



## Package 2 – Explanatory Document – Mining Register and Information, Data and Release

Mining Act
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Mining Register – section 15AA
Transfers – Section 15AB
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## 1. Mining Register

### *The Mining Register as amended by the Statutes Amendment (Mineral Resources) Act 2019*

Mineral and petroleum resources within Australia are the property of the Crown, and the right to exploit these resources is granted under State and Territory licencing regimes. The management of resources licences and the ability to deal with these licences are administered through registers managed by the States and Territories. Each of the respective registers contains the permits, claims, leases and licences (collectively referred to as 'licences' for ease) granted in that jurisdiction and dealings in those licences.

'Dealings' in a licence are commercial arrangements that create an interest in a resource licence or security over a licence. Dealings in resource licences commonly include the creation and transfer of proprietary, equitable or contractual interest in a licence and the creation and withdrawal of a security interest over a licence. Dealings are commonly registered on a mineral or petroleum register to protect that interest, as resource registers offer pre-emptive protections by preventing or notifying a party of dealings with a licence that many derogate that parties interest in, or security over, that licence. These interests are recorded on licensing registers as transfers, mortgages and caveats.

Some jurisdictions also use registers as a means of providing further information on matters related to the licence, such as non-compliance, renewals, financial assurances, environmental approvals and land access arrangements.

Section 15AA of the *Statutes Amendment (Mineral Resources) Act 2019* establishes the new Mining Register and substantially expands the scope of the Register. The new Register will recognise a broader range of dealings which effect a tenement and information related to a tenement, as well as Warden's Court proceedings information and decisions.

The new Mining Register will compose of (s. 15AA(2)):

- tenements –
  - (1) mineral claims established under section 21;
  - (2) exploration licences granted under section 29B;
  - (3) mining leases granted under section 37;
  - (4) retention leases granted under section 45;
  - (5) miscellaneous purpose licences granted under 50;
  - (6) private mines declared under section 19 as in force immediately before 1 September 2000.
- terms and conditions of a tenement as determined under sections 56I to 56K;
- instruments of transfer under section 15AB;
- mortgages under sections 15AC and 15AD;
- caveats under sections 15AE and 15EF;
- instruments, agreements, determinations, and dealings required to be registered under the Act, such as:
  - (1) waiver of restricted land under section 9AA;
  - (2) a statement of exploration operations and expenditure under section 30AAA;
  - (3) an independent report of exploration operations and expenditure under section 30AAA;
  - (4) Special Mining Enterprise approval under section 56V.
- determinations and dealings required to be lodged with the Mining Registrar;
- commencement and completion of Warden's Court matters;
- decisions, determinations and orders of the Warden's Court;
- registrable dealings under section 15AG;
- cessations of tenements; and



- any other document required to be registered under the Regulations.

It is the role of the Mining Registrar to keep the Mining Register (s. 15AA(1)). The Mining Registrar and other mining registrars must be public servants, and the Registrar may delegate their powers or functions to the registrars as necessary (s.13).

The Mining Registrar has the full discretion to control the manner, form and content of the Mining Register. The Act grants very broad discretion to the Registrar to control the contents of the Register (s. 15AA(3)), regulate the form of the Register (s.15AA(4)), and establish requirements related to forms, use of files including format, the provision and certification of instruments and information, and the recording, management, preservation, storage, archiving and disposal of documents (s. 15AA(5)).

Subsection 15AA(2)(l) includes a regulation-making power to prescribe other interests, instruments, approvals, agreements, determinations, statements, notices, orders, directions, bonds, penalties or other documents or dealings that require registration. While the regulations can list other interests, instruments, approvals, agreements, determinations, statements, notices, orders, directions, bonds, penalties or other documents or dealings that must be registered, the Mining Registrar also has broad discretion to control what information is contained on the Register. Regulation 14 and Schedule 1 of the draft Mining Regulation lists the additional items to be registered, as the Registrar determines appropriate.

The reference to 'information' is distinct from the broad list of instruments that appear on the Register. Therefore, the Registrar's broad discretion is not to determine the instruments registered, but rather, the level of information contained on the Register to reflect those instruments.

For example, the regulations may prescribe that rehabilitation, compliance, emergency and environmental directions may be published on the Register. The Registrar's discretion can control the level of information about those directions that appears on the Register, such as simply noting a direction has been issued as an alternative to allowing full access to the direction.

The Registrar also has a broad discretion to amend the Register (s. 15AA(6)) or delay the registration of an instrument. For example, delay to allow for stamping of duty, if relevant (s. 15AA(7)).

A new feature of the Mining Register is to record the commencement and completion of Warden's Court matters and decisions, and determinations and orders of the Warden's Court. As this information is not managed by the Department, section 15AA(8) places an obligation on the Warden's Court Registrar to furnish to Mining Registrar the necessary information to be published on the Register.

It is an offence for a person who is required to serve a notice, or provide or give a notice or an agreement to the Mining Registrar in accordance with the Act and regulations, with a maximum penalty of \$5,000 (s. 15AA(9)). The dealings required to be furnished to the Registrar and published on the Register include:

- notice of entry;
- notice of advanced exploration;
- notice of intent to apply for a mining lease or retention lease;
- waiver of restricted land under section 9AA;
- a statement of exploration operations and expenditure under section 30AAA;
- an independent report of exploration operations and expenditure under section 30AAA;
- Special Mining Enterprise approval under section 56V;



- or any other agreement or notice listed in the Regulations that must be furnished to the Registrar.

These must be furnished to the Registrar by electronic means or email as required by regulation 82 of the draft Mining Regulations.

These offences do not apply to the Minister, Warden's Court Registrar or anyone prescribed by the regulations. Schedule 4 of the draft mining regulations prescribes that this offence can attract a \$210 expiation fine.

## 2. Transfer of title of tenement

### ***Transfer of title of tenement as amended by Statutes Amendment (Mineral Resources) Act 2019***

Transfer of registered titleholder of a mineral tenement is set out in section 15AB of the *Statutes Amendment (Mineral Resources) Act 2019* and will replace the framework currently in place under section 83.

Subsection 15AB(1) limits the application of this section to legal or proprietary interests in a mineral tenement. This subsection operates to qualify the whole of section 15AB and limit the change of the registered titleholder of a tenement to that of legal or proprietary interests in a tenement, as opposed to contractual or equitable interests. This is reinforced by the definition of tenement holder in section 6, being 'the registered holder of the mineral tenement'. The recognition of non-proprietary interests is dealt with in section 15AG.

The limited recognition of interests in a mineral tenement for the purpose of determining the registered titleholder is due to the liability associated with being the registered titleholder. The Mining Act does not adopt the 'polluter pays principle', as subsection 70HK(4) includes a deeming provision whereby the tenement holder is presumed to have caused the failure or contravention of a term or condition of a tenement, or of their program of environment protection and rehabilitation (PEPR), unless there is evidence to the contrary. Further, the tenement holder will be taken to be vicariously liable for an act or omission of an employee or agent under subsection 81(1), unless there is evidence to the contrary.

The registered holder of the tenement may only change via transfer or assignment, or be impacted by a sublet or trust arrangement, with the Minister's consent (s 15AB(2)).

A change in title is not recognised under this Act unless the Minister has consented to it, and it is registered on the Mining Register (s. 15AB(3)). This subsection sets the point in time in which the change in registered titleholder occurs, and therefore when the liability changes from one party to another.

To obtain Ministerial consent, the Minister, in consultation with the Mining Registrar, will determine the manner and form of the application (s. 15AB(4)). This must be accompanied by a fee which will be set out in the regulations.

The Minister can request any information required to determine whether consent should be given (s. 15AB(5)). Under the current policy, the Minister considers the technical and financial capability, outstanding rehabilitation liability and any relevant non-compliances of the transferee.

The instrument of transfer will be registered on the Register in a manner and form determined by the Mining Registrar (s. 15AB(6)).



### 3. Mortgages

#### ***Mortgages as amended by the Statutes Amendment (Mineral Resources) Act 2019***

##### *Types of mortgages*

A mineral tenement, or an interest or share in a mineral tenement (including a share expressed as a percentage) (s. 15AC (5)), may be mortgaged as security in the form of any charge. Section 15AC(1) does not limit the scope of a mortgage, but rather states that it can be any charge. This broad definition leaves the definition of a mortgage or charge to the agreement itself. Examples include a charge for the repayment of money, discharge of liability, or to secure the performance of an obligation. The ultimate decider of whether something is a mortgage are the parties to the agreement, and in the event they disagree, an appropriate court.

##### *Lodging a mortgage*

A mortgage can be lodged with the Mining Registrar for registration on the Mining Register by any party to that mortgage (s.15AC(2)).

A mortgage must be in a manner and form determined by the Mining Registrar and must be accompanied by the prescribed fee (s.15AC(3)). The Mining Registrar can require further information from the applicant if required (s.15AC(4)), such as a copy of the mortgage document. There is no express requirement for the mortgage document to be annexed to the form as supporting evidence.

##### *Effect of a mortgage*

Irrespective of who registers a mortgage on the Mining Register, a mortgage will not:

- a) give the mortgage any priority over other interests on the Register;
- b) give the mortgage any additional power or status if enforced;
- c) warrant or confirm any security by the mortgage;
- d) affect or prevent renewals of a tenement;
- e) lapse on the renewal of a tenement;
- f) forbid cancellation, suspension, or forfeiture of a tenement;
- g) forbid compulsory surrenders or relinquishment; or
- h) affect or prevent any dealing with a tenement required by a law or an order of a court or tribunal.

If a mortgage is lodged by a party to the mortgage agreement without the express consent of the tenement holder, the mortgage will have no effect on the tenement other than appearing on the Register.

If a mortgage is lodged by the tenement holder(s), or with the consent of the tenement holder(s), the mortgage will prevent transfers and surrenders until withdrawn (s.15AC(7) and (8)). The Mining Registrar may (in limited circumstances) register a transfer despite the mortgage if:

- a) the application to transfer was received by the Registrar before the registration of the mortgage on the register;
- b) the transfer is subject to the mortgage;
- c) the mortgagee(s) consent to the registration of the transfer;
- d) the transfer is required by an order of a court or tribunal;
- e) the mortgage is discharged before the registration of the transfer, or
- f) the mining registrar is acting in any circumstances prescribed by the regulations.

a) applies a first-in-time approach based on the lodgement of the application, not the commercial agreement between the parties which gave rise to the transfer or the mortgage. The management of this will be dependent on our lodgement systems. Therefore, there may be circumstances in which the mortgage arises under contract before the right to transfer. However, unless the application to



register a mortgage is received by the Mining Registrar before the application to transfer, the Registrar may register the transfer despite the unregistered mortgage. If such an event were to occur, it's the responsibility of the mortgagee(s) to seek remedies under the contract for any loss suffered as a result of the transfer. The Mining Register has no liability in such an event.

b) applies when the transfer of a mineral tenement or an interest in a mineral tenement is expressed as allowing a mortgage as a permitted encumbrance. The Mining Registrar has no obligation or liability under the Act to verify this by reviewing the agreement giving rise to the transfer. Rather, it may be prudent to include something in the transfer instrument detailing the requirement to list any permitted mortgages.

c), similar to (b), applies when the transfer of a mineral tenement or an interest in a mineral tenement is expressed with the mortgagee(s) consent. (b) infers consent by supporting contract, where (c) provides an alternative scheme whereby the mortgagee can provide consent to the satisfaction of the Mining Registrar. Policy will dictate the manner in which the Mining Registrar will accept consent, although it is recommended consent be in writing by the mortgagee (e.g. in the form of a letter by the mortgagee annexed to the transfer form, or inclusion of a mortgagee consent execution clause on the transfer form).

d) applies when a court or tribunal orders the Mining Registrar to register a transfer. This may occur irrespective of the mortgage, or the court or tribunal may order the mortgage be removed prior to the transfer.

e) applies when the mortgage is discharged before the registration of the transfer.

f) applies if the regulations prescribe any other circumstances in which the Mining Registrar can register a transfer despite a mortgage affecting the mineral tenement.

A mortgage registered on a mineral tenement will not operate to prevent or forbid forfeiture applications; however, a mortgage may prevent the Minister from transferring the tenement without an order of the Warden's court ordering the lapsing of the mortgage (15AC(11)), or order of the court authorising the transfer despite the mortgage (15AC(7)(d)). Failure to get an order of the court relating to the mortgage or caveat at the time of forfeiture will cause confusion for the Minister. This issue arises as the Warden can recommend that a tenement be forfeiture to the Crown, but it is up to the Minister to transfer the tenement.

While the Minister should not be prevented from transferring a forfeited tenement, transferring the tenement subject to the mortgage does not make sense. Without a court order or the agreement of the incoming tenement holder, it's not clear how the mortgage could be binding on the new tenement holder (doctrine of privity). Therefore, it makes no sense for the mortgage to remain on the register, but the Minister has no power to remove it without a court order or consent of the mortgagee. There may be circumstances where a caveat could remain to protect an interest despite a transfer; however, this would need to be considered. Consequently, to ensure the Court considers the effect of a mortgage or caveat on a forfeiture application, the warden's court form and rules will make a note of this interaction to ensure it's addressed by the Court, and applicants should consider these issues when making a forfeiture application.

The Mining Registrar may in limited circumstances register a surrender despite the mortgage if:

- a) the mortgage (or mortgagee) consent to the surrender;
- b) the mortgage is discharged before the surrender;
- c) the surrender occurs by compulsory relinquishment or surrender under the Mining Act; or
- d) the surrender is happening in any circumstances prescribed by the regulations.

a) applies when all or part of a mineral tenement is voluntarily surrendered with the mortgagee(s) consent. This could be done under an agreement or at the time of applying for the surrender. Policy will dictate the manner in which the Mining Registrar will accept consent, although it is recommended



consent be in writing by the mortgagee (e.g. in the form of letter by the mortgagee annexed to the surrender form, or inclusion of a mortgagee consent execution clause on the surrender form).

b) applies when the mortgage is discharged before the registration of the voluntary surrender.

c) applies to allow for compulsory surrender or relinquishment under the Mining Act. Under section 30AAA, a tenement holder may be required to relinquish an exploration licence area for failure to meet expenditure requirements, or as a condition of an amalgamated expenditure agreement. Under section 30A, a tenement holder is required to relinquish percentages of an exploration licence upon renewal. Under section 33B, a tenement holder may be required to relinquish the area of their exploration licence subject to retention status for failure to comply with a show-cause notice issued by the Minister. It is intended that a mortgage will not prevent compulsory relinquishment or surrender under the Act, as distinct from voluntary surrender.

f) applies if the regulations prescribe any other circumstances in which the Mining Registrar can register a surrender despite a mortgage affecting the mineral tenement. Regulation 15 of the draft Mining Regulations prescribes that the Registrar can register a surrender despite a mortgage where the surrender is required by an order of a court or tribunal.

#### *Discharge of a mortgage*

A mortgage is discharged in full or part on the following events:

1. an order of a court or tribunal; or
2. discharge of the mortgage, in the determined form.

Section 15AC(9) sets out that a mortgage may be discharged in accordance with procedures determined by the Mining Registrar. Subsection 15AC(10) clarifies that the Mining Registrar will only allow for a discharge under subsection (9) if the discharged is consented to by the mortgagee(s)/secured party(ies), or if the application is made by the mortgagee. As the mortgagee(s)/secured party(ies) have the benefit of the protection of the mortgage, and the mortgage only has effect if the tenement holder(s) consents to its registration, then to allow a tenement holder to discharge a mortgage without the consent of the mortgagee(s)/secured party(ies) would derogate the purpose of registering the mortgage in the first place.

#### *Duties of the Court*

Under section 15AD, an appropriate court (i.e. the Warden's Court, ERD Court and Supreme Court) has the power to:

- a) declare a mortgage as defective, invalid or unenforceable;
- b) order a transfer despite a mortgage;
- c) order a full or partial discharge of a mortgage; or
- d) order that a mortgagee pays compensation for any loss suffered because of the registration of a mortgage.

Any person can seek an order or declaration of the court under section 15AD, as long as that person has an interest in a tenement which is subject to that mortgage, or has an interest that is directly affected by that mortgage. Interest in this context would include a contractual, equitable or proprietary interest in a tenement or a contractual, equitable or proprietary interest affected by a mortgage.

## **4. Caveats**

### ***Caveats as amended by the Statute Amendment (Mineral Resources) Act 2019***

Under the Torrens system, a caveat is a means of protecting an interest in the land claimed under an unregistered instrument or an equitable charge. There are different forms of caveats, but generally, caveats operate as statutory injunctions which freezes the Register and preserves the status quo.



A caveat does not substantiate an estate or interest claimed in the caveat, but merely prevents the registration of other dealings/interests from destroying the estate or interest claimed if substantiated.

#### *Types of caveats*

There are two categories of caveats: an absolute caveat (s.15AE(3)(a)) and a claim caveat (s.15AE(3)(b)).

An absolute caveat can be lodged in respect of an interest in a mineral tenement and may forbid any transfer, mortgage, or voluntary surrender which affects that interest.

A claim caveat can be lodged in respect of an interest in a mineral tenement and may forbid the registration of any transfer or mortgage, or voluntary surrender which affects that interest, unless the caveat expressly states it is subject to that interest.

Both an absolute caveat and a claim caveat can be conditional. Subsection 15AE(5) allows a caveat to be conditioned to expire on a certain date, on a specified transfer or mortgage, or at the end of a specified period.

#### *Lodging a caveat*

Both an absolute caveat and a claim caveat can be lodged by the tenement holder, or the person claiming an interest in the tenement (s.15AE(1)).

A caveat must be in a form determined by the Mining Registrar and must be accompanied by the prescribed fee, and such other documents or information as required by the Registrar. If a caveat is lodged by a person claiming an interest in the tenement without the express consent of the tenement holder, the application must be accompanied by the agreement that provides for the registration of the caveat or any information required by the Mining Registrar regarding the nature of the caveatable interest, plus a statutory declaration as to the truthfulness and accuracy of the matter set out in the application.

A caveat can be lodged over a tenement holder's proprietary interest in a tenement which may be expressed as a percentage interest or a share, and will only operate to affect that interest.

Once a caveat is registered, the Mining Registrar must notify the effected tenement holder(s). The notice must be provided in accordance with the notice provisions in the regulations.

#### *Caveatable Interests*

A caveatable interest under section 15AE is any interest in a mineral tenement (proprietary, equitable, contractual, etc.) as agreed between the parties under contract. The ultimate decision-maker as to whether something is a caveatable interest or not is a Warden of the Warden's Court. If a caveat is lodged by the tenement holder, or by a person with the express consent of the tenement holder, the question of whether there is an interest and whether that interest is caveatable is determined by considering the agreement which creates the interest and the right to caveat. Where the caveat is lodged by the person claiming an interest without the express consent of the tenement holder, section 15AE(4) provides guidance as to what in this circumstance would constitute a caveatable interest:

1. There must be an agreement between the tenement holder and person claiming an interest in the mineral tenement;
2. That agreement must create an interest in the mineral tenement;
3. That interest must relate to:
  - a. the sale or transfer (or both) of that interest in the tenement; or
  - b. any other matter connected with that tenement; and
4. That agreement must expressly allow for a caveat to be registered under the Mining Act.

If there is no agreement between the tenement holder and person claiming an interest, the Mining Registrar may consider registering the caveat and can request any information he/she may require (s. 15AE(4)(b)). The ability for the Registrar to consider the registration of caveatable interests that do



not arise under contract was included to capture interests that arise under a trust or other arrangements.

#### *Effect of a caveat*

A caveat does not:

1. warrant or confirm any interest claimed by that caveat;
2. affect or prevent renewals of a tenement;
3. lapse on the renewal of a tenement;
4. forbid cancellation, suspension, or forfeiture of a tenement;
5. forbid compulsory partial surrenders or relinquishment; or
6. affect or prevent any dealing with a tenement required by law or an order of a court or tribunal.

An absolute caveat forbids transfers, mortgaged or voluntary surrenders.

A claim caveat forbids transfers and mortgage unless that caveat expressly states that it is subject to a specific transfer or mortgage.

A Warden of the Warden's Court has the power to order that a transfer, mortgage or surrender be registered despite the caveat. An application for such an order can be made under section 15AF by a person who has an interest in the relevant tenement or has an interest that is directly affected by the caveat. Interest in the context could be a proprietary, equitable or contractual interest in the mineral tenement.

While the matters the Warden can consider when considering an order to registered a transfer, mortgage or surrender are not explicit, it is likely the Warden would consider the nature of the caveatable interest and agreement which gives rise to that interest, and whether that agreement contemplates or validly forbids the registration of the proposed transfer, mortgage or surrender.

#### *Lapse of a caveat*

A caveat lapses on the following events:

1. an order of the Warden's Court;
2. withdrawal of the caveat by the caveator; or
3. the caveats lapses on the expiry date or event as set out in the caveat application form.

A second or subsequent caveat cannot be lodged over the same interests in a mineral tenement without the approval of the Warden's court.

#### *Duties of the Warden's Court*

As referred to above, the ultimate arbiter of caveats under the Act is the Warden. A Warden has the power under section 15AF to:

1. declare what is or isn't a caveatable interest;
2. cause a caveat to lapse;
3. allow a transfer, mortgage or surrender despite a caveat forbidding such registrations; and
4. order a caveator pay compensation for loss or damage caused by an invalid caveat.

Any person can seek an order or declaration of the court under section 15AF, as long as that person has an interest in a tenement subject to that caveat, or has an interest directly affected by that caveat. Interest in this context would include a contractual, equitable or proprietary interest in a tenement, or a contractual, equitable or proprietary interest affected by a caveat.

#### **Examples**

*Sale and Purchase Agreement (SPA)*

Tenement holder enters into a SPA to sell a 60% interest to Party A. Party A could lodge the caveat with or without the consent of the tenement holder, or the tenement holder could lodge the caveat.

If Party A registers a caveat with the consent of tenement holder, a stat dec or supporting agreement is not required. To best protect the interests under the SPA, Party A should register a claim caveat which prevents all transfers and mortgages, but is subject to the transfer contemplated by the SPA and will expire on the registration of the transfer contemplated by the SPA (or the condition precedent expiry date).

If Party A lodges the caveat, the tenement holder cannot remove it unilaterally without a court order. If the tenement holder is not the caveator, they should ensure the caveat expires on the condition precedent expiry date in case the sale and purchase never completes.

Alternatively, if the tenement holder registers a caveat to protect the transfer of interest contemplated by the SPA, the tenement could have the flexibility to withdraw the caveat.

#### *Royalty Agreement (RA)*

Tenement holder grants a 5% net smelter royalty to Party A. Party A could lodge the caveat with or without the consent of the tenement holder, or the tenement holder could lodge the caveat.

If Party A registers a caveat with the consent of tenement holder, a stat dec or supporting agreement is not required. To best protect the interests under the RA, Party A should register an absolute caveat which prevents all transfers, mortgages and surrenders (with expiry).

If Party A lodges the caveat, the tenement holder cannot remove it unilaterally without a court order.

#### *Farm-in Agreement (FIA) & potential Joint Venture Agreement (JVA)*

Tenement Holder grants Party A farm-in rights via several stages with the formation of a JVA if the rights are earned. Party A could lodge the caveat with or without the consent of the tenement holder, or the tenement holder could lodge the caveat.

If Party A registers a caveat with the consent of the tenement holder, a stat dec or supporting agreement is not required. To best protect the interests under the FIA, Party A should register a claim caveat which prevents all transfers and mortgages, but is subject to the transfer(s) contemplated by the FIA and will expire on the transfer of the last contemplated transfer(s) or stage one farm in expiry date.

Assuming all the contemplated transfer(s) occur and the caveat expires, the JVA could be registered as a dealing, and the JV cross charges registered as a mortgage. The JVA contemplates potential dilution transfers and sole risk transfers under the JVA, but ordinarily, these are not caveated because they only arise in default or sole risk ventures.

If Party A lodges the caveat to protect the farm-in interests, the tenement holder cannot remove it unilaterally without a court order. Therefore, it would be prudent for Party A to register the caveat to best protect its earned interests. But it would also be prudent for the tenement holder to ensure the caveat expires at the farm-in expenditure expiry date in case the interests are never earned. If there is no clear expiry date or the extension provisions in the FIA are not conducive to setting an expiry, it may be better placed for the tenement holder to register the FIA in so they can remove it in the event Party A never earns the rights, or to include a provision in the FIA requiring Party A to remove the caveat after notice to withdraw under the agreement.



## 5. Other Interests in a tenement

### ***Other interests in a tenement under the Statutes Amendment (Mineral Resources) Act 2019***

Section 15AG allows for the registration of dealings or documents which relate to a mineral tenement, or an interest in a mineral tenement, or the operations to be carried out on the tenement. The tenement holder is the only person who can register such a dealing. Registration of a 'registrable dealing' has no effect other than to make the dealing known.

This section seeks to allow the tenement holder to register dealings of a contractual or equitable nature that do not amount to a transfer of legal or proprietary interest. This section is expected to be used to register royalty agreements (as distinct from Part 3 royalty agreements), mineral rights agreements, farm-in agreements, joint venture agreements, etc. Registration of these documents will be of great commercial benefit to industry to put others on notices of these documents.

It is anticipated this section will be used in conjunction with the caveat provisions in sections 15AC and 15AD, whereby a contractual or equitable interest will give rise to a caveat and prevent a transfer, mortgage or surrender, and the nature of the contractual or equitable interest will be reflected on the Register as a dealing under section 15AG. This will allow the beneficiary of the contractual or equitable interest to ensure a deed of assignment and assumption is entered into prior to any transfer of a proprietary interest in a tenement.

Section 15AG also operates to place an obligation on the tenement holder to notify the Minister within 14 days of any person other than the tenement holder undertaking authorised activities on their behalf. This authorisation must also be registered on the Register. Failure to notify the Minister or register the dealing does not cause the dealing to be of no effect, as is the case for transfers under section 15AB; rather, the tenement holder may be subject to a maximum penalty of \$5,000.

## 6. Protection from liability

### ***Protection from liability as amended by the Statutes Amendment (Mineral Resources) Act 2019***

Section 15AH operates to ensure that any act or omission by the:

- (a) Mining Registrar;
- (b) Any person acting on behalf of the Mining Registrar in connection with the administration of the Register; or
- (c) Any person acting on behalf of the Mining Registrar in connection with the registration of any interest, instrument, agreement, statement, notice, order, direction, bond, penalty, or other document or dealing on the Register,

will not, and cannot, subject any liability to, or give rise to any right of any action against (other than judicial review),:

- (a) the Mining Registrar;
- (b) any person acting on behalf of the Mining Registrar;
- (c) the Minister;
- (d) the Director of Mines; or
- (e) the Crown.



Section 15AH operates in addition to section 74 of the *Public Sector Act 2009* (SA), but goes further by broadening the limitation to include any liability, not just civil liability, and does not carve out actions not in good faith.

Part 2A does not appear to give rise to any express liability arising from the registration process. Therefore, this section has presumably been added for the avoidance of doubt in light of the Mining Registrar's broad discretion under section 15AA.

## 7. Information

### ***Information as amended by the Statutes Amendment (Mineral Resources) Act 2019***

The *Statutes Amendment (Mineral Resources) Act 2019* creates very broad powers relating to materials within the scope of the Act, and materials that must be compiled, created, kept, produced and provided to the Director (included the form of that material).

Regulation 16 of the draft Mining Regulations set out the list of materials a tenement holder must compile, keep and provide to the Director of Mines. In summary, this includes:

- a) Geological mapping
- b) Surveys of workings
- c) Geological samples, including drill hole samples and drilling samples
- d) Drill hole logs
- e) Locations relating to geological samples including drill hole collar locations
- f) Results of analysis and testing of samples
- g) Records of geophysical surveys
- h) Technical data, studies and reports
- i) Records of geochemistry
- j) Supporting information and data associated with reserve or resource estimation
- k) Records of airborne surveys under regulation 76
- l) Records of remote sensing
- m) Economic, environmental or social studies or reports
- n) Records of mineralogy and petrology studies
- o) Scoping studies
- p) Feasibility studies
- q) Surface mapping (recording the geological features of an operating mine)
- r) Drill hole photographs
- s) Open data file compilations
- t) Technical data associated with exploration that demonstrates an increased inferred or indicated resource (JORC definitions or equivalent)
- u) Production volume or quantity, and quality and value, records for a mining lease or private mine
- v) Records that evidence cost of a kind prescribed by regulation 11
- w) Technical data associated with the measurement of criteria in a program or plan approved under Part 10A or 11B of the Act

In addition to the broad compilation, keeping and provision powers, the Director may request at any time that a tenement holder make 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.

The Minister or Director has broad discretionary release powers under the *Statutes Amendment (Mineral Resources) Act 2019* which allows the Minister or Director to release any materials unless it



falls within an exemption. This new approach reverses the powers under the current *Mining Act 1971* which list what the Minister can release. This includes materials furnished to the Director as noted above, as well as any document, instrument, report, information, sample or other material:

- created under the Act or regulation; or
- provided to the Minister, Director, Mining Registrar(s), authorised officer(s) or any other persons acting with authority; or
- any specific information or material by notice in the Gazette or by notice served on the tenement holder.

Materials may be released subject to any conditions the Minister or Director thinks fit, and any person who fails to comply with those conditions is guilty of a penalty of up to \$120,000.

The amendments set out that everything can be released unless it falls within one of the exemptions. The exception to release include:

1. release that would be contrary to any other Act or law;
2. release would be in breach of an order of a court or tribunal;
3. release would involve the disclosure of a trade secret; or
4. release would be contrary to any requirement or restriction prescribed by the regulations.

Regulation 17 of the draft Mining Regulation restricts the Director from releasing materials until one of the following occurs:

- a) the expiry of the period of 4 years from the date on which the designated material was so provided to the Director; or
- b) the expiry, cancellation or forfeiture of the tenement to which the designated material relates; or
- c) the surrender, relinquishment or reduction (in whole or in part) of the tenement to which the designated material relates (being, in a case involving a part of a tenement, the designated material that relates to that part); or
- d) the designated material has been publicly available; or
- e) a holder of the tenement consents to the release of the designated material.

Despite the exemptions, a document, instrument, report, information, sample or other material related to a private mine cannot be released unless the material is to be published on the Mining Register or the Act expressly requires the material to be released, such as MOPs. Consequently, the Director can still collect a broad range of materials related to a private mine, but that material cannot be publicly released.

While the exemptions apply generally, they do not operate to prevent the Mining Registrar publishing or releasing, or allowing access to, any documents on the Register. Further, the exemptions do not limit any other section of the Act that requires a document to be published, such as MOPs, PEPRs and documents associated with public consultation (public submissions and a response document).