

MINING AMENDMENT BILL 1998

COMMITTEE

CLAUSE BY CLAUSE NOTES

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CLAUSE BY CLAUSE NOTES

Clause 1 Short Title

The short title for the amending legislation is the *Mining Amendment Act 1998*.

Clause 2 Commencement

This clause provides that the Amendment Act comes into force on the day it receives the Royal Assent.

Clause 3 Principal Act

The principal Act is the *Mining Act 1978*.

Clause 4 Section 91 amended and transitional provision

Section 91 provides that a person may be granted a miscellaneous licence for a term of 5 years, the section further provides that a licence may be renewed or further renewed for successive terms not exceeding 5 years.

Subclauses (1) and (2) deletes reference to both the term (5 years) and renewal provisions for miscellaneous licences. These provisions are now contained in new sections 91A and 91B, refer clause 5 hereunder. The term for miscellaneous licences is being increased to 21 years and the renewal of an existing 5 year term miscellaneous licence has been made 'as of right'.

These changes will provide developers of resource projects security of tenure over a longer term for the supporting infrastructure of the project.

Transitional provision -

Subclause (3) provides that any renewal of a miscellaneous licence not

determined at the commencement date is to be treated as an application under new section 91A (3) (a).

Clause 5 Sections 91A and 91B inserted
New sections inserted.

The term for miscellaneous licences is being increased to 21 years with the right to renew for one further period of 21 years followed by further renewals of 21 years at the discretion of the Minister, this is the same that applies to leases. The following two new sections are therefore being inserted to deal with the old (5 year) and new (21 year) terms:

New section 91A:

Subsection (1) applies this section to a miscellaneous licence -

- (i) in force on the commencement day, or
- (ii) granted on or after the commencement day in respect to an application made before the commencement day.

Subsection (2) provides that these licences remain in force for -

- (i) a period of 5 years from the date of grant, or
- (ii) if the licence was previously renewed before the commencement day for a period less than 5 years that lesser period.

Subsection (3) provides that on receipt of a renewal application made during the final year of the term of a licence, the licence -

- (i) may be renewed for one further period not exceeding 5 years on such terms and conditions considered necessary, and
- (ii) shall, in the case of a licence renewed above, be renewed or further renewed for the same period for which the licence was previously renewed subject to the same terms and conditions.

Existing miscellaneous licences will continue to require renewal every five years. The first renewal after the commencement day will be discretionary and subject to the Commonwealth's Native Title Act 1993, however subsequent renewals will be 'as of right' if conditions are met.

Subsection (4) provides that where a renewal application is received the miscellaneous licence remains in force until the renewal application is determined.

Subsection (5) provides that if the holder of a miscellaneous licence transfers that licence, any renewal application made under this section continues in force in the names of the transferees.

For commercial reasons holders may wish to transfer licences, and it is arguable that the licence would expire upon the registration of the transfer

as the renewal application would then not be in the same name as the licence. The provision has therefore been amended to ensure currency of the licence is maintained.

Subsection (6) defines "commencement" for this section and section 91B to be the commencement of this Act.

New section 91B:

Subsection (1) applies this section to a miscellaneous licence applied for on or after the commencement day.

Subsection (2) provides the term for a miscellaneous licence under this section is 21 years.

Subsection (3) provides that on the receipt of an application made during the final year of the term of a licence, that licence -

- (a) shall be renewed for one further period of 21 years on the same terms and conditions it was subject to before its renewal, and thereafter
- (b) may be renewed or further renewed for a period of 21 years on such terms and condition considered necessary.

Subsection (4) provides that where a renewal application is received the miscellaneous licence remains in force until the renewal application is determined.

Subsection (5) provides that if the holder of a miscellaneous licence transfers that licence, any renewal application made under this section continues in force in the names of the incoming parties.

For commercial reasons holders may wish to transfer licences, and it is arguable that the licence would expire upon the registration of the transfer as the renewal application would then not be in the same name as the licence. The provision has therefore been amended to ensure currency of the licence is maintained.

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