

Serial 301
Mining Management Bill 2001
Mr Manzie

**A BILL
for
AN ACT**

to provide for the authorisation of mining activities, the management of mining sites and the protection of the safety and health of persons and of the environment on mining sites, and for related purposes



NORTHERN TERRITORY OF AUSTRALIA

MINING MANAGEMENT ACT 2001

No. of 2001

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2001

AN ACT

to provide for the authorisation of mining activities, the management of mining sites and the protection of the safety and health of persons and of the environment on mining sites, and for related purposes

[Assented to 2001]
[Second reading 2001]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Mining Management Act 2001*.

2. Commencement

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

3. Objects

The objects of this Act are –

- (a) to ensure the development of the Territory's mineral resources in accordance with best practice safety, health and environmental standards;

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- (b) to protect the environment and the safety and health of all persons on mining sites in the Territory by –
 - (i) the authorisation and monitoring of mining activities;
 - (ii) requiring appropriate management of mining sites;
 - (iii) facilitating consultation and co-operation between the management and workers in implementing safety, health and environment protection management systems;
 - (iv) implementing audits, inspections, investigations, monitoring and reporting to ensure compliance with agreed standards and criteria; and
 - (v) specifying the obligations of all persons on mining sites in respect of safety, health and the environment;
- (c) to assist the mining industry to introduce programs of continuous improvement to achieve best practice safety, health and environmental management;
- (d) to enable persons connected with the mining industry to participate in the implementation of this Act through the establishment of a Mining Board to advise the Minister on –
 - (i) guidelines for the industry;
 - (ii) specification of competencies required by persons involved in the industry; and
 - (iii) best practice in mining activities; and
- (e) to minimise the liability of the Territory by requiring the payment of security to provide for the rehabilitation of mining sites or to rectify environmental harm caused by mining activities.

4. Definitions

In this Act, unless the contrary intention appears –

"act" includes omission;

"Atomic Energy Act" means *Atomic Energy Act 1953* of the Commonwealth;

"Authorisation" means an Authorisation under Division 2 of Part 4;

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"Chief Executive Officer" means the Chief Executive Officer, within the meaning of the *Public Sector Employment and Management Act*, of the Agency administering this Act;

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

"competent" means having the skill and knowledge (whether by training or experience) required to carry out the relevant work, task or function to a standard necessary to protect the safety and health of persons or the environment;

"contaminant" has the same meaning as in the *Waste Management and Pollution Control Act*;

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

"critical incident" means an event on a mining site that has the potential to cause a significant adverse effect on –

- (a) the safety or health of a person; or
- (b) the environment on the mining site;

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

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

"environmental harm" means –

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

of any degree or duration and includes environmental nuisance;

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"environmental nuisance" means –

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

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

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

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

"guideline" means a guideline issued by the Minister under Part 5;

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

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

"management system" means the safety, health and environment protection management system implemented for a mining site under Division 1 of Part 3;

"material environmental harm" means environmental harm that –

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

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"mineral" means any –

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

but does not include –

- (e) water; or
- (f) petroleum within the meaning of the *Petroleum Act*;

"mining activity" means any of the following activities:

- (a) exploration for minerals;
- (b) mining of minerals;
- (c) processing of minerals, tailings, spoil heaps or waste dumps;
- (d) decommissioning and rehabilitation of a mining site;
- (e) operations and works in connection with the activities in paragraphs (a), (b), (c) and (d), including –
 - (i) the removal, handling, transport and storage of minerals, substances, contaminants and waste; and
 - (ii) the construction, operation, maintenance and removal of plant and buildings;

"mining interest" means –

- (a) a mining interest within the meaning of the *Mining Act*;
- (b) a mining tenement within the meaning of the *Mining Act*;
- (c) a special mining lease in force by virtue of section 191(12) of the *Mining Act*; or

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(d) an authority under section 41 of the *Atomic Energy Act*;

"mining management plan" means a mining management plan under Division 3 of Part 4;

"mining officer" means a person appointed as a mining officer under Part 7;

"mining site" means an area of land –

- (a) in respect of which a person holds, or has held, a mining interest;
- (b) on which mining activities are being, or have been, carried out; or
- (c) that is declared by the Minister to be a mining site for the purposes of this Act;

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

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

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

"serious accident" means an event on a mining site that causes –

- (a) the death of a person;
- (b) a person to suffer an injury such that the person is unable to carry out the full range of his or her normal work activities; or
- (c) material environmental harm;

"serious environmental harm" means environmental harm that is more serious than material environmental harm and includes environmental harm that –

- (a) is irreversible or otherwise of a high impact or on a wide scale;
- (b) damages an aspect of the environment that is of a high conservation value, high cultural value or high community value or is of special significance;

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- (c) results or is likely to result in more than \$50 000 or the prescribed amount (whichever is greater) being spent in taking appropriate action to prevent or minimise the environmental harm or rehabilitate the environment; or
- (d) results in actual or potential loss or damage to the value of more than \$50 000 or the prescribed amount (whichever is greater);

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

"this Act" includes regulations made under this Act;

"uranium or thorium" includes a derivative or compound of uranium or thorium;

"waste" has the same meaning as in the *Waste Management and Pollution Control Act*;

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

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

5. Application

(1) Subject to section 7, this Act applies in relation to all mining sites and mining activities in the Territory.

(2) This Act does not apply in relation to fossicking within the meaning of the *Mining Act*.

(3) This Act does not apply in relation to the extraction of material from temporary borrow pits required for the construction or maintenance of a road, railway or other infrastructure unless the extraction is carried out on a mining site in respect of which a person holds a mining interest.

6. Act to bind Crown

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

7. Exemptions

- (1) The Minister may in writing exempt –
 - (a) a person, mining site, part of a mining site or a class of mining sites; or
 - (b) a mining activity or class of mining activities,

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

- (2) Before exempting under subsection (1) –
 - (a) a person, mining site, part of a mining site or a class of mining sites in relation to a mining activity in respect of uranium or thorium; or
 - (b) a mining activity or class of mining activities in respect of uranium or thorium,

the Minister must consult with the Commonwealth Minister and give effect to the advice given by the Commonwealth Minister.

(3) The Minister must not exempt a person, site or activity referred to in subsection (2) otherwise than in accordance with the advice of the Commonwealth Minister.

8. Civil remedies and common law not affected

(1) Unless expressly provided for, nothing in this Act is to be taken to affect a civil right or remedy available to a person in respect of a matter to which this Act applies.

(2) Compliance with this Act is not of itself evidence that there has been no breach of a common law duty of care.

PART 2 – MANAGEMENT AND COMPETENCIES

9. Operator responsible for control and management

(1) The operator for a mining site is responsible for the control and management of the site and the mining activities carried out on the site.

(2) The operator for a mining site must take all reasonable and practicable measures to ensure that every person on the site complies with and does not contravene this Act.

Penalty: In the case of a natural person – 1 000 penalty units.

In the case of a body corporate – 5 000 penalty units.

10. Owner may be operator or may appoint operator

(1) The owner of a mining site may also be the operator for the site.

(2) If the owner of a mining site is not also the operator for the site, the owner must, before mining activities commence on the site, appoint a person to be the operator for the site.

(3) The appointment of an operator is to be by written contract including a condition that the operator must, if mining activities are operational, establish and implement a safety, health and environment protection management system for the site.

(4) The owner of a mining site must notify the Chief Executive Officer in writing of the appointment of an operator as soon as practicable, but not later than 14 days, after the date on which the appointment takes effect.

Penalty: In the case of a natural person – 20 penalty units.

In the case of a body corporate – 100 penalty units.

(5) A notice under subsection (4) is to include a statement that the contract by which the operator was appointed contains the condition referred to in subsection (3).

(6) The owner of a mining site must notify the Chief Executive Officer in writing of –

(a) the resignation of an operator appointed under this section or the termination of such an operator's appointment; and

(b) the date of the resignation or termination,

not later than 14 days after the date on which the resignation or termination took effect.

Penalty: In the case of a natural person – 20 penalty units.

In the case of a body corporate – 100 penalty units.

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

Penalty: In the case of a natural person – 1 000 penalty units.

In the case of a body corporate – 5 000 penalty units.

(8) An offence against subsection (4) or (6) is a regulatory offence.

11. Competencies for supervisors and workers

(1) The Minister may, by notice in the *Gazette*, specify the competencies required by supervisors or workers in respect of specified mining activities.

(2) The Minister may, by notice in the *Gazette*, specify that a worker requires a certificate of competency to carry out specified work.

(3) A worker must not perform duties or do work referred to in subsection (2) without a current certificate of competency.

Penalty: 200 penalty units.

(4) An offence against subsection (3) is a regulatory offence.

PART 3 – SAFETY, HEALTH AND ENVIRONMENT

Division 1 – Safety, health and environmental obligations

12. Definition

In this Division, "practicable", in relation to a hazard or risk, means practicable having regard to –

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

13. General obligation to take care

- (1) Every person on a mining site has an obligation to take care of –
 - (a) his or her own safety and health; and
 - (b) the safety and health of other persons on the site whose safety and health may be affected by his or her acts.
- (2) Every person on a mining site has an obligation to take care of the environment.

14. Obligations of all persons in respect of site

(1) A person on a mining site must comply with instructions and procedures applying to the person that are included in the management system for the site.

(2) A person on a mining site must follow all reasonable directions given by the operator, or a person having the duty to give the person directions, in relation to –

- (a) the person's own safety and health;
- (b) the safety and health of other persons who may be affected by the person's acts; or
- (c) the environment.

(3) A person on a mining site must use safety equipment made available for the person's use.

(4) A person on a mining site must not wilfully or recklessly –

- (a) interfere with or misuse anything on the site provided in the interests of safety or health or protecting the environment; or
- (b) adversely affect or place at risk the safety or health of a person on the site.

(5) A person must not wilfully or recklessly cause environmental harm on a mining site.

15. Obligations of owner who has appointed operator

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

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

16. Obligations of operator

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

17. Obligations of worker

- (1) A worker must keep himself or herself informed about, and comply with, work instructions and procedures applying to the worker that are included in the management system for the site.
- (2) A worker must not work on a mining site if he or she is not in a fit condition to do so.
- (3) A worker must report the occurrence of an accident or critical incident to the operator for the site or, if employed by a contractor, to his or her employer as soon as practicable after becoming aware of the occurrence.

18. Obligations of contractor who is employer

(1) A contractor must ensure that the provisions of this Act and the management system for the site are complied with to the extent that they relate to the work performed or service provided by the contractor.

(2) A contractor must report the occurrence of an accident or critical incident to the operator for the site as soon as practicable after becoming aware of the occurrence.

(3) In this section, "contractor" means a contractor who employs a worker whether the contractor is a body corporate or a natural person.

19. Obligations of manufacturers etc. of plant or substance

(1) A person who designs, manufactures, imports or supplies any plant or substance that is used on a mining site must, so far as is practicable –

- (a) ensure that the design and construction of the plant, or the characteristics of the substance, are such that a person who properly uses the plant or substance is not exposed to hazards in doing so;
- (b) test and examine, or arrange for the testing and examination of, the plant or substance to ensure that it complies with paragraph (a); and
- (c) ensure that adequate information in respect of the following is provided when the plant or substance is supplied:
 - (i) any danger associated with the plant or substance;
 - (ii) the specifications of the plant or substance and the data obtained at the testing of the plant or substance under paragraph (b);
 - (iii) the conditions necessary to ensure that a person properly using the plant or substance is not exposed to hazards in doing so.

(2) A person who manufactures, imports or supplies a substance that is used on a mining site must, so far as is practicable, ensure that adequate toxicological data in respect of the substance and other data that is relevant to the safe use, handling, processing, storage, transportation and disposal of the substance is provided when the substance is supplied and whenever requested after the substance has been supplied.

20. Obligations of erectors and installers of plant

A person who erects or installs plant on a mining site must, so far as is practicable, ensure that it is erected or installed so that a person who properly uses

the plant is not subjected to any hazard that arises from, or is increased by, the way in which the plant is erected or installed.

21. Consequences of breach of obligation

(1) A person who breaches an obligation imposed by this Division may be found guilty of an offence under Division 2 or 3 but the breach does not of itself constitute an offence.

(2) The fact that a person on a mining site has been injured, or that environmental harm has occurred on a mining site, is not of itself evidence of an offence under Division 2 or 3.

Division 2 – Safety and health offences

22. Interpretation

For the purposes of this Division, the death of or serious injury to a person, or an adverse effect on or unacceptable risk to a person's safety or health, may be caused by an act or failure to act whether the death, serious injury, adverse effect or unacceptable risk –

- (a) is caused directly or indirectly by, or is a direct or indirect result of, the act or failure to act; or
- (b) is caused by, or is a result of, the act or failure to act solely or the act or failure to act combined with other factors.

23. Safety and health offences

- (1) A person must not intentionally do an act or fail to do an act that –
 - (a) is in breach of an obligation imposed by Division 1;
 - (b) causes the death of a person; and
 - (c) the person knows, or ought reasonably be expected to know, will or might cause the death of or a serious injury to a person.

Penalty: In the case of a natural person – not less than 250 penalty units and not more than 2 500 penalty units or imprisonment for not more than 5 years.

In the case of a body corporate – not less than 1 250 penalty units and not more than 12 500 penalty units.

- (2) A person must not do an act or fail to do an act that –
 - (a) is in breach of an obligation imposed by Division 1;

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- (b) causes the death of a person; and
- (c) the person knows, or ought reasonably be expected to know, will or might cause the death of or a serious injury to a person.

Penalty: In the case of a natural person – not less than 100 penalty units and not more than 1 000 penalty units.

In the case of a body corporate – not less than 500 penalty units and not more than 5 000 penalty units.

- (3) A person must not intentionally do an act or fail to do an act that –
 - (a) is in breach of an obligation imposed by Division 1;
 - (b) causes serious injury to a person; and
 - (c) the person knows, or ought reasonably be expected to know, will or might cause the death of or a serious injury to a person.

Penalty: In the case of a natural person – not less than 100 penalty units and not more than 1 000 penalty units.

In the case of a body corporate – not less than 500 penalty units and not more than 5 000 penalty units.

- (4) A person must not do an act or fail to do an act that –
 - (a) is in breach of an obligation imposed by Division 1;
 - (b) causes serious injury to a person; and
 - (c) the person knows, or ought reasonably be expected to know, will or might cause the death of or a serious injury to a person.

Penalty: In the case of a natural person – not less than 50 penalty units and not more than 500 penalty units.

In the case of a body corporate – not less than 250 penalty units and not more than 2 500 penalty units.

- (5) A person must not do an act or fail to do an act that –
 - (a) is in breach of an obligation imposed by Division 1; and

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- (b) causes an adverse effect on or unacceptable risk to the safety or health of the person or any other person.

Penalty: In the case of a natural person – not more than 50 penalty units.

In the case of a body corporate – not more than 250 penalty units.

- (6) In this section, "serious injury" means an injury of a nature that –
 - (a) endangers or is likely to endanger life; or
 - (b) causes or is likely to cause permanent injury to health.

24. Alternative verdicts available

In a proceeding for an offence against –

- (a) section 23(1), the person charged with the offence may be found guilty alternatively of an offence against section 23(2), (3), (4) or (5);
- (b) section 23(2), the person charged with the offence may be found guilty alternatively of an offence against section 23(3), (4) or (5);
- (c) section 23(3), the person charged with the offence may be found guilty alternatively of an offence against section 23(4) or (5); or
- (d) section 23(4), the person charged with the offence may be found guilty alternatively of an offence against section 23(5).

Division 3 – Environmental offences

25. Interpretation

For the purposes of this Division, environmental harm may be caused by an act or failure to act whether the harm –

- (a) is caused directly or indirectly by, or is a direct or indirect result of, the act or failure to act; or
- (b) is caused by, or is a result of, the act or failure to act solely or the act or failure to act combined with other factors.

26. Application of Division

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

27. Environmental offences

- (1) A person must not intentionally do an act or fail to do an act that –
 - (a) is in breach of an obligation imposed by Division 1;
 - (b) causes serious environmental harm on a mining site; and
 - (c) the person knows, or ought reasonably be expected to know, will or might cause serious environmental harm or material environmental harm on the site.
- level 1.
 - (2) An offence against subsection (1) is an environmental offence
 - (3) A person must not do an act or fail to do an act that –
 - (a) is in breach of an obligation imposed by Division 1;
 - (b) causes serious environmental harm on a mining site; and
 - (c) the person knows, or ought reasonably be expected to know, will or might cause serious environmental harm or material environmental harm.
 - (4) An offence against subsection (3) is an environmental offence
- level 2.
 - (5) A person must not intentionally do an act or fail to do an act that –
 - (a) is in breach of an obligation imposed by Division 1;
 - (b) causes material environmental harm on a mining site; and
 - (c) the person knows, or ought reasonably be expected to know, will or might cause serious environmental harm or material environmental harm.
 - (6) An offence against subsection (5) is an environmental offence
- level 2.
 - (7) A person must not do an act or fail to do an act that –
 - (a) is in breach of an obligation imposed by Division 1;
 - (b) causes material environmental harm on a mining site; and
 - (c) the person knows, or ought reasonably be expected to know, will or might cause serious environmental harm or material environmental harm.

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(8) An offence against subsection (7) is an environmental offence level 3.

(9) A person must not do an act or fail to do an act that –

(a) is in breach of an obligation imposed by Division 1; and

(b) causes environmental nuisance on a mining site.

(10) An offence against subsection (9) is an environmental offence level 4.

28. Alternative verdicts available

In a proceeding for an offence against –

(a) section 27(1), the person charged with the offence may be found guilty alternatively of an offence against section 27(3), (5), (7) or (9);

(b) section 27(3), the person charged with the offence may be found guilty alternatively of an offence against section 27(5), (7) or (9);

(c) section 27(5), the person charged with the offence may be found guilty alternatively of an offence against section 27(7) or (9); or

(d) section 27(7), the person charged with the offence may be found guilty alternatively of an offence against section 27(9).

Division 4 – Serious accidents and critical incidents

29. Operator must report serious accident or critical incident

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

Penalty: In the case of a natural person – 200 penalty units.

In the case of a body corporate – 1 000 penalty units.

(2) If the operator gives oral notification under section (1), the operator must also give the Chief Executive Officer a written report as soon as practicable after the notification.

Penalty: In the case of a natural person – 200 penalty units.

In the case of a body corporate – 1 000 penalty units.

(3) An offence against this section is a regulatory offence.

30. Mining officer may investigate serious accident or critical incident

As soon as practicable after receiving a notification of a serious accident or critical incident, the Chief Executive Officer may instruct a mining officer to –

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

31. Operator must investigate serious accident

(1) If a serious accident occurs on a mining site, the operator for the site must –

- (a) carry out an investigation to determine, if possible, the cause of the serious accident; and
- (b) give the Chief Executive Officer a written report about the serious accident that includes information on remedial actions taken or to be taken and recommendations for the prevention of the occurrence of further similar accidents.

Penalty: In the case of a natural person – 200 penalty units.

In the case of a body corporate – 1 000 penalty units.

(2) The written report referred to in subsection (1)(b) is to be given within 14 days after the occurrence of the serious accident or within the period of time that is agreed between the operator and Chief Executive Officer.

32. No interference with place of serious accident

(1) A person must not interfere with a place where a serious accident occurred unless permitted to do so by a mining officer.

Penalty: In the case of a natural person – 200 penalty units.

In the case of a body corporate – 1 000 penalty units.

(2) A person is not to be taken as interfering with a place where a serious accident occurred if the person takes an action at the place to save life or to prevent further injury or further environmental harm.

Division 5 – Consultation and co-operation in respect of safety and health of workers

33. Consultation and co-operation

(1) The operator for a mining site must facilitate consultation and co-operation between the operator, contractors and workers for initiating, developing and implementing measures designed to ensure the safety and health of the workers on the site.

(2) Without limiting subsection (1), measures designed to ensure the safety and health of workers may include any of the following:

- (a) establishing a safety and health committee or committees for the mining site, part of the site or for a mining activity;
- (b) establishing safety and health policy and procedures;
- (c) providing, as far as is practicable, adequate information on health and safety matters relevant to the mining site or a mining activity;
- (d) planning alterations of work processes, work content or organisation of work, which may have safety and health implications for the workers.

PART 4 – MINING ACTIVITIES

Division 1 – Exercise of powers by Minister

34. Minister to have regard to mining interest etc.

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

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

(3) Before exercising a power or performing a function under this Part in relation to an Authorisation that relates to uranium or thorium, the Minister –

- (a) must consult with the Commonwealth Minister about matters agreed in writing between them relating to the mining of uranium or thorium; and
- (b) must act in accordance with any advice provided by the Commonwealth Minister.

(4) In granting or varying an Authorisation that relates to the Ranger Project Area, the Minister must ensure that the Authorisation incorporates or adopts by reference (with the necessary modifications) the Ranger Project Environmental Requirements.

(5) In subsection (4) –

"Ranger Project Area" has the same meaning as in the *Atomic Energy Act*;

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

Division 2 – Authorisation to carry out mining activities

35. Application for Authorisation

(1) Subject to subsection (5), the operator for a mining site must not carry out mining activities on the site unless the Minister has granted him or her an Authorisation.

Penalty: In the case of a natural person – 250 penalty units.

In the case of a body corporate – 1 250 penalty units.

(2) The operator for a mining site may apply in writing to the Minister for an Authorisation to carry out on the site the mining activities specified in the application.

(3) An application for an Authorisation is to be accompanied by the mining management plan in respect of the mining activities specified in the application.

(4) The Minister may by written notice request an applicant for an Authorisation to provide the Minister with further information within the time specified in the notice.

(5) This section does not apply in relation to the carrying out of exploration for minerals on a mining site unless the exploration is to involve substantial disturbance of the surface of the site.

36. Determination of application

(1) The Minister may determine an application for an Authorisation by granting or refusing to grant the Authorisation.

(2) Before granting an Authorisation the Minister must be satisfied, in relation to the mining site to which the Authorisation will relate –

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- (a) that the management system to be implemented on the site will promote the protection of the safety and health of persons and of the environment on the site; and
- (b) that the management of the mineral resources on the site will be in accordance with good mining practice.
- (3) If the Minister refuses to grant an Authorisation, he or she must give the applicant reasons in writing for the refusal.

37. Conditions of Authorisation

- (1) An Authorisation granted under this Division is for the period and subject to the conditions specified in the Authorisation.
- (2) An Authorisation is subject to –
 - (a) the condition that the operator must comply with the current mining management plan in respect of the mining activities to which the Authorisation relates; and
 - (b) any additional conditions specified in the Authorisation that the Minister considers appropriate in relation to the mining activities to which the Authorisation relates.
- (3) Without limiting subsection (2)(b), the additional conditions of an Authorisation may relate to any of the following matters:
 - (a) the protection of the safety and health of persons or the environment;
 - (b) the outcomes of environmental assessment of mining activities undertaken under the *Environmental Assessment Act*;
 - (c) the requirement for security, for the purposes of section 43, in the form and amount and on the terms specified in the condition;
 - (d) the form and frequency of periodic reports to be submitted in relation to the mining activities to which the Authorisation relates.

38. Variation or revocation of Authorisation

- (1) An operator may apply in writing to the Minister for a variation of an Authorisation, stating the reasons for the application.
- (2) The Minister may, by written notice served on an operator, vary or revoke an Authorisation.

(3) Before varying an Authorisation, the Minister must be satisfied that the effect of the variation will not be detrimental to the protection of the safety or health of persons or the environment on the mining site to which the Authorisation relates.

(4) Before varying or revoking an Authorisation, the Minister may in writing request the operator to provide the Minister with specified information, documents or plans within a specified time.

(5) A variation or revocation of an Authorisation takes effect –

(a) on the date on which the notice of variation or revocation is served on the operator; or

(b) if a later date is specified in the notice – on the later date.

39. Compliance with Authorisation

The operator for a mining site granted an Authorisation must comply with the Authorisation as in force from time to time.

Penalty: In the case of a natural person – 250 penalty units.

In the case of a body corporate – 1 250 penalty units.

Division 3 – Mining management plan

40. Information to be included in mining management plan

A mining management plan is to include the following information and documents relevant to the proposed mining activities to be carried out on a mining site:

- (a) the identification and description of the mining activities;
- (b) particulars of the implementation of the management system to address safety and health issues;
- (c) particulars of the implementation of the management system to address environmental issues;
- (d) a plan and costing of closure activities;
- (e) particulars of the organisational structure;
- (f) plans of current and proposed mine workings and infrastructure and other information or documents required by the Minister.

41. Subsequent mining management plans

(1) The operator for a mining site must, at intervals specified in the Authorisation or as required by the Minister –

- (a) review, and if necessary amend, the mining management plan last submitted to the Minister; and
- (b) submit the current mining management plan to the Minister for his or her acceptance.

(2) A mining management plan submitted to the Minister under this section is to clearly identify amendments made under subsection (1)(a).

42. Notification of proposed cessation of mining activities

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

Penalty: In the case of a natural person – 20 penalty units.

In the case of a body corporate – 100 penalty units.

(2) An offence against this section is a regulatory offence.

Division 4 – Security

43. Purpose of security

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

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

44. Claim on security

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

(2) If the Minister intends to make a claim on a security, the Minister must give the operator a written notice including –

- (a) the reason for making the claim;
- (b) if action is to be taken, or has been taken, under section 82 – a summary of that action; and
- (c) the amount of the security that is to be claimed.

(3) The operator may, within 30 days after being given a notice under subsection (2), make submissions to the Minister in relation to the matters in the notice.

(4) The Minister may make a claim on a security if he or she has –

- (a) given the operator a notice under subsection (2);
- (b) considered the submission (if any) made by the operator; and
- (c) notified the operator of his or her decision to claim on the security.

(5) If the amount recovered by the Minister by a claim on a security is less than the reasonable costs and expenses incurred by or on behalf of the Minister, he or she may, by notice in writing, require the operator to pay a specified amount within a specified time.

(6) The amount specified under subsection (5) is to be the difference between the costs and expenses claimed on the security and the reasonable costs and expenses incurred in relation to the matter to which the claim relates.

(7) The amount specified in a notice under subsection (5) is a debt due to the Territory and is payable by the date specified in the notice.

(8) Costs and expenses may be recovered under this section even though they were incurred as a result of an act or matter that occurred before the security was provided to the Minister.

Division 5 – Miscellaneous

45. Minister may require information

(1) The Minister may give the operator for a mining site a written notice requiring the operator to provide the Minister with specified information,

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statistics or plans relevant to the site, or a mining activity on the site, within the time specified in the notice.

(2) The operator for a mining site must comply with a notice given to him or her under subsection (1).

Penalty: In the case of a natural person – 20 penalty units.

In the case of a body corporate – 100 penalty units.

(3) An offence against subsection (2) is a regulatory offence.

46. Certificate of closure

(1) On completion of the rehabilitation of a mining site to the satisfaction of the Minister, the operator for the site may apply to the Minister for a certificate of closure in respect of the site.

(2) When the operator has met the closure criteria for the mining site, the Minister must –

- (a) issue to him or her a certificate of closure in respect of the site; and
- (b) return or relinquish any outstanding security provided by the operator.

(3) In this section, "closure criteria" means the standard or level of performance, as specified in the mining management plan for the mining site, that demonstrates successful closure of the site.

PART 5 – GUIDELINES

47. Minister may issue guidelines

(1) The Minister may issue, vary or revoke guidelines.

(2) Guidelines may refer to or incorporate, wholly or partially and with or without modification, a standard, code or other document formulated or published by a body referred to in the guidelines as in force at the time the guideline is issued or as amended, formulated or published from time to time.

(3) The Minister must give notice in the *Gazette* of the issuing, variation or revocation of guidelines and specify in the notice the place at which copies of the guidelines that are in force, and all documents incorporated or referred to in those guidelines, may be inspected during normal business hours.

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

48. Purpose of guidelines

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

PART 6 – MINING BOARD

49. Establishment of Mining Board

The Mining Board is established.

50. Functions and powers of Mining Board

(1) The functions of the Mining Board are –

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

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

51. Membership of Mining Board

(1) The Mining Board is constituted by at least 5 members appointed in writing by the Minister.

(2) A member of the Mining Board must have the experience in the mining industry or matters connected with the mining industry that the Minister thinks fit.

(3) A member holds office for the period (not exceeding 3 years) specified in the instrument of appointment and is eligible for reappointment.

52. Chairperson

(1) The Minister must in writing appoint a member of the Mining Board to be the Chairperson of the Board.

(2) The Chairperson holds office for the period (not exceeding 3 years) specified in the instrument of appointment and is eligible for reappointment.

(3) The Chairperson must preside at all meetings of the Mining Board but if the Chairperson is absent from a meeting the members present at the meeting must elect one of their number to act as the Chairperson for the purposes of that meeting.

(4) A member has the same powers as the Chairperson when acting as the Chairperson.

53. Termination of appointment

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

(2) The Minister must terminate the appointment of a member who –

(a) is absent from 3 consecutive meetings of the Mining Board without the leave of the Board; or

(b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of remuneration for their benefit.

54. Resignation of member

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

55. Acting members

(1) The Minister may appoint a person to act as a member of the Mining Board (other than as the Chairperson) –

- (a) during a vacancy in the office of the member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the member is for any reason unable to perform the functions of the office.

(2) A person appointed to act as a member under subsection (1)(a) must not act in that office continuously for more than 12 months.

(3) A person is not to be appointed to act as a member under subsection (1) unless the person is eligible under section 51(2) to be appointed as a member.

(4) Anything done by or in relation to a person purporting to act in pursuance of an appointment under this section is not invalid on the ground that –

- (a) the appointment was ineffective or had ceased to have effect; or
- (b) the occasion to act had not arisen or had ceased.

(5) An acting member of the Mining Board has the same functions and powers as a member when acting as a member.

(6) The Minister may terminate the appointment of an acting member at any time.

56. Meetings of Mining Board

(1) The Mining Board must hold at least 3 meetings each year at a time and place determined by the Chairperson and notified in writing to the members of the Board.

(2) The Chairperson –

- (a) may convene a meeting of the Mining Board at any time; and
- (b) must convene a meeting of the Mining Board, as soon as practicable, if requested in writing to do so by the Minister or 3 other members.

(3) At a meeting of the Mining Board, one half of the number of the members then holding office (including a person appointed under section 55(1)(a) to act as a member) plus one member of the Board constitute a quorum.

(4) At a meeting of the Mining Board, questions arising are to be determined by a majority of the members present and voting but, in the event of an equality of votes, the Chairperson may exercise a casting vote.

(5) Subject to this Act, the Mining Board is to determine the procedures to be followed at or in connection with its meetings.

57. Committees

(1) The Mining Board may establish committees to advise and make recommendations to the Board on those matters within the Board's powers and functions that are referred to the committees by the Board.

(2) The Mining Board is to determine the membership of a committee and the way in which it is to carry out its functions.

(3) A committee may be constituted by members of the Mining Board or other persons, or both.

58. Validity of actions

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

- (a) there is a vacancy in the membership of the Board;
- (b) there is a defect in the appointment of a member or the election of an acting Chairperson; or
- (c) a person has acted in office after the termination of his or her appointment as a member.

PART 7 – MINING OFFICERS

59. Appointment of mining officer

(1) The Minister may in writing appoint a person to be a mining officer.

(2) The appointment of a mining officer may be subject to conditions specified in the instrument of appointment.

(3) The Minister must be satisfied that a person appointed under this section has the appropriate competencies or adequate experience required for the performance of his or her functions as a mining officer.

(4) A mining officer must perform the functions and may exercise the powers that are imposed or conferred on him or her by or under this Act or any

other Act or delegated to him or her by the Minister or the Chief Executive Officer.

60. Identity cards

(1) The Chief Executive Officer must issue to each mining officer an identity card containing –

- (a) the mining officer's name, signature and photograph; and
- (b) the date of appointment of the mining officer and the date on which the appointment is to cease (if applicable).

(2) A mining officer must produce his or her identity card on being requested to do so by a person in respect of whom the mining officer has exercised or is about to exercise his or her powers under this Act or any other Act.

(3) A mining officer must return his or her identity card to the Chief Executive Officer as soon as practicable after ceasing to be a mining officer.

Penalty: 20 penalty units.

(4) An offence against subsection (3) is a regulatory offence.

61. Functions of mining officer

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

- (a) to enforce this Act;
- (b) to monitor the management systems on mining sites;
- (c) to inspect and audit mining sites and mining activities to assess levels of risk and whether the applicable Authorisation and management system are being complied with;
- (d) to ensure timely corrective or remedial action is taken if unsafe plant, practices or conditions are detected on a mining site;
- (e) to investigate and report on serious accidents and critical incidents;
- (f) to receive and investigate complaints in relation to mining sites or mining activities;
- (g) to provide advice and information to the Minister, the Chief Executive Officer, persons involved in mining activities and the public;

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- (h) to collect and collate statistics about mining activities and the mining industry as required by the Minister.

62. Powers of mining officer

Subject to this Act, a mining officer may, in respect of a mining site –

- (a) enter and inspect the site at any time, with the assistants that the mining officer considers necessary, but not so as to unnecessarily impede or obstruct mining activities;
- (b) require the assistance of the owner, operator, contractors or workers to obtain access to parts of the site or to information necessary to enable the mining officer to perform his or her functions;
- (c) require a person to provide information that is reasonably necessary –
 - (i) to assist the mining officer to perform a function under this Act; or
 - (ii) for the administration or enforcement of this Act;
- (d) require the owner, operator, contractors or workers to attend and answer questions for the purposes of an investigation into a critical incident, serious accident, complaint received by the mining officer or other matters relevant to safety, health and environment protection issues on the site;
- (e) issue written instructions to the operator;
- (f) direct the operator to take action to ensure compliance with the Act or the Authorisation in respect of the site or to protect the environment or the safety or health of persons;
- (g) to close the site or part of the site if the mining officer has assessed there is an immediate risk of a serious accident; or
- (h) take any other action that may be reasonably necessary to –
 - (i) protect the safety or health of persons on the site;
 - (ii) protect the environment on the site; or
 - (iii) ensure compliance with this Act, the Authorisation or management system.

63. Mining officer not to disclose name of complainant

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

Penalty: 100 penalty units.

64. Offences

(1) A person must not –

- (a) refuse or fail to allow a mining officer, or a person assisting a mining officer, to enter or inspect a mining site;
- (b) resist or obstruct, or incite or encourage another person to resist or obstruct, a mining officer or person assisting a mining officer;
- (c) use abusive or threatening language to a mining officer; or
- (d) refuse or fail to comply with the lawful requirements, instructions or directions of a mining officer.

Penalty: In the case of a natural person – 100 penalty units.

In the case of a body corporate – 500 penalty units.

(2) A person must not –

- (a) knowingly give false or misleading information to a mining officer; or
- (b) impersonate or falsely claim to be a mining officer or person lawfully assisting a mining officer.

Penalty: In the case of a natural person – 400 penalty units or imprisonment for 2 years.

In the case of a body corporate – 200 penalty units.

PART 8 – REVIEW OF DECISIONS

65. Applications for review

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

- (a) under section 36 refusing to grant an Authorisation;
- (b) under section 37 imposing a condition of an Authorisation;

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- (c) under section 38 varying or refusing to vary, revoking or refusing to revoke, a condition of an Authorisation; or
 - (d) under section 44 claiming on a security.
- (2) A person affected by a decision of a mining officer under this Act may apply for a review of the decision.
- (3) A person applying for a review of a decision must lodge the application with the Chief Executive Officer within 28 days after the date of the decision or service of the notice relating to the decision (as applicable).
- (4) An application for a review of a decision is to be in a form approved by the Chief Executive Officer and is to set out the reasons for the application.
- (5) In subsection (2), "decision" includes a requirement of or instruction or direction given by a mining officer in the exercise or performance, or purported exercise or performance, of the officer's powers or functions under this Act.

66. Review

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

67. Application for further review

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

68. Further review

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

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

69. Constitution and procedure of review panel

(1) A review panel is constituted by the Chairperson of the Mining Board and 2 other members of the Board appointed in writing by the Chairperson for the purposes of that review.

(2) Subject to section 70, the procedure in connection with a review by a review panel is in the discretion of the review panel.

70. Review procedure generally

- (1) In this section –

"review" means a review of a decision under section 66 or a further review of a decision under section 68;

"reviewer" means the person or persons conducting the review.

- (2) A review is to be a review on the merits and is to be decided –

- (a) in the case of a review by the Chief Executive Officer or his or her delegate – within 21 days after the date on which the application for review is lodged; or
- (b) in the case of a review by a review panel – within 28 days after the date on which the application for review is lodged.

(3) The reviewer must conduct the review in a manner that is fair and expeditious and must give proper consideration to all relevant issues.

(4) The reviewer may stay the operation of the decision under review if the reviewer considers it to be appropriate in the circumstances.

- (5) The reviewer must decide the review by –

- (a) confirming the decision under review;
- (b) varying the decision under review; or

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

PART 9 – OFFENCES AND CRIMINAL PROCEEDINGS

Division 1 – Offences

71. Continuing offence

If –

- (a) a court finds a person guilty of an offence against a provision of this Act; and
- (b) the court is satisfied the person continued to contravene, or to fail to comply with the provision after the date on which the person was notified of the alleged offence,

the Court may, in addition to the penalty specified for the offence, impose a further penalty, not exceeding 10% of the specified penalty, in respect of each day during which the offence continued to be committed after the first day on which it was committed.

72. Liability if consent, connivance or wilful neglect

(1) If an offence against this Act (except Division 2 or 3 of Part 3) is committed by a person other than the owner of or operator for a mining site and is proved –

- (a) to have been committed with the consent or connivance of the owner or operator; or
- (b) to have been attributable to wilful neglect on the part of the owner or operator,

the owner or operator is also guilty of the offence and liable to the penalty for that offence.

(2) If an offence against this Act (except Division 2 or 3 of Part 3) is committed by a body corporate and is proved –

- (a) to have been committed with the consent or connivance of; or

(b) to have been attributable to wilful neglect on the part of, a person who is, or purports to be, a director of the body corporate or concerned in the management of the body corporate, that person is also guilty of the offence and liable to the penalty for that offence.

73. Liability of body corporate

(1) If in a prosecution for an offence against this Act it is necessary to establish the state of mind of a body corporate in relation to a particular act, it is sufficient to show –

- (a) that the act was done by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, employee or agent had the relevant state of mind.

(2) For the purposes of a prosecution for an offence against this Act, an act done on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken to have been done also by the body corporate.

(3) In this section, "employee or agent", in relation to the owner of a mining site, does not include –

- (a) the operator for the site appointed under Part 2 or an employee or agent of the operator; or
- (b) a contractor or an employee or agent of the contractor.

(4) In this section "employee or agent", in relation to the operator for a mining site, does not include a contractor or an employee or agent of the contractor.

74. Liability of director etc. for safety, health or environmental offence

(1) If a body corporate commits an offence against Division 2 or 3 of Part 3, every person who is a director of or who is concerned in the management of the body corporate is to be taken to have committed the same offence.

(2) It is a defence to a prosecution for an offence committed by virtue of subsection (1) if the defendant establishes that –

- (a) the body corporate would not have been found guilty of the offence because the body corporate would have been able to establish a defence;

- (b) the act that constituted the offence took place without the defendant's authority, permission or consent;
- (c) the defendant did not know, and could not reasonably have been expected to know, that the offence was to be or was being committed and took all reasonable steps to prevent or stop the commission of the offence or a similar offence; or
- (d) the defendant could not by the exercise of reasonable diligence have prevented the commission of the offence.

(3) A person may be prosecuted for and found guilty of an offence by virtue of subsection (1) whether or not the body corporate has been prosecuted for or found guilty of the offence.

(4) A person is not liable to a penalty of imprisonment for an offence committed by virtue of subsection (1) if the person would not have been found guilty of the offence had subsection (1) not been enacted.

75. Liability of partner or member of association for safety, health or environmental offence

(1) If a partner commits an offence against Division 2 or 3 of Part 3, every other partner in the partnership is to be taken to have committed the same offence.

(2) If a person commits an offence against Division 2 or 3 of Part 3 while doing an act on behalf of an unincorporated association, each member of the committee of management of the association is to be taken to have committed the same offence.

(3) It is a defence to a prosecution for an offence committed by virtue of subsection (1) or (2) if the defendant establishes that –

- (a) the partner or person would not have been found guilty of the offence because the partner or person would have been able to establish a defence;
- (b) the act that constituted the offence took place without the defendant's authority, permission or consent;
- (c) the defendant did not know, and could not reasonably have been expected to know, that the offence was to be or was being committed and took all reasonable steps to prevent or stop the commission of the offence or a similar offence; or
- (d) the defendant could not by the exercise of reasonable diligence have prevented the commission of the offence.

(4) A person may be prosecuted for and found guilty of an offence by virtue of subsection (1) or (2) whether or not the partner or person referred to in subsection (2) has been prosecuted for or found guilty of the offence.

(5) A person is not liable to a penalty of imprisonment for an offence committed by virtue of subsection (1) or (2) if the person would not have been found guilty of the offence had subsection (1) or (2) not been enacted.

76. Liability of natural person for safety, health or environmental offence by employee etc.

(1) For the purposes of a prosecution for an offence against Division 2 or 3 of Part 3, an act done on behalf of a natural person by an employee or agent of the person, within the scope of the actual or apparent authority of the employee or agent, is to be taken to have been done also by that person.

(2) It is a defence to a prosecution for an offence committed by virtue of subsection (1) if the defendant establishes that –

- (a) the employee or agent would not have been found guilty of the offence because the employee or agent would have been able to establish a defence;
- (b) the act that constituted the offence took place without the defendant's authority, permission or consent;
- (c) the defendant did not know, and could not reasonably have been expected to know, that the offence was to be or was being committed and took all reasonable steps to prevent or stop the commission of the offence or a similar offence; or
- (d) the defendant could not by the exercise of reasonable diligence have prevented the commission of the offence.

(3) A person may be prosecuted for and found guilty of an offence by virtue of subsection (1) whether or not the employee or agent has been prosecuted for or found guilty of the offence.

(4) A person is not liable to a penalty of imprisonment for an offence committed by virtue of subsection (1) if the person would not have been found guilty of the offence had subsection (1) not been enacted.

(5) In this section, "employee or agent", in relation to the owner of a mining site, does not include –

- (a) the operator for the site or an employee or agent of the operator; or
- (b) a contractor or an employee or agent of the contractor.

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(6) In this section, "employee or agent", in relation to the operator for a mining site, does not include a contractor or an employee or agent of the contractor.

Division 2 – Criminal proceedings

77. Commencing proceeding

- (1) A proceeding for an offence against this Act may be commenced –
 - (a) only by, or with the written approval of, the Chief Executive Officer; and
 - (b) within 12 months after the day on which Chief Executive Officer first became aware of the commission of the alleged offence.

(2) A certificate of the Chief Executive Officer as to the day on which he or she first became aware of the commission of an alleged offence is, in the absence of evidence to the contrary, conclusive evidence of that fact.

78. Defences to health and safety or environmental offence

(1) It is a defence to a prosecution for an offence against Division 2 or 3 of Part 3 if it is proved that the alleged offence did not result from a failure on the defendant's part to exercise reasonable diligence in the circumstances of the case.

(2) It is a defence to a prosecution for an offence against Division 2 of Part 3 in relation to a particular contaminant or waste if it is proved the defendant complied with –

- (a) a provision of an environment protection objective within the meaning of the *Waste Management and Pollution Control Act*; or
- (b) a condition of an approval, permit, lease, licence or authorisation under an Act,

that fixed maximum allowable levels for the particular contaminant or waste.

79. Defence if act in accordance with guideline etc.

It is a defence to a prosecution for an offence against this Act if the defendant establishes that the act constituting the offence, or an element of the offence, was –

- (a) in accordance with a guideline in force at the time the act was done; or

- (b) in accordance with another code, standard, practice or methodology in force at the time the act was done and the act was reasonable in the circumstances.

PART 10 – MISCELLANEOUS

Division 1 – Delegation and exercise of powers by Minister etc.

80. Delegation by Minister or Chief Executive Officer

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

(2) A delegation under this section may be to a named person or to a person from time to time holding, acting in or performing the duties of an office, designation or position.

(3) A power or function delegated under this section, when exercised or performed by the delegate, is to be taken to have been exercised or performed by the Minister or Chief Executive Officer, as applicable.

(4) A delegation by the Minister or Chief Executive Officer –

(a) is to be in writing; and

(b) does not prevent the exercise of a power or the performance of a function by the Minister or Chief Executive Officer.

81. Protection of safety, health and environment

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

(a) the occupational health and safety of persons involved in mining activities;

(b) the desirability of protecting the environment; and

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

82. Minister may cause action to be taken on mining site

(1) If a person –

(a) does an act on a mining site that is prohibited by this Act or an Authorisation; or

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- (b) fails to do an act on a mining site that is required by this Act or an Authorisation,

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

(2) The Minister may cause action to be taken on or outside a mining site that the Minister considers necessary to prevent, minimise or rectify a hazardous situation or environmental harm that results from or may result from a mining activity.

(3) The Minister may cause action to be taken to complete rehabilitation of a mining site.

(4) A person authorised in writing by the Minister to take action for the purposes of this section may enter a mining site and take the action.

(5) Subject to section 44, the costs and expenses incurred by the Minister in having action taken under this section is a debt payable to the Territory by the person whose act or failure to act made the action necessary.

Division 2 – Miscellaneous

83. Person under 16 years of age not to work underground

(1) An employer must not employ a person who has not attained the age of 16 years to work underground on a mining site.

(2) A person must not direct a worker who has not attained the age of 16 years to work underground on a mining site.

Penalty: In the case of a natural person – 200 penalty units.

In the case of a body corporate – 1 000 penalty units.

84. No dismissal of worker for making complaint etc.

(1) An employer must not dismiss a worker, or act in a way detrimental to a worker employed by the employer, for the sole reason that –

- (a) the worker has assisted or given information to a mining officer;
- (b) the worker has made a reasonable complaint to the employer or a mining officer in relation to safety, health or the protection of environment; or

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- (c) if there is on the mining site an immediate risk of severe injury to the worker – he or she has ceased work in the area where the risk is present until the risk is removed by the operator or employer.

Penalty: In the case of a natural person – 200 penalty units or imprisonment for 12 months.

In the case of a body corporate – 1 000 penalty units.

(2) If a person is found guilty of an offence against subsection (1), the court may, in addition to imposing a penalty on the person, make one or both of the following orders:

- (a) an order that the person must pay to the worker an amount of compensation that the court thinks fit;
- (b) an order that the worker be reinstated or re-employed in the worker's former position or, if the position is no longer available, in a similar position.

85. Certificate of costs

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

86. Debt due to Territory etc.

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

(2) If under this Act 2 or more persons are liable for a debt to the Territory, they are jointly and severally liable for the whole debt.

(3) A person who under this Act is liable for a debt may recover contribution from another person who is jointly liable, either by joining the other

person as a party to a proceeding commenced by the Territory to recover the debt or by commencing a separate proceeding in a court of competent jurisdiction.

(4) A court, when hearing a claim for contribution under subsection (3) in relation to a debt payable under section 82, must consider the relative benefit each party to the proceeding has derived from the action taken under that section and may make an order as to contribution and costs as it thinks fit.

87. Immunity from liability

No liability attaches to the Chief Executive Officer or his or her delegate, a mining officer or person assisting a mining officer or a member of the Mining Board for an act done in the exercise or performance, or purported exercise or performance, of a power or function under this Act unless it is done in bad faith.

88. Confidentiality

A person must not disclose information obtained in the course of his or her duties under this Act unless –

- (a) the information is otherwise available to the public;
- (b) the disclosure is made in the course of exercising a power or performing a function under this Act;
- (c) authorised or required by law to do so; or
- (d) the disclosure is for the purposes of court proceedings.

Penalty: 500 penalty units or imprisonment for 2 years.

89. Service of documents

A document required by this Act to be served on a person may be served –

- (a) on that person personally;
- (b) by certified mail; or
- (c) by leaving it at the person's last-known or most usual place of residence or business with some other person, apparently resident or employed there and who has apparently attained the age of 16 years.

Division 3 – Regulations

90. Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters –

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- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Regulations may deal with the following matters:
 - (a) the safety and health of workers and other persons on mining sites, including requirements for the notification of silicosis;
 - (b) the minimising of environmental harm;
 - (c) matters to be included in management systems;
 - (d) the provision of information, statistics, plans or design information relating to mining activities;
 - (e) the functions of the Mining Board;
 - (f) the procedures to be followed –
 - (i) at or in connection with the meetings of the Mining Board; or
 - (ii) in connection with an application for a review of a decision under Part 8 and with the review of the decision;
 - (g) the manner of doing or performing any thing required or permitted by this Act to be done or performed;
 - (h) fees payable in respect of any matter under this Act, the time and manner of payment of those fees, and the recovery, refund, waiver or reduction of those fees;
 - (i) penalties for offences against the Regulations not exceeding 100 penalty units for a natural person and 500 penalty units for a body corporate;
 - (j) the designation of an offence against the Regulations to be an environmental offence level 3 or level 4 within the meaning of the *Environmental Offences and Penalties Act* or the designation of an offence against the Regulations to be a regulatory offence;
 - (k) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act or the Regulations (other than an environmental offence within the meaning of the *Environmental Offences and Penalties Act*);

- (1) the service of a notice in respect of payment of a prescribed amount on a person alleged to have committed an offence against this Act or the Regulations and the particulars to be included in that notice.

91. Regulations may incorporate other instrument

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

(2) The Regulations may apply, adopt, incorporate or apply by reference (either wholly or in part or with or without modification) an instrument as in force at a particular time or as in force from time to time prescribed or published by an authority or body, whether or not a Territory authority or body.

(3) An instrument applied, adopted or incorporated under this section may require anything referred to in that instrument to be in accordance with another instrument to which that instrument refers.

(4) The Chief Executive Officer must ensure that each instrument applied or adopted by or incorporated in the Regulations, and each other instrument referred to in that instrument, is available for viewing by members of the public at an office of the Agency responsible for administering this Act.

92. Regulations may be limited or provide for exemptions

(1) The Regulations may –

- (a) be of general application or limited in application according to the persons, areas, times or circumstances to which they are expressed to apply; and
- (b) provide that a matter in respect of which regulations may be made is to be determined, regulated or prohibited according to the discretion of the Minister or Chief Executive Officer.

(2) The Regulations may contain provisions for or in relation to exemptions (whether or not subject to conditions) from compliance with all or any specified regulations, including provisions authorising the Chief Executive Officer or the Minister to grant an exemption.

93. Regulations may contain savings and transitional provisions

(1) The Regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) The Regulations may provide that a savings or transitional provision takes effect from a date that is earlier than the date of its publication or notification in the *Gazette* but, if they do so, the provision does not operate so as –

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- (a) to affect, in a manner prejudicial to any person (other than the Territory), the rights of that person existing before the date of its publication or notification; or
- (b) to impose liabilities on a person (other than the Territory) in respect of anything done or omitted to be done before the date of its publication or notification.

PART 11 – REPEAL, SAVINGS AND TRANSITIONALS

Division 1 – Repeal

94. Repeal

The Acts and Ordinances specified in the Schedule are repealed.

Division 2 – Savings and transitional

95. Definitions

In this Division –

"commencement date" means the date on which this Act comes into operation;

"mining site" includes a mine within the meaning of the repealed Act;

"repealed Act" means the *Mine Management Act* as in force immediately before the commencement date.

96. Notification of appointment of operator

(1) On and after the commencement day, an agent (within the meaning of the repealed Act) in respect of a mining site is to be taken to be the operator for the site appointed by the owner of the site.

(2) The owner of a mining site for which there is an operator by virtue of subsection (1) must, within 14 days after the commencement date, comply with section 10(3), (4) and (5).

97. Mine manager's certificate of competency

A mine manager's certificate of competency issued under section 11 of the repealed Act and in force immediately before the commencement date remains in force, subject to the same limitations and conditions, for the period for which it was issued.

98. Mine record book

A mine record book that was kept under the repealed Act is to be preserved by the operator for the mining site to which the book relates for 7 years after the date on which the last entry in the book was made.

99. Investigation of accidents etc.

If, before the commencement date –

- (a) an accident or critical incident had been reported under section 19 or 26 of the repealed Act; and
- (b) an inspector (within the meaning of the repealed Act) had not completed the investigation of or inquiry into the accident or critical incident,

sections 30 and 31 apply in relation to the accident or critical incident as if it were a serious accident or critical incident, respectively, notified under section 29.

100. Review of decision

If, on the commencement date, a review of a decision under section 45 of the repealed Act has not been finally decided by the Board constituted under the repealed Act, the review is to continue as if this Act had not come into operation.

101. Authorizations under *Uranium Mining (Environment Control) Act*

An authorization granted under section 13 of the *Uranium Mining (Environment Control) Act* and in force immediately before the commencement date, is, on and after the commencement date, to be taken to be an Authorisation granted under Division 2 of Part 4.

102. Mining interests etc. under *Mining Act*

(1) Section 35(1) does not apply to a person who, on the commencement date, holds –

- (a) a mining interest within the meaning of the *Mining Act*;
 - (b) a mining tenement within the meaning of the *Mining Act*; or
 - (c) a special mining lease in force by virtue of section 191(12) of the *Mining Act*.
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SCHEDULE

Section 94

REPEALED ACTS

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

