliment clause 69, a new subsection is being added to section 161 to include the provisions of former section 145 relating to proof of judgement, etc in Part XI instead of Part VIII.

Clause 84 – Section 162 amended
Section 162 provides for regulation making powers. This clause is adding further regulation making powers relating to the conduct of proceedings before a warden and costs that may be awarded.

Clause 85 – Various references to “warden” changed to “warden’s court”
This clause further rationalises the difference in function between the warden and warden’s court by amending the terminology where appropriate.

Clause 86 – Transitional provision
This clause is necessary to ensure applications or objections that are currently being determined are not affected by the rationalisation of the powers and functions of the warden and warden’s court under this Part, to apply from commencement of these amendments.

Part 10 – Other amendments to Mining Act 1978

Clause 87 – Section 8 amended
A definition of “Director, Geological Survey” is being added as the Director is referred to in new section 74A.

“ground disturbing equipment” is defined for the purposes of its use in amended sections 6 (clause 26), 46 (clause 6), 63 (clause 15) and 70H (clause 90).

“prescribed official” is defined for the purposes of its use in the same provisions, as well as in Part 9 of this Bill.

Clause 88 – Section 20 amended
This clause removes a provision relating to the removal of timber and the erection of structures for the purpose of prospecting. It is being replaced with a provision to clarify the ability to camp whilst prospecting by virtue of a Miner’s Right.

Clause 89 – Section 63A amended
Section 63A provides when an exploration licence is liable to be forfeited. Paragraph (a) adds:-

- Section 65(4) - failure to lodge a compulsory partial surrender, as “deemed” surrender will no longer apply as a penalty;
- Section 69E(2) - failure to comply with a request to show cause why the holder of an exploration licence with retention status should not apply for a mining lease should not be applied for over an exploration licence with retention status; and
- Section 115B(2) – failure to supply an audited statement when requested to verify expenditure claimed.
Paragraph (b) adds an amendment to provide that a request for geological samples or records that is not complied with renders an exploration licence liable for forfeiture.

**Clause 90 – Section 70H amended and transitional provision**

Similar to clause 6 and 15, this clause (1) adds a statutory condition to require prior approval for any proposed use of mechanised equipment on a retention licence. Currently this condition is applied administratively on the grant of all retention licences. Reference to the State Mining Engineer is being removed from the same section to better reflect that an officer responsible for environmental management will now be responsible for certain environmental approvals.

Subclause (2) provides that this statutory condition does not apply retrospectively to existing granted retention licences, however the same condition has been applied administratively to these licences in any event.

**Clause 91– Section 90 replaced**

Current section 90 provides that certain provisions of the Act applying to a mining lease also apply to a general purpose lease, however with the introduction of the new mining lease provisions this section now needs to be rationalised.

New subsection (1) provides that the amendment to section 6 relating to mining leases made by clause 26 has the same effect on general purpose leases. That is, when a mining proposal is lodged in respect to a general purpose lease, the referral process required under the Environmental Protection Act 1986 applies.

New subsection (2) provides that an application for a general purpose lease must be accompanied by either a mining proposal or a statement setting out the intentions for the land the subject of the application. This provision excludes the requirement to lodge a mineralisation report, as is required for a mining lease.

New subsection (3) provides that the amendments made to section 75 by clause 31 of this Amendment Bill, that is, the requirement for a mineralisation report and the subsequent report on “significant mineralisation” by the Director, Geological Survey now required for a mining lease, do not apply to an application for a general purpose lease.

New subsection (4) lists the other sections that apply to a mining lease that also currently apply to a general purpose lease.

**Clause 92 – Section 95 amended**

Section 95(2) related to ongoing liabilities of a tenement holder who surrenders the title. This clause repeals the section as it is being included in new consolidated section 114B in clause 97.
Clause 93 – section 96 amended
Similar to clause 89 and its effect on exploration licences, this clause provides that, pursuant to new section 55B(2), where the holder of a prospecting licence with retention status fails to show cause why a mining lease should not be applied for, this clause renders the licence liable for forfeiture for non-compliance with the request. Failure to supply an audited statement when requested to verify expenditure claimed on a prospecting licence will also the licence liable for forfeiture.

Clause 94 – Section 102 amended
Section 102(2)(h) deals with exemption from annual expenditure requirements in respect to tenements deemed to be within a project. Subclause (1) clarifies the provision by providing that project exemption may only relate to exploration expenditure.

Subclause (2) defines “aggregate exploration expenditure” and provides for regulations to support this definition.

Clause 95 – Section 105A amended
Section 105A relates to priorities between tenement applications based on time of lodgement or marking out boundaries. This clause clarifies that, in respect to the release of land surrendered from an exploration licence under section 65, time of lodgement of an application establishes priority.

Clause 96 – Sections 114B and 114C inserted
New section 114B provides for continuation of liability for tenement holders in respect to matters that remain outstanding or require attention where a tenement is surrendered, forfeited or expires. Previously this ongoing liability only applied to surrendered tenements under section 95(2), now being repealed by clause 92.

New section 114C provides that where a tenement expires or is surrendered or forfeited, the former holder may access the land to carry out required remedial work.

Clause 97 – Section 115B inserted and consequential amendments
Subclause (1) adds new section 115B which will allow the Minister to request an audited statement from a tenement holder to verify expenditure claimed in annual operations reports.

Subclause (2) adds the failure to lodge an audited statement to the grounds for forfeiture applicable to retention licences and mining leases.

Clause 98 – Section 118A inserted and validation and transitional provisions
Subclause (1) inserts a new provision relating to the authorisation of mining on a tenement by persons other than the tenement holder. The provision clarifies that mining by third parties is allowed with the written authorisation of the tenement holder and expenditure incurred conducting those activities may be
claimable by the tenement holder against the annual expenditure commitment for that tenement.

Subclauses (2) to (4) qualify that any mining authorisation given prior to these amendments is valid and effective.

**Clause 99 – Section 120AA inserted**

New section 120AA provides that the applicant for a mining lease that is applied for before commencement of these amendments may apply to “revert” to a prospecting or exploration licence. Subsection (1) defines the various terms used in new section 120AA. A “continued licence” in subsection (1) acknowledges that the majority of lease applications are currently keeping licences in force and the order referred to in subsection (3) will address this.

Subsection (2) provides for the Governor to publish in the Government Gazette the mechanism to enable this reversion from lease application to licence application to occur.

Subsection (3) outlines the issues an order published under subsection (2) may include, including the effect on existing licences mentioned in subclause (3).

Subsection (4) allows a “reversion licence application” to also include available land adjacent to or within the external boundaries of the lease application(s).

Subsections (5) to (7) outline the effect of an order made pursuant to subsection (2), the period the order applies to and the amending or revoking of such an order.

Subclause (8) provides that an order under subsection (2) must be tabled before both Houses of Parliament and may be disallowed in the same manner as for regulations.

**Clause 100 – Section 162 amended**

Subclause (1) adds regulation making powers to the Act to allow grounds for extension of term of a licence and deferral of the partial surrender requirement for exploration licences to be included in the regulations.

Subclause (2) adds a regulation making power to the Act so that regulations may be made to correct an anomaly that presently prevents the release of old mineral exploration reports lodged under a previous system for reporting.

**Part 11 – Mining Amendment Act 1996 amended**

**Clause 101 – The Act amended**

Specifies that Mining Amendment Act 1996 is the Act being amended.

**Clause 102 – Section 15 amended**

Section 15 of the amending Act inserts Part IVA – Registration of Instruments and Register. This clause amends new section 103C(8) to clarify that only legal
interests are required to be registered against mining tenements, leaving the option for equitable interests to be protected by caveat.

Section 103E is being reworded to better reflect that priority of dealings is based on the time of registration.

**Clause 103 - Section 18 amended**
Section 18 relates to lodgement of caveats and this clause rewords new section 122A(2)(a) to clarify that a caveat may be lodged in respect to matters other than the sale of a tenement holder’s interest, and this would include to a contractual interest.

This clause also contains minor amendments to terminology.

**Part 12 – Transitional regulations**

**Clause 104 – Further transitional provisions may be made**
A similar provision has been included in other recent legislation. It will enable changes to be made to the operation of provisions within this Bill should anomalies arise during the transition from the provisions of the Act which applied before commencement to those that will apply after commencement.

New subsection (4) provides that any transitional regulation required must be made within 12 months of commencement and new subsection (5) allows the effect of the transitional regulation to be retrospective.