

# Mining Regulation 2003

As at 17 June 2005

## Part 1 - Preliminary

### 1 Name of Regulation

This Regulation is the *Mining Regulation 2003* .

### 2 Commencement

This Regulation commences on 1 September 2003.

**Note:** This Regulation replaces the *Mining (General) Regulation 1997* which is repealed on 1 September 2003 by section 10 (2) of the *Subordinate Legislation Act 1989* . For the purposes of consolidation, this Regulation repeals the *Mining (Savings and Transitional) Regulation 1992* and the *Mining (Boards of Management) Regulation 2000* and incorporates such of the provisions of those regulations as are of current operation.

### 3 Definitions

(1) In this Regulation:

**agricultural lime** means crushed or ground limestone suitable for use in improving the condition of soil.

**appointed member** means a member of the board who is appointed by the Minister.

**approved form** in relation to an application, means the form approved for the application under section 382 of the Act.

**area of operations** of a board means the area for which the board is constituted.

**board** means a board of management constituted by the Minister under section 359 of the Act.

**chief inspector of mines** means the Chief Inspector of Mines appointed for the purposes of the *Mines Inspection Act 1901* .

**clay/shale** means clay or shale other than structural clay, but does not include clay or shale used in road making or as fill.

**Council** means the Mine Safety Advisory Council established under section 341 of the Act.

**dimension stone** means any rock, other than sandstone, that is quarried in blocks or slabs for building, decorative or other purposes.

**Geocentric Datum of Australia** has the same meaning as it has in section 3 of the *Surveying Act 2002* .

**geothermal substance** means any substance occurring naturally or artificially underground that is heated by the natural processes of the earth to a temperature in excess of 100 degrees Celsius, such as hot dry rock, but does not include:

- (a) any other substance referred to in Schedule 2, or
- (b) petroleum.

**land identification map** means:

- (a) in the case of land within the Eastern or Central Division of New South Wales--the relevant County, Parish, Town or Village map kept at the local office of the Department of Lands, or
- (b) in the case of land in the Western Division of New South Wales--the relevant 1:100,000 cadastral map kept at the Dubbo office of the Western Lands Commissioner.

**Map Grid of Australia** means a rectangular co-ordinate system using a Transverse Mercator projection with zones 6 degrees wide and based on the Geocentric Datum of Australia.

**member** means any member of the Council.

**quartzite** does not include sandstone.

**standard map** means a map that complies with the provisions of clause 9.

**statutory surveying requirements** means the requirements of the *Surveying Act 2002* , and the regulations under that Act, in relation to the conduct of surveys.

**structural clay** means clay or shale used in the manufacture of fired clay building or construction products, such as bricks, pipes and quarry tiles.

**survey mark** includes a survey mark placed in accordance with the statutory surveying requirements and includes any other mark in the nature of a survey mark that has been placed for the purposes of the Act by, or at the direction of, a mining registrar.

**the Act** means the *Mining Act 1992* .

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

#### **4 Notes**

Notes included in this Regulation do not form part of this Regulation.

#### **5 Meaning of "mineral"**

The substances listed in Schedule 2 are prescribed as minerals for the purposes of the definition of **mineral** in the Dictionary at the end of the Act.

#### **6 Meaning of "group of minerals"**

The groups of minerals listed in Schedule 3 are prescribed as groups of minerals for the purposes of the definition of **group of minerals** in the Dictionary at the end of the Act.

#### **7 Meaning of "mining purpose"**

The following purposes are prescribed as mining purposes for the purposes of the definition of **mining purpose** in the Dictionary at the end of the Act:

- (a) the construction, maintenance or use (in or in connection with mining operations) of:
  - (i) any building or mining plant, or
  - (ii) any road, railway, tramway, bridge or jetty, or
  - (iii) any reservoir, dam, drain or water race, or

- (iv) any cable, conveyor, pipeline, telephone line or signalling system, or
- (v) any bin, magazine or fuel chute, or
- (vi) any plant nursery,
- (b) opal puddling,
- (c) the stockpiling or depositing of overburden, ore or tailings,
- (d) the storage of fuel, machinery, timber or equipment for use in or in connection with mining operations,
- (e) the generation and transmission of electricity for use in or in connection with mining operations,
- (f) the construction, maintenance and use (in or in connection with mining operations) of any drillhole or shaft for:
  - (i) drainage of gas, or
  - (ii) drainage or conveyance of water, or
  - (iii) ventilation, or
  - (iv) conveyance of electricity, or
  - (v) conveyance of materials, or
  - (vi) communications, or
  - (vii) emergency access to underground workings.

### **8 Meaning of "landholder"**

- (1) Persons who are recognised by the Director-General as being landholders of a particular parcel of land are landholders for the purposes of the definition of **landholder** in the Dictionary at the end of the Act.
- (2) Any person may apply to the Director-General for recognition as a landholder of specified land.
- (3) The application must indicate the grounds on which the applicant claims to be a landholder of the land.
- (4) The Director-General may require the application to be verified by statutory declaration.
- (5) The Director-General must decide whether or not to recognise the applicant as a landholder of the land and must cause written notice of the decision to be given to the applicant as soon as practicable after it is made.
- (6) The Director-General may at any time, by notice in writing served on the person, withdraw a person's recognition as a landholder of specified land.
- (7) The Director-General must cause a register to be maintained in which the following particulars are to be recorded:
  - (a) particulars identifying each parcel of land in respect of which the Director-General recognises any person as being a landholder,
  - (b) the name and address of each such person.
- (8) The register is to be kept available at the head office of the Department for inspection, free of charge, by members of the public.

### **9 Standard map**

A map is a standard map for the purposes of this Regulation if it is:

- (a) a standard topographic-cadastral map at the scale of:
  - (i) 1:25,000, or
  - (ii) if a map at the scale of 1:25,000 is not available--1:50,000, or
  - (iii) if maps at the scale of 1:25,000 or 1:50,000 are not available--1:100,000,
 published by the Department of Lands, the Department of Mineral Resources or the Australian Surveying and Land Information Group, or
- (b) if a map referred to in paragraph (a) is not available, a cadastral map published by a Government Department or public authority, whether of New South Wales or of the Commonwealth, or
- (c) if maps referred to in paragraphs (a) and (b) are not available, an aerial photograph or a

topographic map of a standard acceptable to the Director-General.

## Part 2 - Prospecting and mining generally

### 10 Mining and prospecting for privately owned minerals

(1) For the purposes of section 8 (1) (b) of the Act, the security to be lodged with the Director-General:

(a) must be:

- (i) in the form of cash, or
- (ii) in the form of a security instrument of a kind approved by the Minister, being an instrument issued by an authorised deposit-taking institution, or
- (iii) in any other form that the Director-General may approve, and

(b) is to be of an amount determined by the Director-General.

(2) For the purposes of section 8 (1) (c) of the Act, the conditions in accordance with which a person must prospect for or mine privately owned minerals are the conditions set out in Schedule 4.

(3) For the purposes of section 8 (2) (c) of the Act, the prescribed manner for describing the land on which prospecting or mining operations are to be carried on is by means of:

- (a) a plan drawn in accordance with the statutory surveying requirements, or
- (b) a standard map showing the land to which the relevant notice relates by means of distinctive marking or colouring, indicating the distance and bearing of each side of the area and a connection, by distance and bearing, to a survey mark.

### 11 Fossicking

(1) A person must not:

(a) fossick for minerals using explosives, power-operated equipment or any other equipment except hand-held implements, or

(b) in the course of fossicking for minerals:

- (i) excavate or clear any land or waters, or
- (ii) damage any bushrock or remove any bushrock from the site, or

(c) in the course of fossicking for minerals, remove more than:

- (i) 25 kilograms of minerals (other than gold or gemstones), or
- (ii) 50 grams of gold (except where found as nuggets of 10 grams or greater), or
- (iii) 100 grams of gemstones,

during any single period of 48 hours, or

(d) fail to replace (where practicable) any soil, rock or other material that the person has disturbed in the course of fossicking for minerals.

Maximum penalty: 50 penalty units.

**Note:** The language of part of this subclause mirrors the language of part of section 24LA (Low impact future acts) of the *Native Title Act 1993* of the Commonwealth. That section refers, in part, to an act (in relation to particular land or waters) that does not consist of, authorise or otherwise involve "the excavation or clearing of any of the land or waters" or "mining (other than fossicking by using hand-held implements)".

(2) In this clause, **gemstone** means a Group 6 or Group 7 mineral.

**Note:** Group 6 and Group 7 minerals are listed in Schedule 3.

### 12 Activities taken not to be prospecting or mining

(1) For the purposes of section 11A of the Act, any activity carried out on the following land by Sita Australia Pty Ltd (ACN 002 902 650) for or in connection with the use of the land for waste disposal (including the extraction of material for the purpose of recovering minerals from the material) is taken not to be prospecting or mining:

The land within Reserve No 3228 (constituted under section 367 of the Act by an order published in Gazette No 141 of 17 November 1995 at page 7866), being land situated at Badgerys Creek and having an area of approximately 56.7 hectares.

(2) For the purposes of section 11A of the Act, any activity carried out for the purpose of recovering:

- (a) halite (including solar salts), or
- (b) magnesium salts, or
- (c) potassium salts, or
- (d) sodium salts,

from evaporation basins is taken not to be prospecting or mining if the person who carries out the activity has first given notice of the person's intention to do so to the Director-General.

(3) For the purposes of section 11A of the Act, any activity carried out on the land described in Schedule 5 (and shown by some distinctive marking on the maps marked "Hunter Enviro-Mining" held in the Department) by Hunter Enviro-Mining (Operations) Pty Limited (ACN 096 170 633) for or in connection with the use of the land for the environmental rehabilitation of coal reject emplacement sites (including the extraction of material for the purpose of recovering minerals from the material) is taken not to be prospecting or mining.

(4) A person who carries out any activity described in subclause (1), (2) or (3) must pay royalty to the Minister in respect of any publicly owned minerals recovered as a consequence of the carrying out of that activity.

(5) In this clause, **evaporation basins** means natural depressions, modified natural depressions or man-made structures into which saline groundwater or surface water is pumped or drained for disposal by evaporation, in association with the mitigation or prevention of salinisation of land or water resources.

## **Part 3 - Authorities**

### **Division 1 - Exploration licences**

#### **13 Application for exploration licence: manner of describing land**

For the purposes of section 13 (3) (a) of the Act, the prescribed manner for describing the land over which an exploration licence is sought is by means of:

- (a) except as provided by paragraph (b)--the area, block and unit references identifying the land, as determined in accordance with Schedule 6, or
- (b) in the case of an application for an exploration licence for Group 9 minerals--a standard map showing the co-ordinates (either by reference to Map Grid of Australia co-ordinates or by reference to latitude and longitude determined by reference to the Geocentric Datum of Australia) of all points where there is a change in direction of the boundaries of the land.

**Note:** Group 9 minerals are listed in Schedule 3.

#### **14 Applications for low-impact exploration licences**

(1) A low-impact exploration licence is not to be granted during the period of 4 months following service of notice of the application for the licence on the representative bodies referred to in section 32D (1) (c) of the Act.

(2) This clause extends to applications made, but not granted, before the commencement of this clause.

### **Division 2 - Assessment leases**

#### **15 Application for assessment lease: manner of describing land**

For the purposes of section 33 (3) (a) of the Act, the prescribed manner for describing the land over which an assessment lease is sought is by means of:

- (a) except as provided by paragraph (b):
  - (i) a plan drawn in accordance with the statutory surveying requirements, or
  - (ii) a standard map showing the land to which the application relates by means of

distinctive marking or colouring, indicating the distance and bearing of each side of the area and a connection, by distance and bearing, to a survey mark, or  
(iii) a plan (certified by a registered surveyor as being accurate) showing co-ordinate values at each point at which the boundaries of the land concerned change direction and indicating the land to which the application relates by means of distinctive marking or colouring, or  
(iv) the area, block and unit references identifying the land, as determined in accordance with Schedule 6, or

(b) in the case of an application for an assessment lease for coal--a standard map showing the co-ordinates (either by reference to Map Grid of Australia co-ordinates or by reference to latitude and longitude determined by reference to the Geocentric Datum of Australia) of all points where there is a change in direction of the boundaries of the land.

### **Division 3 - Mining leases**

#### **16 Application for mining lease: manner of describing land**

For the purposes of section 51 (3) (a) and (5) (a) of the Act, the prescribed manner for describing the land over which a mining lease is sought is by means of:

(a) except as provided by paragraph (b):

(i) a plan drawn in accordance with the statutory surveying requirements, or  
(ii) a standard map showing the land to which the application relates by means of distinctive marking or colouring, indicating the distance and bearing of each side of the area and a connection, by distance and bearing, to a survey mark, or  
(iii) a plan (certified by a registered surveyor as being accurate) showing co-ordinate values at each point at which the boundaries of the land concerned change direction and indicating the land to which the application relates by means of distinctive marking or colouring, or

(b) in the case of an application for a mining lease for coal--a standard map showing the co-ordinates (either by reference to Map Grid of Australia co-ordinates or by reference to latitude and longitude determined by reference to the Geocentric Datum of Australia) of all points where there is a change in direction of the boundaries of the land.

#### **17 Aggregation of labour and expenditure conditions**

(1) The Minister may, by order, declare that 2 or more mining leases are taken to be a single mining lease for the purpose of enabling the labour and expenditure conditions of those leases to be aggregated.

(2) A declaration is subject to any conditions that the Minister thinks fit to impose.

(3) The effect of a declaration is to allow the holder or holders of the mining leases concerned to comply with the labour and expenditure conditions of those leases, subject to any conditions on which the declaration is made, as if they were the conditions of a single mining lease over the whole of the land the subject of those mining leases.

(4) For the purpose of calculating the application fee, any mining leases whose labour and expenditure conditions are currently aggregated as a result of a previous declaration are taken to be a single mining lease.

(5) An order under this clause takes effect on the date on which written notice of the order is served on the holder or holders of the mining leases concerned or on any later date that may be specified in the order.

### **Division 4 - Consolidation of mining leases**

#### **18 Preparation of proposed lease**

For the purposes of section 86 (2) of the Act, the prescribed manner for describing the land over which a consolidated mining lease is proposed to be granted is by means of a compilation of the various plans relating to the leases to be consolidated.

## **Division 5 - Renewal, transfer and cancellation of authorities**

### **19 Application for renewal of authority: manner of describing land**

(1) For the purposes of section 113 (5) of the Act, the prescribed manner for describing part of the land over which the renewal of an authority is sought is by means of a description, prepared in accordance with clause 13, 15 or 16, as the case requires, of the land over which the renewal is sought.

(2) For the purposes of section 113 (6) of the Act, 5 is the maximum number of parts of an exploration area in respect of which an application for renewal of an exploration licence may be made.

### **20 Transfers of authorities**

For the purposes of section 120 (2) (c) of the Act, the particulars to accompany an application for approval of the transfer of an authority are the particulars required by the approved form for such an application.

### **21 Request for cancellation of authority: manner of describing land**

For the purposes of section 125 (2) (b) of the Act, the prescribed manner of describing the land in respect of which a cancellation of an authority (in relation to part only of that land) is sought is by means of:

- (a) a plan drawn in accordance with the statutory surveying requirements, or
- (b) a description, prepared in accordance with clause 13, 15 or 16, as the case requires, of the land over which the cancellation is sought, or
- (c) a map on which the land is shown in a distinctive manner, indicating, for example, the distance and bearing of each side of the area (or cadastral or topographic features forming sides of the area) and a connection, by distance and bearing, to a survey mark.

## **Division 6 - Authorities generally**

### **22 Records of authorities**

For the purposes of section 159 (2) of the Act, the records required to be kept:

- (a) must be kept in written form or by means of computer equipment, and
- (b) must contain the following particulars:
  - (i) the type of authority and the identifying number or code allocated to it,
  - (ii) the date on which the authority was first granted,
  - (iii) the name and address of each person who is a holder of the authority,
  - (iv) a description of the land over which the authority is in force,
  - (v) the mineral or minerals, or the group or groups of minerals, to which the authority relates,
  - (vi) the mining purpose or mining purposes to which the authority relates (in the case of a mining lease granted in respect of a mining purpose or mining purposes),
  - (vii) the period for which the authority is to have effect,
  - (viii) the current status of the authority (that is, "current", "expired" or "cancelled") and details of any operations suspended under the authority,
  - (ix) any interest in the authority registered under section 161 of the Act.

### **23 Colliery holdings**

(1) For the purposes of section 163 (1) of the Act, the register required to be kept must be kept in written form or by means of computer equipment.

(2) For the purposes of section 163 (2) (b) of the Act, the register required to be kept must contain the following particulars for each colliery holding:

- (a) the name of the colliery holding,
- (b) the name and address of each person who has an interest in the colliery holding,

- (c) a description of the land comprised in the colliery holding,
- (d) the current status of the land (that is, "subject to mining lease" or "not subject to mining lease").

(3) For the purposes of section 163 (5) (b) of the Act, the prescribed particulars to accompany an application for registration of land as a colliery holding or as part of an existing colliery holding are the particulars required by the approved form for such an application.

## **24 Rights of way**

(1) For the purposes of section 164 (1) of the Act, a right of way to which the holder of an authority is entitled under that section is to be marked out with:

- (a) steel star pickets, or
- (b) other posts having a diameter of at least 75 millimetres,

along the route of the right of way.

(2) The pickets or posts are to be fixed into the ground:

- (a) at intervals of not more than 150 metres, and
- (b) at each point where the route of the right of way changes direction,

and must project at least one metre above the ground.

(2A) Alternatively, a right of way may be marked out with steel star pickets fixed into the ground, and projecting at least one metre above the ground:

- (a) in the case of a right of way which follows the route of an existing road or track:
  - (i) at the start and finish of the right of way, and
  - (ii) at the midpoint of the right of way, or
- (b) in the case of a right of way which does not follow the route of an existing road or track:

- (i) at the start and finish of the right of way, and
- (ii) at intervals of not more than 500 metres and at each point where the route of the right of way changes direction.

(2B) A star picket referred to in subclause (2A) must bear a tag showing:

- (a) the co-ordinates of the picket's position, and
- (b) the serial number of the authority, and
- (c) the name of the holder of the authority.

(2C) For the purposes of subclause (2B) (a), it is sufficient for the co-ordinates of a picket to be established by means of a Global Positioning System device.

(2D) If a right of way is marked out in accordance with subclause (2A), the holder of the authority must prepare a map of the right of way and cause copies of the map to be given to the mining registrar and to each landholder affected by the right of way.

(2E) A map referred to in subclause (2D) must describe the route of the right of way (which must be no more than 10 metres wide) and must indicate the co-ordinates of the position of each picket that bears a tag referred to in subclause (2B).

(3) The holder of the authority who is entitled to the right of way must ensure that any such picket or post is properly maintained.

Maximum penalty: 20 penalty units.

(4) For the purposes of section 164 (6) of the Act, the exercise of a right of way conferred by that section is subject to the following conditions:

- (a) the holder of the authority who is entitled to the right of way is to pay to the landholder such amount, by way of compensation, as is agreed in writing by the holder of the authority and the landholder (or, in default of agreement, as is assessed by a warden at the request of the holder of the authority or the landholder),
- (b) if the right of way passes over:
  - (i) any garden, orchard or land under cultivation, or
  - (ii) any land on which is situated any improvement, being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal

area, soil conservation work or other valuable work or structure, being land that was, when the right of way was marked out, land of that nature, the holder of the authority who is entitled to the right of way is not to exercise the right of way otherwise than in accordance with the consent of the landholder.

(5) The amount agreed or assessed for the purposes of subclause (4) (a) may be a fixed amount or an amount calculated at a fixed rate.

## **Part 4 - Mineral claims**

### **25 Marking out of proposed claim area**

(1) For the purposes of section 176 (1) of the Act, a proposed claim is to be marked out with:

- (a) steel star pickets, or
- (b) other posts having a diameter of at least 75 millimetres,

along the boundaries of the proposed claim area.

(2) The pickets or posts are to be fixed into the ground at each point where the boundaries change direction and must project at least one metre above the ground.

(3) The boundaries of the proposed claim are to be indicated:

- (a) by means of trenches at least 150 millimetres in depth, or
- (b) if the cutting of trenches is impracticable, by means of stone walls at least 150 millimetres in height,

extending along the boundaries for a distance of at least one metre from each post or picket.

(4) There is to be attached to:

- (a) the picket or post indicating the northernmost corner of the proposed claim, or
- (b) if there are 2 or more such pickets or posts, the easternmost of them,

a board or plate (made of wood or metal) to which is fixed a notice of the proposed claim.

(5) The notice is to contain the following particulars:

- (a) the words "MINERAL CLAIM" in block letters prominently displayed at the head of the notice,
- (b) the dimensions of the land over which the proposed claim has been marked out,
- (c) the date on which the proposed claim was marked out,
- (d) the name and address of the applicant for the proposed claim.

(6) As soon as practicable after a mineral claim is granted, the holder of the claim must include the following particulars on the notice:

- (a) the date on which the claim was granted,
- (b) the number of the claim.

(7) The requirements of subclause (6) are satisfied if the holder of the claim replaces the notice with a new notice containing the particulars required by subclauses (5) and (6).

(8) The applicant for a mineral claim must ensure that any such picket or post, and any such notice, is properly maintained until the application is determined and, if the claim is granted, while the claim is in force.

Maximum penalty: 20 penalty units.

(9) For the purposes of section 176 (2) of the Act:

- (a) the area marked out for a proposed mineral claim must, as far as practicable, be square or rectangular in shape, and
- (b) no side of the area may exceed 200 metres in length.

### **26 Notice of intention to apply for mineral claim: identification of land**

For the purposes of section 177 (2) of the Act, the land to which an application for a mineral claim relates must be identified in a manner that clearly indicates the extent of that land, for example:

- (a) by means of a plan drawn in accordance with the statutory surveying requirements, or
- (b) by means of a map on which the land is shown in some distinctive manner, indicating the distance and bearing of each side of the area and a connection, by distance and bearing,

to a survey mark.

### **27 Application for granting of mineral claim: identification of land**

For the purposes of section 178 (2) (a) of the Act, the land to which an application for a mineral claim relates must be identified in a manner that clearly indicates the extent of that land, for example:

- (a) by means of a plan drawn in accordance with the statutory surveying requirements, or
- (b) by means of a map on which the land is shown in some distinctive manner, indicating the distance and bearing of each side of the area and a connection, by distance and bearing, to a survey mark.

### **28 Security to be lodged in respect of mineral claim**

For the purposes of section 190 (4) (b) of the Act, the security to be lodged with the mining registrar:

- (a) must be:
  - (i) in the form of cash, or
  - (ii) in the form of a security instrument of a kind approved by the Minister, being an instrument issued by an authorised deposit-taking institution, or
  - (iii) in any other form that the Director-General may approve, and
- (b) must be of an amount that the Director-General may determine.

### **29 Determination of order of dealing with simultaneous applications for mineral claims**

(1) For the purposes of section 190 (6) of the Act, the prescribed manner of determining the order in which simultaneous applications for mineral claims are to be dealt with is for the mining registrar to conduct a ballot in accordance with the following provisions:

- (a) the names of each of the applicants are to be written on separate tickets, each of the same size and shape,
  - (b) the tickets are to be placed in a box or other receptacle and thoroughly mixed,
  - (c) the mining registrar is then, without looking, to select each of the tickets, one by one, from the box or receptacle.
- (2) The ballot is to be conducted in the presence of any of the applicants who wish to be present.
- (3) The applications are to be dealt with in the order in which the tickets bearing the applicants' names are drawn from the box or receptacle.

### **30 Conditions of mineral claim**

For the purposes of section 192 (1) (b) of the Act, the conditions to which a mineral claim referred to in that paragraph is to be subject:

- (a) must include:
  - (i) any conditions as to mining safety that the chief inspector of mines may require, and
  - (ii) any conditions that the Director-General may require, and
  - (iii) in the case of land within an exempted area--any conditions that the controlling body for the area may require, and
- (b) must not, except to the extent required by paragraph (a), include conditions other than those approved by the Director-General.

### **31 Renewal of mineral claim: variation of conditions**

For the purposes of section 198 (3) (b) of the Act, the conditions to which a renewed mineral claim is to be subject:

- (a) must include:
  - (i) any conditions as to mining safety that the chief inspector of mines may require, and
  - (ii) any conditions that the Director-General may require, and
  - (iii) in the case of land within an exempted area--any conditions that the controlling body for the area may require, and
- (b) must not, except to the extent required by paragraph (a), include conditions other than

those approved by the Director-General.

### **32 Transfer of mineral claim: variation of conditions**

For the purposes of section 201 (3) (b) of the Act, the conditions to which a transferred mineral claim is to be subject:

(a) must include:

- (i) any conditions as to mining safety that the chief inspector of mines may require, and
- (ii) any conditions that the Director-General may require, and
- (iii) in the case of land within an exempted area--any conditions that the controlling body for the area may require, and

(b) must not, except to the extent required by paragraph (a), include conditions other than those approved by the Director-General.

### **33 Request for cancellation of mineral claim: manner of describing land**

For the purposes of section 203 (2) (b) of the Act, the prescribed manner of describing the land in respect of which a cancellation of a mineral claim (in relation to part only of that land) is sought is by means of:

- (a) a plan drawn in accordance with the statutory surveying requirements, or
- (b) a map on which the land is shown in some distinctive manner, indicating the distance and bearing of each side of the area and a connection, by distance and bearing, to a survey mark.

### **34 Rights of way**

(1) For the purposes of section 211 (1) of the Act, a right of way to which the holder of a mineral claim is entitled under that section is to be marked out with:

- (a) steel star pickets, or
- (b) other posts having a diameter of at least 75 millimetres,

along the route of the right of way.

(2) The pickets or posts are to be fixed into the ground:

- (a) at intervals of not more than 150 metres, and
- (b) at each point where the route of the right of way changes direction,

and must project at least one metre above the ground.

(2A) Alternatively, a right of way may be marked out with steel star pickets fixed into the ground, and projecting at least one metre above the ground:

- (a) in the case of a right of way which follows the route of an existing road or track:
  - (i) at the start and finish of the right of way, and
  - (ii) at the midpoint of the right of way, or
- (b) in the case of a right of way which does not follow the route of an existing road or track:

- (i) at the start and finish of the right of way, and
- (ii) at intervals of not more than 500 metres and at each point where the route of the right of way changes direction.

(2B) A star picket referred to in subclause (2A) must bear a tag showing:

- (a) the co-ordinates of the picket's position, and
- (b) the serial number of the mineral claim, and
- (c) the name of the holder of the mineral claim.

(2C) For the purposes of subclause (2B) (a), it is sufficient for the co-ordinates of a picket to be established by means of a Global Positioning System device.

(2D) If a right of way is marked out in accordance with subclause (2A), the holder of the mineral claim must prepare a map of the right of way and cause copies of the map to be given to the mining registrar and to each landholder affected by the right of way.

(2E) A map referred to in subclause (2D) must describe the route of the right of way (which must be no more than 10 metres wide) and must indicate the co-ordinates of the position of each picket that bears a tag referred to in subclause (2B).

(3) The holder of the mineral claim who is entitled to the right of way must ensure that any such picket or post is properly maintained.

Maximum penalty: 20 penalty units.

(4) For the purposes of section 211 (6) (a) of the Act, the exercise of a right of way conferred by that section is subject to the following conditions:

(a) the holder of the mineral claim who is entitled to the right of way is to pay to the landholder such amount, by way of compensation, as is agreed in writing by the holder of the mineral claim and the landholder (or, in default of agreement, as is assessed by a warden at the request of the holder of the mineral claim or the landholder),

(b) if the right of way passes over:

(i) any garden, orchard or land under cultivation, or

(ii) any land on which is situated any improvement, being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure,

being land that was, when the right of way was marked out, land of that nature, the holder of the mineral claim who is entitled to the right of way is not to exercise the right of way otherwise than in accordance with the consent of the landholder.

(5) The amount agreed or assessed for the purposes of subclause (4) (a) may be a fixed amount or an amount calculated at a fixed rate.

### **35 Compensation arising under mineral claim**

For the purposes of section 266 (4) (c) of the Act, the prescribed amount is nil.

## **Part 5 - Opal prospecting licences**

### **36 Objections**

For the purposes of section 222 (1) (b) of the Act, the prescribed grounds of objection to the constitution of land as an opal prospecting area, or to the addition of the land to an existing opal prospecting area, are as follows:

(a) that the land to which the objection relates is a garden or orchard or is within 50 metres of a garden or orchard,

(b) that on the land, or within 200 metres of the land, there is a dwelling-house or a woolshed or shearing shed,

(c) that the land is, or is within 200 metres of, a watering place,

(d) that on the land, or within 50 metres of the land, there is an improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes.

### **37 Determination of order of dealing with simultaneous applications for opal prospecting licences**

(1) For the purposes of section 226 (3) of the Act, the prescribed manner of determining the order in which simultaneous applications for opal prospecting licences are to be dealt with is for the mining registrar to conduct a ballot in accordance with the following provisions:

(a) the names of each of the applicants are to be written on separate tickets, each of the same size and shape,

(b) the tickets are to be placed in a box or other receptacle and thoroughly mixed,

(c) the mining registrar is then, without looking, to select each of the tickets, one by one, from the box or receptacle.

(2) The ballot is to be conducted in the presence of any of the applicants who wish to be present.

(3) The applications are to be dealt with in the order in which the tickets bearing the

applicants' names are drawn from the box or receptacle.

### **38 Securities to be lodged**

For the purposes of section 228 (4) of the Act, the security to be lodged with the mining registrar:

- (a) must be:
  - (i) in the form of cash, or
  - (ii) in the form of a security instrument of a kind approved by the Minister, being an instrument issued by an authorised deposit-taking institution, or
  - (iii) in any other form that the Director-General may approve, and
- (b) must be of an amount that the Director-General may determine.

### **38A Rights of way**

(1) For the purposes of section 235C (1) of the Act, a right of way to which the holder of an opal prospecting licence is entitled under that section is to be marked out with:

- (a) steel star pickets, or
- (b) other posts having a diameter of at least 75 millimetres,

along the route of the right of way.

(2) The pickets or posts are to be fixed into the ground:

- (a) at intervals of not more than 150 metres, and
- (b) at each point where the route of the right of way changes direction,

and must project at least one metre above the ground.

(3) Alternatively, a right of way may be marked out with steel star pickets fixed into the ground, and projecting at least one metre above the ground:

- (a) in the case of a right of way which follows the route of an existing road or track:
  - (i) at the start and finish of the right of way, and
  - (ii) at the midpoint of the right of way, or
- (b) in the case of a right of way which does not follow the route of an existing road or track:

- (i) at the start and finish of the right of way, and
- (ii) at intervals of not more than 500 metres and at each point where the route of the right of way changes direction.

(4) A star picket referred to in subclause (3) must bear a tag showing:

- (a) the co-ordinates of the picket's position, and
- (b) the serial number of the opal prospecting licence, and
- (c) the name of the holder of the opal prospecting licence.

(5) For the purposes of subclause (4) (a), it is sufficient for the co-ordinates of a picket to be established by means of a Global Positioning System device.

(6) If a right of way is marked out in accordance with subclause (3), the holder of the opal prospecting licence must prepare a map of the right of way and cause copies of the map to be given to the mining registrar and to each landholder affected by the right of way.

(7) A map referred to in subclause (6) must describe the route of the right of way (which must be no more than 10 metres wide) and must indicate the co-ordinates of the position of each picket that bears a tag referred to in subclause (4).

(8) The holder of the opal prospecting licence who is entitled to the right of way must ensure that any such picket or post is properly maintained.

Maximum penalty: 20 penalty units.

(9) For the purposes of section 235C (6) (a) of the Act, the exercise of a right of way conferred by that section is subject to the condition that, if the right of way passes over:

- (a) any garden, orchard or land under cultivation, or
- (b) any land on which is situated any improvement, being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure,

being land that was, when the right of way was marked out, land of that nature, the holder of the opal prospecting licence who is entitled to the right of way is not to exercise the right

of way otherwise than in accordance with the consent of the landholder.

### **39 Compensation arising under opal prospecting licence**

For the purposes of section 267 (4) (c) of the Act, the prescribed amount is nil.

## **Part 5A - Access management plans for small-scale titles**

### **39A Miners' representative**

A person is a **miners' representative**, in relation to any access management plan over land, if the person (being a salaried or honorary office-holder) is nominated by any of the following bodies, by written notice served on the landholder, to represent the interests of holders (and potential holders) of small-scale titles with respect to that land:

- (a) the Lightning Ridge Miners' Association, in relation to land within the area covered by that Association,
- (b) the Grawin-Glengarry Sheeppark Miners Association, in relation to land within the area covered by that Association.

### **39B Lodgment of access management plans**

An access management plan that has been agreed on under section 236E of the Act, or determined under section 236F or 236G of the Act, is to be sent or delivered to the Director-General at the Lightning Ridge office of the Department.

### **39C Applications for determination of access management plans**

(1) An application under section 236F of the Act for determination of an access management plan over land must be accompanied by the following:

- (a) a copy of the notice served on each landholder of the land under clause 39A,
- (b) a copy of the notice served on each landholder of the land under section 236E (1) of the Act,
- (c) documentary evidence of the landholder's interest in the land,
- (d) a statement as to the date on which, and the manner in which, each such notice was served,
- (e) copies of any correspondence (including faxes and e-mails) between the miners' representative and any landholder of the land,
- (f) a statement as to what steps have been taken to reach agreement on an access management plan over the land, and as to what matters are not yet agreed,
- (g) a draft access management plan in a form acceptable to the applicant.

(2) For the purpose of determining such an application, the Director-General may require the miners' representative or the landholder, or both of them, to provide the Director-General with alternative or amended versions of a draft access management plan.

## **Part 6 - Evidence of powers of entry**

### **40 Certificates of authority**

For the purposes of section 248 (2) of the Act:

- (a) an inspector's certificate of authority is to be in Form 1, and
- (b) a royalty officer's certificate of authority is to be in Form 2.

### **40A Granting of permits**

(1) A permit under section 254 of the Act is not to be granted to any applicant unless the Director-General is satisfied:

- (a) as to the applicant's identity, having inspected a document (such as a driver licence) that bears both the applicant's photograph and the applicant's residential address, and
- (b) as to the applicant's mining qualifications.

(2) An applicant has satisfactory mining qualifications for the purposes of this clause if,

and only if:

- (a) the applicant is the holder of a mineral claim or an opal prospecting licence, or
- (b) the applicant has completed such course of instruction in relation to mining as is approved for the time being by the chief inspector of mines.

#### **41 Form of permit**

For the purposes of section 260 of the Act, a permit is to be in Form 3.

## **Part 7 - Compensation**

#### **42 Compensation arising under mining lease**

For the purposes of section 265 (3) of the Act, the prescribed period is the period of 28 days beginning on the date on which the mining lease takes effect.

#### **43 Assessment of compensation**

For the purposes of section 272 (1) (a) of the Act, the prescribed manner of assessing compensation is by making an assessment that has regard to the following factors:

- (a) the nature, quality, area and particular characteristics of the land concerned,
- (b) the proximity of the land to any building, structure, road, track or other facility,
- (c) the purpose for which the land is normally used.

## **Part 8 - Royalty**

#### **44 Rates of royalty for minerals other than coal**

(1) For the purposes of section 283 (1) (a) of the Act:

- (a) the base rate of royalty payable in respect of a mineral specified in Schedule 7 is the rate per tonne so specified of the quantity of mineral recovered, and
- (b) the base rate of royalty payable in respect of any other mineral (other than coal) is 4 per cent of the value of mineral recovered.

(2) (Repealed)

(3) For the purposes of section 283 (4) of the Act, the quantity of minerals (other than coal) recovered during any particular period is to be calculated in accordance with the following formula:

graphicwhere:

**R** represents the quantity of minerals recovered by the holder of the mining lease during that period.

**D** represents the quantity of minerals disposed of by the holder of the mining lease during that period as determined by the Minister, having regard to any records kept by the holder of the mining lease.

**S2** represents the quantity of minerals held (in the form in which they are disposed of) by the holder of the mining lease at the end of that period as determined by the Minister, having regard to any records kept by the holder of the mining lease.

**S1** represents the quantity of minerals held (in the form in which they are disposed of) by the holder of the mining lease at the beginning of that period as determined by the Minister, having regard to any records kept by the holder of the mining lease.

(4), (5) (Repealed)

#### **44A Rates of royalty for coal**

(1) For the purposes of section 283 (1) (a) of the Act, the base rate of royalty for coal is as

follows:

- (a) 7% of the value of coal recovered by open cut mining,
  - (b) 6% of the value of coal recovered by underground mining,
  - (c) 5% of the value of coal recovered by deep underground mining.
- (2) For the purposes of this clause, the quantity of coal taken to have been recovered during any particular period is the quantity of coal disposed of by the holder of the mining lease during the period, as determined by the Minister on the basis of the records kept by the holder of the mining lease.
- (3) For the purposes of this clause, if coal is recovered by the holder of a mining lease by more than one method of mining or if there is a dispute as to the method by which coal was recovered, the Minister may determine how it was recovered and may determine what value of coal was recovered by what method.
- (4) In this clause:

**deep underground mining** means mining carried out at a mine in which coal situated at a depth of 400 metres or more is extracted by means other than open cut methods.

**open cut mining** means mining carried out at a mine in which coal is extracted by open cut methods.

**underground mining** means mining (other than deep underground mining) carried out at a mine in which coal is extracted other than by open cut methods.

#### 45 Returns

- (1) For the purposes of section 289 (1) of the Act:
- (a) royalty returns must be in a form that shows:
    - (i) in the case of a mineral specified in Schedule 7--the quantity of the mineral recovered by the holder of the mining lease during the period to which the return relates, and
    - (ii) in the case of any other mineral--the value of the mineral recovered by the holder of the mining lease during the period to which the return relates, and
    - (iii) in the case of any mineral--any other matters required by the Director-General to be shown, and
  - (b) royalty returns must be furnished:
    - (i) at the time at which royalty is payable, in the case of minerals other than coal, and
    - (ii) monthly, and in any case not later than the 21st day of the following month, in the case of coal.
- (2) The holder of a mining lease must keep records of all minerals recovered under the lease, including:
- (a) records of the quantity of minerals recovered during each return period, and
  - (b) records of the quantity of minerals disposed of, whether by sale or otherwise, during each return period, and
  - (c) records of the quantity of minerals held (in the form in which they are disposed of) by the holder of the mining lease at the beginning and at the end of that period, and
  - (d) records of all royalty that became payable during each return period in connection with the disposal of minerals, and
  - (e) any other records relating to the minerals required by the Director-General to be kept.
- Maximum penalty:

- (a) 100 penalty units, in the case of an offence committed by a corporation, or
- (b) 50 penalty units, in the case of an offence committed by an individual.

#### **46 Payment of royalty**

- (1) This clause prescribes the times at which, and the periods in respect of which, royalty is payable to the Minister under the Act, except to the extent that a determination under section 291 (1) (b) of the Act is in force.
- (2) In the case of minerals other than coal, royalty is payable on or before 31 July in each year in respect of the period of 12 months ending on the last preceding 30 June, unless subclause (3) applies.
- (3) In the case of a person by whom, in respect of the last preceding period of 12 months that ended on 30 June, an amount of royalty greater than \$50,000 was payable in respect of minerals (other than coal), royalty on minerals (other than coal) recovered during the succeeding period of 12 months is payable:
  - (a) on or before 31 October, in respect of the period of 3 months ending on 30 September, and
  - (b) on or before 31 January, in respect of the period of 3 months ending on 31 December, and
  - (c) on or before 30 April, in respect of the period of 3 months ending on 31 March, and
  - (d) on or before 31 July, in respect of the period of 3 months ending on 30 June.
- (4) In the case of coal, royalty is payable within 21 days after the beginning of each month.

## **Part 9 - Mine Safety Advisory Council**

#### **47 Membership of Council**

- (1) The Mine Safety Advisory Council is to consist of the following members appointed by the Minister:
  - (a) one or more persons nominated by each of the following bodies:
    - (i) the NSW Minerals Council (representing the coal sector),
    - (ii) the NSW Minerals Council (representing the metalliferous sector),
    - (iii) the Crushed Stone and Sand Association of NSW,
    - (iv) the Construction Forestry Mining and Energy Union, Mining and Energy Division,
    - (v) the Australian Workers' Union, Greater New South Wales Branch,
  - (b) the Director-General of the Department or a representative of the Department nominated by the Director-General,
  - (c) an independent person as Chairperson of the Council.
- (2) Of the members referred to in subclause (1) (a), equal numbers of employer representatives and employee representatives must be appointed.
- (3) Subclause (1) does not prevent the Minister from appointing not more than 2 additional persons as members of the Council being persons who, in the Minister's opinion:
  - (a) are independent of the bodies referred to in subclause (1) (a), and
  - (b) have expertise that would be of assistance to the Council.
- (4) The Minister may decline to accept the nomination of any candidate.
- (5) If a body referred to in subclause (1) fails to nominate a candidate within 60 days after being requested to do so by the Minister, or fails to nominate within that period a candidate whose nomination is accepted by the Minister, the Minister may appoint any person whom the Minister considers suitable to represent the interests of the body as a member of the Council, instead of a person nominated by the body.

#### **48 Functions of Council**

For the purposes of section 341 (2) (b) of the Act, the functions of the Mine Safety Advisory Council are:

- (a) to advise the Minister on any matter, other than a policy matter, relating to occupational

health and safety in mines that is referred to it by the Minister, and  
(b) to advise the Minister on any other matter, other than a policy matter, relating to occupational health and safety in mines that it considers relevant.

**Note:** Section 341 (2) (a) of the Act provides that the Council has the function of providing advice to the Minister on any policy matter relating to occupational health and safety in mines.

#### **49 Membership and procedure of Council**

Schedule 8 has effect with respect to the members and procedure of the Council.

## **Part 10 - Boards of management**

### **50 Boards to be constituted by Ministerial order**

(1) A board of management is constituted by means of an order published in the Gazette by the Minister.

(2) The order must:

- (a) specify the board's name, and
- (b) describe the board's area of operations, and
- (c) specify the number of board members, and
- (d) specify the persons who are to be board members by virtue of their office, and
- (e) specify the persons or bodies who are to be authorised to nominate persons for appointment as board members, and the number of persons they are to be authorised to nominate, and
- (f) specify which of the board members is to be the Chairperson of the board, and
- (g) identify the mining registrar who is to be the secretary of the board.

(3) The board members (other than those who are members by virtue of their office) are to be appointed by the Minister.

(4) The secretary of a board is to be the mining registrar of a mining division that is wholly or partly within the board's area of operations.

(5) An order under this clause commences on the day it is published in the Gazette or, if a later day for commencement is specified in the order, on the later day.

### **51 Nominations for membership of board**

(1) The secretary of a board must cause a written notice to be sent to each person or body who is authorised to nominate a person for appointment as an appointed member of the board.

(2) Notices under this clause must be sent as follows:

- (a) within one month after the publication in the Gazette of the order by which the board is constituted,
- (b) at least one month before the end of a current appointed member's term of office,
- (c) within one month after a casual vacancy arises in a current appointed member's office.

(3) Despite subclause (1), a notice required to be given at the time specified in subclause (2) (b) or (c) need be given only to the persons or bodies authorised to nominate a person for appointment as the relevant one of the following board members:

- (a) the board member whose term of office is coming to an end (in the case of a notice required to be given at the time specified in subclause (2) (b)), or
- (b) the board member in respect of whom a casual vacancy has arisen (in the case of a notice required to be given at the time specified in subclause (2) (c)).

(4) A notice under this clause must invite the person or body concerned to send nominations to the secretary within the time (being at least 14 days) specified in the notice.

(5) If a person or body fails to nominate a person as a board member within the specified time, the Minister may appoint, as that member, any person who in the Minister's opinion represents the interests of the person or body.

## **52 Membership and procedure of boards**

Schedule 9 has effect with respect to the members and procedure of a board.

## **53 Annual report to Minister**

- (1) On or before 31 July in each year, a board is to prepare and present to the Minister an annual report for the period of 12 months ending on the preceding 30 June.
- (2) The report must set out the board's membership, a summary of its activities and achievements during the year and its plans for the following year.

# **Part 11 - Miscellaneous**

## **54 Fees for services**

- (1) The Director-General may determine the fee payable for any service provided in connection with the administration or execution of the Act for which a fee is not prescribed by this Regulation.
- (2) An appropriate lodgment fee is payable with respect to the following matters:
  - (a) an application for the amendment of a mining lease under section 79 of the Act,
  - (b) an application under section 168 of the Act for the suspension of any of the conditions of an authority,
  - (c) an application for a certificate under section 172 of the Act,
  - (d) an application under section 215 of the Act for the suspension of any of the conditions of a mineral claim,
  - (e) an application for a certificate under section 219 of the Act,
  - (f) an application for a certificate under section 236 of the Act,
  - (g) an application for a permit under section 252 of the Act,
  - (h) an application for a permit under section 254 of the Act,
  - (i) an objection under clause 26 of Schedule 1 to the Act,
  - (j) an application for a declaration under clause 17,
  - (k) an application for registration of a change in the name of the holder of an authority,
  - (l) an application for registration of a change in the name of the holder of a mineral claim.

## **55 Waiver and refund of fees**

The Minister may waive or refund any fees payable under the Act or this Regulation in any circumstances that the Minister may consider appropriate.

## **56 Applications generally**

- (1) An application under the Act may be lodged either in person, by facsimile or by post. An application for an exploration licence may also be lodged electronically as provided by subclause (9).
- (2) An application that is required to be lodged with the Director-General may be lodged instead with any other person that the Director-General may from time to time nominate as a person who may receive such an application.
- (3) An application that is required to be lodged with a mining registrar may be lodged instead with any other person that the mining registrar may from time to time nominate as a person who may receive such an application.
- (4) An application that is lodged in person with the Director-General or any other person nominated under this clause may be lodged on any day (other than a Saturday, Sunday or public holiday) between the hours of 9.30 am and 4.00 pm.
- (5) An application that is lodged in person with a mining registrar or any other person nominated under this clause may be lodged on any day (other than a Saturday, Sunday, public holiday or other day on which the mining registrar's office is closed) between the

hours of 9.30 am and 4.00 pm.

(6) An application that is lodged in person is to be endorsed, by the person with whom it is lodged, with the date and time of its lodgment.

(7) If an application is lodged by post, the application is presumed to have been lodged at 9.30 am on the day on which it is received.

(8) If an application is lodged by facsimile and the receiving facsimile machine records its receipt at a particular date and time, the application is presumed to have been lodged at that time on that date.

(9) An application for an exploration licence may be lodged electronically only if:

(a) the information recorded in the application is capable, at any time, of being reproduced in a written form, and

(b) the application is lodged in an information system designated by the Director-General for the purpose of receiving such an application.

(10) The Director-General must ensure that every application that is lodged electronically in accordance with subclause (9) is allocated an exploration licence application number as soon as practicable after entry in the designated information system.

(11) If an application is lodged electronically and is allocated an exploration licence application number, the application is presumed to have been lodged at the time and on the date on which the number was allocated.

(12) If an application is required to be accompanied by a fee, the application is presumed to have been lodged:

(a) in the case of an application that is lodged in person, at the time and date of payment of the fee or at the time and date of lodgment of the application, whichever is later, or

(b) in the case of an application that is lodged by mail, at the time and date of payment of the fee or at 9.30 am on the day on which the application is received, whichever is later, or

(c) in the case of an application that is lodged by facsimile, at the time and date of payment of the fee or at the time and date that the application's receipt is recorded, whichever is later, or

(d) in the case of an application that is lodged electronically, at the time and date of payment of the fee or at the time and date that the application is allocated an exploration licence application number, whichever is later.

(13) In this clause:

**information system** means a system for generating, sending, receiving, storing or otherwise processing electronic communications.

### **57 Notification of landholder of intention to invite tenders for mining lease: manner of describing land**

For the purposes of clause 21 (4) (b) of Schedule 1 to the Act, the prescribed manner for describing the land over which a mining lease is sought is by means of a plan or map prepared in accordance with clause 16.

### **58 Mining statistics, returns**

(1) The Director-General may direct the holder of an authority:

(a) to keep any statistics in relation to the conduct of prospecting operations and mining operations, and to the treatment and disposal of minerals recovered, under the authority, and

(b) to furnish to the Director-General any returns in connection with those statistics, that the Director-General may reasonably require in connection with the administration of the Act.

- (2) Any statistics required to be kept are to be kept in any form that the Director-General may determine.
- (3) Any returns required to be furnished are to be furnished at any times and in respect of any periods that the Director-General may determine.
- (4) The holder of an authority must not fail to comply with a direction under this clause or, in purported compliance with a direction under this clause, furnish false or misleading information.

Maximum penalty:

- (a) 100 penalty units, in the case of an offence committed by a corporation, or  
(b) 50 penalty units, in the case of an offence committed by an individual.

### **59 Service of documents on the Crown**

For the purposes of section 383 (6) of the Act, the prescribed manner of service is by sending the document to the head office or regional office of the Government Department or public authority responsible for administration of the land.

### **60 Penalty notices for contraventions of conditions of mining title**

(1) For the purposes of section 375A (2) of the Act, the prescribed penalty for an offence under section 374A of the Act that consists of a contravention of or failure to comply with a condition described in Column 2 of Schedule 10 in respect of a mining title referred to in Column 1 of that Schedule is:

- (a) in the case of a penalty payable by an individual--the penalty specified in Column 3 of that Schedule opposite the description of the condition, and  
(b) in the case of a penalty payable by a corporation--the penalty specified in Column 4 of that Schedule opposite the description of the condition.

(2) In Column 2 of Schedule 10:

- (a) a reference to a direction includes a reference to a notice or instruction, and  
(b)

**authorised officer** means any person who is authorised, under the relevant mining title, to give the direction concerned (including, where relevant, the Minister pursuant to clause 61).

### **61 References to officers in mining titles**

Pursuant to section 390 of the Act, a reference in any authority, mineral claim or opal prospecting licence to any of the following officers is, for the purpose of the performance of a function involving rehabilitation or environmental requirements, taken to be a reference to the Minister:

Chief Inspector of Mines,  
Chief Inspector of Coal Mines,  
Chief Inspector appointed under the *Coal Mine Health and Safety Act 2002* ,  
Senior Inspector of Mines,  
Regional Inspector of Mines,  
District Inspector of Mines,  
District Inspector of Coal Mines,  
Inspector of Mines,  
Mining Occupations Officer,  
Regional Mining Officer,  
Mine Safety Officer,  
Regional Mining Engineer,  
Mining Registrar,  
Opal Field Management Officer.

## **Part 12 - Repeals and savings and transitional provisions**

## **62 Repeal of certain Regulations**

(1) The *Mining (Savings and Transitional) Regulation 1992* is repealed.

(2) The *Mining (Boards of Management) Regulation 2000* is repealed.

**Note:** The two Regulations repealed by this clause are remade elsewhere in this Regulation. The repeal and remaking of these Regulations are by way of consolidation only.

## **63 Savings and transitional provisions**

Schedule 11 has effect.

# **Schedule 1 Forms**

(Clause 3 (2))

## **Form 1 - Certificate of authority**

*Mining Act 1992*

*Mining Regulation 2003* , clause 40 (a)

This certifies that ,

(insert name of inspector)

whose photograph and signature appear below, is an inspector appointed under the *Mining Act 1992* .

(affix photograph here)(signature of inspector) (Minister for Mineral Resources)

The inspector named above is authorised to exercise the following powers:

- (a) the power to enter land the subject of an authority or a mineral claim, or the subject of an application for an authority or a mineral claim, and land in an opal prospecting area,
- (b) the power to inspect that land and any mine, works, operations, buildings or structures on that land,
- (c) the power to remove samples of ore or other mineral deposits from that land,
- (d) the power to direct the person in charge of any mine, works, operations, buildings or structures on that land to provide the inspector with all reasonable facilities and assistance.

## **Form 2 - Certificate of authority**

*Mining Act 1992*

*Mining Regulation 2003* , clause 40 (b)

This certifies that ,

(insert name of royalty officer)

whose photograph and signature appear below, is a royalty officer appointed under the *Mining Act 1992* .

(affix photograph here)(signature of royalty officer) (Minister for Mineral Resources)

The royalty officer named above is authorised to exercise the following powers:

- (a) the power to enter:
  - (i) any premises occupied by the holder of an authority or mineral claim, or
  - (ii) any premises where the royalty officer reasonably believes documents, of the kind referred to in paragraph (b), of or relating to the holder are kept,
- (b) the power to inspect, and take extracts or copies from, any documents that are found on those premises and that appear to the royalty officer to relate to minerals recovered under the authority or mineral claim,
- (c) the power to direct the person in charge of any such premises to provide the royalty officer with all reasonable facilities and assistance.

### **Form 3 - Permit**

*Mining Act 1992*

*Mining Regulation 2003* , clause 41

This certifies that ,

(insert name of holder of permit)

whose signature appears below, is authorised to exercise the powers conferred by section of the *Mining Act 1992* .

(signature of holder of permit)

That section confers the following powers on the holder of a permit:

This permit is granted in respect of the following land:

This permit is granted subject to the following conditions:

This permit has effect for the period commencing on the day of and ending on the day of .

Dated:

(Minister/warden/Director-General)

### **Schedule 2 Minerals**

(Clause 5)

agate agricultural lime antimony apatite arsenic asbestos barite bauxite bentonite (including fuller's earth) beryllium minerals bismuth borates cadmium caesium calcite chalcedony chert chlorite chromite clay/shale coal cobalt columbium copper corundum cryolite diamond diatomite dimension stone dolomite emerald emery feldspathic materials fluorite galena garnet geothermal substances germanium gold graphite gypsum halite (including solar salt) ilmenite indium iron minerals jade kaolin lead leucoxene limestone lithium magnesite magnesium salts manganese marble marine aggregate mercury mica mineral pigments molybdenite monazite nephrite nickel

niobium oil shale olivine opal ores of silicon peat perlite phosphates platinum group minerals platinum potassium minerals potassium salts pyrophyllite quartz crystal quartzite rare earth minerals reef quartz rhodonite rubidium ruby sapphire scandium and its ores selenium serpentine sillimanite-group minerals silver sodium salts staurolite strontium minerals structural clay sulphur talc tantalum thorium tin topaz tourmaline tungsten and its ores turquoise vanadium vermiculite wollastonite zeolites zinc zircon zirconia

## **Schedule 3 Groups of minerals**

(Clause 6)

### **Group 1 (Metallic minerals)**

antimony arsenic bismuth cadmium caesium chromite cobalt columbium copper galena germanium gold indium iron minerals lead lithium manganese mercury molybdenite nickel niobium platinum group minerals platinum rare earth minerals rubidium scandium and its ores selenium silver sulphur tantalum thorium tin tungsten and its ores vanadium zinc zirconia

### **Group 2 (Non-metallic minerals)**

agricultural lime apatite asbestos barite bauxite beryllium minerals borates calcite chert chlorite cryolite diatomite dimension stone dolomite emerald emery feldspathic materials fluorite garnet graphite gypsum halite (including solar salt) limestone magnesite magnesium salts marble mica mineral pigments olivine ores of silicon peat perlite phosphates potassium minerals potassium salts pyrophyllite quartzite reef quartz serpentine sillimanite-group minerals sodium salts staurolite strontium minerals talc topaz vermiculite wollastonite zeolites

### **Group 3 (Semi-precious stones)**

agate chalcedony jade nephrite quartz crystal rhodonite tourmaline turquoise

### **Group 4 (Marine aggregate)**

marine aggregate

### **Group 5 (Clay minerals)**

bentonite (including fuller's earth) clay/shale kaolin structural clay

### **Group 6 (Corundum, diamond, ruby and sapphire)**

corundum diamond ruby sapphire

### **Group 7 (Opal)**

Opal

### **Group 8 (Geothermal substances)**

geothermal substances

### **Group 9 (Coal and oil shale)**

coal oil shale

### **Group 10 (Mineral sands)**

ilmenite leucoxene monazite rutile zircon

## **Schedule 4 Conditions for prospecting for and mining**

# privately owned minerals

(Clause 10 (2))

## 1 Maximum area over which operations may be conducted

(1) The maximum area over which prospecting operations or mining operations may be conducted at any one time is the area determined by the Minister and notified to the person conducting the operations.

(2) Prospecting operations or mining operations are taken to continue to be carried on until any rehabilitation work required to be carried out (whether by this Schedule or otherwise) has been completed.

## 2 Safety

(1) Prospecting operations and mining operations are not to be carried out in a manner that endangers the safety of any persons or any stock in the vicinity of the location of the operations.

(2) In particular, all shafts and excavations are to be appropriately protected to ensure that access to them by persons and stock is restricted.

(3) Abandoned shafts and excavations are to be filled in or otherwise rendered safe.

## 3 Restoration of land that has been drilled

Any drillhole is to be filled or plugged as soon as it ceases to be used and the land in its immediate vicinity is to be left in a clean and tidy condition.

## 4 Topsoil and vegetation

(1) Any topsoil that is removed in the course of prospecting operations and mining operations is to be set aside for replacement when the operations have come to an end.

(2) Other soil, rock and tailings are to be used to fill abandoned shafts and excavations and to be covered by topsoil.

(3) The land over which the prospecting operations or mining operations have been carried on:

(a) is to be appropriately landscaped to ensure that the land is properly drained and protected from soil erosion, and

(b) is to be planted with vegetation appropriate to the area.

## 5 Soil erosion

(1) Prospecting operations and mining operations are to be carried on in such a manner as to avoid soil erosion.

(2) Particular regard is to be given to preventing water run-off from causing or contributing to soil erosion.

## 6 Water pollution

Prospecting operations and mining operations are to be carried out in a manner that avoids the pollution of water or the siltation of any watercourse.

## 7 Protection of fisheries

Prospecting operations and mining operations are not to be carried out in or adjacent to any waters that are closed to fishing pursuant to the *Fisheries Management Act 1994* unless at least 7 days' notice of the commencement of those operations have been given to the Director of NSW Fisheries.

## 8 Security for rehabilitation

(1) If it appears to the Minister that any security lodged by a person under section 8 (1) (b) of the Act is inadequate to secure observance of the conditions prescribed by clauses 2, 3 and 4 of this Schedule, the Minister may, by notice in writing, require the person to give

and maintain further security for compliance with those conditions.

(2) A security lodged under section 8 (1) (b) of the Act or given under this clause may be retained by the Minister until the Minister is satisfied that the conditions prescribed by clauses 2, 3 and 4 of this Schedule have been observed.

(3) Any part of any such security that the Minister may determine is to be forfeited to the Crown if the person fails to observe any of the conditions prescribed by clauses 2, 3 and 4 of this Schedule.

(4) Money realised from the forfeiture of any such security is to be applied for the purpose of rehabilitating the land affected by prospecting or mining operations.

(5) The functions of the Minister under this clause may be exercised with or without the benefit of a finding by a court or tribunal that the person has failed to observe any of the conditions prescribed by clauses 2, 3 and 4 of this Schedule.

## **Schedule 5 Description of land for activities carried out by Hunter Enviro-Mining (Operations) Pty Limited**

(Clause 12 (3))

### **Part 1 Abandoned pit top areas**

Name of Property description site	Coordinates of approximate centre of site
Aberdar State Forest situated to the south of Howells Road and to the east of e South Ferguson Road Abernathy and Part Lot 542 DP 39553, Parish of Pit Top Cessnock, County of Northumberland.	337480 E 1359810 N (ISG Zone 56/1), 350496 E 6360174 N (MGA Zone 56)
Abermai Crown land situated on the southern side of the South Maitland n No 1 Railway at Abermain, Parish of Stanford, County of Northumberland. Pit Top	339810 E 1367820 N (ISG Zone 56/1), 352673 E 6368226 N (MGA Zone 56)
Abermai An irregularly shaped parcel (located on 2 parcels of Crown land) n No 1 situated between the Villages of Neath and Kearsley, the South Colliery Maitland Railway and Neath Road, within the Parish of Stanford, Shaft 3 County of Northumberland.	338630 E 1365840 N (ISG Zone 56/1), 351531 E 6366224 N (MGA Zone 56)
Elringto Part Lot 28 DP 844871 & Part Lot 7 DP 263182, Parish of Stanford, n County of Northumberland, and Part Lot 20 DP 778222, Parish of Stanford, County of Northumberland.	339225 E 1360853 N (ISG Zone 56/1), 352220 E 6361250 N (MGA Zone 56)
Hebburn Part Lot 203 DP 829425, Parish of Stanford, County of No 1 Northumberland.	342445 E 1367255 N (ISG Zone 56/1), 355318 E 6367711 N (MGA Zone 56)

Pelaw Main Pit Top	Part Crown land (partially covered by ALC 4243) located south of Mulbring Street, Pelaw Main, Parish of Stanford, County of Northumberland.	344490 E 1366395 N (ISG Zone 56/1), 357379 E 6366890 N (MGA Zone 56)
Pinkeye	Crown land (partially covered by ALC 4250) located to the south of Weston on the southern side of the South Maitland Railway and bordered in the east by Lot 203 DP 829425, Parish of Stanford, County of Northumberland. Lot 203 DP 829425, located to the south of Weston, Parish of Stanford, County of Northumberland.	341822 E 1367350 N (ISG Zone 56/1), 354694 E 6367794 N (MGA Zone 56)

## Part 2 Chitter emplacements outside pit top areas

Name of area	Property description	Coordinates of approximate centre of area
Abermain South	Crown land (almost entirely covered by ALC 4250) situated on the western side of Hebburn Road, south of the South Maitland Railway and southeast of the Township of Abermain, Parish of Stanford, County of Northumberland.	340718 E 1366659 N (ISG Zone 56/1), 353603 E 6367083 N (MGA Zone 56)
Hospital Road	Part Lot 203 DP 829425, Parish of Stanford, County of Northumberland. Part Crown land located on the eastern side of Hebburn Road, Parish of Stanford, County of Northumberland.	Road commences at 340777 E 1364724 N (ISG Zone 56/1), 353699 E 6365149 N (MGA Zone 56) and ends at 342589 E 1365672 N (ISG Zone 56/1), 355492 E 6366131 N (MGA Zone 56)

## Part 3 Rail emplacements

Name of site	Property description	Coordinates of commencement and end points
Rail Line n South	Part Crown land parcel fronting Lake Road at Kearsley, Parish of Stanford, County of Northumberland. Part Crown land comprising a narrow north-south corridor that follows the eastern side of Kearsley Road, Part PT DP 755259, Parish of Stanford, County of Northumberland and Part PT DP 755215, Parish of Cessnock, County of Northumberland.	Rail line commences at 337205 E 1362311 N (ISG Zone 56/1), 350173 E 6362669 N (MGA Zone 56) and ends at 337516 E 1360041 N (ISG Zone 56/1), 350527 E 6360406 N (MGA Zone 56)
Rail Line No 1 to Pelaw Main	Part Lot 203 DP 829425, Parish of Stanford, County of Northumberland and Part of several Crown land parcels: Lot 697342439 DP 755231 Parish of Heddon, Lot 332 DP 729940 Parish of Stanford, Lot 331 DP 729940 Parish of Stanford and Crown land covering the Pelaw Main pit top, Parish of Stanford, County of Northumberland.	Rail line commences at 697342439 E 1367555 N (ISG Zone 56/1), 355307 E 6368011 N (MGA Zone 56) and ends at 344707 E 1366490 N (ISG Zone 56/1), 357594 E 6366989 N (MGA Zone 56)
Rail Line	Several parcels of Crown land dividing Kurri Kurri in the north	Rail line commences at

Pelaw Main to Heddon Greta	from Pelaw Main and Stanford Merthyr in the south, Parishes of Stanford and Heddon, County of Northumberland.	344712 E 1366390 N (ISG Zone 56/1), 357601 E 6366889 N (MGA Zone 56) and ends at 346824 E 1368363 N (ISG Zone 56/1), 359675 E 6368902 N (MGA Zone 56).
Rail Line Pelaw Main to Richmond Main East	Rail line traverses four parcels of Crown land within the Parish of Stanford, County of Northumberland. Crown land encompassing Pelaw Main Colliery pit top. A narrow strip of Crown land that bisects the urban area. Crown land (almost entirely covered by ALC 4242) located south of Mulbring Street, Stanford Merthyr, on the eastern side of Pelaw Main and Leggets Lane. Crown land (entirely covered by ALC 4242) located to the east of Crown land No 3, bordered in the north by Lot 327 DP 822130 and in the south by several lots including Lot 14 DP 716009.	Rail line commences at 344712 E 1366489 N (ISG Zone 56/1), 357599 E 6366988 N (MGA Zone 56) and ends at 346962 E 1363778 N (ISG Zone 56/1), 359900 E 6364321 N (MGA Zone 56)
Rail Line Pinkeye to Hebburn No 2	Crown land (covered by ALC 4250 on the eastern side of Hebburn Road) situated south of the South Maitland Railway and southeast of the Township of Abermain, Parish of Stanford, County of Northumberland. A narrow north-south section of Crown land following the western side of Hebburn Road southward to Hebburn No 2.	Rail line commences at 341219 E 1367093 N (ISG Zone 56/1), 351096 E 6367526 N (MGA Zone 56) and ends at 340471 E 1363845 N (ISG Zone 56/1), 353409 E 6364265 N (MGA Zone 56)
Richmond Main Rail Line	Part Lot 2 DP 533820 & Lot 14 DP 716009, Parish of Stanford, County of Northumberland. Part Lot 26 DP 879812 Parish of Stanford, County of Northumberland. Part Lot 2 DP 986081, Parish of Stockrington, County of Northumberland. Part Lot 4 DP 1000943, Parish of Stockrington, County of Northumberland. Part Crown land parcels (entirely covered by ALC 4242), Parish of Stanford, County of Northumberland, bordered in the south by several lots including Lot 14 DP 716009 and Lot 26 DP 879812.	Rail line commences at 345380 E 1363337 N (ISG Zone 56/1), 358327 E 6363850 N (MGA Zone 56) and ends at 347928 E 1363628 N (ISG Zone 56/1), 360868 E 6364189 N (MGA Zone 56)
Rail Line Abermain No 1 to Abermain No 2	Traverses several Crown land parcels between Neath and Kearsley, Parish of Stanford, County of Northumberland. Commences on the southern side of Cessnock Road and continues southward along the western side of Neath Road. The easement crosses Neath Road at Kearsley and enters the Abermain No 2 pit top area.	Rail line commences at 339512 E 1367347 N (ISG Zone 56/1), 352384 E 6367748 N (MGA Zone 56) and ends on Lake Road at 337206 E 1362375 N (ISG Zone 56/1), 350173 E 6362733 N (MGA Zone 56)

## Schedule 6 Land identification

(Clauses 13 and 15)

### **1 Areas**

The area of land over which an exploration licence or assessment lease, or a renewal of such a licence or lease, is sought is to be identified in relation to the following 1:1,000,000 areas within which it is situated:

- (a) the Broken Hill 1:1,000,000 area, being that area bounded by portions of meridians of longitude 138 degrees east and 144 degrees east, and by portions of parallels of latitude 28 degrees south and 32 degrees south,
- (b) the Bourke 1:1,000,000 area, being that area bounded by portions of meridians of longitude 144 degrees east and 150 degrees east, and by portions of parallels of latitude 28 degrees south and 32 degrees south,
- (c) the Armidale 1:1,000,000 area, being that area bounded by portions of meridians of longitude 150 degrees east and 156 degrees east, and by portions of parallels of latitude 28 degrees south and 32 degrees south,
- (d) the Adelaide 1:1,000,000 area, being that area bounded by portions of meridians of longitude 138 degrees east and 144 degrees east, and by portions of parallels of latitude 32 degrees south and 36 degrees south,
- (e) the Canberra 1:1,000,000 area, being that area bounded by portions of meridians of longitude 144 degrees east and 150 degrees east, and by portions of parallels of latitude 32 degrees south and 36 degrees south,
- (f) the Sydney 1:1,000,000 area, being that area bounded by portions of meridians of longitude 150 degrees east and 156 degrees east, and by portions of parallels of latitude 32 degrees south and 36 degrees south,
- (g) the Melbourne 1:1,000,000 area, being that area bounded by portions of meridians of longitude 144 degrees east and 150 degrees east, and by portions of parallels of latitude 36 degrees south and 40 degrees south,
- (h) the Bodalla 1:1,000,000 area, being that area bounded by portions of meridians of longitude 150 degrees east and 156 degrees east, and by portions of parallels of latitude 36 degrees south and 40 degrees south.

### **2 Blocks**

The blocks in each 1:1,000,000 area are to be identified by numbering consecutively from west to east, commencing with 1 in the northwestern corner, and concluding with 3456 in the southeastern corner, of the 1:1,000,000 area.

### **3 Units**

The units in each block are to be identified, from west to east, by letters commencing with "a" in the northwestern corner of the block, omitting the letter "i", and finishing with "z" in the southeastern corner of the block.

## **Schedule 7 Rate of royalty**

(Clauses 44 and 45)

Mineral	\$ per tonne
agricultural lime	0.35
barite	0.70
bauxite	0.35
bentonite (including fuller's earth)	0.70

borates	0.70
calcite	0.40
chert	0.35
chlorite	0.70
clay/shale	0.35
diatomite	0.70
dimension stone	0.70
dolomite	0.40
feldspathic materials	0.70
fluorite	0.70
gypsum	0.35
halite (including solar salt)	0.40
kaolin	0.70
limestone	0.40
magnesite	0.70
magnesium salts	0.40
marble	0.70
mica	0.70
mineral pigments	0.70
olivine	0.70
peat	0.70
perlite	0.70
phosphates	0.70
potassium minerals	0.70
potassium salts	0.40
pyrophyllite	0.70
quartzite	0.70
reef quartz	0.70
serpentine	0.70
sillimanite-group minerals	0.70
sodium salts	0.40
staurolite	0.70
structural clay	0.35
talc	0.70
vermiculite	0.70
wollastonite	0.70
zeolites	0.70

## **Schedule 8 Membership and procedure of Mine Safety Advisory Council**

(Clause 49)

### **Part 1 - Membership of Council**

#### **1 Terms of office of members**

Subject to this Regulation, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

## **2 Deputies of members**

- (1) A member (other than the Chairperson or Deputy Chairperson) may, from time to time, appoint a person to be the deputy of the member, and the member may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a deputy has all the functions of the member and is taken to be a member.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

## **3 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may at any time remove a member from office.

## **4 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Regulation, to be appointed to fill the vacancy.

## **5 Deputy Chairperson**

- (1) The Minister may, from time to time, appoint a member of the Council to be the Deputy Chairperson of the Council, and may at any time revoke any such appointment.
- (2) In the absence of the Chairperson, the Deputy Chairperson may, if available, act in the place of the Chairperson.
- (3) While acting in the place of the Chairperson, the Deputy Chairperson has all the functions of the Chairperson and is taken to be the Chairperson.
- (4) The Deputy Chairperson vacates office as Deputy Chairperson if the person:
  - (a) is removed from office by the Minister under this clause, or
  - (b) ceases to be a member.

# **Part 2 - Procedure of Council**

## **6 Calling and frequency of Council meetings**

- (1) The procedure for the calling of meetings of the Council is, subject to this Regulation, to be as determined by the Minister.
- (2) The Minister is to call at least 2 meetings of the Council each calendar year, unless otherwise determined by the Council.

## **7 General procedure at Council meetings**

The procedure for the conduct of Council meetings is, subject to this Regulation, to be as determined by the Minister.

### **8 Presiding member**

(1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson) is to preside at a meeting of the Council.

(2) If the Chairperson and Deputy Chairperson are both absent from a meeting of the Council, the members present may elect a member to preside at the meeting.

### **9 Transaction of business outside meetings by telephone**

(1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Council for the time being, and a resolution in writing approved in writing by the members is taken to be a decision of the Council.

(2) The Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) A resolution approved under subclause (1) is, subject to this Regulation, to be recorded in the minutes of the meetings of the Council.

(4) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

### **10 Committees of Council**

(1) The Minister may appoint such committees as the Council considers appropriate to assist the Council in the exercise of its functions.

(2) It does not matter if any or all of the members of a committee are not members of the Council.

(3) Subject to any direction made by the Minister or the Council, the procedure of a committee is to be, as far as practicable, the same as for the Council.

## **Schedule 9 Membership and procedure of boards of management**

(Clause 52)

### **Part 1 - Membership of boards**

#### **1 Terms of office of appointed members**

Subject to this Regulation, an appointed member holds office:

(a) for a period of 3 years, or

(b) if the member has been appointed to fill a casual vacancy, for the unexpired portion of his or her predecessor's term of office,

but is eligible (if otherwise qualified) for reappointment.

#### **2 Deputies of members**

(1) A board member may appoint a person to act as the member's deputy.

(2) The appointment is invalid unless it is approved:

(a) by the Minister, or

(b) if the member has been appointed on the nomination of a particular person or body, by that person or body.

(3) In the absence of a board member, the member's deputy:

(a) may act in the place of the member, and

(b) while so acting, has all the functions of the member and is to be regarded as a

board member.

(4) The deputy of a board member who is also the Chairperson of the board has the member's functions as Chairperson.

### **3 Vacancy in office of appointed member**

(1) The office of an appointed member becomes vacant if the member:

- (a) dies, or
- (b) resigns the office by instrument in writing addressed to the Minister, or
- (c) is removed from office by the Minister under this clause, or
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (e) becomes a mentally incapacitated person, or
- (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time.

### **4 Filling of vacancy in office of appointed member**

If the office of an appointed member becomes vacant, a person is, subject to this Regulation, to be appointed to fill the vacancy.

## **Part 2 - Procedure of boards**

### **5 Calling and frequency of board meetings**

(1) An ordinary board meeting is to be called by the Chairperson at least once every 3 months.

(2) A special board meeting is to be called on the written request of at least 3 members or, if the number of members that constitutes a quorum at a board meeting is less than 3, of at least that number of members.

(3) The request must:

- (a) state the purpose of the meeting, and
- (b) be signed by the board members making the request, and
- (c) be lodged with the secretary in time for the secretary to call the meeting.

### **6 Secretary to give notice of board meeting**

(1) The secretary of a board is to give written notice of a proposed board meeting to each member at least 7 days before the meeting.

(2) A board member must give written notice to the secretary, at least 14 days before a proposed board meeting, of any matter the member wishes to be placed on the agenda for the meeting.

(3) The secretary of a board (or, in the secretary's absence, a nominee of the secretary) must attend all board meetings.

### **7 General procedure at board meetings**

The procedure for the conduct of board meetings is, subject to this Regulation, to be determined by the board.

### **8 Quorum**

A majority of a board's members for the time being (of whom one must be the Chairperson or the Chairperson's deputy) constitutes a quorum at a board meeting.

### **9 Presiding member**

(1) The Chairperson (or, in the Chairperson's absence, the Chairperson's deputy) is to

preside at all board meetings.

(2) The person presiding at a board meeting has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **10 Voting**

A decision supported by a majority of votes cast at a board meeting at which a quorum is present is the decision of the board.

## **11 Transaction of business outside meetings or by telephone**

(1) A board may, if it thinks fit, transact any of its business by the circulation of papers among all the board members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the board.

(2) The board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1), or

(b) a meeting held in accordance with subclause (2),

the person presiding and each member have the same voting rights as they have at an ordinary board meeting.

(4) A resolution approved under subclause (1) is to be recorded in the minutes of the board meetings.

(5) Papers may be circulated among board members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **12 Disclosure of pecuniary interests**

(1) If:

(a) a board member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a board meeting, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a board meeting.

(2) A disclosure by a board member at a board meeting that the member:

(a) is a member, or is in the employment, of a specified company or body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of that disclosure and which is required to be disclosed under this clause.

(3) The secretary is to record particulars of any disclosure made under this clause in a book kept for that purpose and that book is to be made available at all reasonable hours for inspection by any person.

(4) After a board member has disclosed the nature of an interest in any matter, the member must not, unless the board otherwise determines:

(a) be present at any deliberation of the board with respect to the matter, or

(b) take part in any decision of the board with respect to the matter.

(5) For the purposes of the making of a determination by the board under subclause (4), a board member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the board for the purpose of making the determination, or

- (b) take part in the making by the board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the board.
- (7) Nothing in this clause applies to or in respect of an interest of a board member in a matter or thing which arises merely because the member is associated with the organisation by which the member was nominated.

### 13 Minutes

- (1) The secretary of a board must keep full and accurate minutes of the proceedings of each board meeting.
- (2) The secretary must keep (in addition to the minutes) a separate record of resolutions decided by a casting vote.
- (3) The record is to show the date of the meeting, the name of the presiding member and the wording of the resolution.
- (4) A copy of the minutes must be forwarded to the Minister and to each member within one month of the meeting.

### 14 Calling of first meeting

The Minister may call the first meeting of a board in such manner as the Minister thinks fit.

## Schedule 10 Penalty notice offences

(Clause 60)

Column 1 Type of mining title	Column 2 Nature of condition	Column 3 Penalty for individual's contravention or failure to comply	Column 4 Penalty for corporation's contravention or failure to comply
Mineral claim	Requirement to maintain marks defining area of claim	\$550	\$550
Mineral claim	Prohibition on keeping more than one dog on claim	\$550	\$550
Mineral claim	Requirement to comply with direction given by authorised officer	\$2,200	\$2,200
Mineral claim	Requirement to dispose of soil, rock and tailings in accordance with opal field management plan or as directed by authorised officer	\$2,200	\$2,200
Mineral claim	Requirement to maintain claim in clean and tidy condition	\$2,200	\$2,200
Mineral claim	Prohibition on erection of unauthorised structures	\$5,500	\$5,500
Mineral claim	Requirement to ensure operations are conducted so as to provide safety to persons and stock	\$5,500	\$5,500
Mineral claim	Requirement to fill in or make safe shafts and excavations	\$5,500	\$5,500
Exploration licence or assessment lease	Requirement to lodge report of exploration activity	\$2,750	\$5,500
Exploration licence or	Requirement to leave exploration site in clean and tidy condition	\$2,750	\$5,500

assessment lease	Exploration Requirement to make safe any drillholes or other excavations	\$2,750	\$5,500
licence or assessment lease	Exploration Requirement to comply with direction given by authorised officer	\$5,500	\$5,500
Mining lease	Requirement to prevent slurry or silt flowing outside lease boundary	\$5,500	\$5,500
Mining lease	Requirement to lodge report	\$2,750	\$5,500
Mining lease	Requirement to comply with direction given by authorised officer	\$5,500	\$5,500
Mining lease	Prohibition on erection of unauthorised structures	\$5,500	\$5,500
Mining lease	Requirement to ensure operations are conducted so as to provide safety to persons and stock	\$5,500	\$5,500
Mining lease	Requirement to fill in or make safe shafts and excavations	\$5,500	\$5,500
Mining lease	Requirement to maintain lease area in clean and tidy condition	\$5,500	\$5,500
Mining lease	Requirement to mine in accordance with mining operations plan	\$5,500	\$5,500

## Schedule 11 Savings and transitional provisions

(Clause 63)

### Part 1 - Provisions consequent on the enactment of the Mining Act 1992

**Note:** This Division remakes such of the provisions of the *Mining (Savings and Transitional) Regulation 1992* ( **the Transitional Regulation** ) as are of current operation. The Transitional Regulation commenced on 21 August 1992 (the date of the commencement of the *Mining Act 1992* ).

#### 1 Saving of existing residence areas and business areas

(1) Any person who, immediately before the commencement of the *Mining Act 1992* , was in lawful occupation of a residence area or business area referred to in clause 13 of the Second Schedule to the *Mining Act 1973* may continue to occupy the area.

(2) This clause ceases to apply to a residence area or business area if the occupier of the area fails to give written notice, in accordance with subclause (3), that the occupier wishes to continue to occupy the area.

(3) Notice in relation to any calendar year must be given:

(a) to the mining registrar for the mining division within which the residence area or business area is situated, and

(b) during December in the previous calendar year,

and must be accompanied by a fee of \$25.

(4) An authority or mineral claim may not be granted over a residence area or business area to which this clause applies except with the written consent of the occupier of the area.

(5) A written consent given under this clause is irrevocable.

## **2 Saving of existing rent**

Any rent in relation to a mining lease, mining purposes lease or coal lease that was, immediately before the commencement of the *Mining Act 1992* , payable under the provisions of:

(a) section 95 of the *Mining Act 1973* , or

(b) section 75 the *Coal Mining Act 1973* ,

in respect of private lands (within the meaning of the Act concerned) remains payable in accordance with those provisions, for the remainder of the term of the corresponding mining lease under the *Mining Act 1992* , as if those provisions were still in force.

## **3 Saving of existing royalty**

Any royalty that was, immediately before the commencement of the *Mining Act 1992* , payable under:

(a) a mining lease under the *Mining Act 1973* , or

(b) a coal lease under the *Coal Mining Act 1973* ,

being royalty payable by virtue of the conditions on which the lease was granted, remains payable in accordance with those conditions for the purposes of the *Mining Act 1992* .

## **4 Saving of aggregation of labour and expenditure conditions of certain mining leases**

(1) The labour and expenditure conditions of any mining leases whose labour or expenditure conditions were aggregated, immediately before the commencement of the *Mining Act 1992* , pursuant to Regulation 43 of the *Mining Regulations 1974* are taken to be aggregated for the purposes of this clause.

(2) The effect of the aggregation of the labour and expenditure conditions of any such mining leases is to allow the holder or holders of the mining leases to comply with those conditions, subject to any conditions on which the relevant application under Regulation 43 of the *Mining Regulations 1974* was granted, as if they were the conditions of a single mining lease over the whole of the land the subject of those mining leases.

(3) The aggregation of the labour and expenditure conditions of any such mining leases may be varied or revoked as if those mining leases were the subject of a declaration under clause 17.

# **Part 2 - Provisions consequent on repeals**

## **5 Savings relating to Mining (Savings and Transitional) Regulation 1992**

Any act, matter or thing that, immediately before the repeal of the *Mining (Savings and Transitional) Regulation 1992* , had effect under that Regulation continues to have effect under this Regulation.

## **6 Savings relating to Mining (General) Regulation 1997**

(1) Any act, matter or thing that, immediately before the repeal of the *Mining (General) Regulation 1997* , had effect under that Regulation continues to have effect under this Regulation.

(2) In particular, a reference in an exploration licence, mining lease or mineral claim (as in force on 1 July 2001) to:

(a) a mineral specified in Column 1 of the Table to this clause is, on and from that date, taken to include a reference to the mineral specified opposite in Column 2, and

(b) Group 1 minerals specified in Schedule 3 is, on and from that date, taken to include a reference to Group 10 minerals specified in that Schedule, and

(c) Group 4 minerals specified in Schedule 3 is, on and from that date, taken to include a reference to Group 2 minerals specified in that Schedule.

## Table

Column 1	Column 2
barytes	barite
bentonite fuller's earth	bentonite (including fuller's earth)
beryllium and its ores	beryllium minerals
bloating clay brick clay pipeclay	structural clay
clay shale	structural clay clay/shale
diatomaceous earth	diatomite
felspar	feldspathic materials
fire clay pottery clay	kaolin
fluorspar	fluorite
granite slate syenite	dimension stone
iron iron ore ironstone oxide of iron lateriteiron materials	
limestone	agricultural lime
platinoid materials	platinum group materials

### 7 Savings relating to Mining (Boards of Management) Regulation 2000

Any act, matter or thing that, immediately before the repeal of the *Mining (Boards of Management) Regulation 2000*, had effect under that Regulation continues to have effect under this Regulation.

### Historical notes

#### Table of amending instruments

*Mining Regulation 2003* published in Gazette No 129 of 22.8.2003, p 8129 and amended as follows: *Mining Amendment (Royalties) Regulation 2004* (GG No 104 of 25.6.2004, p 4555) *Statute Law (Miscellaneous Provisions) Act (No 2) 2004 No 91*. Assented to 10.12.2004. Date of commencement of Sch 2.50, assent, sec 2 (2).

2005 (234) *Mining Amendment Regulation 2005*. GG No 73 of 17.6.2005, p 2371. Date of commencement, 17.6.2005, cl 2.

#### Table of amendments

Cl 24	Am 2005 (234), Sch 1 [1] [2].
Cl 34	Am 2005 (234), Sch 1 [3] [4].
Cl 38A	Ins 2005 (234), Sch 1 [5].
Part 5A (cII 39A-39C)	Ins 2005 (234), Sch 1 [6].
Cl 40A	Ins 2005 (234), Sch 1 [7].
Cl 44	Am 25.6.2004.
Cl 44A	Ins 25.6.2004.
Cl 45	Am 25.6.2004; 2004 No 91, Sch 2.50 [1] [2].
Sch 1	Am 2005 (234), Sch 1 [8].
Sch 7	Am 25.6.2004.