

Package 3 – Explanatory Document – Private Mines

Mining Act	
Section 6 (subject to the operation of section 6(6) and (6a)); Sections 7, 8, 8A, 9A and 10; Part 2; Part 2A; Part 3; Section 56P; Section 56X; Section 63;	Part 10, other than section 70; Part 10C, other than section 70HG; Sections 72 and 73; Part 11B; Sections 74 and 74AA; Sections 75A and 79; Sections 83A and 85; and Sections 88 to 92 (inclusive)

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History of Private Mines

Currently, there are approximately 222 private mines across South Australia; 136 are understood to be actively mined, and 86 are inactive, as determined from royalty returns.

On 3 July 1972, the Mining Act 1971 (**Mining Act**) came into operation. The Mining Act effected a substantial change in respect of ownership of minerals. The Mining Act vested in the Crown the property in all minerals in the State (s. 16). This represented an expropriation of minerals from those persons who, by reason of the original land grant under which they held the land were entitled to

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the minerals on their land. Further, effect was given to that expropriation by the enactment an obligation to pay a royalty on all minerals recovered from mineral land (s. 17). Upon payment of the royalty, property in the minerals passed to the person who lawfully mined the minerals.

Section 19 (now repealed) of the Mining Act provided a kind of a quid pro quo enabling those who had been conducting mining operations to apply for the grant of a 'private mine'. Given the expropriation of minerals from those who had property in minerals, it is recognised that one of the purposes of section 19 was to provide for a transitional mechanism by which those persons could continue to recover minerals from their land. Section 19 preserved pre-existing rights or recreated them in an altered form.

Section 19(1) enabled an application for a private mine to be made where three conditions had been satisfied, namely:

- (a) a person had been divested of his property in any minerals under the new Mining Act;
- (b) mining operations had been commenced before or after the commencement of the new Mining Act for the recovery of any of those minerals or for purposes of ascertaining whether any of them may be profitably exploited; and
- (c) the application was made within 3 years after the commencement of the Act.

If an application accorded with the terms of section 19(1), it was mandatory for the Governor of South Australia to make a proclamation declaring the subject land to be a private mine.

A private mine proclamation under the Mining Act is a statutory instrument created by the Governor that declares a designated area within the State of South Australia to be a private mine and, where such a declaration is made, the mine will be subject to the provisions of the Act (at any point in time). In 1971, private mines were exempt from all of the Mining Act, but for section 19 and obligations under the Mines and Works Inspection Act 1920, including the requirement to have a Development Program (**ADP**). In 1999, section 19 was repealed and Part 11B was introduced to further transition private mines to meet modern mining practices.

A private mine proclamation and a mining tenement granted under the Mining Act are both statutory instrument which grants a right to mine minerals on behalf of the State (*profit à prendre*), however, these two instruments differ in the manner in which that right is granted and how mining is regulated. The difference between a private mine and mining lease will be referred to throughout this document, however, a quick summary can be seen in Annexure 1: Differences between a private mine pre 2021, post 2021 and a mining lease under the Mining Act 1971 (SA).

Summary of the transition of Private Mines under the Statutes Amendment (Mineral Resources) Act 2019

Part 11B of the Mining Act sets out the regulatory framework for mining operations on a private mine within South Australia. All other mines in South Australia are regulated under the remainder of the Mining Act.

The *Statutes Amendment (Mineral Resources) Act 2019* proposes a range of amendments to further transition private mines toward modern mining practices across the State. The regulation of private mines under the Mining Act, and the manner in which the *Statutes Amendment (Mineral Resources) Act 2019* proposes to transition these mines can be summarized as follows:

1. Part 11B is retained, and the specific sections of the Mining Act, which are to apply to private mines, are listed in the Act.
2. All private mines MOPs to transition to PEPRs after 15 years.

3. A modern definition of the environment to apply to all private mines in the same way that it applies to all other tenement types, except for the words 'the aesthetic or cultural value of an area'.
4. The compliance tools in Part 11B have been updated and expanded. Firstly, a new emergency order power has been introduced to allow authorised officers to issue verbally to respond efficiently to matters of environmental emergency. Secondly, the general duty obligation has been updated to remove compromising language which qualified a private mine holders obligation to avoid damage to the environment.
5. All offences and penalties under the Bill apply to private mines in the same way they apply to other tenements except continuing offences. Continuing offences mean that until the offence is rectified, the penalty increases by one-tenth of the maximum penalty daily.

This summary is expanded on in detail below.

1. Operating Approvals - MOPs

MOPs as amended by the Statutes Amendment (Mineral Resources) Act 2019

Under Part 11B of the Mining Act, a person must not carry out mining operations on a private mine without a 'mine operations plan' (**MOP**). Any ADPs on a private mine in place at the time under the *Mines and Works Inspection Act 1920* is deemed to be MOPs for the purposes of Part 11B. A MOP must be in a manner and form determined by the Director (r. 70(5)) and include objectives and criteria for measuring those objectives, the requirements prescribed in the Regulations and must be consistent with any relevant environment improvement programme or environment protection policy under the *Environment Protection Act 1993*.

Regulation 70 of the draft Mining Regulations provides for specific requirements for the content of the MOP. The MOP must:

- (a) include a statement outlining the operations to be carried out at the mine; and
- (b) include a description of the features of the natural environment that are expected to be affected by operations at the mine; and
- (c) include a description of the environmental impacts that may reasonably be expected to occur; and
- (d) set out the measures that are used, or to be used, to manage, limit or remedy those impacts; and
- (e) set out the environmental objectives that are expected to be achieved; and
- (f) set out a set of criteria proposed to be adopted to measure the environmental objectives to be achieved in relation to the mining operations to be carried out at the mine and when operations at the mine will no longer be undertaken, including details about—
 - i. what is to be measured and the form of the measurements that are to be used; and
 - ii. the locations where relevant measurements are to be taken, or how such locations are to be determined; and
 - iii. what is proposed to be taken to constitute the achievement of the relevant objectives (with consideration being given to any inherent errors of measurement); and
 - iv. the frequency of any measurement or monitoring; and

- v. any background or control data that is to be used, or how any such data is to be acquired; and
- (g) without limiting paragraph (f), to the extent (if any) that there is a high level of reliance on control strategies to reduce risk to the environment—set out criteria (leading indicator criteria) that will be used to give an early warning that a control strategy may be failing; and
- (h) include a statement of the capabilities of the person's ability to achieve the environmental objectives that are expected to occur; and
- (i) if so determined by the Director in a particular case, include a description of the social impacts that may reasonably be expected to occur and the measures that are to be used to manage, limit or remedy those impacts (in the case of negative impacts), or to facilitate or ensure those impacts (in the case of positive impacts); and
- (j) include such other information as may be determined by the Director for the purposes of this regulation.

Any information or material provided for the purposes of a mine operations plan must—

- (a) be balanced, objective and concise; and
- (b) state any limitations that apply, or should apply, to the use of information; and
- (c) identify any matter in relation to which there is a significant lack of information or a significant degree of uncertainty; and
- (d) so far as is relevant, identify the sensitivity to change of any assumption that has been made and any significant risks that may arise if an assumption is later found to be incorrect; and
- (e) be in a form determined by the Director, be supported by such evidence as the Director may determine, and comply with any requirement of the Director relating to the amount or detail of information that must be provided.

A description of the environment for the purpose of MOP includes:

- (a) land, air, water (including both surface and underground water and sea water), organisms, ecosystems, native fauna and other features or elements of the natural environment; and
- (b) buildings, structures and other forms of infrastructure, and cultural artefacts; and
- (c) public health, safety or amenity.

MOP objectives are statements of the expected impact on the environment caused by the proposed mining operations after the implementation of mitigation and control measures. The objectives must be consistent with any relevant environment improvement program or environment protection policy under the *Environment Protection Act*. Clear and measurable criteria are required to measure the achievement of all objectives.

Prior to submitting a MOP to the Minister for assessment, the applicant must engage on the draft and demonstrate in the final version submitted to the Minister the people the applicant consulted, any issues of concern raised by the persons and the steps (if any) taken or proposed to be taken to address those concerns (r. 71).

Objectives and criteria set out in a MOP must be submitted and approved by the Director of Mines. The *Statutes Amendment (Budget Measures) Act 2019* introduced an assessment fee to accompany a MOP submission which commenced on 1 January 2020.

After assessing a draft set of the objectives and criteria, the Director of Mines may (s. 73G(5)):

- a) accept the draft of the objectives and criteria without alterations; or
- b) after consultation with the applicant, require alterations to the draft of the objectives and criteria.

If the applicant does not agree with the Director of Mines' determination, they have the right to appeal to the Warden's Court (s. 73G(6)). The Warden's Court may either confirm the requirement of the Director of Mines or vary the requirement. In hearing a merits review, the Warden's Court may:

- a) confirm the decision of the Director of Mines
- b) vary or revoke the decision of the Director of Mines
- c) make any consequential order that it considers necessary or expedient.

Once the objectives and criteria are approved, the MOP may be registered on the Mining Register and the Minister can publish the MOP in such manner and to such extent as the Minister thinks fit (s. 73G(12a)).

If a draft MOP relates to new operations to be carried out at a private mine, the objectives and criteria sections must be released for public consultation in accordance with the section 73G(9) of the Mining Act. Subsequently, the applicant must prepare and submit a report to the Director of Mines addressing relevant issues raised or draft alterations recommended during the public consultation process.

Regulation 72 of the draft Mining Regulations prescribes the process for undertaking public consultation of a MOP. In accordance with regulation 72, the Director must publish a notice in a manner the Director thinks fit. In practice, the Director publishes the notice in the Gazette, a state-wide newspaper, any relevant regional newspapers and online.

The notice seeking public consultation must:

- a) identifying the location of the mine; and
- b) stating that a mine operations plan has been prepared for the mine and that the relevant objectives and criteria may be inspected at a place specified in the notice; and
- c) inviting written submissions in relation to the draft objectives and criteria within a period specified in the invitation.

The Director must also invite written submissions on the draft objectives and criteria from the owners of land and the local council (r. 72(3)).

The Director has the discretion to determine the length of time by which the draft MOP is publically exhibited. In practice, the Director routinely exhibits applications for a number of weeks.

The Minister must give all submissions received during the consultation period to the person who submitted the draft MOP (r. 72(4)), and the submitter must prepare a report setting out responding to any relevant matter raised in the submissions (r. 72(4)-(5) and s. 73G(10)).

A submission received during the public consultation period cannot be made on the basis that the submission or part of the submission be kept confidential (r. 72(6)) and a response by the applicant cannot be made on the basis that the response or part of the response be kept confidential. This aligns with the rules of natural justice as the Director must have regard to both the submission and the response document. For example, if the Director had regard to a confidential submission but did not provide the applicant with the opportunity to respond and therefore, for the Director to have regard to the response, this would not align with natural justice.

Where mining operations comprises private mine(s) and a number of different mining tenements (extractive mineral leases, mineral leases, miscellaneous purpose leases etc.), the Director of Mines recommends that applicants develop a single document that encompasses the entire mining operation. This single program may be approved by Director of Mines and the Minister for Energy and Mining as a MOP and PEPR for the various private mines and tenements that comprise the operation.

A MOP may be reviewed by a person carrying out, or intending to carry out, mining operations at the private mine at any time, and must be reviewed if required by the director, or at least every seven years. A MOP review is conducted in accordance with the Regulations and at the conclusion of the review a report must be furnished to the Director. Unlike a PEPR review, which is undertaken to revise the PEPR, a MOP review is the preparation of a report that considers the compliance with the MOP and analysis of the MOP. The report may include details about any proposals for alterations to the objectives or criteria, which will require the approval of the director to alter the MOP.

Regulation 73 of the draft Mining Regulations proposes that a MOP review must be conducted taking into account the minimum requirements of a MOP and must include the preparation of a report that contains the information determined by the Director and if required by the Director, a revised mine operations plan for approval.

2. Environmental Protection

Environmental Protection as amended by the Statutes Amendment (Mineral Resources) Act 2019

The *Statutes Amendment (Mineral Resources) Act 2019* will transition private mines to a modern environmental protection, compliance and enforcement regime. Whilst the framework for regulating and enforcing environmental protection for private mines and all other tenure under the Mining Act are not completely aligned, the amendments proposed are a further transitional step toward a modernised approach. These improvements can be summarised as follows:

1. new definition of the environment;
2. modernised authorised officer powers to undertake authorised investigations;
3. improved general duty to protect the environment; and
4. improved and new orders.

Each of these improvements are addressed below in further detail.

Environment definition

The Mining Act's definition of 'environment' is critical in setting the scope of all compliance and enforcement tools under the Act, and for ensuring the Regulator can effectively prevent undue harm to the environment. The current Act sets out a special regime for defining the environment for Private Mines in Part 11B of the Act, where 'environment' is defined to mean 'land, air, water, organisms and ecosystems...'.

The definition of environment applicable for regulating all other tenements in South Australia adopts a modern approach which goes beyond the Private Mine definition by including native fauna and other features or elements of the natural environment, buildings, structures, and other forms of infrastructure, cultural artefacts, public health, public safety, public amenity, and the aesthetic or cultural value of an area. The consequence of this variable approach is a limitation on the Minister's

ability to ensure private mine operations are regulated to the standard expected by the South Australian public. The revised definition of environment for the regulation of private mines includes:

- (a) land, air, water (including both surface and underground water and sea water), organisms, ecosystems, native fauna and other features or elements of the natural environment; and
- (b) buildings, structures and other forms of infrastructure, and cultural artefacts; and
- ~~(c) existing or permissible land use; and~~
- (d) public health, safety or amenity; and
- ~~(e) the geological heritage values of an area; and~~
- ~~(f) the aesthetic or cultural values of an area.~~

The struck through subsections (c), (e) and (f) represent the difference between the definition of environment in respect to the Mining Act as a whole and private mines. Subsections (c) and (e) only apply to the tenement under the Mining Act at the time the tenement was granted and, as private mines were granted between 1972 to 1975, these subsections are not relevant. Subsection (f) was excluded from the definition as aesthetic or cultural values of private mine has not been a relevant consideration and adoption of this now may be of an adverse detriment to existing projects.

Authorised officer powers

Section 730 of the current Mining Act sets out the power of an authorised officer in respect to private mines. The *Statutes Amendment (Mineral Resources) Act 2019* repeals and replaces this with sections 14-14H.

Section 14 allows the Minister to appoint authorised offices to conduct authorised tasks under section 14 of the Mining Act. In order to undertake any authorised investigations (section 14B) or exercise any powers under sections 14C and 14D, a public servant must be appointed as an authorised officer. Without authorisation, a penalty under subsections 14C(2)-(3), 14D(2)-(3) and 14E(2) could not be imposed. An authorised investigation can be everyday activities such as 'monitoring compliance with the Act' as per subsection 14B(a).

Section 14A requires the Minister to issue identity cards to authorised officers. An authorised officer is only obligated to produce the identity card on request.

Section 14B defines 'authorised investigations' as gathering information and monitoring compliance under the Mining Act. Authorised officers under the Act will be able to investigate any matters relevant to the enforcement of the Act and inspect any authorised operations that are creating, or are likely to create a nuisance or are damaging, or likely to damage property. This broadening of powers will ensure the department has greater powers to investigate matters on properties connected with authorised operations.

Section 14C sets out an authorised officers power of entry and inspection. Authorised officers under the Act will be able to enter, search, inspect and examine any premises, land, or vehicle in connection with any operations or activities regulated by the Act and, where necessary break into or open a part of, or anything in, the premises, land or vehicle. A warrant from a magistrate, warden or justice is required for this to occur. This section also allows authorised officers to seize and retain anything that may be evidence of noncompliance with this Act. These amendments align with the current powers of authorised officers in modern environmental legislation (e.g. the Environment Protection Act 1993 and Fisheries Management Act 2007).

Section 14D grants authorised officers with the power to require people to answer questions and provide information. If that person does not provide the information requested by the authorised officer, they may be subject to penalties.

Section 14E grants authorised officers the power to request a copy or seize records or require a person to answer questions about the record.

Section 14F allows the Minister to publish an investigation report.

Section 14G allows authorised officers to issue expiation notices for expiable offences, similar to provisions in other State environmental legislation (e.g. Environment Protection Act 1993).

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

General Duty

The current Mining Act has a specific suite of compliance and enforcement tools for Private Mines set out in Part 11B of the Act. These include a general duty to avoid undue damage to the environment, and powers to issue compliance orders and rectification orders. Whilst useful, they are outdated and only operate to the extent that they correspond to the definition of environment and the content of a MOP.

The *Statutes Amendment (Mineral Resources) Act 2019* repeals subsection 73H(3) of the general duty which included a qualification that if the objectives of a mine operation plan have been met by the mining operations, the person will be taken to have complied with the general duty. A duty to avoid undue damage to the environment should not be qualified by compliance with a mine operation plan.

Improved and new orders

When an incident occasioning undue damage to the environment occurs, or the Regulator suspects that, perhaps because of lax standards of operations, an incident might occur, the Regulator may issue an order requiring specified conduct to be stopped or prevented or requiring that certain positive action be taken. These orders enable the Regulator to respond quickly and positively to both incidents and threats, without needing to seek court orders. After all, by the time a court order is obtained, the threatened incident may have occurred, or the damage escalated.

The compliance tools available to the Director of Mines under Part 11B are compliance orders (s. 73I), rectification orders (s. 73J), emergency orders (s. 73KA) and rectification authorisations (s. 73K).

A compliance order is an administrative order from the Director of Mines to direct compliance (s.73I). The Director of Mines may issue an order to secure compliance with the requirements and objective of a MOP and the general duty. A compliance order may impose any reasonable requirement to achieve the above, including a requirement to discontinue or not commence specific

operations, a requirement to carry on specific operations at specific times or subject to specific conditions, or require that specific actions be taken.

A rectification order is an administrative order from the Director of Mines to rectify environmental harm as a result of a contravention of the general duty (s. 73J). The Director may, by written notice given to any person, direct that specific action be taken to make good the damage.

The *Statutes Amendment (Mineral Resources) Act 2019* introduces a new emergency order power modelled from the *Environment Protection Act 1993 (SA)*. An identical power also appears in section 70FB (emergency directions) and relates to all tenements, other than private mines. An emergency order is an administrative order from an authorised officer to direct action in an emergency. If in an authorised officer's opinion, operations are being carried out in a way that results in, or that is reasonably likely to result in undue damage to the environment, or a breach of an environmental objective in a MOP, and action is urgently necessary, then the authorised officer may issue (in writing or orally) an emergency order. An emergency order may impose any reasonable requirement, including a requirement to take specific activities or actions for a specific period or a requirement to furnish a specific report to the Director of Mines. If an emergency order is given orally, the authorised officer must confirm the direction in writing at the earliest opportunity, but not exceeding 2 business days. Irrespective of whether an order is issued in written or orally, the Director of Mines must confirm the actions taken by the authorised officer with 3 business days, or the emergency order will expire.

The penalty for all orders have been increased from \$120,000 to \$250,000. This aligns with similar penalties under the Mining Act.

The Director of Mines can issue a rectification authorisation authorising an authorised officer to undertake action to rectify damage to the environment (s. 73K). A rectification authorisation can be issued irrespective of whether a compliance, rectification and emergency order has been issued. The costs incurred to do the rectification work will constitute a debt due to the Crown which the Minister or Director of Mines can recover as a debt in a competent court or take enforcement action as the secured party of a statutory interest under the *Personal Property Securities Act (Cth) 2009* (see s. 85).

3. Revocation of private mines

Revocation of private mines as amended by the Statutes Amendment (Mineral Resources) Act 2019

Unlike all other tenements under the Mining Act, a private mine cannot be forfeited, relinquished, suspended, cancelled and it does not expire, however, under the *Statutes Amendment (Mineral Resources) Act 2019* it can be surrendered or revoked.

These amendments will allow a private mine to be surrendered voluntarily by the proprietor of the private mine, or allow the Minister to revoke a private mine by following the process set out in section 73N of the Act.

Surrender – proprietor initiated

Section 56X of the *Statutes Amendment (Mineral Resources) Act 2019* establishes the process whereby the tenement holder (including the proprietor of a private mine) can apply to the Minister for approval to surrender part or whole of a tenement or private mine. An application for surrender must be in the manner and form determined by the Minister (Ministerial Determination) and accompanied by the prescribed fee. On receipt of an application for surrender, an assessment will be

conducted by the Mining Regulation Branch. The nature of the assessment and the requirements of surrender will be dependent on the type of tenement being surrendered, and this will need to be detailed in the relevant Ministerial Determination. Where the Minister has approved the surrender of all, or part of, a private mine, the proclamation relevant to that private mine will be either varied to reflect the reduction or be revoked. The Minister does not need to instruct the Governor as the variation or revocation will be applied automatically through the operation of section 56X.

Revocation – Minister initiated

Section 73N of the *Statutes Amendment (Mineral Resources) Act 2019* establishes a new streamlined process for the Minister to revoke a private mine without going to the Warden’s Court. If the Minister is satisfied that the whole or part of a private mine is not being effectively operated or it is no longer possible to carry out operations, and the area has been rehabilitated to an appropriate standard, the Minister may instruct the Governor to revoke or vary the area of a private mine by a proclamation. Before this occurs, the Minister is required to serve a notice on the proprietor of the private mine and provide the proprietor with an opportunity to make written submissions on the matter within a time-frame set by the Minister.

Where the Mining Registrar has doubt as to who the proprietor is, the Registrar may write to the last known proprietor or the current owner of land and ask that person to (r. 74)

- a) to confirm or indicate whether the person is the proprietor of the private mine; and
- b) if the person is not the proprietor of the private mine, or is not the sole proprietor of the private mine—to provide such information as the Mining Registrar may require about who is, or about who else is, the proprietor of the private mine.

Failure to comply with such a request may result in a \$5,000 penalty.

4. Mining Register and Information

Mining Register and Information as amended by the Statutes Amendment (Mineral Resources) Act 2019

The *Statutes Amendment (Mineral Resources) Act 2019* significantly improves the transparency relating to private mines by publishing MOPs, establishing a register of private mines and applying broad powers relating to private mine materials that must be compiled, created, kept, produced and provided to the Director.

The current Mining Act allows for the public inspection of the objectives and criteria of a MOP but not the publication of the document in the same manner in which a PEPR is published. The *Statutes Amendment (Mineral Resources) Act 2019* changes this by requiring the publication of MOPs. This requirement will not have retrospective effect and will only apply to new MOPs or altered MOPs.

The current Mining Act does not require the Mining Registrar to keep a register of private mines, or a mechanism for the transfer of ownership, mortgaging or caveating a private mine. An effect of the current royalty provisions is that the Minister is notified of a ‘relevant event’ which allows the Registrar to keep track of ownership changes. However, the requirement to notify of a relevant event was introduced in 2014, therefore, changes between 1972 and 2014 may not be recorded unless that information has been volunteered or obtained through another mechanism such as the provision of royalty returns. The *Statutes Amendment (Mineral Resources) Act 2019* allows the Mining Register to apply to private mines for the first time. Under the Mining Register framework tenements under the Act are transferred, mortgaged and caveated. As the proprietor of a private

mine does not own the proclamation which creates the right to mine, Part 2A will operate to allow a proprietor to transfer, mortgage or caveat their right to mine, as opposed to a tenement holder who transfers, mortgages or caveats its statutory lease or licence. Comprehensive detail about how the Mining Register is intended to operate can be found in *Package 2 – Explanatory Document – Mining Register and Information*.

The *Statutes Amendment (Mineral Resources) Act 2019* also creates very broad powers relating to materials that must be compiled, created, kept, produced and provided to the Director (included the form of that material). In addition to the broad compilation, keeping and provision powers, the Director may request at any time that a tenement holder or the person carrying out operations on a private mine to undertake tests and take samples of minerals, in relation to or from land within the tenement and the Director may retain any material produced or taken.

While the Minister or Director has broad discretionary powers under the *Statutes Amendment (Mineral Resources) Act 2019* to release materials, those powers do not apply to private mines unless the Act expressly allows for the release of the materials on the Mining Register. Consequently, the Director can still collect a broad range of materials related to a private mine, but that material cannot be publicly released.

5. Application of the Mining Act

Application of the Mining Act as amended by the Statutes Amendment (Mineral Resources) Act 2019

Section 73D of the current Mining Act operates to exempt private mines from all Parts of the Mining Act, but for Part 11B and relevant royalty provisions (by virtue of section 73E(1)). The *Statutes Amendment (Mineral Resources) Act 2019* proposes to not only update parts of Part 11B but to expand on the relevant sections which apply to private mines. These are as follows:

- section 6 (subject to the operation of section 6(6) and (6a));
- sections 7, 8, 8A, 9A and 10;
- Part 2;
- Part 2A;
- Part 3;
- section 56P;
- section 56X;
- section 63;
- Part 10, other than section 70;
- Part 10C, other than section 70HG;
- sections 72 and 73;
- sections 74 and 74AA;
- sections 75A and 79;
- sections 83A and 85; and
- sections 88 to 92 (inclusive);
- any other provision specified by the regulations.

Each of these sections and their application to private mines are addressed in detail below. As you will see in the below commentary, whilst this list is more exhaustive than is currently applicable to

private mines, many of these section applies generally already, however, by expressly stating that these sections will apply to Part 11B removes any doubt of its application.

Regulation 69 of the draft Mining Regulations prescribes that bonds may be applied to private mines that relate to operations for the recovery of mineral (not extractive minerals), and that an offence related to the misleading and deceptive information applies to private mines.

Section 6 (subject to the operation of section 6(6) and (6a))

Section 6 (interpretation) sets out the definitions which apply to the whole of the Mining Act. Section 6 will only apply to private mines to the extent that the defined term is used in a provision of the Mining Act that applies in relation to a private mine. Section 73D lists the sections which now apply to private mines and are explained in this part of the briefing heading 'application of the Mining Act'.

Sections 7, 8, 8A, 9A and 10

Each of these sections are administrative in nature and improve the operation of the Mining Act generally.

Section 7 (application of Act) principally relates to the application of the Mining Act to mining operations authorised under other Acts.

Sections 8 (Declaration of mineral lands etc), 8A (Opal development area) and 9A (Special declared areas) do not relate to private mines or any tenement, but rather relate to the regulation of mineral land (which is all of SA).

Section 10 (Mining in respect of public roads and places) does not relate to private mines or any specific tenement type, but rather relates to the regulation of rights conferred by the Act, such as the right to mine a private mine in respect of public roads, reserves of places.

Part 2

Section 11 to 13 of Part 2 of the Mining Act sets out administrative boilerplate provisions which assist in the regulation of the Mining Act.

Section 11 (The Minister and the Director to be corporate sole) does not relate to private mines or any specific tenement type, but to the conduct of the Minister and Director under this Act, and in particular, the manner in which they enter into contracts on behalf of the State.

Section 12 (Delegation) does not relate to private mines or any specific tenement type but allows for delegations under the Act, and thus promotes efficient regulation.

Section 13 (Mining Registrars and other staff) does not relate to private mines or any specific tenement type, but appoints the Mining Registrar and allows for delegations under the Act.

Sections 14 to 14H of Part 2 relate to the powers of an authorised officer. The *Statutes Amendment (Mineral Resources) Act 2019* repeals section 73O (private mine specific powers of inspectors or persons) and applies streamlined and modernised authorised officer powers to all operations under the Mining Act. An explanation of how sections 14 to 14H of Part 2 applies to private mines is set out above under the header 'environmental protection'.

Part 2A

An explanation of how Part 2A applies to private mines is set out above under the header 'Private Mines and Information'.

Part 3

A royalty is payable on extractive minerals from a Private Mine, and in the case of minerals, a royalty is payable on a Private Mine if a 'relevant event' has occurred in accordance with section 17.

A relevant event is a change of ownership of a private mine. If no relevant event has occurred, no royalty is payable on minerals from a Private Mine. If a relevant event has occurred, royalty is payable on all minerals which are sold or intended for sale or are utilised or intended to be utilised for a commercial or industrial purpose, other than precious stones, unless they are recovered under the Mining Act under subsection 17(3) or minerals recovered that are removed for the purpose of any testing of a kind approved by the Minister under subsection 17(2). The relevant value of mineral under the Mining Act is the contract value, which means the value that fairly represents the invoiced amount at the point of sale (excluding GST) as set out in subsection 17(5). A contract value is not relevant for extractive minerals as the royalty liability is determined at a cent rate per tonne.

Whilst there are amendments to the royalty regime under the *Statutes Amendment (Mineral Resources) Act 2019*, these are of little impact on private mines. Most notably, the relevant sections relating to royalty on private mines have been removed from Part 11B and replicated in Part 2.

Section 56P

The Minister may, on application by the tenement holder amalgamate the area of two or more tenements. The Minister can instigate the amalgamation, but only with the agreement of the tenement holder or proprietor of a private mine. It is expected that either policy or regulations will set out the following factors as being relevant when assessing an amalgamation application:

- a) The same mineral tenement type
- b) 100% ownership or related body corporates
- c) Suitable project-wide program and commodity targets
- d) Contiguous or nearly contiguous tenements
- e) Tenements in good standing regarding all compliance issues
- f) Native title status

If the Minister approves an application for amalgamation, the tenements or private mines will be amalgamated into one tenement, and the ownership of that tenement or private mine will be set according to any agreement between those parties (if multiple ownership is relevant), as furnished to the Minister. The terms and conditions of the tenement and expiry term of the tenement will be determined by the Minister. These factors are not relevant to private mines as a private mine does not expire and is not subject to terms and conditions. The Minister may also make other such determinations as the Minister think appropriate. It is likely that policy materials will expand on this, but this may be such things as what should happen with the dealings registered on the Mining Register, whether a new PEPR or MOP may be required, etc.

Section 56X

In addition to the ordinary process for the surrender of a tenement, this section introduces a streamlined revocation process for private mines whereby a proprietor can surrender a private mine on application to the Minister. This is detailed above under the header of 'Revocation of private mines'.

Section 63

The Extractive Areas Rehabilitation Fund (EARF) is constituted under Section 63. The EARF is funded through contributions from a specified proportion of the royalty paid on each tonne of quarry product sold. The fund is designed to facilitate the rehabilitation of extractive mineral mine sites. Funds for this purpose are allocated for approved rehabilitation projects according to the terms of the EARF Guidelines for Operation. The Act makes the holder of an Extractive Mining Lease (EML) or the owner of a Private Mine (PM) responsible for the rehabilitation of that EML or PM. This responsibility is most effectively and most economically discharged when the site is progressively rehabilitated. The EARF provides a mechanism to fund certain rehabilitation activities on extractive mineral sites as approved by the Minister for Energy and Mining. Application, project assessment, project approval and administrative processes for access to funds are described in full in the Guidelines for Operation. Whilst section 63 has always applied to private mines that pay royalties into the fund, by expressly stating that section 63 applies to Part 11B removes any doubt of their application.

Part 10 (sections 64 to 67)

Part 10 of the Mining Act relates to the establishment and powers of the Warden's Court. As the Warden's Court has jurisdiction over private mine matters, sections 64 (establishment of Warden's Court), (Powers etc of Warden's Court), 66 (Rules of Warden Court), 66A (Removal of cases to ERD Court) and 67 (Jurisdiction relating to tenements and monetary claims) have always applied to private mines, but by expressly stating that these apply to Part 11B removes any doubt of their application.

Part 10C, other than section 70HG

Part 10C is a proposed new part of the Mining Act which includes a new offences and penalty regime. Part 10C was considered in detail in Package 2 – Explanatory Document – Compliance and Enforcement.

Section 70HC (Penalty for illegal mining of the Bill) replaces and expands section 74 of the current Mining Act. This section does not relate to private mines or any specific tenement type but relates to a person mining without a right under this Act.

Section 70HD (Obstruction of person authorised to mine etc) of the Bill replaces section 89 of the current Mining Act but has been updated to include obstructing operations on a private mine. This section creates an offence for a person who, without lawful excuse, obstructs or hinders the holder of a mining tenement or a private mine.

Section 70HE (Civil penalties) of the *Statutes Amendment (Mineral Resources) Act 2019* introduces a new civil penalty regime. This section allows the Director of Mines to pursue civil penalties in lieu of criminal penalties and aligns with civil penalties in modern environmental legislation.

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

Section 70HH (Offences by bodies corporate) introduces offences against Directors (for offences of a body corporate) if the Directors knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed, was in a position of influence, and the Directors failed to exercise due diligence to prevent the offence. This section operates to make directors guilty of an offence if the company is. It does not impose any obligations on a director. This section is below the standard set by commercial law and is the lowest director's liability provision in SA statutes.

Section 70HI (Time limits) sets a statutory time limit for prosecutions under the Mining Act. Criminal proceedings under this Act may occur within three years of the alleged offence, or within 10 years of the alleged offence, if the written authorisation of the Attorney-General has been obtained.

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

Section 70HK (Evidentiary provisions) has been moved from section 90 of the current Mining Act and expanded to provide the Minister with the ability to certify a broader range of documents for the purposes of evidence before the court, ensuring smoother operation of prosecutions. Section 730 in Part 11B of the *Statutes Amendment (Mineral Resources) Act 2019* also include private mine specific evidentiary provisions in addition to the provisions set out in section 70HK.

Sections 72 and 73

Section 72 (Research and investigations) allows the Minister to conduct research and investigation into the existence of native title on mineral land, and problems affecting the conduct of mining operations or the treatment of ores; stipulate and recover charges for any such research or investigation conducted at the request of any person; and pay the cost of any such research or investigation out of money provided by Parliament for the purpose. This section does not relate to private mines or any specific tenement type, but relates to the Minister's research. This section has always applied to the land covered by a private mine, but by expressly stating that this will apply to Part 11B removes any doubt of its application.

Section 73 (Acquisition of mining equipment) allows the Minister to acquire mining equipment. This section does not relate to private mines or any specific tenement type but relates to the Minister's ability to acquire equipment. This section applies generally, but by expressly stating that this will apply to Part 11B removes any doubt of its application.

Sections 74 and 74AA

Section 74 (Civil remedies) is a new section and this section, in connection with section 70HE (Civil penalties) of the *Statutes Amendment (Mineral Resources) Act 2019*, establishes new civil penalties

and remedies regime and gives the court the power to make orders aligning with civil remedies in modern environmental legislation (e.g. the Environment Protection Act 1993).

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

Sections 75A and 79

Section 75A (Avoidance of double compensation) states that in determining the compensation to be paid to a body or person under this Act, compensation that has been paid to the body or person, or to which the body or person is entitled under other laws, must be taken into account. This section does not relate to private mines or any specific tenement type, but relates to compensation paid under this Act. This section applies generally, but by expressly stating that this will apply to Part 11B removes any doubt of its application.

Section 79 (Minister may grant exemption) allows the Minister to exempt the holder a mining tenement from an obligation to comply with either (a) a condition of their lease or licence or (b) compliance with an obligation under the Act. Section 79 cannot be exercise any obligation under Part 9B of the Act or to discriminate against the holders of native title. This section does not operate to exempt the Minister, Director of Mines, or the Mining Registrar of any obligation exercisable under this Act. By allowing this section to apply to private mines means the Minister can exempt (where necessary) the person operating a private mine from compliance with the Act.

Sections 83A and 85

Section 83A (Licence or other right is not personal property for the purposes of Commonwealth Act) states that a right, entitlement or authority given by the Mining Act is not personal property for the purposes of the *Personal Property Securities Act 2009 (Cth)*. Section 8 of the *Personal Property Securities Act 2009 (Cth)* specifically excludes a “right, licence or authority (the statutory right) granted by or under a law of the Commonwealth, a State or a Territory, if, at the time when the statutory right is granted, or at any time afterwards, a provision of that law declares that kind of statutory right not to be personal property for the purposes of this Act (no matter whether the provision remains in force).

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

Sections 88 to 92 (inclusive)

Section 88 (Hindering authorised officers) states that a person cannot hinder or obstruct, without a reasonable excuse, an authorised officer or other person engaged in the administration of the Act. This section applies generally, but by expressly stating that this will apply to Part 11B removes any doubt of its application.

Section 89A (Offences and ERD Court) states that offences under the Mining Act are criminal offences in the ERD Court. The maximum penalty is \$250,000 for criminal penalties and the \$150,000 for civil penalties, and the ERD Court has jurisdiction for prosecutions under the Mining. This section applies generally, but by expressly stating that this will apply to Part 11B removes any doubt of its application.

Section 89B (Penalties and expiation fees payable into Mining Rehabilitation Fund) explains that any penalties or expiation fees under this Act are paid into the Mining Rehabilitation Fund, ensuring that funds can be collected and used to assist with mineral tenement rehabilitation (at the discretion of the Minister). This section applies generally, but by expressly stating that this will apply to Part 11B removes any doubt of its application.

Section 90 (Reports and verification of information) allows the Minister to request the tenement holder or operator of a private mine to provide a report on the operation or administration of any provision of the Act, an assessment of the tenement holder's, or operator of a private mines', capability to comply with the Act, the identification, delineation or accuracy of any boundary of a mineral tenement or verifying any information or material provided to the Minister. The Minister may require that a report is prepared by an independent expert. The report must be completed in accordance with the timeframe set by the Minister and all costs associated with the report must be met by the tenement holder or operator of a private mine. The maximum penalty is \$20,000.

Section 91 (Administrative penalties) allows the Director of Mines to impose an administrative penalty on a holder or former holder of a mineral tenement or the operator of a private mine. To increase efficiency in issuing administrative penalties, the penalty may be issued without consultation and there is also no requirement to provide a warning or prior notice to the person. This section applies generally, but by expressly stating that this will apply to Part 11B removes any doubt of its application.

Section 92 (Regulations) sets out the regulation-making powers in the Act. This section applies generally, but by expressly stating that this will apply to Part 11B removes any doubt of its application.



	Mining Lease	Private Mine pre 2021	Private Mine post 2021
Statutory Instrument	Lease granted by the Minister	Proclamation of the Governor	Proclamation of the Governor
Owner of Statutory Instrument	Tenement holder	Governor	Governor
Term	Term set in lease conditions & can be renewed	Do not expire	Do not expire
Cessation	Surrender, cancellation, forfeiture, suspension or expiry	Revocation via Warden's Court order & instruction to the Governor	Voluntary surrender by proprietor or revocation process of inactive mines whereby the Minister instructs to Governor (without court order)
Right to Minerals	Extractive minerals or metallic minerals & limited by lease conditions	All minerals	All minerals
Conditions of Grant	Conditions specified in lease document	No condition	No conditions
Working Conditions	Must diligently work lease; must have PEPR & work in accordance with PEPR	No obligation or requirement to mine, but must have a MOP & must work in accordance with MOP	No obligation or requirement to mine, but must have a MOP & must work in accordance with MOP
Operating Approval	Program for Environment Protection & Rehabilitation (PEPR)	Mine Operations Plan (MOP)	Mine Operations Plan (MOP) with updated requirements to align closer with PEPRs.
Transparency of operating approvals	PEPRs are published online	MOPs are not public, only name proprietor, location & extract of objectives & criteria can be accessed on application	MOPs to be published online
Environmental Compliance	DEM regulate conditions, PEPRs & general environmental protection	DEM to regulate MOP compliance; EPA & DEM to regulate general environmental protection	DEM to regulate MOP compliance; EPA & DEM to regulate general environmental protection
Bond	Bond or security required for 100% rehabilitation liability	No bond or security required, but must meet rehabilitation requirements in MOP & can access the EARF	Bond or security may be required for metallic minerals, but must meet rehabilitation requirements in MOP & can access the EARF
Insurance	Must have public liability insurance	No obligation to have public liability insurance	Must have public liability insurance
Reporting	Compliance reporting, incident report, geological reporting	7 yearly report on MOP compliance	Compliance reporting, incident report, geological reporting
Royalties	Royalty payable under the Mining Act	Royalties on extractive minerals are payable under the Mining Act; No royalties on metallic minerals until after a 'relevant event'	Royalties on extractive minerals are payable under the Mining Act; No royalties on metallic minerals until after a 'relevant event'
Public consultation	Public consultation of lease assessment & the Minister must have regard to submission when making decision	MOP to be circulated for public consultation if new operations are to be carried out	MOP to be circulated for public consultation if new operations are to be carried out
Land access	Must serve notice of entry; must obtain waiver for exempt land; must obtain native title agreement; must obtain consent from owner for access to extractive minerals	Nil requirements	Nil requirements
Dealings	Ministerial consent require to transfer ownership & can protect interests with mortgage or caveat	No ministerial consent or reporting required when transferring or dealing with a private mine	Ministerial consent require to transfer right to mine & can protect interests with mortgage or caveat
Rent & Fees	Annual rental payable to DEM & distribute to owner of land. Application fee for lease. Fee for PEPR assessment	No rental. Fees payable for MOP assessments	No rental. Fees payable for MOP assessments and annual administrative fee