Guide to the Statutes Amendment (Mineral Resources) Bill 2018

A section-by-section explanation of the proposed amendments outlined in the Statutes Amendment (Mineral Resources) Bill 2018
This Guide summarises the proposed amendments to the *Mining Act 1971 (SA), Opal Mining Act 1995 (SA), and Mines and Works Inspection Act 1920 (SA)* outlined in the *Statutes Amendment (Mineral Resources) Bill 2018* (the *Bill*).

This Bill will be the first phase of a broader suite of legislative, regulation and policy review. A regular renewal process of review and amendment will be established to ensure that South Australia remains at the forefront of international trends and practices in mining regulation.

Given the length and complexity of the Bill, this Guide has been prepared as an easy to read document that will provide a better understanding of the proposed amendments. The Guide aligns with the relevant Parts and sections of the Bill.
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Part 1 - Preliminary

1 Short title
The name of the Act.

2 Commencement
The date of the commencement of the Act has yet to be determined but will commence on a day set by the Governor via a proclamation in the Government Gazette.

3 Amendment provisions
Any reference to an Act in this Bill is intended to be amended by the Statutes Amendment (Mineral Resources) Act 2018 as set out in the Bill, which include the Mining Act, Opal Mining Act and Mines and Works Inspection Act. This Bill will not amend any other Acts.

Part 2 – Amendment of Mining Act 1971

4 Amendment of section 6 – Interpretation
To improve clarity for landowners and all stakeholders on the nature and scale of operations, definitions have been included in the Bill for advanced exploration operations, ancillary operations (activities on a miscellaneous purpose licence), authorised operations, low impact exploration operations, mineral assessment principles, mineral tenement, private mine, related body corporate, royalty assessment principles and tenement holder.

Some definitions such as Crown lands, mining operator and mining tenements have been removed and replaced with clearer definitions that better describe their purpose.

Other definitions have been expanded to more accurately reflect their interpretation (e.g. exploring or exploration operations, extractive minerals (to exclude proppant sand), mining or mining operations and radioactive mineral).

A private mine has been defined as a tenement, and a proprietor of a private mine is defined as a tenement holder. This will allow some parts of the Act to apply to privates mines (relevant sections are listed in Part 11B).

5 Amendment of section 7 – Application of the Act
This section has been updated to clarify that operations for the recovery of extractive minerals as authorised under an Act other than the Mining Act, will require the payment of royalty, unless that other Act expressly precludes the payment of royalty.

This section also allows the regulations (to be drafted in 2019) to allow the scope of the Act to apply, in prescribed circumstances, to land that is not considered mineral land or other mining operations authorised under another Act which are currently excluded from the Mining Act. This expansion of the scope of the Act is intended to allow for the regulation of sites, which may have previously been regulated, by the Mines and Works Inspection Act.

6 Amendment of section 8 – Declaration of mineral land etc
This amendment clearly confirms that proclamations made before 29 June 1972 under the predecessors to the Mining Act 1971 no longer apply for areas that are inconsistent with later proclamations. This provision will not affect processes under other Acts.

7 Amendment of section 8A – Opal development areas
Consistent with changes to section 4, Amendment of section 6 – Interpretation, reference to mining operations has been changed to authorised operations.

8 Amendment of section 9 – Exempt land
Exempt land has been amended to reflect recent case law relating to cultivated fields, springs, wells, reservoirs and dams. The 400 metre exemption of operations from a building or structure has been replaced with a ‘prescribed distance’ (described in this
section) depending on the nature of the operations (i.e. 200 metres for low impact exploration operations, 400 metres for advanced exploration operations (e.g. use of declared equipment or any operations for the recovery of extractive minerals) and 600 metres for high impact operations around residences.

The value of a building or structure within 150 metres has also been changed from $200 to a prescribed amount (described in this section) of $2,500 or an amount prescribed by regulation (whichever is greater).

9 Amendment of section 9AA – Waiver of exemption (including cooling-off)
Where a mineral claim has been registered or an application is made for a production tenement or miscellaneous purposes licence, the owner of the land in which section 9 (exempt land) applies, may commence negotiations on the waiver of exemption with the tenement holder. This means that the owner of the land can provide advice to the tenement holder of the conditions (if any) on which the owner may agree to waive the benefit of exemption on their land, rather than waiting for the tenement holder to begin negotiations or proceedings. This allows the landowner to start the conversation earlier. Any agreement must be in writing.

Cooling off periods and the opportunity to seek direction from any court (Warden’s, Environment Resources and Development (ERD) or Supreme Court) will apply. However, permission of the Supreme Court is required before any application may be made to the Supreme Court. This section will be amended to increase 'exempt land' legal advice assistance available to landowners from $500 to $2500 (or another amount prescribed in the regulations) so that the figure is more reflective of legal costs.

Consistent with changes to section 4, Amendment of section 6 – Interpretation, reference to mining operations and tenement holder have been changed to authorised operations and tenement holder respectively.

10 Amendment of 9A – Special declared areas
Consistent with changes to section 4, Amendment of section 6 – Interpretation, references to mining tenement and holder of the tenement have been changed to mineral tenement and tenement holder respectively.

11 Repeal of section 10A
This section related to special conditions applicable to radioactive minerals. Amendments in 2011 introduced a rigorous process for assessing tenement applications, and applying conditions reflective of the relevant mineral specific risks; therefore section 10A is no longer relevant.

12 Amendment of section 10B—Interaction with other legislation
This section includes the requirement for the Minister to take into account the code of management of wilderness protection areas and wilderness protection zones under the Wilderness Protection Act 1992. Note – there is no change to allow exploration and mining in Wilderness Protection Areas.

13 Amendment of section 12 – Delegation
Delegations have been amended to align with delegations under other Acts (e.g. the Petroleum and Geothermal Energy Act 2000) and to allow for the sub-delegation to a specified person or body or to a specified officer or position in order to increase efficient decision making. Amendments also allow the Minister to delegate his powers and functions administered under corresponding Acts, such as Aboriginal Lands Trust Act 2013 (SA), Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 (SA) and Maralinga Tjarutja Land Rights Act 1984 (SA).
14 Amendment of section 13 – Mining registrars and other staff
This section has been amended to allow the Mining Registrar to sub-delegate certain powers and functions to a specified person or body or to a specified officer or position as long as it does not reduce the delegate’s ability to act in any matter. The delegate will still have the ability to amend the sub-delegation at any time. This will increase efficiency and reduce red-tape and promote efficient decision making.

15 Amendment of section 14B – Authorised investigations
Authorised officers under the Act will be able to investigate any matters relevant to the enforcement of the Act and inspect any authorised operations that are creating, or are likely to create a nuisance or are damaging, or likely to damage property. This broadening of powers will ensure the Department has greater powers to investigate matters on properties connected with authorised operations.

16 Amendment of section 14C – Powers of entry and inspection
Authorised officers under the Act will be able to enter, search, inspect and examine any premises, land, or vehicle in connection with any operations or activities regulated by the Act and, where necessary break into or open a part of, or anything in, the premises, land or vehicle. A warrant from a magistrate, warden or justice is required for this to occur. This section also allows authorised officers to seize and retain anything that may be evidence of non-compliance with this Act.

17 Amendment of section 14D – Power to gather information
This section has been updated to require a person to identify himself or herself when asked by an authorised officer.

18 Amendment of section 14E – Production of records
An addition has been made to this section to allow an authorised officer to seize and retain records produced under this section if the authorised officer suspects that the record may be evidence of non-compliance with the Act.

19 Insertion of sections 14G and 14H
14G Power to issue expiation notices
This new section allows authorised officers to issue expiation notices for expiable offences, similar to provisions in other State environmental legislation (e.g. Environment Protection Act 1993).

14H Provisions relating to things seized
Outlines the processes for the holding, forfeiting and releasing items that have been seized under the Act, aligning with provisions of the Fisheries Management Act 2007. The Minister may via written application authorise the item/s to be released back to the lawful owner subject to certain conditions. If the defendant is found guilty of an offence, the relevant court will determine the outcome of the item/s. Should proceedings not commence within the ‘prescribed period’ (at least 12 months, as described in the Act – determined by the court on application by the Minister) or the defendant is found not guilty of an offence, the item/s will be returned (or compensated if required).

20 Amendment of section 15 – Power to conduct geological investigations etc
Consistent with changes to section 4, Amendment of section 6 – Interpretation, reference to mining tenement has been changed to mineral tenement. The current
penalties provision has also been removed and replaced with a maximum fine of $20,000 or six months in prison. Note – there is no change to allow exploration and mining in Wilderness Protection Areas.

21 Repeal of section 15A
This section has been repealed and replaced with a new expanded section 15AA (see section 22 Insertion of Part 2A, Part 2A—Mining register and information).

22 Insertion of Part 2A
Part 2A—Mining register and information
Division 1—Mining register
15AA The register
The mining register will be restructured and expanded to show the ‘life of a tenement’ and include any documents or instruments registered or relating to the Act, which will increase transparency. This will include: mineral tenements, transfers, mortgages, caveats, instruments, agreements and dealings required to be registered, the commencement and completion of proceedings before the Warden’s Court, decisions, determinations and orders of the Warden’s Court, anything registered under Division 4 (‘other dealings’), other interests, instruments, agreements, statements, notices, orders, directions, bonds, penalties or other document or dealing required to be registered under the regulations and any other information the Mining Registrar determines. The Mining Registrar will establish requirements for the form, use, provision, certification, recording, management, preservation, storage, archiving and disposal (as required) of the instruments and documents stored on the Register. Section 15AA of the Bill is a substantially expanded version of section 15A of the current Mining Act.

The Department will consult further on the timing and extent of what may be registered, and other matters, as part of the regulations review process scheduled for 2019.

15AB Dealings with mineral tenements
This section deals with the requirement to obtain Ministerial consent prior to the transfer of a mineral tenement and operates similar to the Lands Title Office. The individual must have a legal and proprietary interest to the tenement, the application must be in a form determined by the Minister and accompanied by the relevant transfer fee. Section 15AB of the Bill replaces part of section 83 of the current Mining Act.

Division 2—Mortgages
15AC Mortgages
This section aligns with modern mortgage systems and deals with the application, registration, and discharge of mortgages over a mineral tenement. The Register will not give priority to mortgages over the same tenement but will allow mortgages to be registered over part of the tenement (i.e. in the case of joint ventures). It is the responsibility of the tenement holder or mortgagee to register and discharge the mortgage; the consent of the Minister is no longer required, and therefore it is up to the parties to determine whether there is a mortgaged interest. Section 15AC of the Bill replaces part of section 83 of the current Mining Act.

15AD Application to court to challenge aspects of mortgages
A person who has an interest in a mineral tenement subject to a mortgage registered under the Act may apply to the court under this section for an order to have the registered mortgage declared defective, invalid or unenforceable, or that a transfer of a mineral tenement be registered despite the mortgage, or that the mortgage be fully or partially discharged, or that compensation be paid. Section 15AD of the Bill is a new section to compliment the regime introduced in section 15AC.
Division 3—Caveats

15AE Caveats
This section introduces a modern regulatory regime for the application, registration, withdrawal and expiry of caveats which is fit for purpose for commercial transactions. This system has been partially modelled on the Western Australian system, but modernised to reflect the nature of commercial transactions in the mineral resources industry. The lodgement of a caveat may be done by the tenement holder or someone claiming any interest in the mineral tenement, and may operate to prevent transfers, mortgages and surrenders. Section 15AE of the Bill replaces sections 73A and 73B (Part 11A) of the current Mining Act.

15AF Application to Warden's Court to lapse caveat or obtain compensation
A person who has an interest in a mineral tenement subject to a caveat registered under the Act or has an interest that may directly be affected by a caveat may apply through the Warden’s Court to have the caveat declared invalid, to have the caveat lapse, have a transfer, mortgage or surrender registered despite the registered caveat or obtain compensation. The application may be moved to a higher court if required.

Division 4—Other dealings

15AG Other dealings
The criteria for the tenement holder to apply to the Mining Registrar for other documents to be placed on the mining register (e.g. mineral rights agreements, memorandums, arrangements, instruments or other documents relating to the mineral tenement or interests in the mineral tenement) are outlined in this section. If a tenement holder appoints an agent or another party to operate their tenement on their behalf, the tenement holder must register that agreement under this section to ensure the Mining Registrar is informed of who is operating on the tenement. The Mining Registrar has the ability to determine the scope of what documents go on the Register. Section 15AF of the Bill is a new section to compliment the regime introduced in section 15AE.

Division 5—Protection from liability

15AH Protection from liability
This section deals with the protection of the Mining Registrar, the Minister, the Director of Mines, the Crown and anyone acting on behalf of the Mining Registrar from liability as a result of the administration of the Register. Section 15AH of the Bill is a new section to compliment the new mining register regime introduced in Part 2A, and reflects modern practice.

Division 6—Information

15AI Interpretation
For the purposes of this Division, the definitions for designated material, designated person and prescribed material are described in this section. Section 15AI of the Bill is a new section to replace sections 32, 77, and 77B of the current Mining Act.

15AJ Compilation, keeping and provision of material
Outlines the requirements of the holder of a mineral tenement to compile, create, keep, provide and retain designated material (see Division 6 — Information, 15AI Interpretation for definition of designated material) in accordance with requirements of the regulations. An administrative penalty has also been incorporated into this section. Section 15AJ of the Bill is a new section to replace sections 32, 77, 77A, and 77B of the current Mining Act.

15AK Tests
Outlines the requirement for the holder of a mineral tenement to allow the Director or a person acting under the written authority of the Director to take samples of minerals from the mineral tenement, and in some cases, retain those samples.
An administrative penalty has also been incorporated into this section. Section 15AK of the Bill is a new section to replace section 77(3) of the current Mining Act.

15AL Release of material
Outlines the circumstances in which the Minister or Director may release any prescribed material, including the ability for the Mining Registrar to publish or release, or to allow access to, any instrument, document or other item or material registered on the mining register. This section also sets out the circumstances in which prescribed material cannot be released, which align with the Australian Securities Exchange Listing Rules (rule 3.1A). This is in line with the desire to increase transparency of the Act. Section 15AL of the Bill is a new section to replace section 77D of the current Mining Act.

23 Amendment of section 17—Royalty
The royalty rates have not changed. The method for calculating the value of minerals at arms-length have been updated to be calculated on the invoiced value rather than the price at the time the minerals leave the mine gate. This method of the calculation is based on the Western Australia model of ‘First Sale’. These amendments improve the royalty calculation of arms-length transactions by reflecting the true market value as set out in the relevant invoice.

The method of calculating the value of minerals sold at non-arms-length (i.e. the buyers and sellers of the mineral are independent and have no relationship to each other) has been modernised, but largely has remained the same.

A new calculation method has been introduced which will apply if no method is applicable for non-arms-length transactions. This method is estimated based on a self-assessment.

The deductions available when determining the royalty payable have been expanded to include costs before and after the minerals leave the tenement area.

The Director of Mines will have the discretionary ability to authorise a tenement holder to use extractive minerals that are recovered in the course of their mineral operations but may, in some circumstances, still require the payment of royalty. Royalties are not payable for personal use.

24 Amendment of section 17A—Reduced royalty for new mines
Consistent with changes to section 4, Amendment of section 6 – Interpretation, reference to mining operations has been changed to authorised operations.

25 Insertion of sections 17AB and 17AC
17AB Royalty for private mines
There is no change to the royalty calculation for private mines. Section 17AB of the Bill is a new section to replace section 73E of the current Mining Act.

17AC Notification of relevant event
There is no change to the process of notifying the Minister of a relevant event for the purpose of a private mine proprietor paying royalty. The maximum penalty for non-compliance has been increased from $5,000 to $20,000. Section 17AC of the Bill is a new section to replace section 73EA of the current Mining Act.

26 Substitution of section 17B
17B Assessments by Treasurer
This section broadens the Treasurer’s (after consultation with the Minister) powers to assess the amount of royalty payable. The Treasurer may estimate the amount of royalty payable and may base that estimate on any matter the Treasurer determines relevant. If it is determined that the royalty due is less than the Treasurer’s assessment, the royalty can be refunded or set aside for future royalty liabilities. Appeals may be undertaken through the ERD Court. Section 17B of the Bill
replaces sections 17B and 17C of the current Mining Act.

27 Insertion of section 17CA

17CA Returns
There is no change to the requirement of a tenement holder to provide ongoing reporting to the Director of Mines every six months about the operations on the tenement, minerals recovered and the sale or disposal of minerals from that tenement. The timing of a final return has been updated to reflect ordinary practices, whereby the final return is due 3 months after the tenement is cancelled, suspended, transferred or forfeited, and is due before a tenement has expired or is surrendered. The continuing offence for failure to lodge a return has been consolidated in a new section 70HG. Section 17CA of the Bill is a new section to replace section 76 of the current Mining Act.

28 Amendment of section 17D—When royalty falls due (general principles)
Consistent with section 23 (Amendment of section 17 – Royalty), the reference to ex-mine gate value has been removed from the sections relating to when royalties are due.

Consistent with changes to section 4, Amendment of section 6 – Interpretation, reference to mining operator and mining tenement have been changed to tenement holder and mineral tenement respectively.

29 Amendment of section 17DA—Special principles relating to designated tenement holders
Consistent with changes to section 4, Amendment of section 6 – Interpretation, reference to mining operator has been changed to tenement holder.

30 Amendment of section 17E—Penalty for unpaid royalty
This section outlines a change to the calculation of default interest for unpaid royalties. The calculation for determining penalties for unpaid royalties has been replaced with a more accepted economic benchmark (i.e. the average rate of the Taxation daily 90-day Bank Accepted Bill Rate prescribed by the Reserve Bank of Australia) used by Revenue SA under the Taxation and Amendment Act 1996.

31 Substitution of section 18
18 Passing of property in minerals
This section has been amended to allow the title of the minerals to transfer prior to the payment of royalty, subject to a security in favour of the Crown to recover the payment.

32 Amendment of section 20—General right to prospect for minerals
Consistent with changes to section 4, Amendment of section 6 – Interpretation, reference to mining operations has been changed to authorised operations.

33 Amendment of section 21—Steps to establish a mineral claim
Amendments to this section have been made to reflect changes to Part 8B, Common provisions, Division 1 – Identifying areas and considering applications, 56E Identification of areas (i.e. allowing the area of a mineral claim to be identified in a form determined or approved by the Mining Registrar, including electronically (e.g. through SARIG)). Any notice relating to this section must be provided to the owner of the land as required by the regulations and by a prescribed person outlined in the regulations.

34 Amendment of section 25—Rights conferred by ownership of mineral claim
An amendment to this section clarifies a consistent drafting approach and clarifies that the holder of the mineral claim cannot sell minerals or do anything, which would result in the minerals leaving the custody and control of the holder of the mineral claim. This change reflects common drafting with section
Amendment of section 17—Royalty, and 109 Amendment of section 75—Provision relating to certain minerals.

35 Amendment of section 26—Mineral claim not transferable etc
The section has been amended to move the process of surrendering a mineral claim to a new common provision (see section 53 Insertion of Part 8B, 56X Surrender on application.

36 Amendment of section 27—Land not to be subject to successive mineral claims
The prohibition on establishing a further claim by or on behalf of the person, who held the previous claim within two years of the lapse, surrender, or forfeiture has been expanded to include a body corporate, and claims which are cancelled.

This closes the loop-hole of the same individual or body corporate holding the ground after the mineral claim has lapsed or has been surrendered, forfeited or cancelled.

This section has also been expanded to clarify that if a special application is made to circumvent this prohibition, the application must be made to the Minister before the claim lapses.

37 Substitution of sections 28 and 29

28 Preliminary
For the purposes of this Part (Part 5 – Exploration licence), this section provides definitions for exploration release area, exploration release area notice, open ground and relinquished ground. It further explains that exploration licences are granted by the Minister, including in exploration release areas, areas which have been partially surrendered or reduced as well as over open ground. The notice of an exploration release area will specify the exploration release area and the application period for that area. Section 28 of the Bill replaces subsections 28(1), 29(1a), 28(9), and 29(10) of the current Mining Act.

29 Nature of exploration licence
This section explains what an exploration licence is and what is authorised (e.g. exploration operations of a kind described in the licence on the relevant land). This section notes that an exploration licence cannot be issued for extractive minerals or authorise the holder of the licence to carry out exploration operations for precious stones on land within a precious stones field that is outside of an opal development area, or on land within an exclusion zone under the Opal Mining Act 1995. Section 29 of the Bill replaces subsections 28(2), 28(2a), and 28(3) of the current Mining Act.

29A Application for exploration licence
Although this section is a redraft of the current application processes in order to improve clarity, no significant changes have been made to the application process for exploration licences. However, the notice requirements for relinquished and open ground have been amended so that the notice can be published at a time determined by the Minister. Section 29A of the Bill replaces subsections 29(1), and 29(2) – (8) (inclusive).

29B Grant of exploration licence
Should the Minister grant an exploration licence, the term of the exploration licence will begin on the day that it is registered in the mining register. The Minister must also provide a notice (as per the regulations) when an exploration licence has been granted. Section 29B of the Bill replaces subsection 28(5)).

38 Amendment of section 30—Incidents of licence
This section has been amended to replace all references to ‘conditions’ to ‘terms and conditions’. The subsection relating to compensation has been removed and moved
to a new section (see section 58 Amendment of section 61—Compensation).

39 Insertion of section 30AAA
30AAA Expenditure
The Minister has been given the power to set minimum expenditure and amalgamate expenditure for exploration licences as a condition of a licence. This is the current practice of the Minister, however, this is currently managed through the Minister’s power to set conditions at grant and renewal. These processes have been separated to allow the Minister to grant full exploration licence terms and manage expenditure commitments at the times set out in the regulations. This will provide further security of tenure for explorers. The Minister will have the ability to request audits of expenditure as required and the cost of the audit will be borne by the tenement holder. Audit statements and statements of exploration conducted and expenditure may be published on the mining register. Section 30AAA of the Bill is an expansion of the Minister’s power under subsections 29(2)(c), 30(1)(a), 30A(4a), and 30AB(2) of the current Mining Act.

40 Amendment of section 30AA—Area of licence
Additions to this section allow explorers to sub-divide an area of the exploration licence, and surrender the area on the condition that the area will be granted to a third party. A commercial contract between the parties must be prepared and an application for conditional surrender and an application for the area of the licence (as if it was available open ground) lodged with the Minister, along with the relevant application fee.

41 Amendment of section 30A—Term and renewals of licence
Exploration licences may be granted for a six-year period and renewed for six year additional increments if an application is made in a manner and form determined by the Minister before the expiry of the licence. At the 12-year anniversary of an exploration licence, the area of the licence will be reduced by 50% (based on the original area of the licence) and at the 18 year anniversary, the licence will expire. The changes to this section ensure that ground is not held by companies indefinitely and encourages genuine exploration on exploration tenements.

42 Substitution of section 30AB
30AB Excise of land for public purposes
This section has been replaced with the Minister’s ability to place a notice in the Government Gazette to excise (i.e. remove) land from an exploration licence for a public purpose. Any land that is excised will not become available as open ground at a later date. The tenement holder may apply to the ERD Court for compensation for the money expended by the tenement holder for the relevant excised land. Section 30AB of the Bill replaces subsections 33(4) to 33(6) (inclusive) of the current Mining Act.

43 Amendment of section 31—Fee
This section has been updated to clarify that any unpaid fees will be a debt due to the Crown.

44 Repeal of sections 32 and 33
These sections have been repealed and moved to new sections. Section 32 of the current Mining Act has been consolidated into section 22 Insertion of Part 2A, Part 2A—Mining register and information - 15AI Interpretation and 15AJ Compilation, keeping and provision of material. Section 33 has been consolidated into a new common provision as set out in section 53 Insertion of Part 8B, Part 8B—Common provisions - 56W Cancellation and suspension—action by Minister.

45 Insertion of section 33B
33B Retention status
This new section introduces retention status for exploration licences, based on an adapted version of the Western Australia model. The holder of the exploration licence can apply for retention status for six years in cases where a
mineral resource has been identified but mining of that resource is impracticable for one or more reasons, or where one or more approvals are required before activities can commence or continue. Retention status is not a tenement or a grant of tenure. Retention status is a means of reducing or exempting relinquishment requirements, expenditure commitments, or the payment of fees. The application must be made in a manner and form determined by the Minister, and include the information required by the regulations. When granting a retention status, the Minister may require a specified work program to be undertaken. The Minister may issue a show cause notice whereby the explorer must satisfy the Minister of the reasonable efforts to obtain outstanding approvals, or reasons why a mining lease or retention lease cannot be applied for.

46 Substitution of sections 34 to 37

34 Preliminary
This section allows the Minister to grant a mining lease to holders or a related body corporate of a holder of an exploration licence, mineral claim or retention lease. A mining lease is not required to be registered under the Real Property Act 1886. Section 34 of the Bill replaces subsections 34(1), 34(1a), 34(1b), and 37(2) of the current Mining Act.

35 Nature of mining lease
This section explains what a mining lease is and the rights of the holder of a mining lease. Apart from the removal of ‘super-imposed’ leases (i.e. removal of a class of minerals to allow mining leases to be granted for both extractives and minerals), no other changes have been made to the nature of a mining lease. Section 35 of the Bill replaces subsections 39(1) of the current Mining Act.

36 Application for mining lease
An application for a mining lease must be in a manner and form approved by the Minister, include the information prescribed by the regulations, accompany a mining lease proposal and include the payment of a prescribed fee. The Minister may also request additional information. The boundaries of the mining lease need to be identified in accordance with Part 8B, Common provisions, Division 1 — Identifying areas and considering applications, 56E Identification of areas. Section 36 of the Bill replaces subsection 35(1)-(2) (inclusive) of the current Mining Act.

37 Approval of application and registration
The Minister will not grant a mining lease if the Minister considers that the area of the proposed lease cannot be effectively and efficiently mined, that appropriate environmental outcomes will not be achieved or if the Minister believes that insufficient investigations have been carried out. If the Minister is unable to grant a mining lease, the Minister has the ability (with the applicant’s permission) to grant a retention lease. Should a lease be granted, the term of the lease will begin on the day that it is registered in the mining register. Section 37 of the Bill replaces and expands subsection 35(3) of the current Mining Act.

47 Amendment of section 38—Term and renewal of mining lease
The Minister has the power to determine the length of a mining lease, as per the Tasmanian model. This allows the Minister to issue a lease for longer than the planned mining operations to ensure rehabilitation is completed while the lease is active. This section also outlines the process for the application to renew a mining lease. The Minister may request additional information as part of the application.

48 Repeal of sections 39 to 41
Section 39 of the current Mining Act has been repealed. Subsection 39(1) has been moved and expanded on in section 37 of the Bill. Subsections 39(2) to (8) inclusive have been incorporated in the new change in operations process as set out in section 53 Insertion of Part 8B, Part 8B—Common provisions - Division 7—Change in operations.
Sections 40 and 41 of the current Mining Act have been repealed and consolidated into 53 Insertion of Part 8B, Part 8B—Common provisions—section 56M—Rental, section 56W—Cancellation and suspension—action by Minister and section 56X—Surrender on application.

49 Substitution of Parts 6A and 8

Part 7—Retention leases

42 Preliminary

This new section allows the Minister to grant a retention lease to holders, or a related body corporate of the holder of a registered mineral claim, exploration licence or a mining lease. A retention lease is not required to be registered under the Real Property Act 1886. Section 42 of the Bill replaces subsections 41A(1), 41A(1a), and 41C(2) of the current Mining Act.

43 Nature of retention lease

Explains what is authorised and not authorised under a retention lease and links back to section 37 of the Bill (Application and registration of a mining lease), which explains that the Minister has the power to grant a retention lease in lieu of a mining lease (with the permission of the applicant). This section also sets out the reasons for which a retention lease can be granted. Section 43 of the Bill replaces subsections 41A(2) and section 41F of the current Mining Act.

44 Application for retention lease

An application for a retention lease must be completed in a manner and form determined by the Minister, include the information required by the regulations, a retention lease proposal (unless exempted by the regulations) and be accompanied by the payment of the prescribed application fee. The Minister may also request additional information as required. The boundaries of the retention lease need to be identified in accordance with Part 8B, Common provisions, Division 1—Identifying areas and considering applications, 56E Identification of areas. Section 44 of the Bill replaces and expands section 41B of the current Mining Act.

45 Approval of application and registration

Aligns with the registration processes of a mining lease. The date of the lease grant aligns with date of registration on the mining register, which will reduce confusion over when a lease is issued and when it ceases. This section introduces a new test whereby the Minister must not grant a retention lease unless the Minister is satisfied that the appropriate environmental outcomes can be met.

46 Term and renewal of retention lease

The term and renewal of a retention lease of 5 years remain unchanged; however, this section expands the renewal application process. The application must be completed in a manner and form approved by the Minister and must include any information prescribed by the regulations. The Minister may request additional information as part of the application. Section 46 of the Bill replaces and expands on section 41D of the current Mining Act.

Part 8—Miscellaneous purposes licences

47 Preliminary

A miscellaneous purposes licence may be granted to any person over any mineral land if the requirements of this Part are met, and cannot exceed the maximum area set out in the regulations. Section 47 of the Bill replaces subsections 52(1) and 52(5) of the current Mining Act.

48 Nature of miscellaneous purposes licence

This section allows a miscellaneous purpose licence to be granted for ancillary operations and on the conditions as determined by the Minister, or prescribed by the regulations. Section 48 of the Bill replaces subsections 52(3) and 52(4a) of the current Mining Act.
49 Application for miscellaneous purposes licence
An application for a miscellaneous purposes licence must be completed in a manner and form determined by the Minister and include the information required by the regulations, a miscellaneous purpose licence proposal and include the payment of a prescribed application fee. The Minister may also request additional information as required. The boundaries of the miscellaneous purpose licence need to be identified in accordance with Part 8B, Common provisions, Division 1 – Identifying areas and considering applications, 56E Identification of areas. Section 49 of the Bill replaces subsection 53(1) of the current Mining Act.

50 Approval of application and registration
Aligns with the registration processes of a mining lease, which will reduce confusion over when a licence is issued and when it ceases. This section introduces a new test whereby the Minister must not grant a miscellaneous purpose licence unless the Minister is satisfied that the appropriate environmental outcomes can be met.

51 Term and renewal of miscellaneous purposes licence
The Minister has the power to determine the length of a miscellaneous purpose licence, which is modelled on the Tasmanian mining legislation. This allows the Minister to issue a licence for the time required for the ancillary activities. This section also outlines the process for the application to renew a miscellaneous purpose licence. The Minister may request additional information as part of the application.

50 Amendment of section 56B
56B Special mining enterprises
The minimum requirements for special mining enterprises remain the same but the application process has been modernised to increase transparency. The assessment of a Special Mining Enterprise application will be assessed with the similar rigour as a mining lease application and must include public consultation, relevant referrals to the Minister for Sustainability, Environment and Conservation and the Minister for Water and the River Murray and consideration of Aboriginal heritage and the environment.

56BA Concept phase
This section outlines a new process that allows an individual or company to notify the Director of Mines of its intention to apply for a Special Mining Enterprise. The intention of this section is to allow the Director of Mines to obtain information on the proposed Special Mining Enterprise and begin preparing a project specific determination which sets out the fit for purpose application process, which the applicant is expected to meet that considers all of the relevant environmental, social and economic matters. The consultation with the Director must be made in a manner and form prescribed by regulations and a prescribed fee must also be lodged. The Director may require the applicant to provide additional information and undertake consultation with the public as required by the guidelines issued by the Minister or specified by the Director. At the close of consultation, the Director may allow the applicant to proceed to the formal Special Mining Enterprise application process, or advise that the matter is not suitable for further consideration.

56BB Application phase
If the applicant satisfies the Director during concept phase, the applicant can proceed to the application phase, which is assessed by the Minister. Although the application process remains largely the same, the Minister now has absolute discretion to advise the proponent by notice that the application has been refused, without needing to consult or undertake any other step.

51 Amendment of section 56C—Power to exempt from or modify Act
A Special Mining Enterprise allows the Minister to exempt or modify the Act. Under
the current Mining Act, section 56C sets out the sections or regulation which can be amended or modified. The proposed amendments to section 56C set out the provisions that can’t be exempted or modified, rather than what can. These include provisions relating to exempt land, waiver of exemption (to exempt land), compensation, native title land, programs for environment protection and rehabilitation (PEPR), or any other provision outlined in the regulations. The penalty provision has also been increased from $50,000 to $250,000.

52 Amendment of section 56D—Existing tenements
Consistent with changes to section 4, Amendment of section 6 – Interpretation, reference to mining tenement has been changed to mineral tenement.

53 Insertion of Part 8B
Part 8B—Common provisions
Part 8B – Common provisions has been prepared to reduce duplication throughout the Act. As outlined in the following sections of this Part, these ‘common provisions’ apply to a number of mineral tenements.

Division 1 – Identifying areas and considering applications

56E Identification of areas
In order to modernise and adapt with technology and create an outcomes-based identification system, the identification of areas relating to establishing a mineral claim or an application for an exploration licence, retention status in relation to an exploration licence, mining lease, retention lease or miscellaneous purposes licence may now be done in a form determined or approved by the Mining Registrar, including electronically (e.g. through SARIG). Physical pegging is still allowed. An administrative penalty has also been incorporated into this section. Section 56E of the Bill replaces and modernises all references in application processes to attach a map, and the pegging processes for mineral claims and miscellaneous purpose licences set out in the current Mining Act and regulations.

56F Related environmental legislation
This new section consolidates existing references to the Murray-Darling Basin into one section and requires any applications for and renewals of exploration licences, mining leases, retention leases, miscellaneous purposes licences and an application for a program for environment protection and rehabilitation (PEPR) with declared equipment and change in operations within the area of the Murray-Darling Basin to consider the Objectives for a Healthy River Murray under that Act. Section 56F of the Bill replaces and expands on subsections 28(8), 35(2), 41A(3a), 52(3a), and 59(1aa) of the current Mining Act.

56G Specially protected areas
This new section consolidates existing references to specially protected areas into one section and requires any applications for and renewals of exploration licences, mining leases, retention leases, miscellaneous purposes licences and an application for a program for environment protection and rehabilitation (PEPR) with declared equipment and change in operations adjacent to or within a specially protected area (i.e. the Adelaide Dolphin Sanctuary, a marine park and the River Murray Protection Area) to be referred to the Minister for Sustainability, Environment and Conservation and the Minister for Water and the River Murray for consultation. If the Environment Minister does not agree with the recommendation or conditions of the application, the Governor will make a decision on the application. Section 56F of the Bill replaces and expands on subsections 28(9), 30A(7), 35(2b), 38(5), 41A(3b), 41D(5), 52(3b), 55(5) and 59(1ab) of the current Mining Act.

Division 2 – Notice

56H Notice
This new section sets out a process whereby the Minister notifies relevant landowners and councils as soon as practical that an application for a mining lease, retention lease,
change of operations or miscellaneous purposes licence has been received. Prior to determining whether to approve or refuse the application, the Minister will publish a notice describing the land to which the application relates, the particular stratum to which the application would relate (if applicable), specify the place where the application may be viewed and invite members of the public to make written submissions within a period determined by the Minister. Copies of all submissions will be provided to the applicant and no confidential submissions will be accepted, similar to the Planning, Development and Infrastructure Act 2016. The Minister may require the applicant to provide a response document responding to any submission referred to the applicant for the Minister’s consideration. The Minister will make a determination whether or not to grant the application and the terms and conditions (if a grant occurs), which will be published as required by the regulations. Section 56H of the Bill replaces and expands on sections 34A, 35B, 41BA and subsection 53(2)-(5) (inclusive) of the current Mining Act.

56J Alteration of terms and conditions
To avoid repetition, three sections have been removed from the Act and placed in this new section under common provisions, and applies to a mining lease, retention lease and a miscellaneous purposes licence. Additional subsections have been included to link to conditions associated with approvals under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (Cth) and matters prescribed by regulation. The Minister must make reasonable steps to consult with the holder of the relevant tenement and appeals may be heard by the ERD Court, although this will not apply in circumstances prescribed by regulations. Section 56J of the Bill replaces and expands on subsections 34(9), 41A(6), and 52(4b) of the current Mining Act.

56K Special term or condition relating to extractive minerals
This section allows for a condition to be placed on a mineral tenement to clarify that the use of extractive minerals obtained during the course of authorised operations and may, in some circumstances, be exempt from paying royalties on those by-products (such as those used for the furtherance of existing authorised operations to maintain tracks, roads, lining dams etc. reducing the need to remove material from other mine sites and transport it to the tenement).

56L Offence to contravene terms or condition
The maximum penalty has been increased from $120,000 to $250,000. Section 56L of the Bill replaces subsections 30(8), 34(13), 41A(10), and 52(4f) of the current Mining Act.

Division 3—Terms and conditions
56I Matters to be considered
Prior to the granting of a mineral tenement (mining lease, retention lease or miscellaneous purposes licence), the Minister is required to determine terms and conditions of the tenement that give proper consideration to any aspect of the environment, any lawful activities and any Aboriginal sites or objects that may be affected by the authorised operations. Section 56I of the Bill replaces and expands on sections 34A, 35B, 41BA and subsection 53(2)-(5) (inclusive) of the current Mining Act.

56J Alteration of terms and conditions
To avoid repetition, three sections have been removed from the Act and placed in this new section under common provisions, and applies to a mining lease, retention lease and a miscellaneous purposes licence. Additional subsections have been included to link to conditions associated with approvals under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (Cth) and matters prescribed by regulation. The Minister must make reasonable steps to consult with the holder of the relevant tenement and appeals may be heard by the ERD Court, although this will not apply in circumstances prescribed by regulations. Section 56J of the Bill replaces and expands on subsections 34(9), 41A(6), and 52(4b) of the current Mining Act.

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This section allows for a condition to be placed on a mineral tenement to clarify that the use of extractive minerals obtained during the course of authorised operations and may, in some circumstances, be exempt from paying royalties on those by-products (such as those used for the furtherance of existing authorised operations to maintain tracks, roads, lining dams etc. reducing the need to remove material from other mine sites and transport it to the tenement).

56L Offence to contravene terms or condition
The maximum penalty has been increased from $120,000 to $250,000. Section 56L of the Bill replaces subsections 30(8), 34(13), 41A(10), and 52(4f) of the current Mining Act.

Division 4—Rental
56M Rental
To avoid repetition, three sections have been removed from the Act and placed in this new section under common provisions, and applies to a mining lease, retention lease and a miscellaneous purposes licence. Largely, the process remains the same, where the Minister reimburses landowners 95% of the rental paid by tenement holders. However, where the holder of a tenement or any related body corporate is also the registered proprietor of the land, rather than paying the full rental to the Minister and then receiving 95% back, the tenement holder will...
just need to pay 5% of the rental to the Minister. There is no rental charges where the land is owned by a Minister, the Commissioner for Highways or any other agency or instrumentality of the Crown, as outlined in the regulations. Where native title exclusive possession has yet to be determined, the Minister will retain the rental until a determination has been made. An application can be made within 5 years and the rental will be taken from the consolidated account (unlike under the current Mining Act, where the money is held in Trust). All amendments to this section are intended to cut Department administrative costs and red-tape. Section 56M of the Bill replaces sections 40, 41E and 52(6)-(9) of the current Mining Act.

56N Debt payable to Crown
Any unpaid rent due relating to a mining lease, retention lease or miscellaneous purposes licence will become a debt to the Crown which the Crown can seek enforcement action to recover.

Division 5—Rectification of boundaries
56O Rectification of boundaries
This section sets out the process for the Mining Registrar to rectify the boundary of a tenement. Under the current Mining Act, rectification could only occur in prescribed circumstances. This limitation has been removed, and rectification can now occur with the consent, or after consulting with a tenement holder, or on an order of the Warden’s Court. Section 56O of the Bill replaces and amends section 91A of the current Mining Act.

Division 6—Amalgamation of areas
56P Amalgamation of areas
This section outlines the Minister’s new power to amalgamate two or more mineral tenements (on application from the tenement holder), with the term of the new tenement and terms and conditions of the amalgamated tenement determined by the Minister following consultation with the relevant tenement holders. If more than one tenement holder has an interest in the amalgamated tenement, their interests will be determined via agreement between the parties. Section 56P of the Bill is a new power, but replaces the regulation making power in section 92(1)(g) that was never used.

Division 7—Change in operations
This is a new Division.

56Q Preliminary
This section outlines the proposed changes that a holder of a mining lease, retention lease or a miscellaneous purposes licence may apply to the Minister for to make changes to the terms or conditions of that tenement. This process is distinct from a change to a program for environment protection and rehabilitation (PEPR), or a minor change.

Any changes under this new division must be approved by the Minister and the maximum penalty for non-compliance is $250,000.

56R Application
This new section explains that an application and proposal for a change of operations must be made in a manner and form determined by the Minister and the regulations and include the payment of a prescribed fee. The Minister may also require the applicant to provide additional information, which must be provided within any period specified by the Minister.

56S Consultation
With regards to any proposed change to operations, the Minister can nominate the level of consultation required, ensuring that the level of consultation is relative to the proposed change. For example, a minor proposed change such as a change of similar minerals being mined is more likely to only require targeted or minimal consultation, while a substantial change to the area of size of the mine will likely require broader public consultation.
The Minister must undertake consultation in accordance with section 56H of this Bill if required by regulations.

56T Consideration of proposal
This section outlines the things that the Minister needs to consider before approving a change to operations application and proposal. If the proposed change relates to an authorisation to mine for extractive minerals, the consent of the landowner must be obtained before the change can be approved by the Minister. The Minister cannot approve a proposal unless the Minister is satisfied that the change will not adversely affect the ability of the tenement holder to effectively and efficiently mine the tenement, that appropriate environmental outcomes will be achieved, and the change will not adversely affect the ability of the tenement holder to comply with other requirements of the Act.

56U Terms and conditions
This new section allows the Minister to add, vary or revoke a term or condition on the relevant mineral tenement to the extent that it is required to reflect any approved change. The Minister must consider any effect to the environment, other lawful activities and Aboriginal heritage when considering whether to add, vary or revoke a term or condition.

56V Registration
The date of the approval of an application for a change in operations will be the date on which the approval is registered on the mining register, reducing confusion over when the application was approved.

Division 8—Cancellation and suspension
56W Cancellation and suspension—action by Minister
This new cancellation and suspension process allows the Minister to provide a notice to a tenement holder of his/her intention to cancel or suspend a tenement or parts of the operations of the tenement in cases where the tenement holder contravenes or fails to comply with a term of the tenement or a provision of the Act. The Minister must take all reasonable steps to notify the tenement holder of the proposed course of action and give the tenement holder the opportunity to make written submissions on the matter. Appeals may be heard in the ERD Court. Section 56W of the Bill replaces and amends sections 33, 41, 56 and 85 of the current Mining Act.

56X Surrender on application
In addition to the ordinary process for the surrender of a tenement, this section introduces a streamlined revocation process for private mines whereby a proprietor can surrender a private mine on application to the Minister. The application must be in a manner and form determined by the Minister and include the relevant information as prescribed by regulations. Section 56X of the Bill consolidates and amends section 82 and subsections 73M(3)-(5) of the current Mining Act.

Division 9—Extension of term or reinstatement of tenement
56Y Extension of term of tenement
This new section allows the Minister to extend the term of a mineral tenement (mining lease, retention lease or miscellaneous purposes licence) if the Minister determines that the tenement holder has contravened or failed to comply with a provision of the Act. This will mean that the tenement holder will continue to be subject to the terms and conditions of the tenement and the requirements of the Act, but their right to undertake activities will be limited to rehabilitation only. The Minister must take reasonable steps to consult with the tenement holder and appeals may be made to the ERD Court.

56Z Reinstatement of tenement
This section allows the Minister to reinstate an expired tenement if the tenement holder has contravened or failed to comply with a provision of the Act. This then provides the Minister the ability to use all compliance and...
enforcement tools under the Act to ensure that the conditions of the tenement are met. The tenement holder’s right to undertake activities will be limited to rehabilitation only. Part 9B of the Mining Act does not apply to a reinstated tenement so as to allow the Minister to ensure land is fully rehabilitated on native title land without breaching Part 9B. The Native Title Act 1993 (Cth) still applies.

Division 10—Assessment reports

56 Substitution of section 58A
58A Notice requirements
This section introduces impact-based notices which clearly indicate the nature of the operations the tenement holder is intending to, and is authorised to undertake. This will include a notice of entry, which authorises low impact exploration operations, notice of advanced exploration operations, and notice of intention to apply for a mining lease, retention lease or miscellaneous purpose licence and to undertake authorised operations. The right to object to these notices has been retained and expanded to include pastoral leases.

The right to entry and undertake the proposed activities after 21 days has been expanded to 28 days.

All notices must also be served on the Mining Registrar and will be published on the mining register. All notices will be binding on successive landowners.

Maximum penalties for failure to serve a notice have been increased from $120,000 to $150,000. Section 58A of the Bill replaces and amends sections 58A, and subsections 59(2)–(9) (inclusive).

57 Repeal of section 59
The use of declared equipment has been amalgamated into the notice of entry process. Matters relating to the Murray Darling Basin and specially protected areas have been moved to the common provisions section (Part 8B, Common provisions).

58 Amendment of section 61—Compensation
Changes have been made to terminology in this section to align with section 4 Amendment of section 6 – Interpretation (e.g. declared mining operations and licensee have been changed to authorised operations and tenement holder respectively). This section also incorporates a section that is already in various sections of the current Mining Act that allows the Minister to require the tenement holder’s consent to certain activities.
holder to pay compensation to any person as a result of loss or damage suffered by the person as a result of operations carried out under the tenement. Section 61 of the Bill replaces and consolidates subsections 30(3) and 34(7) of the current Mining Act.

59 Amendment of section 62—Bond and security
This section has been updated to allow the Minister to agree, in his/her absolute discretion, to assign the liability or obligation of a bond to a third party under the Minister’s terms and conditions and also has the ability to refuse an application if the applicant fails to comply with requirement under this section. Any failure to pay a bond or security when due under this section is considered a debt to the Crown. Maximum penalties have been increased from $120,000 to $150,000.

Consistent with changes to section 4 Amendment of section 6 – Interpretation, reference to mining operations and mining tenement have been changed to authorised operations and mineral tenement.

60 Insertion of section 62AA
62AA Mining Rehabilitation Fund
A framework for a mining rehabilitation fund has been established to fund monitoring and maintenance programs relating to rehabilitation of any land, achieve environmental outcomes related to the ceasing of authorised operations, fund other programs or to achieve other outcomes prescribed by regulations and to provide for the cost of administering the fund. The fund will consist of any penalties, expiation fees or funds required to be paid under regulations, any other section or under any other Act. This section also creates a ‘residual risk payment’ whereby at surrender a tenement holder can pay money into the fund and pass the responsibility to maintain and monitor any ongoing environmental impacts to the Government.

61 Amendment of section 62A—Right to require acquisition of land
Consistent with changes to section 4 Amendment of section 6 – Interpretation, reference to mining operator and mining tenement have been changed to tenement holder and mineral tenement.

62 Amendment of section 63—Extractive Areas Rehabilitation Fund
Consistent with changes to section 4 Amendment of section 6 – Interpretation, reference to mining operations has been changed to authorised operations.

63 Repeal of Part 9A
This Part has been repealed and the sections dealing with sub-surface strata have been incorporated into section 115 Amendment of section 80 – Conditions under which land may be simultaneously subject to more than 1 tenement.

64 Amendment of section 63F—Qualification of rights conferred by exploration authority
Consistent with changes to section 4 Amendment of section 6 – Interpretation, reference to mining operator has been changed to tenement holder.

65 Amendment of section 63K—Types of agreement authorising mining operations on native title land
Consistent with changes to section 4 Amendment of section 6 – Interpretation, reference to mining operator has been changed to tenement holder.

66 Amendment of section 63L—Negotiation of agreements
The time required for negotiations with holders of, or claimants to, native title on the land has been increased from two months to four months to align with the Native Title Act 1993 (Cth). Consistent with changes to section 4 Amendment of section 6 –
Interpretation, reference to mining operator has also been changed to tenement holder.

67 Amendment of section 63N—What happens when there are no registered native title parties with whom to negotiate
The time required for negotiations with holders of, or claimants to, native title on the land has been increased from two months to four months to align with the Native Title Act 1993 (Cth).

68 Amendment of section 63O—Expedited procedure where impact of operations is minimal
The time required for negotiations with holders of, or claimants to, native title in the land has been increased from two months to four months to align with the Native Title Act 1993 (Cth).

69 Amendment of section 63R—Effect of registered agreement
Consistent with changes to section 4 Amendment of section 6 – Interpretation, reference to mining operator has been changed to tenement holder.

70 Amendment of section 63S—Application for determination
For consistency, the relevant period for when negotiations were initiated and when an application is made have both been amended to six months to align with the Native Title Act 1993 (Cth).

71 Amendment of section 63V—Effect of determination
Consistent with changes to section 4 Amendment of section 6 – Interpretation, reference to mining tenement has been changed to mineral tenement.

72 Amendment of section 63ZB—Review of compensation
Consistent with changes to section 4 Amendment of section 6 – Interpretation, reference to mining operators has been changed to tenement holders.

73 Amendment of section 63ZBA—Minning Native Title Register
The penalty provision for this section has been increased from $10,000 to $50,000.

74 Substitution of heading to Part 10
This heading has been renamed to Part 10—Warden’s Court—general provisions.

Part 10—Warden's Court—general provisions
75 Amendment of section 64—Establishment of Warden’s Court
This section has been expanded to allow the jurisdiction of the Warden’s Court to be conferred by or contemplated by this or any other Act.

76 Amendment of section 65—Powers etc of Warden's Court
This section ensures that the powers and authorities of the Warden’s Court are consistent with the Magistrates Court of South Australia and those powers can be limited or expanded by the regulations. Summons may also be issued on behalf of the Court by the Warden or any other officer authorised by the rules of the Court, ensuring the court can function as efficiently as possible.

77 Amendment of section 66—Rules of Warden's Court
In order to ensure quicker and more efficient court processes and cut red-tape, the Senior Warden (rather than the Governor) may now make rules in relating to the practice and procedure of the Warden’s Court.

78 Amendment of section 67—Jurisdiction relating to tenements and monetary claims
The Warden’s Court has been given the power to determine a maximum monetary claim up to $150,000 (increased from the previous
amount of $100,000). Consistent with changes to section 4 Amendment of section 6 – Interpretation, reference to mining tenement and mining operations have also been changed to mineral tenement and authorised operations respectively.

79 Repeal of section 69
This section has been repealed and combined with section 80 Amendment of section 70—Forfeiture and transfer of mineral tenement.

80 Amendment of section 70—Forfeiture and transfer of mineral tenement
This section expands the Warden’s Court process for an interested person to seek forfeiture of a mineral tenement. A tenement can be plainted due to a breach of the Mining Act, regulations, term or conditions of a tenement, or a program for environment protection and rehabilitation (PEPR), or undue damage to the environment or failure to carry out authorised operations. Regulation making powers have been expanded to make minimum requirements for applications for forfeitures and transfers of tenements (mineral claims, exploration licence (if prescribed by regulations), mining lease or retention lease) and scope is also provided for the Warden to recommend that the Government transfer the tenement. Section 70 of the Bill is a combination of sections 69 and 70 of the current Mining Act.

81 Amendment to heading to Part 10A
The title of Part 10A has been changed from ‘Programs for environment protection and rehabilitation’ to ‘Operating approvals - Programs for environment protection and rehabilitation’

82 Amendment of section 70A—Object of Part
The subsection relating to the objects of the Natural Resources Management Act 2004 has been removed from this section as it is a duplication (section 10(b) already deals with this). Changes have also been made to terminology in this section to align with section 4 Amendment of section 6 – Interpretation (e.g. mining operations and mining tenement have been changed to authorised operations and mineral tenement respectively).

83 Amendment of section 70B—Preparation or application of program
Several amendments have been made to this section to improve and clarify the interpretation. For example, it is clearer where the statement of criteria for the preparation or application of a program can be found, it clarifies the link between the proposal with the program for environment protection and rehabilitation (PEPR), ensures that the PEPR meets the minimum standard required by the Act and regulations, incorporates requirements for individuals acting on behalf of the tenement holder, clarifies that PEPRs may be approved but tenement holders are unable to operate on that tenement until waivers over exempt land are in place. Consistent with changes to section 4 Amendment of section 6 – Interpretation, reference to mining operations, mining tenement and holder of the tenement have also been changed to authorised operations, mineral tenement and tenement holder respectively.

84 Amendment of section 70C—Review of programs
This section has been updated to interact with the new change in operations regime by ensuring that programs will be reviewed if there is an application for a change and the proposed changes are inconsistent with the program for environment protection and rehabilitation (PEPR). Any review must be conducted in accordance with any requirements and timeframes of regulations and consider the minimum requirements of a PEPR. Consistent with changes to section 4 Amendment of section 6 – Interpretation,
reference to *holder of the tenement* has also been changed to *tenement holder*.

85 Substitution of section 70D

70D Notice of certain programs

Section 70D of the current Mining Act has been replaced to allow public consultation on PEPRs to take place if the proposed activity triggers the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999* and any assessment or approval bilateral agreement with the Commonwealth.

70DA Audit of program

This new section is based on the audit provisions from the *Environment Protection Act 1993 (SA)*, where the tenement holder must, at the direction of the Minister demonstrate through various means (e.g. specified tests, environmental monitoring or other investigations) the tenement holder’s ability to achieve the outcomes of the program for environment protection and rehabilitation (PEPR). The Minister may provide directions on the independence, qualifications or experience of the person who carries out a program audit, the period in which the audit must be completed and the completion and provision of a report. The program audit must be completed in accordance with regulations and all costs associated with the program audit must be met by the tenement holder.

The penalties provisions have also been expanded and moved to *section 70DC Offences* below.

70DB Publication of program

This new section allows the Minister to publish a program (PEPR) or part of a program in a manner the Minister determines.

86 Substitution of heading to Part 10B

This heading has been renamed to *Part 10B—Compliance and enforcement*.

Part 10B—Compliance and enforcement

87 Amendment of section 70E—Power to direct persons to take action to prevent or minimise environmental harm

The Minister’s power to issue environmental directions have been expanded to allow the Minister to direct specified tests or monitoring to be undertaken as well as the requirement to develop a plan for action. Consistent with *section 4 Amendment of section 6—Interpretation*, reference to *mining operations* and *mining tenement* have also been changed to *authorised operations* and *mineral tenement* respectively.

88 Amendment of section 70F—Power to direct rehabilitation of land

This section has been amended to clarify for the avoidance of doubt that a rehabilitation direction may be issued at any time, including after a mineral tenement has expired or been cancelled or surrendered. Consistent with *section 4 Amendment of section 6—Interpretation*, reference to *mining operations* and *mining tenement* have been changed to *authorised operations* and *mineral tenement* respectively.

89 Insertion of sections 70FA, 70FB and 70FC

70FA Compliance directions

Section 70FA of the Bill replaces section 74AA of the current Mining Act. The right to appeal a compliance direction has been removed and consolidated in section 70G of the Bill.
70FB Emergency directions
This section introduces a broadened emergency direction power modelled from the Environment Protection Act 1993 (SA). An emergency environmental direction power is available under subsection 70E(2) of the current Mining Act, but could not be issued verbally which impacted on the Department’s ability to respond efficiently to matters of environmental emergency.

The maximum penalty for a breach of this section is $250,000.

70FC Contravention of Act
This section provides the Minister or an authorised officer under the Act to issue a direction that may be in contravention of the Mining Act. The person who complies with this direction will not be liable for any penalties under the Act for compliance with this requirement.

90 Amendment of section 70G—Application for review of direction
The scope of this section has been widened to manage a review of any direction in this Part (rather than just dealing with environmental or rehabilitation directions) and provides the Director of Mines power to make decisions within the context of this section. Section 70G of the Bill consolidates and expands section 70G and subsections 74AA(3)-(6) of the current Mining Act.

91 Amendment of section 70H—Action if non-compliance occurs
The scope of this section has been widened to allow the Minister to take the action required by any direction in this Part (rather than just dealing with environmental or rehabilitation directions) where the directions are not complied with.

Any reasonable costs and expenses incurred by the Minister or the Director becomes a debt to the Crown.

92 Insertion of sections 70HA and 70HB
70HA Restriction of claims
This section allows the Warden’s Court to make an order limiting the establishment of a mineral claim by a person who has failed to comply with a direction (environmental, compliance, emergency or rehabilitation). This applies to mineral claims, as the Minister approves or refuses other tenement applications. Section 70HA of the Bill is an expansion of subsection 70F(4) and (5) under the current Mining Act, which related only to outstanding rehabilitation directions.

70HB Self-incrimination
This section sets out that it is not an excuse for a person to refuse to provide information as required by a direction on the grounds it may incriminate the person or make the person liable to a penalty. However, any information provided cannot be used against that person in any proceedings for an offence or for the imposition of a penalty (other than proceedings for making a false or misleading statement), but that information can be used against a company.

93 Insertion of Part 10C
A new Part (Part 10C – Offences and penalties) has been included.

Part 10C—Offences and penalties
70HC Penalty for illegal mining
Section 70HC of the Bill replaces and expands section 74 of the current Mining Act. The drafting of this section has been updated to reflect the rest of the Bill. A new subsection has been introduced to allow the regulations to limit prescribed classes of ancillary operations, which are not to be considered illegal mining, for example, activities approved under the Planning, Development and Infrastructure Act 2016 (SA).

70HD Obstruction of person authorised to mine etc
Section 70HD of the Bill replaces section 89 of the current Mining Act. The maximum
penalty for the offence has been increased to $150,000.

**70HE Civil penalties**
Section 70HE of the Bill introduces a new civil penalty regime modelled from the *Environment Protection Act 1993 (SA)*. This section allows the Director of Mines to pursue civil penalties in lieu of criminal penalties and aligns with civil penalties in modern environmental legislation.

**70HF Additional orders on conviction**
This section expands the court’s power to make orders necessary to address environmental offences and aligns with modern environmental legislation (e.g. the *Environment Protection Act 1993*).

**70HG Continuing offences**
A person who is convicted of an offence against a provision of this Act and continues the offence or disregards the conditions associated with the offence, will be subject to a daily penalty, in addition to the penalty for the offence. The daily penalty cannot exceed one-tenth of the maximum penalty prescribed for that offence and the individual will continue to be liable for that daily penalty until the conditions associated with the offence have been met. Sections 17E and 73A of the current Mining Act includes a continuing offence for unpaid royalty. Section 70HG of the Bill expands on sections 17E(1) and 73A(8) to apply to all offences under the current Mining Act.

**70HH Offences by bodies corporate**
This section introduces offences against Directors (for offences of a body corporate) if the Directors knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed, was in a position of influence, and the Directors failed to exercise due diligence to prevent the offence.

**70HI Time limits**
Criminal proceedings under this Act may occur within three years of the alleged offence, or within 10 years of the alleged offence, if the written authorisation of the Attorney-General has been obtained.

**70HJ Summary offences**
All offences under this Act are classified as summary offences (i.e. proceedings can occur without the right to a jury trial and/or indictment).

**70HK Evidentiary provisions**
This section has been moved from *section 90* of the current Mining Act and expanded to provide the Minister the ability to certify a broader range of documents for the purposes of evidence before the court, ensuring smoother operation of prosecutions.

**94 Amendment of section 71—Minister may assist in conduct of operations**
Consistent with changes to *section 4 Amendment of section 6 – Interpretation*, reference to *mining operations* has been changed to *authorised operations*.

**95 Amendment of section 72—Research and investigations**
Consistent with changes to *section 4 Amendment of section 6 – Interpretation*, reference to *mining operations* has been changed to *authorised operations*.

**96 Repeal of Part 11A**
*Part 11A* (caveats) has been repealed and moved to sections 15AE and 15AF for the Bill (*Part 2A – Mining Register and information*).

**97 Amendment of section 73C—Interpretation**
This section sets out the definitions in the Act that apply to private mines. The definition of environment has been updated to align with the same definition of environment applying to all tenements under the Mining Act, other than the words ‘the aesthetic or cultural value of an area’. The definitions in section 6 of the Act will apply to private mines to the extent they are relevant.
98 Amendment of section 73D – Application of Act
This section lists all the sections of the Mining Act that will apply to private mines.

99 Repeal of sections 73E, 73EA and 73F
Sections 73E, 73EA and 73F have been moved to section 24 Amendment of section 17A — Reduced royalty for new mines and section 25 Insertion of sections 17AB and 17AC of the Bill.

100 Amendment of section 73G – Mine operation plans
This section has been amended to ensure Mine Operation Plans (MOPs) can be made publically available. This aligns with the publication of Programs for Environment Protection and Rehabilitation (PEPRs) in section 70DB Publication of program.

101 Amendment of section 73H – General duty to avoid undue environmental damage
This section has been amended to remove compromising language, which qualified the duty to avoid undue damage to the environment.

102 Amendment of section 73I – Compliance orders
The penalty in this section has been increased from $120,000 to $250,000 to align with similar offences in the rest of the Act.

103 Amendment of section 73J – Rectification orders
The penalty in this section has been increased from $120,000 to $250,000 to align with similar offences in the rest of the Act.

104 Insertion of sections 73KA and 73KB
73KA Emergency order
This section introduces a new emergency order power modelled from the Environment Protection Act 1993 (SA). An identical power also appears in section 70FB Emergency directions and relates to all tenements, other than private mines.

The maximum penalty for a breach of this section is $250,000.

73KB Contravention of Act
This section provides the Minister or an authorised officer under the Act to issue an order that may be in contravention of the Mining Act. The person who complies with this direction will not be liable for any penalties under the Act for compliance with this requirement.

105 Amendment of section 73L – Application for review of direction
This section has been updated to include reference to an emergency order.

106 Substitution of sections 73M to 73Q
73M Actions if non compliance occurs
If the holder of a private mine fails to comply with an order issues under this Part, the Minister or Director of Mines can take the action required by the order, and recover the money from the holder of the private mine. This section is consistent with section 70H of the Act, which relates to directions issues on tenement holders.

73N Revocation of private mine
This section introduces a new streamlined process for the Minister to revoke a private mine without going to the Warden’s Court. If the Minister is satisfied that the whole or part of the mine is not being effectively operated or it is no longer possible to carry out operations and the area has been rehabilitated to an appropriate standard, the Minister may instruct the Governor to revoke or vary the area of a private mine by proclamation. Before this occurs, the Minister is required to serve a notice on the proprietor of the private mine and provide the proprietor an opportunity to make written submissions on the matter within a time-frame set by the Minister. Section 73N of the Bill replaces
section 73M of the current Mining Act by introducing a new, more efficient revocation process with clear requirements to consult with the proprietor.

73O Evidentiary provisions
This provides the Minister the ability to certify a range of private mine specific documents for the purposes of evidence before the court, ensuring smoother operation of prosecutions. This section aligns with section 70HK Evidentiary provisions of the Bill which relates to tenements other than private mines.

107 Substitution of sections 74 and 74AA

74 Civil remedies
This section, in connection with section 70HE (Civil penalties) of the Bill, establishes new civil penalties and remedies regime, and gives the court the power to make orders aligning with civil remedies in modern environmental legislation (e.g. the Environment Protection Act 1993).

74AA Enforceable voluntary undertakings
This section introduces a new alternative penalty whereby, rather than being prosecuted, the Minister may accept a specific undertaking from a tenement holder. This section is consistent with modern competition and consumer legislation, and with workplace health and safety legislation. The maximum penalty for a breach of this section is $50,000.

108 Amendment of section 74A – Compliance orders
Consistent with section 4, Amendment of section 6 – Interpretation, reference to mining tenement has been changed to authorised operations.

109 Amendment of section 75— Provision relating to certain minerals
This section has been clarified that a further tenement is not required to authorise the use of extractive minerals recovered as a result of existing mineral operations. Personal use has been expanded to ensure landowners can use their extractives without attracting regulation of the Mining Act. Any consent of a landowner to allow a tenement holder to mine for extractive minerals will be binding on subsequent owners. This section also includes a discretionary power whereby the Minister can determine that an individual’s use of extractive minerals is beyond the scope of personal use due to the nature or scope of the operations, and that a tenement is required under the Act.

110 Amendment of section 75A – Avoidance of double compensation
This section has been amended to clarify that an assessment of compensation payable under this Act will take into account any compensation paid under another Act, and any compensation paid under the Mining Act.

111 Repeal of sections 76 to 77D
Section 76 of the current Mining Act has been repealed and replaced with section 17CA of the Bill.
Section 77 of the current Mining Act has been repealed and replaced with section 15AI of the Bill.
Section 77A of the current Mining Act has been repealed and replaced with section 15AJ of the Bill.
Section 77B of the current Mining Act has been repealed and replaced with section 15AI of the Bill.
Section 77C of the current Mining Act has been repealed and replaced with expanded application in section 90 of the Bill.
Section 77D of the current Mining Act has been repealed and replaced with section 15AL of the Bill.

112 Amendment of section 78 – Persons under 16 years of age
Consistent with section 4, Amendment of section 6 – Interpretation, reference to mining tenement has been changed to mineral tenement.
113 Amendment of section 79 – Minister may grant exemptions
Consistent with section 4, Amendment of section 6 – Interpretation, reference to mining tenement has been changed to mineral tenement. Reference to him has also been amended to Minister and the words term or has been inserted prior to condition of a lease or licence.

114 Substitution of section 79A
79A False or misleading information
This section introduces a consolidated offence whereby a person is guilty of an offence if they provide false or misleading information to the Minister, the Director, the Mining Registrar or another person involved in the administration of the Mining Act, with a maximum penalty of $150,000. Section 79A of the Bill replaces and expands the offence under section 76(5a) of the current Mining Act to apply to all information provided under the Act.

115 Amendment of section 80 – Conditions under which land may be simultaneously subject to more than 1 tenement
This section has been updated to prevent circumstances where the same individual or related body corporate attempt to establish a subsequent mineral claim. Due to the repeal of Part 9A of the current Mining Act, this section has been updated to require agreements which relate to overlapping tenement with subsurface and surface strata must include rights relating to access to the subsurface stratum. The maximum penalty has increased from $5,000 to $20,000.

116 Substitution of sections 81, 82 and 83
Section 83 of current Mining Act has been repealed and replaced with sections 15AB, 15AC, 15AD, 15AE, 15AF and 15AG of the Bill.

81 Additional provisions relating to liability
Section 81 of the current Mining Act has been repealed as this is appropriately dealt with in subsection 7(2). Where there are two or more persons who are tenement holders of the same mineral tenement, each tenement holder is ‘jointly and severally liable’ (a claimant may pursue an obligation against any one party as if they were jointly liable and it becomes the responsibility of the defendants to sort out their respective proportions of liability and payment) for compliance with any requirement under the Act. Section 81 of the Bill also introduces vicarious liability which means an action of an employee or agent is deemed to be the liability of the employer.

82 Deemed consent or agreement
Section 82 of the current Mining Act has been repealed and replaced with section 56X of the Bill. Section 82 of the Bill introduces a new section which states that in the event the tenement holder and the landowner are the same person, any agreements or consent required under the Act are deemed to be complied with, and will bind subsequent owners of land. This will remove the confusing practice of having to enter into agreements or obtaining consent from yourself.

117 Repeal of sections 84 and 84A
Section 84 of the current Mining Act is being repealed as a lease of licence instrument is no longer used as the determiner of title.

Section 84A of the current Mining Act is being repealed as the nature of a safety net agreement is inconsistent with the operation of the Act. Section 28 of the Bill has been updated to allow for preferential grants if necessary.

118 Substitution of sections 85 and 86
85 Charge on property if debt due to Crown
This section creates a statutory interest over property as recognised under the Personal
Property Securities Act 2009 (Cth) for debt due to the Crown under the Mining Act. This charge has priority over any other interests or encumbrances on that property and is not affected by a change in ownership.

86 Removal of machinery etc
This section has been updated to clarify the drafting and to allow the Treasurer to deduct the costs associated with seizing, holding, maintaining, repairing, cleaning or selling the abandoned machinery or goods from the proceeds of sale of the machinery or goods.

119 Substitution of sections 88 and 89

88 Hindering authorised officers
This section has been updated with modern drafting to state that a person cannot hinder or obstruct, without a reasonable excuse, an authorised officer or other person engaged in the administration of the Mining Act. The maximum penalty for the offence has been updated to include six months in prison.

Section 89 of the current Mining Act has been moved to section 70HD of the Bill.

120 Insertion of section 89A

89B Penalties and expiation fees payable into Mining Rehabilitation Fund
This section explains that any penalties or expiation fees under this Act are paid into the Mining Rehabilitation Fund, ensuring that funds can be collected and used to assist with mineral tenement rehabilitation (at the discretion of the Minister).

121 Substitution of section 90

90 Reports and verification of information
The Minister may request the tenement holder to provide a report on the operation or administration of any provision of the Mining Act, an assessment of the tenement holder’s capability to comply with the Act, the identification, delineation or accuracy of any boundary of a mineral tenement or verifying any information or material provided to the Minister. The Minister may require that a report be prepared by an independent expert. The report must be completed in accordance with the timeframe set by the Minister and all costs associated with the report must be met by the tenement holder. Maximum penalty is $20,000. Section 90 of the current Mining Act has been expanded and moved to section 70HK of the Bill.

122 Amendment of section 91—Administrative penalties
This section has been updated to allow the Director of Mines to impose an administrative penalty on a holder or former holder of a mineral tenement. To increase efficiency in issuing administrative penalties, the penalty may be issued without consultation and there is also no requirement to provide a warning or prior notice to the person. Administrative penalties will be paid into the Mining Rehabilitation Fund.

123 Repeal of section 91A
Section 91A of the Mining Act has been moved to section 56O of the Bill.

124 Amendment of section 92—Regulations
The regulation making powers have been expanded and updated to reflect the holistic changes proposed by the Bill. These changes include a regulation making power to allow the Governor to make regulations to fix an expiation fee of up to $7000; to provide for the service, director, order or other document; to allow transitional provisions to be included in regulations to enable changes to the Act; and to prescribe penalties of up to $20,000.

Consistent with section 4, Amendment of section 6 – Interpretation, reference to mining tenement, mining operations and holders of mining tenements have also been changed to mineral tenement, authorised operations and tenement holders respectively.
125 Amendment of Schedule
The subsection relating to mineral land has been removed due to amendments proposed by section 6, Amendment of section 8 – Declaration of mineral land etc.

126 Renumbering
Renumbering of subsections, sections, Divisions and Parts of the Mining Act in consecutive order (with necessary consequential changes to cross-references) will occur once the Act is operational.

Part 3—Amendment of Mines and Works Inspection Act 1920
Amendments to the Mines and Works Inspection Act 1920 aim to reduce regulatory overlap by limiting the application of the Mines and Works Inspection Act 1920 to the Leigh Creek coal mine, Olympic Dam and operations authorised under the Whyalla Steel Works Act 1958; and reduce red tape by removing the mine manager competency certification scheme, and amend the Work Health and Safety Regulations to include specific requirements for the competence of mine managers. Specific changes proposed in the Bill are outlined in the sections below.

127 Amendment of section 4—Interpretation
Reference to the manager has been removed from this section as the mine manager competency certification scheme will be removed from the Act and included in the Work Health and Safety Regulations. A further amendment has been made to this section relating to mining or mining operations to specify that the Act will apply to certain operations (i.e. Leigh Creek coal mine, Olympic Dam and operations authorised under the Whyalla Steel Works Act 1958).

128 Substitution of section 5
5 Application of Act
This section specifies that the only operations that will apply to this Act are operations relating to the Leigh Creek coal mine (under section 48 of the Electricity Corporations Act 1994), Olympic Dam (under the Indenture under the Roxby Downs (Indenture Ratification) Act 1982) and operations authorised under the Whyalla Steel Works Act 1958.

129 Amendment of section 8—Disqualification for office of inspector
To ensure consistency with section 127, Amendment of section 4—Interpretation, references to manager and manager of mines have been removed.

130 Amendment of section 10—Power of inspector on inspection
To ensure consistency with section 127, Amendment of section 4—Interpretation, references to manager and manager of mines have been removed.

131 Amendment of section 12—Miners' inspectors
To ensure consistency with section 127, Amendment of section 4—Interpretation, references to manager have been removed and responsibility placed on the owner of the tenement to facilitate inspections as required.

132 Amendment of section 13—Obstructing or refusing to assist inspector
To ensure consistency with section 127, Amendment of section 4—Interpretation, the reference to manager of mines has been removed.

133 Substitution of section 16
16 Notice
To ensure consistency with section 127, Amendment of section 4—Interpretation, references to manager and manager of mines have been removed. Clarification has also been provided on how a notice or document is required to be given or served under the Act.
Amendment of section 20—
Imprisonment for wilful neglect
To ensure consistency with section 127, Amendment of section 4—Interpretation, the reference to manager of mines has been removed.

Amendment of section 22—
General provisions as to proceedings for offences
To ensure consistency with section 127, Amendment of section 4—Interpretation, references to manager and manager of mines have been removed.

Amendment of Schedule—
Subject matter of regulations
To ensure consistency with section 127, Amendment of section 4—Interpretation, reference to mine managers and manager of mines have been removed.

Part 4—Amendment of Opal Mining Act 1995
Amendments to the Opal Mining Act 1995 aim to improve regulatory transparency and efficiency through the introduction of the new statutory position of the Opal Mining Registrar and a distinct opal mining register, as opposed to current arrangements under the Mining Act; improve environmental and safety provisions for opal mining through strengthened powers of authorised officers to direct rehabilitation of land; and improve consistency between the Opal Mining Act and the Mining Act, particularly in relation to terminology, fees and penalties. Specific changes proposed in the Bill are outlined in the sections below.

138 Amendment of section 6—
Exempt land
This section has been updated to reflect recent case law relating to a spring, well, reservoir or dam with a commercial use and changes the value of a building or structure within 150 metres of an industrial or commercial purpose from $200 to a prescribed amount.

139 Amendment of section 7—
Application for permit
This section has been amended to update the mining registrar to the opal mining registrar and that an application must be made in a manner and form determined by the Director. This ensures that the process can be modernised as required rather than having outdated application processes enshrined in the Act.

140 Amendment of section 8—
Nature of permit
The maximum penalty of $2,500 has been replaced with an administrative penalty (see section 189 Insertion of sections 98A and 98B, 98A Administrative penalties).

141 Amendment of section 9—
Terms and renewal of permit
This section has been amended to update the mining registrar to the opal mining registrar and that an application must be made in a manner and form determined by the Director.

142 Amendment of section 10—
Rights of holder of permit
This section clarifies that the holder of a precious stones prospecting permit must not live on the precious stones field, apart from those who live in the Mintabie township lease area under the relevant approval of the

143 Amendment of section 10A—Special provisions in relation to Mintabie precious stone field
This section has been updated to state that a permit within the Mintabie precious stones field is subject to the conditions set by the Opal Mining Registrar.

This section has also been amended to update the mining registrar to the opal mining registrar.

144 Amendment of section 11—Qualifications to permits
This section has been amended so that the pegging of an area under a precious stones prospecting permit can only be permitted entirely within or entirely outside of a precious stones field (i.e. not over the boundary), to reduce the risk of unforeseen complications and uncertainty about the applicable regulatory requirements. This section also updates the mining registrar to the opal mining registrar, consistent with changes to section 116, Amendment of section 3 – Interpretation.

145 Amendment of section 15—Effect of pegging an area
The words not wholly within, have been replaced with wholly outside to clarify that a permit cannot straddle the boundary of a precious stones field.

146 Amendment of section 16—Ballot may be conducted in certain cases
A maximum penalty of $5,000 and an administrative penalty have been introduced for prospecting for precious stones or pegging in contravention of this section and any pegging without going through the ballot (where required) will not be valid. This section has also been amended to update the mining registrar to the opal mining registrar.

147 Substitution of section 18
18 Contravention of Part
This section has been amended to update the nature of the penalties, to allow for an administrative penalty, and a criminal penalty of $5,000 to align with the Mining Act offences.

148 Amendment of section 18A—Special conditions for tenements in relation to Mintabie precious stones field
This section has been updated to state that a permit within the Mintabie precious stones field is subject to the conditions set by the Opal Mining Registrar.

This section has also been amended to update the mining registrar to the opal mining registrar.

149 Amendment of section 19—Application for registration of tenement
This section has been amended to note that an application under this section must be made in a manner and form determined by the Director or the Opal Mining Registrar. This ensures that the process can be modernised as required rather than having outdated application processes enshrined in the Act. The words not wholly within, have been replaced with wholly outside to clarify that a tenement cannot straddle the boundary of a precious stones field.

150 Amendment of section 19A—Special provision related to application for and registration of tenements on Mintabie precious stones field
This section has been amended to update the mining registrar to the opal mining registrar.
Amendment of section 20—Registration of tenement
This section has been amended to update the mining registrar to the opal mining registrar and also clarifies that the Opal Mining Registrar cannot register a precious stones tenement if it was inconsistent with any public decisions made by the Minister responsible for the operation of the Mining Act 1971.

Amendment of section 22—Term and renewal of tenement
This section has been amended to update the mining registrar to the opal mining registrar and that an application must be made in a manner and form determined by the Director or the Opal Mining Registrar.

Amendment of section 23—Rights conferred by a tenement
This section clarifies that every registered holder of a precious stones claim and registered opal development lease must not live on the precious stones field, apart from those who live in the Mintabie township lease area under the relevant approval of the Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981.

Amendment of section 25—Unlawful entry on tenement
The maximum penalty has been increased from $2,500 to $10,000 to align with the Mining Act offences.

Substitution of section 26
26 Caveats
This section introduces a modern regulatory regime for the application, registration, withdrawal and expiry of caveats which is fit for purpose for commercial transactions. This system has been partially modelled on the Western Australian system, but modernised to reflect the nature of commercial transactions in the mineral resources industry. The lodgement of a caveat may be done by the tenement holder or someone claiming any interest in the mineral tenement, and may operate to prevent transfers, mortgages and surrenders. This section is a replica of the caveat section (section 15AE) of the Bill which amends the Mining Act.

Application to Warden’s Court to lapse caveat or obtain compensation
A person who has an interest in a mineral tenement subject to a caveat registered under the Act or has an interest that may directly be affected by a caveat may apply through the Warden’s Court to have the caveat declared invalid, to have the caveat lapse, have a transfer, mortgage or surrender registered despite the registered caveat or obtain compensation. The application may be moved to a higher court if required. This section is a replica of the caveat section (section 15AF) of the Bill which amends the Mining Act.

Amendment of section 27—Power of Opal Mining Registrar to cancel tenement
This section has been amended to update the mining registrar to the opal mining registrar.

Insertion of section 27A
27A Cancellation and suspension
This new cancellation and suspension process allows the Opal Mining Registrar to provide a notice to a tenement holder of his/her intention to cancel or suspend a tenement or parts of the operations of the tenement in cases where the tenement holder contravenes or fails to comply with a term of the tenement or a provision of the Mining Act. The Opal Mining Registrar must take all reasonable steps to notify the tenement holder of the proposed course of action and give the tenement holder the opportunity to make written submissions on the matter. Appeals may be heard in the ERD Court. This section is a replica of the cancellation and suspension section (section 56W) of the Bill which amends the Mining Act.
158 Amendment of section 28—Surrender of tenement, removal of posts etc
This section has been amended to update the mining registrar to the opal mining registrar and also removed the requirement for the application to be delivered personally to the Opal Mining Registrar.

159 Substitution of section 29
29 Removal of machinery
This section has been updated to clarify the drafting and to allow the Treasurer to deduct the costs associated with seizing, holding, maintaining, repairing, cleaning or selling the abandoned machinery or goods from the proceeds of sale of the machinery or goods. This section is a replica of the removal of machinery (section 86) of the Bill which amends the Mining Act.

160—Amendment of section 30—Maintenance of posts
An administrative penalty has been incorporated into this section.

161 Amendment of section 32—Notice of entry
This section has been amended to update the mining registrar to the opal mining registrar and the maximum penalty has been increased from $5,000 to $50,000 to align with the Mining Act offences.

162 Amendment of section 33—Duration of notice of entry
The duration of notice of entry has been increased from six months to 12 months.

163 Amendment of section 34—Use of declared equipment
This section has been amended to update the mining registrar to the opal mining registrar and the maximum penalties for breaches of this section have been increased from $5,000 and $10,000 to $120,000 to align with the Mining Act offences.

164 Amendment of section 35—Rehabilitation of land
This section has been updated to allow a notice to be issued to order the rehabilitation of land at any time, even if the tenement has already expired or if it is outside the precious stones field. This provides the Minister greater oversight and ability to direct the rehabilitation of sites at any stage. The maximum penalties for breaches of this section have also been increased from $5,000 to $120,000 to align with the Mining Act offences.

165 Insertion of sections 35A and 35B
35A Compliance directions
This new section introduces the ability for the Minister to issue compliance directions to ensure compliance with terms or conditions of a tenement, preventing or bringing to an end specified operations that are contrary to the Act or a tenement, requiring rehabilitation of land as a result of any operations under the tenement. The maximum penalty for contravention of a compliance direction is $150,000 to align with the Mining Act offences. This section is a replica of the compliance direction section 70FA in the Bill which amends the Mining Act.

35B Contravention of Act
This section provides the Minister or an authorised officer under the Act to issue a direction that may be in contravention of the Mining Act. The person who complies with this direction will not be liable for any penalties under the Act for compliance with this requirement. This section is a replica of section 70FC of the Bill which amends the Mining Act.

166 Amendment of section 36—Bonds
This section allows the Minister to require a bond from an applicant for the registration of, or the holder of, a precious stones tenement that is outside a precious stones field. This section has also been amended to update the
mining registrar to the opal mining registrar and maximum penalties have been increased from $5000 to $120,000 to align with the Mining Act offences.

167 Amendment of section 37—Application of bonds
This section has been amended to update the mining registrar to the opal mining registrar.

168 Amendment of section 43—Registration of agreement
This section has been amended to update the mining registrar to the opal mining registrar.

169 Amendment of section 44—Agreement may be varied or revoked
This section has been amended to update the mining registrar to the opal mining registrar.

170 Amendment of section 45—Appeal to Warden's Court
This section has been amended to update the mining registrar to the opal mining registrar.

171 Amendment of section 49—Qualification of rights conferred by permit
The registration of Indigenous land use agreements under the Native Title Act 1993 (Cth) has been included in this section to align with Part 9B of the Mining Act.

172 Amendment of section 50—Limits on grant of tenement
The registration of Indigenous land use agreements under the Native Title Act 1993 (Cth) has been included in this section to align with Part 9B of the Mining Act.

173 Amendment of section 51—Applications for tenements
This section has been amended to update the mining registrar to the opal mining registrar.

174 Amendment of section 59—Agreement
This section has been amended to update the mining registrar to the opal mining registrar.

175 Amendment of section 64—Effect of determination
This section has been amended to update the mining registrar to the opal mining registrar.

176 Amendment of section 70A—Opal Mining Native Title Register
This section has been amended to update the mining registrar to the opal mining registrar and the maximum penalty for breaches of this section has also been increased from $10,000 to $50,000 to align with the Mining Act offences.

177 Amendment to section 72—Jurisdiction relating to tenements and monetary claims
This section has been amended to update the mining registrar to the opal mining registrar and the jurisdiction for monetary claims has been increased from $100,000 to $150,000.

178 Insertion of section 75A
75A Opal Mining Registrar
Establishes the Opal Mining Registrar, outlines his/her functions and the ability for the Opal Mining Registrar to delegate the power or function to another opal mining registrar. This section aligns with section 13 of the Bill which amends the Mining Act.

179 Amendment of section 76—Opal Mining Register
This section establishes the opal mining register as a distinct register for the management of opal mining tenements, agreements, permits, proceedings or any other function that the Opal Mining Registrar sees fit.
180 Amendment of section 77 — Appointment of authorised persons
Authorised officers under the Act will be able to enter, search, inspect and examine any premises, land, or vehicle in connection with any operations or activities regulated by the Act and, where necessary break into or open a part of, or anything in, the premises, land or vehicle. A warrant from a magistrate, warden or justice is required for this to occur unless the inspection relates to a non-residential building or structure that is used by the tenement holder for or in connection with authorised operations or the authorised officer believes that urgent action is required. This section also allows authorised officers to seize and retain anything that may be evidence of non-compliance with this Act.

Maximum penalties have been increased from $2,500 to $10,000 or six months in prison to align with the Mining Act.

It is not an excuse for a person to refuse to provide information on the ground that it may incriminate the person or make the person liable to a penalty. However, any information provided cannot be used against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings for making a false or misleading statement). The maximum penalty for a breach of this provision is $5000 to align with the Mining Act offences.

These amendments align with the current powers of authorised officers in modern environmental legislation (e.g. the Environment Protection Act 1993 and the Fisheries Management Act 2007) and the proposed amendments to the Mining Act.

181 Amendment of section 79 — Exemptions
This section provides the Minister the ability to exempt a tenement holder from a term or condition of the tenement or exempt the holder of a mining tenement from the obligation to comply with a provision of the Mining Act, where the Minister is satisfied that it is justifiable to do so.

182 Amendment of section 82 — Offences
The maximum penalty for the mining, selling, use of disposal of precious stones recovered in the course of mining operations without the proper authorisation under the Act has increased from $10,000 or 2 years in prison to $150,000 to align with the Mining Act offences. All other fines under this section have been increased from $1,250 or $2,500 to $10,000 to align with the Mining Act offences.

183 Amendment of section 84 — Prohibition orders
The maximum penalty for an offence under this section has increased from $5,000 or one year in prison, to $150,000 or two years in prison to align with the Mining Act.

184 Amendment of section 85 — Power of Opal Mining Registrar to require pegs be removed
This section has been amended to update the mining registrar to the opal mining registrar.

185 Amendment of section 87 — Evidentiary provision
This section has been expanded to provide the Minister the ability to certify a broader range of documents for the purposes of evidence before the court, ensuring smoother operation of prosecutions. These updates also reflect the amendments proposed by section 92, section 70HK of the Bill which amends the evidentiary provisions in the current Mining Act.

186 Amendment of section 89 — Disposal of waste
The maximum penalty for breaches of this section has been increased from $2,500 to $10,000 to align with the Mining Act offences.

187 Repeal of section 91
Section 91 of the current Opal Mining Act and 84A of the current Mining Act are being
repealed as the nature of a safety net agreement is inconsistent with the operation of the Act.

188 Amendment of section 93—Interaction with Mining Act
Maximum penalties for breaches of this section have been increased from $5,000 to $10,000 and $20,000 respectively to align with the current Mining Act. Consistent with changes to section 116, Amendment of section 3—Interpretation, reference to mining tenement has also been changed to mineral tenement.

189 Insertion of sections 98A and 98B

98A Administrative penalties
Administrative penalties of up to $15,000 and prescribed by regulations will be applied to any provision of the Act or the regulations, but may not be imposed twice for the same matter. The Director of Mines may by notice impose an administrative penalty on an individual without the need to give a warning or prior notice. An administrative penalty may be recovered as a debt to the Crown.

98B Penalties payable into Mining Rehabilitation Fund
This new section specifies that any penalties or administrative penalties under this Act will be paid into the Mining Rehabilitation Fund established under the Mining Act.

190 Amendment of section 99—Regulations
A head power has been included to allow transitional provisions to be included in regulations to enable changes to the Act. Prescribed fines have been increased from $2,500 to $10,000 and the section has also been amended to update the mining registrar to the opal mining registrar.

Schedule 1—Transitional provisions

Part 1—Transitional provisions—Mining Act 1971

1 Interpretation
This section provides the definition for principal Act for the purposes of the Mining Act.

2 References
Clarifies that following the commencement of section 4 of the Bill, any reference to a mining tenement under the principal Act will, unless the context otherwise requires, be taken to include refer to a mineral tenement.

3 Waiver of exemption
Where a notice has been lodged under section 9AA of the Mining Act (dealing with ‘exempt land’) prior to the commencement of this Act, the notice and the provisions of that section will continue to apply.

4 Registers
All registers kept under section 15A of the current Mining Act immediately before the repeal of that section by this Bill will, following the repeal will be considered registered under section 15AA.

5 Mortgages
A mortgage created before the commencement of section 15AC of the Bill can be registered on the mining register under the new mortgage regime as set out in sections 15AC and 15AD of the Bill. Existing mortgages registered on the mining register before the commencement of this Bill will be considered a mortgage for the purposes of section 15AC.

6 Registered documents and dealings
Any interest, instrument, agreement, statement, notice, order, direction, bond, penalty or other document or dealing on the mining register before the commencement of section 15AH of the Bill will be considered as other dealings for the purpose of that section.
7 Royalty
Changes to the royalty provisions will commence on the first day of a new return period which falls on or after the day on which the amendments to Part 3 of the Bill commence. This commencement date was chosen so that in the event the commencement date is within a return period, a return would not need to set out two separate royalty methodologies.

8 Exploration licences
An exploration licence granted under the existing section 30A of the Mining Act, will continue to be granted under that section until the expiry of the aggregate 5 year term, after which, the explorer will transition to the new section 30A as amended by this Bill. The explorer may apply for a further 6 year renewal under the new Act but would be subject to a 50% relinquishment at the expiry of those 11 years, and may apply for a further 6 year renewal but would be subject to a 100% relinquishment at the expiry of those 17 years.

Similarly, a subsequent licence granted under the existing section 30AB of the current Mining Act will continue to be granted under that section until the expiry of the aggregate 5 year term, after which, the explorer will transition to the new section 30A as amended by this Bill. If the explorer has only had one subsequent licence over that area, the explorer may apply for a 6 year renewal under the new Act but would be subject to a 50% relinquishment at the expiry of those 16 years, and may apply for a further 6 year renewal but would be subject to a 100% relinquishment at the expiry of those 22 years. (5 year exploration licence, 5 year subsequent licence, 5 year subsequent licence, and 6 year renewal under new 30A).

9 Expenditure
An expenditure obligation imposed under section 30(1)(b) of the current Mining Act as a condition of an exploration licence before the commencement of the Bill will be taken to set out the level of expenditure that applies in relation to the licence for the purposes of section 30AAA of the Bill.

10 Reinstatement of tenements
The Minister’s power to reinstate a tenement will not apply to tenements that have expired before the commencement of the Bill.

11 Mining Rehabilitation Fund
The Minister may impose a requirement under section 62AA of the principal Act, as enacted by this Act, in relation to a mining tenement (or mineral tenement) granted before the enactment of that section.

12 Jurisdiction relating to tenements and monetary claims
The amendment to the monetary limit to the jurisdiction of the Warden’s Court and the Court’s ability to hear monetary claims will only apply to proceedings commenced after the commencement of the proposed amendments to section 67 of the current Mining Act.

13 Programs for environment protection and rehabilitation
The transitional provisions clarifies, for the avoidance of doubt, that operations approvals granted prior to the 2011 amendments (such as EWAs, DEFs, MARPs, etc.) will be deemed PEPRs for the purposes of the Bill.

Some historic mines in South Australia still operate under an Operating Approval (called a Development Program) in accordance with the Mines and Works Inspection Regulations 2013. In order to transition these to the standards of operating approvals granted under Part 10A of the Mining Act (PEPRs), the
Bill proposes a transitional provision to achieve this.

14 Caveats
A caveat created before the commencement of section 15AE of the Bill can be registered on the mining register under the new caveat regime as set out in sections 15AE and 15AF of the Bill. Existing caveats registered on the mining register before the commencement of this Bill will be considered a caveat for the purposes of section 15AE.

15 Private mines
A Mine Operations Plan (MOP) will be deemed to be an approved PEPR and the approved MOP (deemed to be an approved PEPR) will transition to the standards of a PEPR if or when a PEPR review is required after the expiry of 15 years. The compliance tools provided for in Part 11B will continue to apply to private mines, even after MOPS transition to PEPRs.

16 Safety net
Any safety net agreement entered into prior to the repeal of section 84A of the current Opal Mining Act will continue as if the section had not been repealed.

17 Interpretation
This section provides the definition for principal Act for the purposes of the Opal Mining Act 1995.

18 Opal mining register
The parts of the mining register relating to opal regulation managed by the Mining Registrar under the Mining Act, will on the commencement of this Bill, be taken to form part of the new opal mining register.

19 Caveats
A caveat created before the commencement of section 135 of the Bill (section 26 of the Opal Mining Act) can be registered on the opal mining register under the new caveat regime as set out in sections 26 and 26A of the Bill. Existing caveats registered on the mining register before the commencement of this Bill will be considered a caveat for the purposes of section 26.

20 Safety net
Any safety net agreement entered into prior to the repeal of section 91 of the current Opal Mining Act will continue as if the section had not been repealed.

21 Jurisdiction relating to tenements and monetary claims
The amendment of section 72(2a) (a) does not apply in respect of proceedings commenced before the commencement of that section (and those proceedings may continue as if this Act had not been enacted); and (b) apply in respect of proceedings commenced after the commencement of that section (including proceedings in respect of a claim arising before the commencement of that section).
Further contact details

The Statutes Amendment (Mineral Resources) Bill 2018 is currently in Parliament.

If you wish to know more about the Bill, please contact us via Email: DEM.miningactreview@sa.gov.au, or Phone: (08) 8429 2534.