

NORTHERN TERRITORY OF AUSTRALIA

MINING MANAGEMENT ACT

As in force at 1 July 2012

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 1 July 2012. Any amendments that may come into operation after that date are not included.

MINING MANAGEMENT ACT

An Act to provide for the authorisation of mining activities, the management of mining sites, the protection of the environment on mining sites, the provision of economic and social benefits to communities affected by mining activities, and

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Mining Management Act*.

2 Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3 Objects

The objects of this Act are:

- (a) to ensure the development of the Territory's mineral resources in accordance with environmental standards consistent with best practice in the mining industry; and
- (b) to protect the environment by:
 - (i) the authorisation and monitoring of mining activities; and
 - (ii) requiring appropriate management of mining sites; and
 - (iii) requiring an operator for a mining site to establish, implement and maintain a management system for the site and, for that purpose, to facilitate consultation and cooperation between the operator, contractors and workers on the site; and
 - (iv) implementing audits, inspections, investigations, monitoring and reporting to ensure compliance with agreed standards and criteria; and

- (v) specifying the obligations of all persons on mining sites with respect to protection of the environment; and
- (c) to assist the mining industry to introduce programs of continuous improvement to achieve best practice environmental management; and
- (ca) to promote the development of relationships between the mining industry and communities affected by mining activities to facilitate the provision of economic and social benefits to those communities; and
- (d) to enable persons connected with the mining industry to participate in the implementation of this Act through the establishment of a Mining Board to advise the Minister on:
 - (i) guidelines for the industry; and
 - (ii) specification of competencies required by persons involved in the industry; and
 - (iii) best practice in mining activities; and
- (e) to minimise the liability of the Territory by requiring the payment of security to provide for the rehabilitation of mining sites or to rectify environmental harm caused by mining activities.

4 Definitions

In this Act:

act includes omission.

acting in an official capacity, in relation to an official, means the official is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

Atomic Energy Act means Atomic Energy Act 1953 (Cth).

Authorisation means an Authorisation under Part 4, Division 2.

Commonwealth Minister means the Commonwealth Minister of State for the time being administering section 41 of the *Atomic Energy Act*.

competent means having the skill and knowledge required to carry out the relevant task or function in accordance with the appropriate environmental standards.

contaminant, see section 4(1) of the *Waste Management and Pollution Control Act*.

contractor means a person who under a contract performs work or supplies a service in connection with a mining activity on a mining site.

environment means land, air, water, organisms and ecosystems on a mining site and includes:

- (a) the well-being of humans; and
- (b) structures made or modified by humans; and
- (c) the amenity values of the site; and
- (d) economic, cultural and social conditions.

environmental harm means:

- (a) any harm to or adverse effect on the environment; or
- (b) any potential harm (including the risk of harm and future harm) to or potential adverse effect on the environment,

of any degree or duration and includes environmental nuisance.

environmental incident means an incident on a mining site that causes environmental harm.

environmental nuisance means:

- (a) an adverse effect on the amenity of land caused by noise, smoke, dust, fumes or odour; or
- (b) an unsightly or offensive condition on the land.

environmental obligation means an obligation imposed on a person under Part 3, Division 1.

exploration means all modes of searching for or evaluating deposits of minerals other than by remote sensing.

extractive mineral means sand, gravel, rocks or soil extracted, obtained or removed for a purpose other than:

- (a) extracting, producing or refining minerals from the sand, gravel, rocks or soil; or
- (b) processing the sand, gravel, rocks or soil by non-mechanical means.

guideline means a guideline issued by the Minister under Part 5.

land means land within the jurisdictional limits of the Territory and includes waters within those limits.

loss, in relation to material environmental harm and serious environmental harm, includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or rectify the environmental harm.

management system, for a mining site, means the environmental protection management system established, implemented and maintained under section 16(2)(c).

material environmental harm means environmental harm that:

- (a) is not trivial or negligible in nature; or
- (b) consists of an environmental nuisance of a high impact or on a wide scale; or
- (c) results, or is likely to result, in not more than \$50 000 or the prescribed amount (whichever is greater) being spent in taking appropriate action to prevent or minimise the environmental harm or rehabilitate the environment; or
- (d) results in actual or potential loss or damage to the value of not more than \$50 000 or the prescribed amount (whichever is greater).

mineral means any:

- (a) naturally occurring:
 - (i) inorganic element or compound, including an inorganic carbonate compound; or
 - (ii) organic carbonate compound,
obtained or obtainable from land by mining; or
- (b) coal, lignite, peat or oil shale; or
- (c) extractive mineral; or
- (d) other substance declared by the Minister, by a notice in the *Gazette*, to be a mineral for the purposes of this Act,

but does not include:

- (e) water; or

(f) petroleum as defined in section 5(1) of the *Petroleum Act*.

mining activity means any of the following activities:

- (a) exploration for minerals;
- (b) mining of minerals;
- (c) processing of minerals, tailings, spoil heaps or waste dumps;
- (d) decommissioning or rehabilitation of a mining site;
- (e) operations and works in connection with the activities in paragraphs (a), (b), (c) and (d), including:
 - (i) the removal, handling, transport and storage of minerals, substances, contaminants and waste; and
 - (ii) the construction, operation, maintenance and removal of plant and buildings;
- (ea) operations and works in connection with exploration or mining generally;
- (eb) the construction, maintenance and use of infrastructure authorised by an access authority granted under the *Mineral Titles Act*;
- (f) operations for the care and maintenance of a mining site when an activity referred to in another paragraph of this definition, except paragraph (e), is suspended.

mining interest means one of the following:

- (a) a mineral title as defined in section 11(1) of the *Mineral Titles Act*;
- (b) a non-compliant existing interest as defined in section 204(1) of the *Mineral Titles Act*;
- (c) an authority under section 41 of the Atomic Energy Act.

mining management plan, see section 40(1).

mining officer means a person appointed as a mining officer under Part 7.

mining site means an area of land:

- (a) in respect of which a person holds a mining interest; or

- (b) on which mining activities are being, or have been, carried out; or
- (c) that is declared by the Minister, by *Gazette* notice, to be a mining site for the purposes of this Act.

official means:

- (a) the Chief Executive Officer; or
- (b) a mining officer or an assistant mentioned in section 62(1)(a).

operator means the operator for a mining site referred to in section 9(1).

owner, in relation to a mining site, includes a person holding the mining interest in respect of the site, a person in possession of the site and an occupier of the site.

plant includes machinery, pressure vessels, equipment, appliances, implements, scaffolding and tools, any component of the plant and anything fitted or connected to the plant.

representative, for Part 9, Division 1, see section 71.

serious environmental harm means environmental harm that is more serious than material environmental harm and includes environmental harm that:

- (a) is irreversible or otherwise of a high impact or on a wide scale; or
- (b) damages an aspect of the environment that is of a high conservation value, high cultural value or high community value or is of special significance; or
- (c) results or is likely to result in more than \$50 000 or the prescribed amount (whichever is greater) being spent in taking appropriate action to prevent or minimise the environmental harm or rehabilitate the environment; or
- (d) results in actual or potential loss or damage to the value of more than \$50 000 or the prescribed amount (whichever is greater).

serious environmental incident means an incident on a mining site that causes material environmental harm.

substance means a natural or artificial substance, whether in solid, liquid, gas or vapour form.

this Act includes regulations made under this Act.

uranium or thorium includes a derivative or compound of uranium or thorium.

waste, see section 4(1) of the *Waste Management and Pollution Control Act*.

worker means an individual on a mining site who, under a contract or agreement of any kind (whether express or implied, oral or in writing, or under a law of the Territory or not), performs work or supplies a service in connection with a mining activity on the site and includes:

- (a) an employee of the operator; and
- (b) a contractor or employee of a contractor.

5 Application

- (1) Subject to section 7, this Act applies in relation to all mining sites and mining activities in the Territory.
- (2) This Act does not apply in relation to fossicking within the meaning of section 135 of the *Mineral Titles Act*.
- (3) This Act does not apply in relation to the extraction of material from temporary borrow pits required for the construction or maintenance of a road, railway or other infrastructure unless the extraction is carried out on a mining site in respect of which a person holds a mining interest.

6 Act to bind Crown

This Act binds the Crown in right of the Territory and, to the extent that the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

7 Exemptions

- (1) The Minister may, by *Gazette* notice, exempt:
 - (a) a person, mining site, part of a mining site or a class of mining sites; or
 - (b) a mining activity or class of mining activities,

from this Act, or a specified provision of this Act, for the period and on the conditions that the Minister thinks fit and specifies in the notice.

- (2) Before exempting under subsection (1):
- (a) a person, mining site, part of a mining site or a class of mining sites in relation to a mining activity in respect of uranium or thorium; or
 - (b) a mining activity or class of mining activities in respect of uranium or thorium,
- the Minister must consult with the Commonwealth Minister and give effect to the advice given by the Commonwealth Minister.
- (3) The Minister must not exempt a person, site or activity referred to in subsection (2) otherwise than in accordance with the advice of the Commonwealth Minister.

8 Civil remedies and common law not affected

- (1) Unless expressly provided for, this Act does not affect a civil right or remedy available to a person in respect of a matter to which this Act applies.
- (2) Compliance with this Act is not of itself evidence that there has been no breach of a common law duty of care.

8A Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 8A

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Management and competencies

9 Operator responsible for control and management

- (1) The operator for a mining site is responsible for the control and management of the site and the mining activities carried out on the site.
- (2) The operator for a mining site must take all reasonable and practicable measures to ensure that every person on the site complies with and does not contravene this Act.

Maximum penalty: 1 000 penalty units.

10 Owner may be operator or may appoint operator

- (1) The owner of a mining site may also be the operator for the site.
- (2) If the owner of a mining site is not also the operator for the site, the owner must appoint an operator for the site.
- (3) The appointment must be in writing and include a condition that the operator must:
 - (a) before mining activities are carried out on the mining site – establish a management system for the site; and
 - (b) while mining activities are carried out on the mining site – implement and maintain the management system.
- (4) If the operator resigns or the appointment is terminated after the notice mentioned in section 36(2)(b) has been given to the Minister, the owner must, not later than 14 days after the relevant date, give the Chief Executive Officer a written notice of the resignation or termination and the date on which it took effect.

Maximum penalty: 20 penalty units.

- (5) If the owner appoints a different operator after the notice mentioned in section 36(2)(b) has been given to the Minister, the owner must, not later than 14 days after the relevant date, give the Chief Executive Officer a written notice of the appointment and the date on which it took effect.

Maximum penalty: 20 penalty units.

- (6) The owner of a mining site who has appointed an operator for the site must take all reasonable and practicable measures to ensure the operator does not contravene this Act.

Maximum penalty: 1 000 penalty units.

- (7) An offence against subsection (4) or (5) is an offence of strict liability.
- (8) In this section:

relevant date means the date on which the termination of appointment, or the resignation or appointment, of an operator takes effect.

11 Competencies

- (1) The Minister may, by *Gazette* notice, specify the competencies required by a class of persons in respect of specified mining activities.
- (2) The Minister may, by *Gazette* notice, specify that a worker requires a certificate of competency to carry out specified work.
- (3) A worker must not carry out work referred to in subsection (2) without a current certificate of competency.

Maximum penalty: 200 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

Part 3 The Environment

Division 1 Environmental obligations

12 Definition

In this Division, *practicable*, in relation to a hazard or risk, means practicable having regard to:

- (a) the severity of the hazard or risk; and
- (b) the state of knowledge about the hazard or risk and the ways of removing or mitigating it; and
- (c) the availability and suitability of ways to remove or mitigate the hazard or risk; and
- (d) the cost of removing or mitigating the hazard or risk.

13 General obligation to take care of the environment

Every person on a mining site has an obligation to take care of the environment.

14 Obligations in respect of the site

- (1) A person on a mining site must comply with instructions and procedures applying to the person that are included in the management system for the site.
- (2) A person on a mining site must follow all reasonable directions given by the operator, or a person having the duty to give the person directions, about preventing environmental harm.

- (3) A person must not wilfully or recklessly:
 - (a) cause environmental harm on a mining site; or
 - (b) interfere with or misuse anything provided on a mining site for environmental protection.

15 Obligations of owner who has appointed operator

The owner of a mining site who has appointed an operator for the site must:

- (a) provide the operator with all relevant information available to the owner that may assist the operator to establish and implement an appropriate environment protection management system; and
- (b) ensure that the operator:
 - (i) is competent; and
 - (ii) provides adequate resources to establish and implement the management system.

16 Obligations of operator

- (1) The operator for a mining site must ensure that the environmental impact of mining activities is limited to what is necessary for the establishment, operation and closure of the site.
- (2) For that purpose, the operator must:
 - (a) establish and maintain an appropriate management structure of competent persons for the site; and
 - (b) as far as practicable ensure that workers on the site are competent to perform their duties; and
 - (c) establish, implement and maintain an appropriate environment protection management system for the site; and
 - (d) provide adequate resources for the implementation and maintenance of the management system; and
 - (e) ensure, by regular assessment, that the management system operates effectively.
- (3) The operator for a mining site must display in a prominent place on the site all written instructions of a mining officer relating to the site and make those instructions available to a contractor or worker on request.

16A Consultation and cooperation for taking care of environment

- (1) For section 16(2)(c), the operator for a mining site must facilitate consultation and cooperation between the operator, contractors and workers in initiating, developing and implementing environment protection measures for the site's management system.
- (2) Without limiting subsection (1), the measures may include one or more of the following:
 - (a) establishing one or more environment protection committees for the mining site or for a particular mining activity;
 - (b) establishing appropriate policies and procedures for dealing with issues involving risk of environmental harm;
 - (c) ensuring, as far as practicable, that adequate information is available about environmental risks involved in operations on the site;
 - (d) planning appropriate strategies for dealing with environmental incidents and serious environmental incidents on the site.

17 Obligations of worker

- (1) A worker must keep himself or herself informed about, and comply with, work instructions and procedures applying to the worker that are included in the management system for the site.
- (2) A worker must, as soon as practicable, report to the operator for the site or, if employed by a contractor, to the contractor:
 - (a) the occurrence of an environmental incident or serious environmental incident; or
 - (b) a situation the worker has reason to believe may present a risk to the environment.

18 Obligations of contractor who is employer

- (1) A contractor must ensure that the provisions of this Act and the management system for the site are complied with to the extent that they relate to the work performed or service provided by the contractor.
- (2) A contractor must report an environmental incident or serious environmental incident to the operator for the site as soon as practicable after becoming aware of the incident.

- (3) In this section, ***contractor*** means a contractor who employs a worker whether the contractor is a body corporate or an individual.

21 Consequences of breach of obligation

- (1) A person who breaches an obligation imposed by this Division may be found guilty of an offence under Division 3 but the breach does not of itself constitute an offence.
- (2) The fact that environmental harm has occurred on a mining site is not of itself evidence of an offence under Division 3.

Division 3 Environmental offences

25 Application of Division

This Division does not apply in relation to environmental harm caused by a substance that is prescribed under the *Waste Management and Pollution Control Act* to be an ozone-depleting substance.

26 Serious environmental harm – environmental offence level 1

- (1) A person commits an offence if:
- (a) the person engages in conduct on a mining site; and
 - (b) the conduct results in:
 - (i) a contravention of an environmental obligation; and
 - (ii) serious environmental harm.
- (2) An offence against subsection (1) is an environmental offence level 1.
- (3) In a proceeding for an offence against subsection (1), the person charged with the offence may be found guilty alternatively of an offence against section 26A(1), 27(1), 27A(1), 28(1) or 28A(1).

26A Serious environmental harm – environmental offence level 2

- (1) A person commits an offence if:
- (a) the person engages in conduct on a mining site; and
 - (b) the conduct results in:
 - (i) a contravention of an environmental obligation; and

- (ii) serious environmental harm; and
 - (c) the person is negligent about the result mentioned in paragraph (b)(ii).
- (2) An offence against subsection (1) is an environmental offence level 2.
- (3) In a proceeding for an offence against subsection (1), the person charged with the offence may be found guilty alternatively of an offence against section 27(1), 27A(1), 28(1) or 28A(1).

27 Material environmental harm – environmental offence level 2

- (1) A person commits an offence if:
- (a) the person engages in conduct on a mining site; and
 - (b) the conduct results in:
 - (i) a contravention of an environmental obligation; and
 - (ii) material environmental harm.
- (2) An offence against subsection (1) is an environmental offence level 2.
- (3) In a proceeding for an offence against subsection (1), the person charged with the offence may be found guilty alternatively of an offence against section 27A(1), 28(1) or 28A(1).

27A Material environmental harm – environmental offence level 3

- (1) A person commits an offence if:
- (a) the person engages in conduct on a mining site; and
 - (b) the conduct results in:
 - (i) a contravention of an environmental obligation; and
 - (ii) material environmental harm; and
 - (c) the person is negligent about the result mentioned in paragraph (b)(ii).
- (2) An offence against subsection (1) is an environmental offence level 3.

- (3) In a proceeding for an offence against subsection (1), the person charged with the offence may be found guilty alternatively of an offence against section 28(1) or 28A(1).

28 Environmental nuisance – environmental offence level 3

- (1) A person commits an offence if:
- (a) the person engages in conduct on a mining site; and
 - (b) the conduct results in:
 - (i) a contravention of an environmental obligation; and
 - (ii) environmental nuisance.
- (2) An offence against subsection (1) is an environmental offence level 3.
- (3) In a proceeding for an offence against subsection (1), the person charged with the offence may be found guilty alternatively of an offence against section 28A(1).

28A Environmental nuisance – environmental offence level 4

- (1) A person commits an offence if:
- (a) the person engages in conduct on a mining site; and
 - (b) the conduct results in:
 - (i) a contravention of an environmental obligation; and
 - (ii) environmental nuisance; and
 - (c) the person is negligent about the result mentioned in paragraph (b)(ii).
- (2) An offence against subsection (1) is an environmental offence level 4.

Division 4 Environmental incidents and serious environmental incidents

29 Operator must report environmental incident or serious environmental incident

- (1) As soon as practicable after the operator for a mining site becomes aware of the occurrence of an environmental incident or serious environmental incident on the site, the operator must notify the Chief Executive Officer of the occurrence.

Maximum penalty: 200 penalty units.

- (2) An operator who gives notice orally must, as soon as practicable after doing so, give a written notice to the Chief Executive Officer.

Maximum penalty: 200 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

30 Investigation by mining officer

As soon as practicable after receiving notice of an environmental incident or serious environmental incident, the Chief Executive Officer may instruct a mining officer to:

- (a) inspect the place where the incident occurred; and
- (b) if the mining officer considers circumstances require it – investigate the incident to determine, if possible, the nature and cause of the incident; and
- (c) give the Chief Executive Officer a written report of the findings of any investigation.

31 Investigation by operator

- (1) If a serious environmental incident occurs on a mining site, the operator for the site must:

- (a) carry out an investigation to determine, if possible, the cause of the incident; and
- (b) within the relevant time – give the Chief Executive Officer a written report about the incident that includes information about remedial actions taken, or to be taken, and recommendations for the prevention of further similar incidents.

- (2) If an environmental incident occurs on a mining site, the Chief Executive Officer may, by written notice, require the operator for the site to:
- (a) carry out an investigation to determine, if possible, the cause of the incident; and
 - (b) within the relevant time – give the Chief Executive Officer a written report about the incident that includes information about remedial actions taken, or to be taken, and recommendations for the prevention of further similar incidents.
- (3) An operator must not contravene subsection (1) or a requirement under subsection (2).

Maximum penalty: 200 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.
- (6) In this section:

relevant time means:

- (a) for subsection (1)(b) – 14 days after the day on which the serious environmental incident occurred or a longer period as approved by the Chief Executive Officer; or
- (b) for subsection (2)(b) – 14 days after the day on which the Chief Executive Officer gives the notice or a longer period as approved by the Chief Executive Officer.

31A Publication of report

If the Chief Executive Officer considers it to be in the public interest, the Chief Executive Officer may publish all or part of a report given under section 30 or 31.

32 No interference with place of serious environmental incident

- (1) A person commits an offence if the person:
- (a) interferes with a place where a serious environmental incident occurred; and

(b) does not have the permission of a mining officer to do so.

Maximum penalty: 200 penalty units.

(2) Strict liability applies to subsection (1)(b).

Division 5 General offence

33 No unauthorised release of waste or contaminant

(1) A person commits an offence if:

(a) the person releases waste or a contaminant that is from a mining site; and

(b) the release is not authorised by the mining management plan for the site.

Maximum penalty: 200 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

(4) Subsection (1) applies regardless of whether the release:

(a) occurs on or outside the mining site; or

(b) causes, or has the potential to cause, environmental harm.

Part 4 Mining activities

Division 1 Exercise of powers by Minister

34 Minister to have regard to mining interest etc.

(1) Before exercising a power or performing a function under this Part in relation to an Authorisation, the Minister must have regard to the mining interest held for the mining site to which the Authorisation relates and any conditions of that mining interest.

(2) In granting or varying an Authorisation that relates to a mining interest held under the *Mineral Titles Act*, the Minister must ensure that the conditions of the Authorisation are not inconsistent with the conditions of the mining interest.

- (3) Before exercising a power or performing a function under this Part in relation to an Authorisation that relates to uranium or thorium, the Minister:
- (a) must consult with the Commonwealth Minister about matters agreed in writing between them relating to the mining of uranium or thorium; and
 - (b) must act in accordance with any advice provided by the Commonwealth Minister.
- (4) In granting or varying an Authorisation that relates to the Ranger Project Area, the Minister must ensure that the Authorisation incorporates or adopts by reference (with the necessary modifications) the Ranger Project Environmental Requirements.
- (5) In subsection (4):

Ranger Project Area, see section 4 of the *Atomic Energy Act*.

Ranger Project Environmental Requirements means the environmental requirements relating to the Ranger Project Area as set out in Appendix A to the Schedule to the authority under section 41 of the *Atomic Energy Act* and dated 14 November 1999.

Division 2 Authorisation to carry out mining activities

35 Requirement for Authorisation

- (1) The operator for a mining site may carry out mining activities on the site only if the Minister has granted the operator an Authorisation to do so.
- (2) However, subsection (1) applies in relation to the carrying out of exploration for minerals on a mining site only if the exploration will involve substantial disturbance of the mining site.
- (3) For subsection (2), substantial disturbance of a mining site includes any of the following:
- (a) land clearing;
 - (b) earthworks (for example, cutting, filling, excavating or trenching);
 - (c) aboveground works (for example, works for building roads, buildings, bridges, railways or airstrips or works for establishing conveyors, pipelines, telephone lines or power lines);

- (d) underground works (for example, works in connection with tunnels, wells, pipelines, conduits or cables);
 - (e) waterworks (for example, works in connection with dams, impoundments, canals or the drainage or alteration of river or creek banks, water courses or shorelines);
 - (f) extracting resources from the surface of the land, underground, riverbeds or under the sea;
 - (g) stockpiling ore, overburden, waste materials or by-products;
 - (h) establishing seismic lines, drill pads, drill holes, grids, tracks or costeans;
 - (i) establishing a camp for the workers;
 - (j) blasting;
 - (k) active remote sensing and seismic techniques in water;
 - (l) an activity that is likely to have a significant impact on flora or fauna.
- (4) The operator for a mining site commits an offence if:
- (a) the operator carries out a mining activity on the site; and
 - (b) the mining activity is an activity for which an Authorisation is required because of subsection (1); and
 - (c) there is no Authorisation in force for the mining activity.

Maximum penalty: 5 000 penalty units.

- (5) Strict liability applies to subsection (4)(b) and (c).

36 Approval of mining management plan and grant of Authorisation

- (1) An operator for a mining site who requires an Authorisation because of section 35(1) must apply in writing to the Minister for the Authorisation.
- (2) The application must be accompanied by:
 - (a) the mining management plan for the mining site; and
 - (b) if the operator is not the owner of the mining site – a notice stating the date on which the operator was appointed.

- (3) The Minister may, by written notice to the operator, request further information to be given within the time specified in the notice.
- (4) The Minister may decide the application by:
 - (a) approving the mining management plan and granting the Authorisation; or
 - (b) refusing to approve the mining management plan and refusing to grant the Authorisation.
- (5) Before approving the mining management plan, the Minister must be satisfied:
 - (a) the management system for the mining site, as detailed in the plan:
 - (i) is appropriate for the mining activities described in the plan; and
 - (ii) will, as far as practicable, operate effectively in protecting the environment; and
 - (b) the mining activities described in the plan will be carried out in accordance with good industry practice.
- (6) If the Minister refuses to approve the mining management plan and grant the Authorisation, the Minister must give the operator written reasons for the refusal.

37 Duration and conditions of Authorisation

- (1) An Authorisation is granted for the period and subject to the conditions specified in it.
- (2) An Authorisation is subject to the following conditions:
 - (a) the operator for the mining site to which the Authorisation relates must comply with the mining management plan in force for the site;
 - (b) if the mining management plan relates to the mining of minerals – the operator must make an environmental mining report available to the public at intervals not exceeding 12 months;

- (c) any other conditions the Minister considers appropriate for the mining activities specified in the mining management plan.

Note for subsection (2)(b)

See section 45A if the operator does not comply with the condition.

- (3) For subsection (2)(b), an ***environmental mining report*** is a report about an operator's environmental performance in carrying out activities for mining minerals, taking into account:
- (a) the commitments given by, and the obligations imposed on, the operator in relation to an environmental assessment under the *Environmental Assessment Act*; and
 - (b) the obligations of the operator under the management system for the mining site.
- (4) An environmental mining report must:
- (a) be in the form approved by the Chief Executive Officer; and
 - (b) include the information required by the approved form; and
 - (c) be made available to the public in a way that is specified in the approved form.
- (5) Without limiting subsection (2)(c), the Minister may impose conditions on an Authorisation about any of the following matters:
- (a) the protection of the environment;
 - (b) the outcomes of an environmental assessment of mining activities undertaken under the *Environmental Assessment Act*;
 - (c) the requirement for security for the purpose mentioned in section 43, in the form and on the terms specified in the condition;
 - (d) the provision of social and economic benefits to communities outside the mining site that will be directly affected by the mining activities to be carried out on the site;
 - (e) the form and frequency of periodic reports about mining activities carried out on the mining site;

- (f) the requirement to make particular reports, or parts of reports, available to the public.

Note for subsection (5)(f)

See section 45A if the operator does not comply with the condition.

- (6) In this section:

minerals does not include extractive minerals.

38 Variation or revocation of Authorisation

- (1) An operator may apply in writing to the Minister for a variation of an Authorisation, stating the reasons for the application.

Note for subsection (1)

If the mining management plan is being amended in connection with the variation, section 41(2) to (5) applies.

- (2) The Minister may, by written notice to an operator, vary or revoke an Authorisation.
- (3) The Minister must not vary an Authorisation unless satisfied the management system detailed in the current mining management plan, or in the amended plan submitted for approval in connection with the variation:
- (a) is appropriate for the mining activities described in the plan; and
 - (b) as far as practicable – will operate effectively in protecting the environment.
- (4) Before varying or revoking an Authorisation, the Minister may in writing request the operator to give the Minister specified information, documents or plans within a specified time.
- (5) A variation or revocation of an Authorisation takes effect:
- (a) on the date on which the notice of variation or revocation is given to the operator; or
 - (b) if a later date is specified in the notice – on the later date.

39 Contravention of Authorisation

The operator for a mining site commits an offence if:

- (a) the operator engages in conduct; and

- (b) the conduct results in a contravention of the Authorisation in force for the site.

Maximum penalty: 250 penalty units.

Division 3 Mining management plan

40 Mining management plan and required information

- (1) A *mining management plan* is a plan for the management of a mining site for which the operator requires an Authorisation to carry out mining activities.
- (2) A mining management plan must include the following:
 - (a) details of the mining interest held for, or associated with, the mining site;
 - (b) details of the ownership of the mining interest;
 - (c) a description of the mining activities for which the operator requires an Authorisation;
 - (d) details of the organisational structure for carrying out the mining activities;
 - (e) details of the management system;
 - (f) plans of proposed and current mine workings and infrastructure;
 - (g) a plan and costing of closure activities;
 - (h) other details or plans required by the Minister.

41 Review and amendment of mining management plan

- (1) The operator for a mining site must, at intervals specified in the Authorisation for the site or as required in writing by the Minister:
 - (a) review and, if necessary, amend the mining management plan for the site; and
 - (b) if the plan is amended – submit the amended plan to the Minister for approval.
- (2) If at any other time it is necessary to amend the mining management plan, the operator must submit the amended plan to the Minister for approval.

- (3) An amended mining management plan must clearly identify the amendments.
- (4) The Minister may, by written notice to the operator, approve the amended plan or refuse to do so.
- (5) An amended mining management plan has no effect unless it has been approved by the Minister.

42 Notification of proposed cessation of mining activities

- (1) The operator for a mining site must notify the Minister in writing of the proposed cessation of mining activities on the site that is not in accordance with the mining management plan as soon as practicable before cessation.

Maximum penalty: 20 penalty units

- (2) An offence against subsection (1) is an offence of strict liability.

Division 4 Security

43 Purpose of security

A security required by the Minister under a condition of an Authorisation is for the purpose of securing any of the following:

- (a) an operator's obligation to comply with this Act or an Authorisation;
- (b) payment of costs and expenses in relation to the Minister causing an action to be taken to prevent, minimise or rectify environmental harm:
 - (i) on a mining site; or
 - (ii) outside a mining site if the environmental harm results from or may result from a mining activity;
- (c) payment of costs and expenses in relation to the Minister causing an action to be taken to complete rehabilitation of a mining site.

44 Claim on security

- (1) In this section, *claim on a security* means any method of taking the benefit of a security provided by an operator.

- (2) If the Minister intends to make a claim on a security, the Minister must give the operator a written notice including:
 - (a) the reason for making the claim; and
 - (b) if action is to be taken, or has been taken, under section 83 – a summary of that action; and
 - (c) the amount of the security that is to be claimed.
- (3) The operator may, within 30 days after being given a notice under subsection (2), make submissions to the Minister in relation to the matters in the notice.
- (4) The Minister may make a claim on a security if he or she has:
 - (a) given the operator a notice under subsection (2); and
 - (b) considered any submission made by the operator; and
 - (c) notified the operator of his or her decision to claim on the security.
- (5) If the amount recovered by the Minister by a claim on a security is less than the reasonable costs and expenses incurred by or on behalf of the Minister, he or she may, by written notice, require the operator to pay a specified amount within a specified time.
- (6) The amount specified under subsection (5) is to be the difference between the costs and expenses claimed on the security and the reasonable costs and expenses incurred in relation to the matter to which the claim relates.
- (7) The amount specified in a notice under subsection (5) is a debt due to the Territory and is payable by the date specified in the notice.
- (8) Costs and expenses may be recovered under this section even though they were incurred as a result of an act or matter that occurred before the security was provided to the Minister.

Division 5 Miscellaneous matters

45 Minister may require information

- (1) The Minister may give the operator for a mining site a written notice requiring the operator to provide the Minister with specified information, statistics or plans relevant to the site, or a mining activity on the site, within the time specified in the notice.

- (2) The operator must comply with the notice.

Maximum penalty: 20 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

45A Minister may publish report

If an operator is required under section 37 to make all or part of a report available to the public and does not do so, the Minister may publish the report or part.

46 Certificate of closure

- (1) On completion of the rehabilitation of a mining site to the satisfaction of the Minister, the operator for the site may apply to the Minister for a certificate of closure in respect of the site.
- (2) When the operator has met the closure criteria for the mining site, the Minister must:
 - (a) issue to him or her a certificate of closure in respect of the site; and
 - (b) return or relinquish any outstanding security provided by the operator.
- (3) In this section, *closure criteria* means the standard or level of performance, as specified in the mining management plan for the mining site, that demonstrates successful closure of the site.

Part 5 Guidelines

47 Minister may issue guidelines

- (1) The Minister may issue, vary or revoke guidelines.
- (2) Guidelines may refer to or incorporate, wholly or partially and with or without modification, a standard, code or other document formulated or published by a body referred to in the guidelines as in force at the time the guideline is issued or as amended, formulated or published from time to time.
- (3) The Minister must give notice in the *Gazette* of the issuing, variation or revocation of guidelines and specify in the notice the place at which copies of the guidelines that are in force, and all documents incorporated or referred to in those guidelines, may be inspected during normal business hours.

- (4) The Minister must make all guidelines that are in force, and all documents incorporated or referred to in those guidelines, available for general inspection free of charge.

48 Purpose of guidelines

The purpose of guidelines is to provide guidance on matters referred to in this Act, including known best practice in respect of mining activities, and to encourage continual improvement in the carrying out or the management of mining activities.

Part 6 Mining Board

49 Establishment of Mining Board

The Mining Board is established.

50 Functions and powers of Mining Board

- (1) The functions of the Mining Board are as follows:
- (a) to advise or report to the Minister on matters relevant to mining activities and their management, including the following:
 - (ii) best practice in mining activities inside and outside Australia;
 - (iii) consistency of legislation, guidelines and competencies inside and outside Australia;
 - (iv) levels of competencies required by persons in respect of specified mining activities;
 - (v) competencies required by mining officers;
 - (b) to recommend guidelines to the Minister for his or her approval;
 - (c) to develop guidelines and other forms of assistance to persons involved in mining activities;
 - (d) to investigate and research matters relevant to mining activities and their management;
 - (e) to constitute a review panel for the purposes of Part 8;
 - (f) other functions imposed by the Minister or prescribed by regulations.

- (2) The Mining Board may exercise the powers conferred on it by this Act or that are necessary or incidental to the performance of its functions.

51 Membership of Mining Board

- (1) The Mining Board is constituted by at least 5 members appointed in writing by the Minister.
- (2) Before appointing a member of the Mining Board, the Minister must request each organisation in the Territory representing the mining industry to nominate one or more persons for appointment.
- (3) If sufficient nominations are received by the Minister after making a request under subsection (2), the Minister must ensure that the majority of the members of the Mining Board comprises persons nominated by organisations representing the mining industry.
- (4) A member of the Mining Board who is not nominated by an organisation representing the mining industry must have the experience in the mining industry or matters connected with the mining industry that the Minister thinks fit.
- (5) A member holds office for the period (not exceeding 3 years) specified in the instrument of appointment and is eligible for reappointment.

52 Chairperson

- (1) The Minister must in writing appoint a member of the Mining Board who is not a public sector employee to be the Chairperson of the Board.
- (2) The Chairperson holds office for the period (not exceeding 3 years) specified in the instrument of appointment and is eligible for reappointment.
- (3) The Chairperson must preside at all meetings of the Mining Board but if the Chairperson is absent from a meeting the members present at the meeting must elect one of their number to act as the Chairperson for the purposes of that meeting.
- (4) A member has the same powers as the Chairperson when acting as the Chairperson.

53 Termination of appointment

- (1) The Minister may terminate the appointment of the Chairperson or a member of the Mining Board for inability, inefficiency, misbehaviour or physical or mental incapacity.

- (2) The Minister must terminate the appointment of a member who:
- (a) is absent from 3 consecutive meetings of the Mining Board without the leave of the Board; or
 - (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of remuneration for their benefit.

54 Resignation of member

A member or the Chairperson of the Mining Board may resign from office by written notice given to the Minister.

55 Acting members

- (1) The Minister may appoint a person to act as a member of the Mining Board (other than as the Chairperson):
- (a) during a vacancy in the office of the member, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the member is for any reason unable to perform the functions of the office.
- (2) A person appointed to act as a member under subsection (1)(a) must not act in that office continuously for more than 12 months.
- (3) A person is not to be appointed to act as a member under subsection (1) unless the person is eligible under section 51(2) to be appointed as a member.
- (4) Anything done by or in relation to a person purporting to act under an appointment under this section is not invalid on the ground that:
- (a) the appointment was ineffective or had ceased to have effect; or
 - (b) the occasion to act had not arisen or had ceased.
- (5) An acting member of the Mining Board has the same functions and powers as a member when acting as a member.
- (6) The Minister may terminate the appointment of an acting member at any time.

56 Meetings of Mining Board

- (1) The Mining Board must hold at least one meeting each year at a time and place determined by the Chairperson and notified in writing to the members of the Board.
- (2) The Chairperson:
 - (a) may convene a meeting of the Mining Board at any time; and
 - (b) must convene a meeting of the Mining Board, as soon as practicable, if requested in writing to do so by the Minister or 3 other members.
- (3) At a meeting of the Mining Board, one half of the number of the members then holding office (including a person appointed under section 55(1)(a) to act as a member) plus one member of the Board constitute a quorum.
- (4) At a meeting of the Mining Board, questions arising are to be determined by a majority of the members present and voting but, in the event of an equality of votes, the Chairperson may exercise a casting vote.
- (5) Subject to this Act, the Mining Board is to determine the procedures to be followed at or in connection with its meetings.

57 Committees

- (1) The Mining Board may establish committees to advise and make recommendations to the Board on those matters within the Board's powers and functions that are referred to the committees by the Board.
- (2) The Mining Board is to determine the membership of a committee and the way in which it is to carry out its functions.
- (3) A committee may be constituted by members of the Mining Board or other persons, or both.

58 Validity of actions

The exercise of a power or performance of a function by the Mining Board is not affected by reason only that:

- (a) there is a vacancy in the membership of the Board; or
- (b) there is a defect in the appointment of a member or the election of an acting Chairperson; or

- (c) a person has acted in office after the termination of his or her appointment as a member.

Part 7 Mining officers

59 Appointment of mining officer

- (1) The Minister may in writing appoint a person to be a mining officer.
- (2) The appointment of a mining officer may be subject to conditions specified in the instrument of appointment.
- (3) The Minister must be satisfied that a person appointed under this section has the appropriate competencies or adequate experience required for the performance of his or her functions as a mining officer.
- (4) A mining officer must perform the functions and may exercise the powers that are imposed or conferred on him or her by or under this Act or any other Act or delegated to him or her by the Minister or the Chief Executive Officer.

60 Identity cards

- (1) The Chief Executive Officer must issue to each mining officer an identity card containing:
 - (a) the mining officer's name, signature and photograph; and
 - (b) the date of appointment of the mining officer and the date on which the appointment is to cease (if applicable).
- (2) A mining officer must produce his or her identity card on being requested to do so by a person in respect of whom the mining officer has exercised or is about to exercise his or her powers under this Act or any other Act.
- (3) A mining officer must return his or her identity card to the Chief Executive Officer as soon as practicable after ceasing to be a mining officer.

Maximum penalty: 20 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

61 Functions of mining officer

Subject to the conditions of his or her appointment, a mining officer has the following functions:

- (a) to enforce this Act;
- (b) to monitor the management systems on mining sites;
- (c) to inspect and audit mining sites and mining activities to assess:
 - (i) levels of environmental risk; and
 - (ii) whether the applicable Authorisation and management system are being complied with;
- (d) to ensure that timely corrective or remedial action is taken to prevent environmental harm or risk of environmental harm;
- (e) to investigate and report on serious accidents and critical incidents;
- (f) to receive and investigate complaints in relation to mining sites or mining activities;
- (g) to provide advice and information to the Minister, the Chief Executive Officer, persons involved in mining activities and the public;
- (h) to collect and collate statistics about mining activities and the mining industry as required by the Minister.

62 Powers of mining officer

- (1) Subject to this Act, a mining officer may, in respect of a mining site:
 - (a) enter and inspect the site at any time, with the assistants that the mining officer considers necessary, but not so as to unnecessarily impede or obstruct mining activities; or
 - (b) require the assistance of the owner, operator, contractors or workers to obtain access to parts of the site or to information necessary to enable the mining officer to perform his or her functions; or
 - (c) require a person to provide information that is reasonably necessary:
 - (i) to assist the mining officer to perform a function under this Act; or

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- (ii) for the administration or enforcement of this Act; or
 - (d) require the owner, operator, a contractor or a worker to attend and answer questions for the purposes of an investigation into:
 - (i) a critical incident or serious accident; or
 - (ii) a complaint received by the mining officer; or
 - (iii) other matters relevant to this Act; or
 - (e) issue written instructions to the operator; or
 - (f) direct the operator to take action to ensure compliance with the Authorisation, the management system or other obligations under this Act; or
 - (g) close the site or part of the site if the mining officer has assessed there is an immediate risk of a serious accident; or
 - (h) take any other action that may be reasonably necessary to:
 - (i) protect the environment; or
 - (ii) ensure compliance with this Act, the Authorisation or the management system.
- (2) A person must comply with a requirement, instruction or direction of a mining officer given under subsection (1).
- Maximum penalty: 100 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

63 Mining officer not to disclose name of complainant

A mining officer who receives a complaint mentioned in section 61(f) must not disclose the name of the person who made the complaint.

Maximum penalty: 100 penalty units.

64 Obstruction of official

- (1) A person commits an offence if the person:
- (a) obstructs an official who is acting in an official capacity; and

(b) knows the official is acting in an official capacity.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

(2) In this section:

obstruct includes resist and hinder.

64A Falsely representing to be mining officer

(1) A person commits an offence if:

- (a) the person represents, by words or conduct, that the person or someone else is a mining officer; and
- (b) the person or other person is not a mining officer; and
- (c) the person makes the representation with an intention to deceive.

Maximum penalty: 100 penalty units.

(2) Strict liability applies to subsection (1)(b).

Part 8 Review of decisions

65 Applications for review

(1) A person may apply for a review of a decision of the Minister or a delegate of the Minister:

- (a) under section 36(6) refusing to approve a mining management plan and grant an Authorisation; or
- (b) under section 37 imposing a condition of an Authorisation; or
- (c) under section 38 varying or refusing to vary, revoking or refusing to revoke, a condition of an Authorisation; or
- (ca) under section 41(4) refusing to approve an amended management plan; or
- (d) under section 44 claiming on a security.

(2) A person affected by a decision of a mining officer under this Act may apply for a review of the decision.

- (3) A person applying for a review of a decision must lodge the application with the Chief Executive Officer within 28 days after the date of the decision or service of the notice relating to the decision (as applicable).
- (4) An application for a review of a decision is to be in a form approved by the Chief Executive Officer and is to set out the reasons for the application.
- (5) In subsection (2), *decision* includes a requirement of or instruction or direction given by a mining officer in the exercise or performance, or purported exercise or performance, of the officer's powers or functions under this Act.

66 Review

- (1) If a person applies under section 65(1) for a review of a decision of the Minister or a delegate of the Minister:
 - (a) the Chief Executive Officer must provide the Chairperson of the Mining Board with a copy of the application as soon as practicable after it is lodged; and
 - (b) the decision is to be reviewed by a review panel.
- (2) If a person applies under section 65(2) for a review of a decision of a mining officer, the decision is to be reviewed by the Chief Executive Officer or a delegate of the Chief Executive Officer.

67 Application for further review

- (1) A person who applies under section 65(2) for a review of a decision of a mining officer may, after the review of that decision under section 66(2), apply for a further review of the decision of the mining officer.
- (2) A person applying for a further review under this section must lodge the application with the Chief Executive Officer within 28 days after the date of service of the notice referred to in section 70(6).
- (3) An application under this section is to be in a form approved by the Chief Executive Officer and is to set out the reasons for the application.

68 Further review

If a person applies under section 67 for a further review of a decision of a mining officer:

- (a) the Chief Executive Officer must provide the Chairperson of the Mining Board with a copy of the application as soon as practicable after it is lodged; and
- (b) the further review is to be by a review panel.

69 Constitution and procedure of review panel

- (1) A review panel is constituted by the Chairperson of the Mining Board and 2 other members of the Board appointed in writing by the Chairperson for the purposes of that review.
- (2) Subject to section 70, the procedure in connection with a review by a review panel is in the discretion of the review panel.

70 Review procedure generally

- (1) In this section:

review means a review of a decision under section 66 or a further review of a decision under section 68.

reviewer means the person or persons conducting the review.

- (2) A review is to be a review on the merits and is to be decided:
 - (a) in the case of a review by the Chief Executive Officer or his or her delegate – within 21 days after the date on which the application for review is lodged; or
 - (b) in the case of a review by a review panel – within 28 days after the date on which the application for review is lodged.
- (3) The reviewer must conduct the review in a manner that is fair and expeditious and must give proper consideration to all relevant issues.
- (4) The reviewer may stay the operation of the decision under review if the reviewer considers it to be appropriate in the circumstances.
- (5) The reviewer must decide the review by:
 - (a) confirming the decision under review; or
 - (b) varying the decision under review; or

- (c) setting aside the decision under review and making a decision in substitution for it.
- (6) The reviewer must give the person who applied for the review a written notice of the reviewer's decision and the reasons for the decision.
- (7) A decision varied or made under subsection (5)(b) or (c) is to be taken to be the decision of the person who made the decision under review.

Part 9 Offences, liability and criminal proceedings

Division 1 Offences and liability

71 Definition

In this Division:

representative, of a person, means an employee or agent of the person.

72 Misleading information or document

- (1) A person commits an offence if:
 - (a) the person gives information to another person; and
 - (b) the other person is an official; and
 - (c) the person knows the information is misleading; and
 - (d) the person knows the official is acting in an official capacity.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

- (2) A person commits an offence if:
 - (a) the person gives a document to another person; and
 - (b) the other person is an official; and
 - (c) the person knows the document contains misleading information; and

(d) the person knows the official is acting in an official capacity.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

- (3) Strict liability applies to subsections (1)(b) and (2)(b).
- (4) Subsection (2) does not apply if the person, when giving the document:
- (a) draws the misleading aspect of the document to the official's attention; and
 - (b) to the extent to which the person can reasonably do so – gives the official the information necessary to correct the document.
- (5) In this section:

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

73 Continuing offence

- (1) This section applies if a court has found a person guilty of an offence against a section of this Act.
- (2) The court may, in addition to any penalty imposed for the offence, impose a penalty not exceeding 10 penalty units for each day during which the offence continues after the day the offence is committed.

74 Liability of representative

- (1) It is not a defence to a prosecution for an offence against a provision of this Act that the defendant was, at the time of the commission of the offence, another person's representative.
- (2) However, it is a defence if the defendant proves the defendant was, at the time of the commission of the offence:
- (a) another person's representative; and
 - (b) under the direct or indirect supervision of the other person.

75 Conduct of representative

- (1) This section applies to a prosecution for an offence against a provision of this Act.

Note for subsection (1)

This section deals with prosecutions of individuals. Part IIAA, Division 5, of the Criminal Code contains provisions about corporate criminal responsibility.

- (2) Conduct engaged in by a representative of a person within the scope of the representative's actual or apparent authority is taken to have been also engaged in by the person.
- (3) However, subsection (2) does not apply if the person proves the person took reasonable steps to prevent the conduct.
- (4) In deciding whether the person took reasonable steps to prevent the conduct, a court must consider:
- (a) any action the person took to ensure the representative had a reasonable knowledge and understanding of the requirement to comply with the contravened provision; and
 - (b) the level of management, control or supervision that was appropriate for the person to exercise over the representative.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) If it is relevant to prove a person had a fault element in relation to a physical element of an offence, it is enough to show:
- (a) the conduct relevant to the physical element was engaged in by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the fault element in relation to the physical element.
- (7) A person may rely on section 43AX of the Criminal Code in relation to conduct by a representative that would be an offence by the person only if:
- (a) the representative was under a mistaken but reasonable belief about the facts that, had they existed, would have meant that the conduct would not have constituted an offence; and

- (b) the person proves the person exercised due diligence to prevent the conduct.

Note for subsection (7)

Section 43AX of the Criminal Code provides a person is not criminally responsible if the person engaged in conduct under a mistake of fact in relation to an offence of strict liability.

- (8) A person (the **defendant**) may not rely on section 43BA of the Criminal Code in relation to a physical element of an offence brought about by another person if the other person is a representative of the defendant.

Note for subsection (8)

Section 43BA of the Criminal Code provides a person is not criminally responsible in circumstances of an intervening conduct or event.

- (9) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (2) or (6).
- (10) In this section:

fault element includes intention, knowledge, recklessness, opinion, belief and purpose, but does not include negligence.

person means an individual.

76 Offence – other partners and managers taken to have committed offence of partner

- (1) If a person (the **offender**) who is a partner in a partnership commits an offence against a provision of this Act in the course of the activities of the partnership, each other partner in the partnership, and each other person who is concerned with, or takes part in, the management of the partnership, is:
- (a) taken to have committed the offence; and
- (b) liable to the same penalty for the offence as an individual.
- (2) Subsection (1) does not apply if:
- (a) the other partner or person was not in a position to influence the conduct of the offender; or

- (b) the other partner or person, being in a position to influence the conduct of the offender, took reasonable steps and exercised due diligence to prevent the conduct.

Note for subsection (2)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

- (3) This section does not affect the liability of the offender.
- (4) This section applies whether or not the offender is prosecuted for, or convicted of, the offence.
- (5) This section does not apply if the offender would have a defence to a prosecution for the offence.
- (6) In this section:

partnership does not include an incorporated limited partnership formed under the *Partnership Act*.

77 Offence – managers of unincorporated associations taken to have committed offence of other manager

- (1) If a person (the *offender*) who is concerned with, or takes part, in the management of an unincorporated association commits an offence against a provision of this Act in the course of the activities of the association, each other person who is concerned with, or takes part in, the management of the unincorporated association is:
- (a) taken to have committed the offence; and
- (b) liable to the same penalty for the offence as an individual.
- (2) Subsection (1) does not apply if:
- (a) the other person was not in a position to influence the conduct of the offender; or
- (b) the other person, being in a position to influence the conduct of the offender, took reasonable steps and exercised due diligence to prevent the conduct.

Note for subsection (2)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

- (3) This section does not affect the liability of the offender.

- (4) This section applies whether or not the offender is prosecuted for, or convicted of, the offence.
- (5) This section does not apply if the offender would have a defence to a prosecution for the offence.

77A Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if:
 - (a) the body corporate commits an offence (a *relevant offence*) by contravening a provision of this Act; and
 - (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
 - (c) the officer failed to take reasonable steps to prevent the contravention; and
 - (d) the officer was reckless about whether the contravention would happen.

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
 - (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the contravened provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's representatives and contractors had a reasonable knowledge and understanding of the requirement to comply with the contravened provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (3) Subsection (2) does not limit the matters the court may consider.

- (4) This section does not affect the liability of the body corporate.
- (5) This section applies whether or not the body corporate is prosecuted for, or convicted of, the relevant offence.
- (6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (7) In this section:

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

Division 2 Criminal proceedings

78 Starting proceeding

- (1) A proceeding for an offence against this Act may be started:
 - (a) only by, or with the written approval of, the Chief Executive Officer; and
 - (b) within 12 months after the day on which the Chief Executive Officer first became aware of the commission of the alleged offence.
- (2) A certificate of the Chief Executive Officer stating the day on which the Chief Executive Officer first became aware of the commission of an alleged offence is, in the absence of evidence to the contrary, evidence of that fact.

79 Averments

- (1) Subsection (2) applies if, in a proceeding, an averment in the information or complaint states that at a specified time:
 - (a) a specified place was a mining site or specified mining activities were being carried out; or
 - (b) a specified person was:
 - (i) the owner of, or operator for, a specified mining site; or
 - (ii) an employer of workers at a specified mining site; or
 - (iii) a worker at a specified mining site; or
 - (iv) a mining officer; or

- (c) a specified person was, or was not, the holder of an Authorisation; or
 - (d) a specified Authorisation had been granted, varied or revoked; or
 - (e) a specified Authorisation contained specified conditions; or
 - (f) a specified substance was a contaminant or waste; or
 - (g) a direction, instruction, notice or requirement permitted or required to be given or imposed under this Act had been given or imposed or had not been given or imposed; or
 - (h) a specified guideline was in force.
- (2) The statement is taken to have been proved in the absence of evidence to the contrary.

80 Defence if conduct in accordance with guideline or code

- (1) It is a defence to a prosecution for an offence against this Act if the defendant establishes that the defendant's conduct relevant to establishing guilt was in accordance with a guideline or code in force at the time the defendant engaged in the conduct.
- (2) A reference in subsection (1) to a code includes a standard, practice and methodology.

Part 10 Miscellaneous matters

Division 1 Delegation and exercise of powers by Minister etc.

81 Delegation by Minister or Chief Executive Officer

The Minister or Chief Executive Officer may delegate to a person any of his or her powers and functions under this Act, other than this power of delegation.

82 Protection of environment

In exercising a power or performing a function under this Act in connection with a mining site or mining activities, the Minister or Chief Executive Officer must have regard to:

- (b) the desirability of protecting the environment; and

- (c) the outcomes of any environmental assessment of the mining activities undertaken under the *Environmental Assessment Act*.

82A Social and economic benefits for affected communities

In exercising a power or performing a function under this Act in connection with a mining site, the Minister or Chief Executive Officer must have regard to the desirability of the operator for the site providing social and economic benefits to communities outside the site that are directly affected by the mining activities carried out on the site.

83 Minister may cause action to be taken on mining site

- (1) If a person:
 - (a) does an act on a mining site that is prohibited by this Act or an Authorisation; or
 - (b) fails to do an act on a mining site that is required by this Act or an Authorisation,

the Minister may cause action to be taken on the mining site that the Minister considers necessary.

- (2) The Minister may cause action to be taken on or outside a mining site that the Minister considers necessary to prevent, minimise or rectify a hazardous situation or environmental harm that results from or may result from a mining activity.
- (3) The Minister may cause action to be taken to complete rehabilitation of a mining site.
- (4) A person authorised in writing by the Minister to take action for the purposes of this section may enter a mining site and take the action.
- (5) Subject to section 44, the costs and expenses incurred by the Minister in having action taken under this section is a debt payable to the Territory by the person whose act or failure to act made the action necessary.

Division 2 Other matters

85 No dismissal of worker for making complaint etc.

- (1) An employer must not dismiss a worker, or act in a way detrimental to a worker employed by the employer, for the sole reason that:
- (a) the worker has assisted or given information to a mining officer; or
 - (b) the worker has made a reasonable complaint to the employer or a mining officer about an issue related to environment protection.

Maximum penalty: 200 penalty units.

- (2) If a person is found guilty of an offence against subsection (1), the court may, in addition to imposing a penalty on the person, make one or both of the following orders:
- (a) an order that the person must pay to the worker an amount of compensation that the court thinks fit;
 - (b) an order that the worker be reinstated or re-employed in the worker's former position or, if the position is no longer available, in a similar position.

86 Evidence

- (1) In a proceeding, it is not necessary to prove:
- (a) the appointment of the Chief Executive Officer, a mining officer or a member of the Mining Board; or
 - (b) the authority of the Minister, the Chief Executive Officer, a mining officer or a member of the Mining Board to exercise a power or perform a function under this Act; or
 - (c) a delegation of a power or function by the Minister or the Chief Executive Officer to a person; or
 - (d) the authority of the Chief Executive Officer to commence and conduct a proceeding for an offence against this Act.
- (2) In a proceeding, a certificate by the Chief Executive Officer certifying any of the following matters or things is evidence of that matter or thing:
- (a) a copy of:
 - (i) an instrument of appointment under this Act;

- (ii) a direction, instruction or notice given under this Act; or
 - (iii) a document or extract of a document kept under this Act;
 - (b) a decision, or a copy of a decision, made under this Act;
 - (c) that on a specified day, or during a specified period, a specified appointment of a mining officer or a member of the Mining Board was or was not in force;
 - (d) that on a specified day a specified person was given a specified direction, instruction or notice, or was informed of a specified requirement imposed, under this Act.
- (3) Apparatus used by or under the direction of a mining officer in accordance with conditions specified in a document for the use of the apparatus is to be taken to be accurate in the absence of evidence to the contrary.
- (4) A signature purporting to be the signature of the Minister, the Chief Executive Officer, a mining officer or a member of the Mining Board is evidence of the signature it purports to be.

87 Certificate of costs

In a proceeding by the Territory to recover costs and expenses under this Act, a certificate by the Chief Executive Officer certifying that an amount specified in the certificate was the amount of costs and expenses incurred by the Territory in relation to the matter specified in the certificate is conclusive evidence of the fact certified.

88 Debt due to Territory etc.

- (1) If a debt is payable to the Territory under this Act:
- (a) the debt is to bear interest at the rate determined by the Chief Executive Officer by *Gazette* notice; and
 - (b) the debt may be recovered, together with that interest, as a debt due to the Territory; and
 - (c) if the debt was incurred by the debtor in relation to acts performed or not performed on land owned by the debtor – the debt is a statutory charge, within the meaning of the *Land Title Act*, on the land.
- (2) If under this Act 2 or more persons are liable for a debt to the Territory, they are jointly and severally liable for the whole debt.

- (2) The Regulations may deal with the following matters:
- (b) the minimising of environmental harm;
 - (c) matters to be included in management systems;
 - (d) the provision of information, statistics, plans or design information relating to mining activities;
 - (e) the functions of the Mining Board;
 - (f) the procedures to be followed:
 - (i) at or in connection with the meetings of the Mining Board; or
 - (ii) in connection with an application for a review of a decision under Part 8 and with the review of the decision;
 - (g) the manner of doing or performing any thing required or permitted by this Act to be done or performed;
 - (h) fees payable in respect of any matter under this Act, the time and manner of payment of those fees, and the recovery, refund, waiver or reduction of those fees;
 - (j) the designation of an offence against the Regulations to be an environmental offence level 3 or level 4 within the meaning of the *Environmental Offences and Penalties Act* or the designation of an offence against the Regulations to be an offence of strict liability;
 - (k) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act or the Regulations (other than an environmental offence within the meaning of the *Environmental Offences and Penalties Act*);
 - (l) the service of a notice in respect of payment of a prescribed amount on a person alleged to have committed an offence against this Act or the Regulations and the particulars to be included in that notice.

93 **Regulations may incorporate other instrument**

- (1) In this section, *instrument* means a standard, code, specification, method or other document.

- (2) The Regulations may apply, adopt, incorporate or apply by reference (either wholly or in part or with or without modification) an instrument as in force at a particular time or as in force from time to time prescribed or published by an authority or body, whether or not a Territory authority or body.
- (3) An instrument applied, adopted or incorporated under this section may require anything referred to in that instrument to be in accordance with another instrument to which that instrument refers.
- (4) The Chief Executive Officer must ensure that each instrument applied or adopted by or incorporated in the Regulations, and each other instrument referred to in that instrument, is available for viewing by members of the public at an office of the Agency responsible for administering this Act.

94 Regulations may be limited or provide for exemptions

- (1) The Regulations may:
 - (a) be of general application or limited in application according to the persons, areas, times or circumstances to which they are expressed to apply; and
 - (b) provide that a matter in respect of which regulations may be made is to be determined, regulated or prohibited according to the discretion of the Minister or Chief Executive Officer.
- (2) The Regulations may contain provisions for or in relation to exemptions (whether or not subject to conditions) from compliance with all or any specified regulations, including provisions authorising the Chief Executive Officer or the Minister to grant an exemption.

95 Regulations may contain savings and transitional provisions

- (1) The Regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) The Regulations may provide that a savings or transitional provision takes effect from a date that is earlier than the date of its publication or notification in the *Gazette* but, if they do so, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the Territory), the rights of that person existing before the date of its publication or notification; or
 - (b) to impose liabilities on a person (other than the Territory) in respect of anything done or omitted to be done before the date of its publication or notification.

Part 11 Transitional matters for Mining Management Amendment Act 2011

96 Definitions

In this Part:

amendment Act means the *Mining Management Amendment Act 2011*.

commencement day means the day on which the *Mining Management Amendment Act 2011* commences.

former Act means this Act as in force immediately before the commencement day.

97 Offences

- (1) This Act as in force on and after the commencement day applies in relation to an offence against a provision of this Act only if the offence is alleged to have been committed on or after the commencement day.
- (2) An offence alleged to have been committed against a provision of the former Act must be dealt with as if the amendment Act had not come into force.

98 Reporting and investigating environmental incidents and serious environmental incidents

- (1) Sections 29 to 31A apply only in relation to an environmental incident or serious environmental incident that occurs on or after the commencement day.
- (2) Sections 29 to 31 of the former Act continue to apply in relation to a critical incident or serious accident that occurred before the commencement day.

99 Applications and decisions

- (1) If a relevant application made under the former Act was not decided before the commencement day, the former Act continues to apply in relation to the application and decision as if the amendment Act had not come into force.
- (2) For subsection (1), a *relevant application* is an application for:
 - (a) an Authorisation; or

- (b) the variation of an Authorisation; or
- (c) a review of the Minister's decision refusing to grant an Authorisation.

Schedule Repealed Acts

section 96

<i>Mine Management Act 1990</i>	No. 37, 1990
<i>Mine Management Amendment Act 1990</i>	No. 54, 1990
<i>Mine Management Amendment Act 1995</i>	No. 9, 1995
<i>Mine Management Amendment Act 1996</i>	No. 38, 1996
<i>Mine Management Amendment Act 1998</i>	No. 46, 1998
<i>Silicosis and Tuberculosis (Mine-workers and Prospectors) Ordinance 1966</i>	No. 20, 1966
<i>Silicosis and Tuberculosis (Mine-workers and Prospectors) Ordinance 1972</i>	No. 44, 1972
<i>Silicosis and Tuberculosis (Mine-workers and Prospectors) Amendment Act 1986</i>	No. 67, 1986
<i>Uranium Mining (Environment Control) Act 1979</i>	No. 46, 1979
<i>Uranium Mining (Environment Control) Amendment Act 1981</i>	No. 61, 1981
<i>Uranium Mining (Environment Control) Amendment Act 1987</i>	No. 50, 1987

 ENDNOTES

1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
<i>Gaz</i> = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION

Mining Management Act 2001 (Act No. 43, 2001)

Assent date	19 July 2001
Commenced	1 January 2002 (<i>Gaz</i> G46, 21 November 2001, p 2)

Law Reform (Work Health) Amendment Act 2007 (Act No. 30, 2007)

Assent date	12 December 2007
Commenced	1 July 2008 (<i>Gaz</i> S29, 25 June 2008)

Statute Law Revision Act 2009 (Act No. 25, 2009)

Assent date	1 September 2009
Commenced	16 September 2009 (<i>Gaz</i> G37, 16 September 2009, p 3)

Mineral Titles (Consequential Amendments) Act 2010 (Act No. 37, 2010)

Assent date	18 November 2010
Commenced	7 November 2011 (<i>Gaz</i> G41, 12 October 2011, p 5)

Mineral Titles (Consequential Amendments) Act 2010 (Act No. 37, 2010)

Assent date	18 November 2010
Commenced	7 November 2011 (<i>Gaz</i> G41, 12 October 2011, p 5)

Penalties Amendment (Children and Families, Health and Primary Industry, Fisheries and Resources) Act 2011 (Act No. 28, 2011)

Assent date	31 August 2011
Commenced	21 September 2011 (<i>Gaz</i> G38, 21 September 2011, p 4)

Mining Management Amendment Act 2011 (Act No. 35, 2011)

Assent date	15 November 2011
Commenced	1 July 2012 (<i>Gaz</i> G26, 27 June 2012, p 8)

3 LIST OF AMENDMENTS

lt	sub No. 30, 2007, s 16 amd No. 35, 2011, s 4
pt 1 hdg	amd No. 35, 2011, s 22
s 3	amd No. 30, 2007, s 17; No. 35, 2011, s 5
s 4	amd No. 30, 2007, s 18; No. 37, 2010, s 8; No. 35, 2011, ss 6 and 22
s 5	amd No. 37, 2010, s 8
ss 7 – 8	amd No. 35, 2011, s 22
s 8A	ins No. 35, 2011, s 7
s 9	amd No. 28, 2011, s 5; No. 35, 2011, s 22
s 10	amd No. 25, 2009, s 10; No. 28, 2011, s 5; No. 35, 2011, s 8
s 11	amd No. 28, 2011, s 5; No. 35, 2011, s 22
s 12	amd No. 35, 2011, s 22
pt 3 hdg	sub No. 30, 2007, s 19
pt 3	
div 1 hdg	sub No. 30, 2007, s 20
ss 13 – 14	sub No. 30, 2007, s 21
s 15	amd No. 30, 2007, s 22
s 16	amd No. 30, 2007, s 23
s 16A	ins No. 35, 2011, s 9
s 17	amd No. 30, 2007, s 24; No. 35, 2011, s 22
s 18	amd No. 30, 2007, s 25; No. 35, 2011, s 22
ss 19 – 20	rep No. 30, 2007, s 26
s 21	amd No. 30, 2007, s 27
pt 3	
div 2 hdg	rep No. 30, 2007, s 28
ss 22 – 23	rep No. 30, 2007, s 28
pt 3	
div 3 hdg	sub No. 35, 2011, s 10
ss 25 – 26	sub No. 35, 2011, s 10
s 26A	ins No. 35, 2011, s 10
s 27	sub No. 35, 2011, s 10
s 27A	ins No. 35, 2011, s 10
s 28	sub No. 35, 2011, s 10
s 28A	ins No. 35, 2011, s 10
pt 3	
div 4 hdg	sub No. 35, 2011, s 10
s 29	amd No. 28, 2011, s 5 sub No. 35, 2011, s 10
s 30	sub No. 35, 2011, s 10
s 31	amd No. 28, 2011, s 5 sub No. 35, 2011, s 10
s 31A	ins No. 35, 2011, s 10
s 32	amd No. 30, 2007, s 29; No. 28, 2011, s 5 sub No. 35, 2011, s 10
pt 3	
div 5hdg	sub No. 30, 2007, s 30; No. 35, 2011, s 10
s 33	sub No. 30, 2007, s 30; No. 35, 2011, s 10
s 34	amd No. 37, 2010, s 8; No. 35, 2011, s 22
s 35	amd No. 28, 2011, s 5 sub No. 35, 2011, s 11
s 36	amd No. 30, 2007, s 31 sub No. 35, 2011, s 11
s 37	amd No. 30, 2007, s 32 sub No. 35, 2011, s 11

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s 38	amd No. 30, 2007, s 33 sub No. 35, 2011, s 11
s 39	amd No. 28, 2011, s 5 sub No. 35, 2011, s 11
s 40	amd No. 30, 2007, s 34 sub No. 35, 2011, s 12
s 41	sub No. 35, 2011, s 12
s 42	amd No. 28, 2011, s 5; No. 35, 2011, s 22
s 44	amd No. 35, 2011, s 22
pt 4	
div 5 hdg	amd No. 35, 2011, s 22
s 45	amd No. 28, 2011, s 5; No. 35, 2011, s 22
s 45A	ins No. 35, 2011, s 13
s 50	amd No. 30, 2007, s 35; No. 35, 2011, s 22
s 52	amd No. 35, 2011, s 22
s 55	amd No. 35, 2011, s 22
s 58	amd No. 35, 2011, s 22
s 60	amd No. 28, 2011, s 5; No. 35, 2011, s 22
s 61	amd No. 30, 2007, s 36
s 62	amd No. 30, 2007, s 37; No. 35, 2011, s 14
s 63	amd No. 28, 2011, s 5; No. 35, 2011, s 22
s 64	amd No. 28, 2011, s 5 sub No. 35, 2011, s 15
s 64A	ins No. 35, 2011, s 15
s 65	amd No. 35, 2011, s 16
s 70	amd No. 35, 2011, s 22
pt 9 hdg	sub No. 35, 2011, s 17
pt 9	
div 1 hdg	sub No. 35, 2011, s 17
s 71	sub No. 35, 2011, s 17
s 72	amd No. 30, 2007, s 38 sub No. 35, 2011, s 17
s 73	sub No. 35, 2011, s 17
s 74	amd No. 30, 2007, s 39 sub No. 35, 2011, s 17
s 75	amd No. 30, 2007, s 40 sub No. 35, 2011, s 17
s 76	amd No. 30, 2007, s 41 sub No. 35, 2011, s 17
s 77	sub No. 35, 2011, s 17
s 77A	ins No. 35, 2011, s 17
pt 9	
div 2 hdg	sub No. 35, 2011, s 17
s 78	sub No. 35, 2011, s 17
s 79	amd No. 30, 2007, s 42 sub No. 35, 2011, s 17
s 80	sub No. 35, 2011, s 17
pt 10 hdg	ins No. 35, 2011, s 22
s 81	sub No. 35, 2011, s 22
s 82	amd No. 30, 2007, s 43
s 82A	ins No. 35, 2011, s 18
s 84	rep No. 30, 2007, s 44
pt 10	
div 2 hdg	amd No. 35, 2011, s 22
s 85	amd No. 30, 2007, s 45; No. 28, 2011, s 5; No. 35, 2011, s 19
s 86	amd No. 35, 2011, s 22
s 88	amd No. 35, 2011, s 22
s 90	amd No. 28, 2011, s 5; No. 35, 2011, s 22

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s 91	rep No. 35, 2011, s 20
s 92	amd No. 30, 2007, s 46; No. 35, 2011, s 22
pt 11 hdg	sub No. 35, 2011, s 21
pt 11	
div 1 hdg	rep No. 35, 2011, s 21
s 96	sub No. 35, 2011, s 21
pt 11	
div 2 hdg	rep No. 35, 2011, s 21
ss 97 – 99	sub No. 35, 2011, s 21
ss 100 – 103	rep No. 35, 2011, s 21
s 104	rep No. 37, 2010, s 8