

Serial 162
Mining Management Amendment Bill 2011
Mr Vatskalis

A Bill for an Act to amend the *Mining Management Act*

NORTHERN TERRITORY OF AUSTRALIA

MINING MANAGEMENT AMENDMENT ACT 2011

Act No. [] of 2011

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2011

An Act to amend the *Mining Management Act*

[Assented to [] 2011]
[Second reading [] 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Mining Management Amendment Act 2011*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Act amended

This Act amends the *Mining Management Act*.

4 Long title amended

Long title

omit

sites and

insert

sites, the provision of economic and social benefits to communities affected by mining activities, and

5 Section 3 amended

(1) Section 3(b)(iii)

omit, insert

- (iii) requiring an operator for a mining site to establish, implement and maintain a management system for the site and, for that purpose, to facilitate consultation and cooperation between the operator, contractors and workers on the site; and

(2) After section 3(c)

insert

- (ca) to promote the development of relationships between the mining industry and communities affected by mining activities to facilitate the provision of economic and social benefits to those communities; and

(3) Section (3)(d)(i), at the end

insert

and

6 Section 4 amended

(1) Section 4, definitions *Chief Executive Officer, critical incident, management system, mining management plan* and *serious accident*

omit

(2) Section 4

insert (in alphabetical order)

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

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

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

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

mining management plan, see section 40(1).

official means:

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

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

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

- (3) Section 4, definition ***mining activity***, after paragraph (e)

insert

- (ea) operations and works in connection with exploration or mining generally;
- (eb) the construction, maintenance and use of infrastructure authorised by an access authority granted under the *Mineral Titles Act*,

- (4) Section 4, definition ***mining activity***, paragraph (f)

omit

paragraph (a), (b), (c) or (d)

insert

another paragraph of this definition, except paragraph (e),

7 Section 8A inserted

After section 8

insert

8A Application of Criminal Code

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

Note for section 8A

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

8 Section 10 amended**(1) Section 10(2)**

omit

must, before mining activities commence on the site,

insert

must

(2) Section 10(3) to (8)

omit, insert

(3) The appointment must be in writing and include a condition that the operator must:

(a) before mining activities are carried out on the mining site – establish a management system for the site; and

(b) while mining activities are carried out on the mining site – implement and maintain the management system.

(4) If the operator resigns or the appointment is terminated after the notice mentioned in section 36(2)(b) has been given to the Minister, the owner must, not later than 14 days after the relevant date, give the Chief Executive Officer a written notice of the resignation or termination and the date on which it took effect.

Maximum penalty: 20 penalty units.

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

Maximum penalty: 20 penalty units.

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

Maximum penalty: 1 000 penalty units.

- (7) An offence against subsection (4) or (5) is an offence of strict liability.

- (8) In this section:

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

9 Section 16A inserted

After section 16

insert

16A Consultation and cooperation for taking care of environment

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

-
- (d) planning appropriate strategies for dealing with environmental incidents and serious environmental incidents on the site.

10 Part 3, Divisions 3, 4 and 5 replaced

Part 3, Divisions 3, 4 and 5

repeal, insert

Division 3 Environmental offences

25 Application of Division

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

26 Serious environmental harm – environmental offence level 1

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

26A Serious environmental harm – environmental offence level 2

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

-
- (2) An offence against subsection (1) is an environmental offence level 2.
 - (3) In a proceeding for an offence against subsection (1), the person charged with the offence may be found guilty alternatively of an offence against section 27(1), 27A(1), 28(1) or 28A(1).

27 Material environmental harm – environmental offence level 2

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

27A Material environmental harm – environmental offence level 3

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

28 Environmental nuisance – environmental offence level 3

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

28A Environmental nuisance – environmental offence level 4

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

Division 4 Environmental incidents and serious environmental incidents

29 Operator must report environmental incident or serious environmental incident

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

Maximum penalty: 200 penalty units.

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

Maximum penalty: 200 penalty units.

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

30 Investigation by mining officer

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

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

31 Investigation by operator

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

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

- (2) If an environmental incident occurs on a mining site, the Chief Executive Officer may, by written notice, require the operator for the site to:

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

-
- (3) An operator must not contravene subsection (1) or a requirement under subsection (2).

Maximum penalty: 200 penalty units.

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

relevant time means:

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

31A Publication of report

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

32 No interference with place of serious environmental incident

- (1) A person commits an offence if the person:
- (a) interferes with a place where a serious environmental incident occurred; and
- (b) does not have the permission of a mining officer to do so.

Maximum penalty: 200 penalty units.

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

Division 5 General offence

33 No unauthorised release of waste or contaminant

- (1) A person commits an offence if:
- (a) the person releases waste or a contaminant that is from a mining site; and

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

Maximum penalty: 200 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.
- (4) Subsection (1) applies regardless of whether the release:
- (a) occurs on or outside the mining site; or
 - (b) causes, or has the potential to cause, environmental harm.

11 Sections 35 to 39 replaced

Sections 35 to 39

repeal, insert

35 Requirement for Authorisation

- (1) The operator for a mining site may carry out mining activities on the site only if the Minister has granted the operator an Authorisation to do so.
- (2) However, subsection (1) applies in relation to the carrying out of exploration for minerals on a mining site only if the exploration will involve substantial disturbance of the mining site.
- (3) For subsection (2), substantial disturbance of a mining site includes any of the following:
- (a) land clearing;
 - (b) earthworks (for example, cutting, filling, excavating or trenching);
 - (c) aboveground works (for example, works for building roads, buildings, bridges, railways or airstrips or works for establishing conveyors, pipelines, telephone lines or power lines);
 - (d) underground works (for example, works in connection with tunnels, wells, pipelines, conduits or cables);
 - (e) waterworks (for example, works in connection with dams, impoundments, canals or the drainage or alteration of river or creek banks, water courses or shorelines);

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- (f) extracting resources from the surface of the land, underground, riverbeds or under the sea;
 - (g) stockpiling ore, overburden, waste materials or by-products;
 - (h) establishing seismic lines, drill pads, drill holes, grids, tracks or costeans;
 - (i) establishing a camp for the workers;
 - (j) blasting;
 - (k) active remote sensing and seismic techniques in water;
 - (l) an activity that is likely to have a significant impact on flora or fauna.
- (4) The operator for a mining site commits an offence if:
- (a) the operator carries out a mining activity on the site; and
 - (b) the mining activity is an activity for which an Authorisation is required because of subsection (1); and
 - (c) there is no Authorisation in force for the mining activity.

Maximum penalty: 5 000 penalty units.

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

36 Approval of mining management plan and grant of Authorisation

- (1) An operator for a mining site who requires an Authorisation because of section 35(1) must apply in writing to the Minister for the Authorisation.
- (2) The application must be accompanied by:
- (a) the mining management plan for the mining site; and
 - (b) if the operator is not the owner of the mining site – a notice stating the date on which the operator was appointed.
- (3) The Minister may, by written notice to the operator, request further information to be given within the time specified in the notice.
- (4) The Minister may decide the application by:
- (a) approving the mining management plan and granting the Authorisation; or

-
- (b) refusing to approve the mining management plan and refusing to grant the Authorisation.
- (5) Before approving the mining management plan, the Minister must be satisfied:
- (a) the management system for the mining site, as detailed in the plan:
 - (i) is appropriate for the mining activities described in the plan; and
 - (ii) will, as far as practicable, operate effectively in protecting the environment; and
 - (b) the mining activities described in the plan will be carried out in accordance with good industry practice.
- (6) If the Minister refuses to approve the mining management plan and grant the Authorisation, the Minister must give the operator written reasons for the refusal.

37 Duration and conditions of Authorisation

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

Note for subsection (2)(b)

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

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

Note for subsection (5)(f)

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

- (6) In this section:

minerals does not include extractive minerals.

38 Variation or revocation of Authorisation

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

Note for subsection (1)

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

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

39 Contravention of Authorisation

The operator for a mining site commits an offence if:

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

Maximum penalty: 250 penalty units.

12 Sections 40 and 41 replaced

Sections 40 and 41

repeal, insert

40 Mining management plan and required information

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

41 Review and amendment of mining management plan

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

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

13 Section 45A inserted

After section 45

insert

45A Minister may publish report

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

14 Section 62 amended

- (1) Section 62, before "Subject"

insert

- (1)

- (2) After section 62(1)

insert

- (2) A person must comply with a requirement, instruction or direction of a mining officer given under subsection (1).

Maximum penalty: 100 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

15 Section 64 replaced

Section 64

repeal, insert

64 Obstruction of official

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

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

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

(2) In this section:

obstruct includes resist and hinder.

64A Falsely representing to be mining officer

(1) A person commits an offence if:

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

Maximum penalty: 100 penalty units.

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

16 Section 65 amended

(1) Section 65(1)(a)

omit, insert

- (a) under section 36(6) refusing to approve a mining management plan and grant an Authorisation; or

(2) Section 65(1)(b), at the end

insert

or

(3) After section 65(1)(c)

insert

- (ca) under section 41(4) refusing to approve an amended management plan; or

17 Part 9 replaced

Part 9

repeal, insert

Part 9 Offences, liability and criminal proceedings

Division 1 Offences and liability

71 Definition

In this Division:

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

72 Misleading information or document

(1) A person commits an offence if:

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

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

(2) A person commits an offence if:

- (a) the person gives a document to another person; and
- (b) the other person is an official; and
- (c) the person knows the document contains misleading information; and
- (d) the person knows the official is acting in an official capacity.

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

(3) Strict liability applies to subsections (1)(b) and (2)(b).

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

- (5) In this section:

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

73 Continuing offence

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

74 Liability of representative

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

75 Conduct of representative

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

Note for subsection (1)

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

- (2) Conduct engaged in by a representative of a person within the scope of the representative's actual or apparent authority is taken to have been also engaged in by the person.

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

Note for subsection (7)

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

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

Note for subsection (8)

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

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

(10) In this section:

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

person means an individual.

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

(1) If a person (the *offender*) who is a partner in a partnership commits an offence against a provision of this Act in the course of the activities of the partnership, each other partner in the partnership, and each other person who is concerned with, or takes part in, the management of the partnership, is:

(a) taken to have committed the offence; and

(b) liable to the same penalty for the offence as an individual.

(2) Subsection (1) does not apply if:

(a) the other partner or person was not in a position to influence the conduct of the offender; or

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

Note for subsection (2)

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

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

(4) This section applies whether or not the offender is prosecuted for, or convicted of, the offence.

(5) This section does not apply if the offender would have a defence to a prosecution for the offence.

(6) In this section:

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

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

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

Note for subsection (2)

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

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

77A Criminal liability of executive officer of body corporate

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

(d) the officer was reckless about whether the contravention would happen.

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

(2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:

(a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):

(i) the body corporate arranged regular professional assessments of the body corporate's compliance with the contravened provision;

(ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);

(iii) the body corporate's representatives and contractors had a reasonable knowledge and understanding of the requirement to comply with the contravened provision;

(b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.

(3) Subsection (2) does not limit the matters the court may consider.

(4) This section does not affect the liability of the body corporate.

(5) This section applies whether or not the body corporate is prosecuted for, or convicted of, the relevant offence.

(6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.

(7) In this section:

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

Division 2 Criminal proceedings

78 Starting proceeding

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

79 Averments

- (1) Subsection (2) applies if, in a proceeding, an averment in the information or complaint states that at a specified time:
 - (a) a specified place was a mining site or specified mining activities were being carried out; or
 - (b) a specified person was:
 - (i) the owner of, or operator for, a specified mining site; or
 - (ii) an employer of workers at a specified mining site; or
 - (iii) a worker at a specified mining site; or
 - (iv) a mining officer; or
 - (c) a specified person was, or was not, the holder of an Authorisation; or
 - (d) a specified Authorisation had been granted, varied or revoked; or
 - (e) a specified Authorisation contained specified conditions; or
 - (f) a specified substance was a contaminant or waste; or
 - (g) a direction, instruction, notice or requirement permitted or required to be given or imposed under this Act had been given or imposed or had not been given or imposed; or
 - (h) a specified guideline was in force.

-
- (2) The statement is taken to have been proved in the absence of evidence to the contrary.

80 Defence if conduct in accordance with guideline or code

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

18 Section 82A inserted

After section 82

insert

82A Social and economic benefits for affected communities

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

19 Section 85 amended

- (1) Section 85(1)(a), at the end

insert

or

- (2) Section 85(1), penalty provision

omit, insert

Maximum penalty: 200 penalty units.

20 Section 91 repealed

Section 91

repeal

21 Part 11 replaced

Part 11

repeal, insert

**Part 11 Transitional matters for Mining Management
Amendment Act 2011**

96 Definitions

In this Part:

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

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

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

97 Offences

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

**98 Reporting and investigating environmental incidents and
serious environmental incidents**

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

99 Applications and decisions

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

22 Act further amended

The Schedule has effect.

Schedule Act further amended

section 22

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
Part 1, heading, at the end		matters
section 4	, unless the contrary intention appears	
section 4, definition <i>Atomic Energy Act</i>	of the Commonwealth	(Cth)
section 4, definition <i>Authorisation</i>	Division 2 of Part 4	Part 4, Division 2
section 4, definition <i>contaminant</i>	has the same meaning as in	, see section 4(1) of
section 4, definition <i>environment</i> , paragraphs (a) and (b), at the end		and
section 4, definitions <i>material</i> , <i>environmental harm</i> , paragraphs (a) and (b), and <i>mineral</i> , paragraphs (a) and (b), at the end		or
section 4, definition <i>mineral</i> , paragraph (f)	within the meaning	as defined in section 5(1)
section 4, definition <i>mining site</i> , paragraph (a), at the end		or
section 4, definition <i>mining site</i> , paragraph (c)	notice in the <i>Gazette</i>	<i>Gazette</i> notice

section 4, definition serious environmental harm , paragraphs (a) and (b), at the end		or
section 4, definition waste	has the same meaning as in	, see section 4(1) of
section 4, definition worker	a natural person	an individual
section 7(1)	may by notice in the <i>Gazette</i>	may, by <i>Gazette</i> notice,
section 8(1)	nothing in this Act is to be taken to	this Act does not
section 9(2), penalty provision	whole penalty provision	Maximum penalty: 1 000 penalty units.
section 11(1) and (2)	notice in the <i>Gazette</i>	<i>Gazette</i> notice
section 11(3), penalty provision	Penalty:	Maximum penalty:
section 11(4)	a regulatory offence	an offence of strict liability
section 12(a) and (b), at the end		and
sections 17(2)(a) and 18(2)	a serious accident or critical	an environmental incident or serious environmental
section 18(3)	a natural person	an individual
section 34(1)	in respect of the mining activities	for the mining site
section 34(5), definition Ranger Project Area	Area has the same meaning as in	Area , see section 4 of
section 42(1), penalty provision	whole penalty provision	Maximum penalty: 20 penalty units
section 42(2)	this section is a regulatory offence	subsection (1) is an offence of strict liability

section 44(2)(a) and (4)(a), at the end		and
section 44(4)(b)	the submission (if any)	any submission
section 44(5)	notice in writing	written notice
Part 4, Division 5 heading, at the end		matters
section 45(2)	all the words from "for" to "subsection (1)"	must comply with the notice
section 45(2), penalty provision	whole penalty provision	Maximum penalty: 20 penalty units
section 45(3)	a regulatory offence	an offence of strict liability
section 50(1)	are:	are as follows:
section 50(1)(e)	and	
section 52(1)	an employee within the meaning of the <i>Public Sector Employment and Management Act</i>	a public sector employee
section 55(4)	in pursuance of	under
section 58(a), at the end		or
section 60(3), penalty provision	Penalty:	Maximum penalty:
section 60(4)	a regulatory offence	an offence of strict liability
section 63	in pursuance of	mentioned in
section 63, penalty provision	Penalty:	Maximum penalty:
section 70(5)(a), at the end		or
Part 10, heading, at the end		matters

section 81(1)	(1) The	The
section 81(2), (3) and (4)	whole subsection	
Part 10, Division 2, heading	whole heading	Other matters
section 86(1)(a) and (b), at the end		or
section 88(1)(a)	notice in the <i>Gazette</i> ;	<i>Gazette</i> notice; and
section 90(a) and (b), at the end		or
section 90(c), after "law"		, or by the Minister or Chief Executive Officer,
section 92(2)(i)	whole paragraph	
section 92(2)(j)	a regulatory offence	an offence of strict liability
