

Mines (Miscellaneous Amendments) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 19 August 1987

(Brought in by Mr Fordham and Mr Crabb)

A BILL

to amend the *Mines Act* 1958, to repeal the *Mining Development Act* 1958 and for other purposes.

Mines (Miscellaneous Amendments) Act 1987

The Parliament of Victoria enacts as follows:

Purpose.

1. The purposes of this Act are—

- 5 (a) to make amendments to the *Mines Act* 1958 concerning mining titles, applications for mining titles and other matters; and
(b) to repeal the *Mining Development Act* 1958 and to make consequential amendments to other legislation.

Commencement.

- 10 2. (1) Sections 8, 20, 21 and 22 come into operation on a day to be proclaimed.
(2) The rest of this Act comes into operation on the day on which it receives the Royal Assent.

Principal Act.

- 15 3. In this Act the *Mines Act* 1958 is called the Principal Act.

No. 6320.
Reprinted to No. 9945.
Subsequently amended by Nos. 10081, 10087, 10164, 10189, 10257, 16/1986, 26/1986, 110/1986, 121/1986, 6/1987, 9/1987, 41/1987 and 45/1987.

Procedure of Land Valuation Board.

4. In section 3 (10) of the Principal Act after paragraph (b) insert—

- “(ba) those provisions included a provision that, on the hearing of a dispute to which this sub-section applies, a Land Valuation Board may make an order requiring each party to the proceedings before it to bear his, her or its own costs, or awarding costs against the person who referred the matter to the Board, but the Board cannot by that order award costs against a party to the proceedings who did not refer the dispute to the Board; 5 10
- (bb) those provisions included a provision that the Board must not determine a dispute to which this sub-section applies unless the Board is satisfied, after considering evidence produced to it, that the person who referred the dispute to the Board has attempted to settle it by conciliation but has not been able to reach a settlement because the other party to the proceedings has refused to negotiate a settlement or because both parties are unable to agree;” 15

Marking out and mining prohibited near certain works.

5. (1) After section 9 of the Principal Act insert— 20

Marking out and mining prohibited near certain works.

“9A. (1) Unless with the written consent of the Minister, a person who is—

- (a) the owner of a claim; or
- (b) an applicant for the registration of a claim— 25
- is not entitled to enter for the purpose of marking out or mining Crown land—
- (c) used as a garden, orchard or vineyard; or
- (d) on which a spring, lake, artificial reservoir, dam, sheepwash or woolshed is located and is in *bona fide* occupation; or 30
- (e) used as a site for a residence or factory; or
- (f) used as a site for a windmill or bore; or
- (g) within 100 metres of—
- (i) Crown land of a kind mentioned in paragraphs (c) to (f); or 35
- (ii) private land used for the purposes of buildings or works mentioned in paragraphs (c) to (f).

(2) Unless with the written consent of the owner of the land, a person to whom sub-section (1) (a) or (b) applies is not entitled to enter for the purposes of marking out or mining Crown land within 100 metres of private land used for the purposes of buildings or works mentioned in sub-section (1) (c),(d),(e) or (f).” 40

(2) In section 301 of the Principal Act, sub-section (2) is repealed.

(3) In section 303 of the Principal Act, for sub-section (4) substitute—

5 “(4) Unless with the written consent of the owner of the land, a person to whom sub-section (1) (a) or (b) applies is not entitled to enter for the purpose of marking out or mining private land—

(a) used as a garden, orchard or vineyard; or

(b) on which a spring, lake, artificial reservoir, dam, sheepwash or woolshed is located and is in *bona fide* occupation; or

10 (c) used as a site for a residence or factory; or

(d) used as a site for a windmill or bore; or

(e) within 100 metres of private land used for the purposes of buildings or works mentioned in paragraphs (a) to (d).”.

15 (4) If before the date of commencement of this section a person has, in accordance with the Principal Act, entered land for the purposes of marking out or mining and, under the Principal Act as amended by this section, the person is not entitled to enter the land for that purpose on or after that date, then despite anything to the contrary in the
20 Principal Act as so amended, the person may continue to occupy the land for the purposes of marking out or mining as if sub-sections (1) and (3) of this section had not been enacted, but otherwise in accordance with the Principal Act.

Changes to claim registration system.

6. (1) The Principal Act is amended as follows:

25 (a) In section 17 (1), for “seven” substitute “14”;

(b) In section 17 (2), for the expression beginning “not later than” and ending with “consent to the Mining Registrar” substitute “subject to this section”;

30 (c) After section 17 (2) insert—

“(2A) The Mining Registrar may refuse to register land as a claim if—

(a) the applicant has failed to comply with sub-section (2) (a), (b), (c) or (d); or

35 (b) the applicant has failed to mark out the land in accordance with this Act and the regulations; or

(c) the applicant has failed to lodge a bond or security required in accordance with this Act or the regulations; or

40 (d) the applicant has failed to comply with a direction given in accordance with this Act or the regulations and relating to the application; or

(e) if under this Act the consent of the holder of an exploration licence under Part V must be obtained

before the land can be registered as a claim, the applicant has failed to produce to the Mining Registrar evidence of that consent.

(2B) As soon as possible after refusing to register a claim the Mining Registrar must give written notice of the refusal to the applicant. 5

(2C) If the Mining Registrar refuses to register a claim under this section, the land is, for the purposes of this Act, to be treated as not having been applied for as a claim or marked out for the purposes of that application.”; 10

(d) In section 17 (7), omit “the registration is not made within the period prescribed by this section or that”;

(e) In sections 17 (9) (b) and 17 (11) (c), for “owner of the claim” substitute “applicant for the registration of the claim”; 15

(f) In section 17 (11), paragraph (b) is repealed;

(g) After section 17 (11) insert—

“(11A) A claim cannot be registered unless—

(a) special conditions that are to relate to it have been communicated to the applicant in accordance with sub-section (11) and, if the applicant is required to lodge a bond or security, the applicant has lodged it in accordance with the requirement; or 20

(b) there is served on the applicant a certificate signed by the Mining Registrar or an inspector of mines stating that no special conditions have been determined in relation to the land to which the application relates.”; 25

(h) In section 17 (12), paragraph (a) is repealed; 30

(i) In section 17, sub-sections (13) and (14) are repealed;

(j) In section 17 (15)—

(i) for “the owner of a claim” substitute “an applicant for the registration of a claim”; and

(ii) for “the claim or” substitute “the land in the application or the owner of the claim”; and 35

(iii) for “the owner shall” substitute “the applicant or owner shall, despite anything to the contrary in this section,”; and

(iv) for the expression beginning “within 60 days” and ending at the end of the sub-section substitute “within a time determined by the Mining Registrar by notice served on the applicant or owner or within any extension of time which the Mining Registrar grants by notice so served within the time so determined”; 40 45

- (k) In section 17 (17), for “the owner of a claim objects to any special condition or an” substitute “an applicant for the registration of a claim objects to any special condition or the owner of a claim objects to any”;
- 5 (l) After section 17 (17) insert—
 “(17A) Sub-section (17) does not authorise a person to object to a special condition requiring the person to lodge a bond or security or concerning the amount of the bond or security.
- 10 (17B) A claim may be registered subject to a special condition even though the applicant for the registration of the claim has objected to the condition.”;
- (m) In section 17 (18), after “claim” insert “or the land to which an application for the registration of a claim relates”;
- 15 (n) In section 17 (19)—
 (i) after “relating to the claim” insert “or the land to which an application for the registration of a claim relates”;
 and
 (ii) after “claim owner” insert “or applicant”;
- 20 (o) In section 17 (20)—
 (i) after “relating to a claim” insert “or the land to which an application for the registration of a claim relates”;
 and
 (ii) after “the claim” insert “or applicant”;
- 25 (p) In section 17 (24)—
 (i) after “owners of a claim” insert “or applicants for the registration of a claim”; and
 (ii) in paragraph (a), after “a claim” insert “or applicant”;
 and
- 30 (iii) in paragraph (a), for “owners” substitute “persons”;
 and
 (iv) in paragraph (b), after “claim” (where secondly occurring) insert “or in relation to or by an applicant for the registration of a claim”; and
- 35 (v) in paragraph (b), after “owners of a claim” insert “or applicants”; and
 (vi) in paragraph (b), after “those owners” insert “or applicants”;
- 40 (q) In section 17 (25), for the expression beginning “and the provisions of this section” and ending at the end of the sub-section substitute—
 “ and—
 (a) the provisions of this section relating to the working of claims apply to land so included, as if the land had

been registered as a claim on the date on which the application was granted under this sub-section; and

(b) the provisions of this section relating to the variation of special conditions apply to such variations of the special conditions relating to the claim as are necessary or expedient because of the inclusion of land in the claim under this sub-section.”; 5

(r) In section 17A, for sub-section (5) substitute—

“(5) Despite anything to the contrary in section 17, if special conditions for the time being relate to a claim and registration of the claim is renewed, a renewed registration is subject to the same special conditions as those relating to the former claim as if they had been determined and communicated under section 17, unless other special conditions relating to the renewed claim are determined and communicated under that section.”; 10 15

(s) In section 361A (1)—

(i) for “a lease or licence and the owner of a claim” substitute “the registration of a claim or for a lease or licence”; and 20

(ii) in paragraph (a), for “the owner of the claim” substitute “for the registration of the claim”;

(t) In section 361A (5)—

(i) after “granted” insert “and a claim shall not be registered”; and 25

(ii) for “section 70B” substitute “Part I”.

(2) The Principal Act as amended by sub-section (1)—

(a) applies to—

(i) an application for the registration, or renewal of the registration of a claim, made on or after the date of commencement of this section; and 30

(ii) an application for the registration or renewal of the registration of a claim, made before that date but not determined at that date; and

(iii) a claim registered or renewed on or after that date; and 35

(b) does not apply to a claim for the time being registered immediately before that date.

(3) The Principal Act continues to apply to claims referred to in sub-section (2) (b) as if sub-section (1) had not been enacted.

Claims and exploration licences. 40

7. Section 21A of the Principal Act is amended as follows:

(a) In sub-section (3), after “(3)” insert “Except as provided in section 514 (16),”;

(b) In sub-section (5), for “issued” substitute “applied for”;

(c) In sub-section (5) (b), after “determination of the licence application” insert “unless the consent in writing of the applicant for the licence to the registration of the land as a claim is first obtained”.

5

Eductor dredges.

8. (1) In section 66A (6) (a) of the Principal Act for “October” (wherever occurring) substitute “August”.

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(2) A licence issued before the date of commencement of this section and in force at that date expires on 31 August next following the date of its issue unless it is sooner revoked, despite anything to the contrary in the licence.

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(3) Despite anything to the contrary in the Principal Act or in regulations made under the Principal Act, if the holder of a licence to which sub-section (2) applies (in this section called the “first licence”), applies for a new licence under section 66A of the Principal Act authorising prospecting for minerals using the same machinery or equipment in the same zone as was authorised by the first licence and the new licence is to commence immediately after the first licence expires, the prescribed fee for the new licence for the purposes of section 66A (3) of the Principal Act is the fee which would, but for this sub-section, be payable under that provision of the Principal Act less one-sixth of the fee paid for the first licence.

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New section 77 inserted.

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9. (1) After section 76 of the Principal Act insert—

Power to refuse applications.

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“77. (1) If a person has applied for a lease or licence or for a renewal of a lease or licence, the Minister may make a reasonable request to the person to provide, within a time fixed in the request, further information in relation to—

(a) the person’s financial standing; or

(b) technical issues which the Minister considers are relevant to the application.

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(2) If a person fails to comply with a request under sub-section (1) within the time fixed in the request, the Minister may refuse the application.”.

(2) In section 514 (9) of the Principal Act for “section” substitute “sections 77 and”.

Mining warden qualifications.

10. In section 103 of the Principal Act, for “and” (where first occurring) substitute “or”.

New section 109A inserted.

11. After section 109 of the Principal Act insert— 5

Vexatious or frivolous matters.

“109A. If any matter is brought before the mining warden under this Act and the mining warden is satisfied that the matter has been brought vexatiously or frivolously, the mining warden may order the person who brought the matter to pay an amount for costs.”. 10

Tailings on private land.

12. (1) In section 300A (1)—

(a) after “Part I.” insert “and the regulations under that Part”;
and

(b) for the expression beginning “as if” and ending at the end
of the sub-section substitute— 15

“as if—

(a) those provisions referred to private land and not
Crown land; and

(b) those provisions referred to tailings which are the
property of the land owner and not to tailings which
are the property of the Crown; and 20

(c) many provision that tailings become the property
of the Crown did not form part of this provision.”. 25

(2) After section 300A (2) insert—

“(3) The Minister must not grant a tailings treatment
licence under this section unless the applicant for the licence
produces evidence to the Minister that the owner of the
private land to which the application relates has consented
to the granting of the licence. 30

(4) This section does not prevent—

(a) the owner of private land on which there are
tailings; or

(b) another person with that owner’s consent—

from using the tailings for a purpose other than extracting
minerals from them or searching for minerals, even though the
owner or person is not the holder of a licence under this section.”. 35

Abolition of mining title holder's powers of compulsory acquisition.

13. The Principal Act is amended as follows:

(a) In section 301 (6) (a) for sub-paragraph (ii) substitute—

5 “(ii) the applicant has purchased the land for which
the lease is applied for, the land on which the
buildings works or features mentioned in this sub-
section are located and any necessary rights of
access to the land applied for (being rights of access
over land owned by the owner of the land applied
for);”;

10 (b) In section 304 (1) for “has paid or tendered to the owner
the purchase money of land taken under the provisions of
this Part” substitute “has, in accordance with an agreement
to purchase land required under this Part, paid or tendered
15 the purchase money to the owner of the land”;

20 (c) In section 304 (6) for “has paid or tendered to the owner
the purchase money for land included in the prospecting
area in accordance with this Part” substitute “has, in
accordance with the agreement to purchase land included
in the prospecting area in accordance with this Part, paid or
tendered the purchase money to the owner of the land”;

(d) In section 305 (1) (a) for “taken” substitute “purchased”;

(e) In section 307 (1)—

25 (i) omit “or purchase money (as the case may be)”; and

(ii) omit “or purchase money” (where secondly occurring);

(f) In section 312 omit “or purchase money” (where secondly
occurring);

(g) In section 321 (1)—

30 (i) for “take” substitute “purchase”; and

(ii) omit the expression beginning “or in default” and
ending at the end of the sub-section;

(h) In section 321, sub-section (2) is repealed.

Consents to prospecting area licences.

14. After section 325 (5) of the Principal Act insert—

35 “(6) If in respect of any land held under an exploration
licence, a person—

(a) applies for a prospecting area licence on or after
the date of commencement of section 14 of the
Mines (Miscellaneous Amendments) Act 1987; or

(b) applied for a prospecting area licence before that date but the application has not been determined before that date—

the Minister must not grant a prospecting area licence unless the person has first obtained the consent in writing of the holder of the exploration licence.”. 5

Transfer of mining titles.

15. The Principal Act is amended as follows:

- (a) In section 45 (3A), after “mining lease” insert “or development lease”; 10
- (b) In section 325—
- (i) after sub-section (11) insert—
- “(12) The holder of a prospecting area licence may transfer that licence to any person if the holder—
- (a) has obtained the Minister’s sanction under section 362; and 15
- (b) has obtained the Minister’s approval under section 70 (1) to transfer the holder’s application for a lease of so much of the land as is the subject of the prospecting area licence to that other person; and 20
- (c) pays the prescribed fee.”; and
- (ii) in sub-section (14), after “renewals” (where first occurring) insert “and transfers”; and 25
- (iii) in sub-section (14), for “or renewals” substitute “renewals and transfers”;
- (c) In section 362 (1) after “mining lease” insert “or development lease or included in any prospecting area licence”. 30

Regulation of mines.

16. The Principal Act is amended as follows:

- (a) In section 380—
- (i) omit “general” (wherever occurring); and
- (ii) for “Division” (wherever occurring) substitute “Act”; 35
- (b) In section 381 for “General Regulations” substitute “regulations”;
- (c) In sections 382 (1) and (2) omit “general” (wherever occurring).

Fees payable to members of Board of Examiners for Mine Managers.

17. In section 390 (2) of the Principal Act, for “regulations made by the Governor in Council for the purposes of this section” substitute “the Governor in Council by Order published in the *Government Gazette*”.

Membership of Mining Consultative Committee.

18. (1) In section 512A (2) of the Principal Act—
 (a) for “six” substitute “seven”; and
 (b) after paragraph (a) insert—
 “(aa) one shall be a person who, in the Minister’s opinion, is able to express and represent landowners’ interests;”.
- (2) The Mining Consultative Committee is the same body after as before the change in its membership.

Applications for exploration licences.

19. (1) In section 514 (4) of the Principal Act, for “180 days” (wherever occurring) substitute “six months”.
- (2) In section 515 (2) (c) of the Principal Act, after sub-paragraph (ii) insert—
 “(iii) evidence of the manner in which the applicant intends to finance the proposed exploration program; and”.
- (3) In section 519 (1A) of the Principal Act, for “a first extension of an original” substitute “an extension of a”.

New Division 6 inserted in Part III.

20. After section 504 of the Principal Act insert—
 “**Division 6—Establishment of Plant for Testing Metalliferous Material**”

Definition.

- ‘505. In this Division—
 “**Testing plant**” means—
 (a) a stamp battery or machinery for the purpose of mechanically reducing rock, gangue, matrix or other vein stuff for the purpose of obtaining minerals or metals; and
 (b) appliances—
 (i) for feeding, classifying or dressing rock, gangue, matrix or other vein stuff; and
 (ii) for separating from the rock, gangue, matrix or other vein stuff the minerals, metals or ores contained in them; and

- (iii) for extracting minerals or metals from those ores by any process.’

Power to purchase plant etc. for testing metalliferous samples.

“505A. Out of the money available for the purposes of this Division the Minister may purchase and erect machinery, plant and appliances for testing the value of metalliferous material.” 5

Locality where testing plant may be established.

“505B. A testing plant may be established only in a district in which or within a reasonable distance of which there is no battery where metalliferous material is crushed or dealt with for payment and if, in the Minister’s opinion, the establishment of a testing plant is required.” 10

Approval for testing plant.

“505C. (1) If the Minister is of the opinion that there is a necessity in the interest of the mining industry for the establishment of a testing plant in any district, the Minister must submit to the Treasurer any reports, plans or other documents which, in the Minister’s opinion, are sufficient to justify the expenditure necessary to procure and erect the testing plant and, if the Treasurer so recommends, the Minister may out of the moneys available for the purposes of this Division procure and erect the testing plant. 15
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(2) The purchase, transport, erection or removal of a testing plant must be in accordance with the regulations.”

Rates for testing.

“505D. (1) Subject to sub-sections (2) and (3), any person may use a testing plant established under this Division for testing metalliferous material in the manner and under the conditions fixed by the regulations on payment of the rates prescribed in the regulations. 25

(2) Rates under sub-section (1) must be paid in accordance with the regulations to the officer appointed by the Minister to receive the rates. 30

(3) A testing plant may, subject to and in accordance with the regulations, be used for testing metalliferous materials before payment for the use of the testing plant has been made, if—

- (a) the regulations provide for payment after that use; or 35
(b) the officer appointed by the Minister to receive payment for the use of the testing plant and the person who is to use the testing plant have previously agreed in accordance with the regulations to the forfeiture to the Crown of a quantity of minerals or metals produced by or in the course of that use of that testing plant. 40

(4) Minerals or metals declared by an agreement under sub-section (3) to be forfeited to the Crown become the property of the Crown in accordance with the regulations and the agreement.

5 (5) In determining the quantity of minerals or metals to be forfeited to the Crown pursuant to an agreement under sub-section (3), regard must be had to the amount which would but for sub-section (3) have been payable for the use of the testing plant and the quantity of minerals or metals taken must be a quantity the value of which is approximately equivalent to that payment.

10 (6) Materials left on the site of a testing plant after the use of a testing plant by a person and which are not claimed by the person within the time prescribed and otherwise in accordance with the regulations become the property of the Crown on the expiration of the prescribed period and may be disposed of by the Minister in accordance
15 with the regulations.”

Regulations.

“506. (1) The Governor in Council may make any regulations that are necessary for carrying into effect all or any of the provisions of this Division.

20 (2) Without limiting the generality of sub-section (1), regulations under that sub-section may make provision for or with respect to—

- (a) the erection, transportation, operation, use and removal of testing plant to which this Division applies;
- 25 (b) the duties of officers in connection with testing plant mentioned in paragraph (a);
- (c) payments to be made in respect of the use of testing plant, the manner in which and the times at which those payments are to be made and the method of accounting for those payments;
- 30 (d) the disposal of material which becomes the property of the Crown under section 505D;
- (e) agreements relating to the forfeiture to the Crown of minerals or metals under section 505D;
- 35 (f) claims in respect of the ownership of materials left on the site of a testing plant, the form of those claims and the period within which those claims must be made; and
- (g) generally, prescribing any matter or thing authorised or required to be prescribed for the purposes of this Division.”.

Repeal of Act No. 6321.

21. The *Mining Development Act 1958* is repealed.

Amendments consequential to Repeal.

22. (1) In section 107 (1) (b) of the Principal Act, omit “or the *Mining Development Act 1958*” (where twice occurring). 5

(2) In section 11 of the *Nuclear Activities (Prohibitions) Act 1983* omit “the *Mining Development Act 1958*, or in”.

