

CLAUSE NOTES

Mineral Resources Development Amendment Bill 2017

Part I - Preliminary

Clause 1 - Short title

This clause provides the short title to be used when citing the Act for any legal purpose.

Clause 2 - Commencement

The Bill will commence on Royal Assent

Part 2 - Mineral Resources Development Act 1995 Amended

Clause 3 - Principal Act

This clause provides that the *Mineral Resources Development Act 1995* is referred to as the Principal Act in this part.

Clause 4 - Section 3 amended (Interpretation)

This clause amends section 3 of the *Mineral Resources Development Act 1995* to:

- a) Omit the definition of *annual report guidelines*, to be replaced with *reporting guidelines*.
- b) Provide a correction to the current definition of *atomic substance* by replacing 'Section 199' with the relevant 'Section 200';
- c) By providing a definition for:
 - i. a *Forestry Right*;
 - ii. a *Forest Road*;
- d) Providing a correction by replacing 'Division 1' reference in definition of *register*, with 'Division 5'.
- e) Provide a definition of the term *reporting guidelines* to replace *annual report guidelines*. These guidelines will encompass a guide for all required mineral tenement reporting, not just annual reports.
- f) Including the word 'licence' in the definition of *security deposit* to allow a failure to meet licence commitments to be included in the security deposit coverage.

Clause 5 - Section 5 amended (Application of Act)

This clause amends section 5 of the *Mineral Resources Development Act 1995* to:

- a) Clarify the existing provision that it is not permitted for persons to undertake mining operations or to explore in areas declared by Order to be exempt from the Act, if those operations are in contravention of the Order; and
- b) update the existing exemption provisions for the Crown to undertake quarrying operations under a Forest Practices Plan, by adding the term '*Future Potential Production Forest Land*' to the existing State Forest (defined as Permanent Timber Production Zone Land under the Act) exemption as areas where a lease is not required under the Act to help maintain operational efficiency; and
- c) Clarifying that the exemption for forestry quarrying can only apply to the Crown for providing materials for the construction and maintenance of Forest Roads that provide access to State Forest;

- d) Clarifying that only the Crown can be a beneficiary of the existing exemption to take Category 3 minerals (gravel) from State Forest.

Clause 6 - Section 8 substituted (Director, Registrar and Inspectors)

This clause repeals and replaces section 8 of the *Mineral Resources Development Act 1995* to provide unambiguous language detailing the appointment of the Director, Inspectors and the Registrar, without fundamentally altering the existing intent of the appointment provisions:

- 1) How the Minister may appoint a State Service Officer or employee to be the Director of Mines; and
- 2) how the Director of Mines may appoint State Service Employees as the Registrar or as inspectors;
- 3) Clarifying that these appointed positions are held in conjunction with the State Service employment;
- 4) Retaining the existing Subsection 3 authorising the Director of Mines to be able to authorise an employee of the Department to exercise the powers and perform the functions of the Registrar.
- 5) A savings provision for existing appointments has been included to avoid any issues during the transition.

Clause 7 - Section 15 amended (Objection to exploration licence)

Clause 7 amends the principal Act by including a mineral tenement holder (in respect of the same area of land) as a person who can lodge an objection to the proposed grant of a mineral tenement (exploration licence), expanding the existing provision that provides this opportunity only for those persons with an '*interest or estate in the land*'.

Clause 8 - Section 17A amended (When application for licence may be granted or refused)

This clause amends section 17A of the *Mineral Resources Development Act 1995* to confirm that the applicant must provide evidence of a valid public liability insurance policy prior to the Minister granting an application for an exploration licence. Public liability insurance cover is required to be held by all mineral tenement holders. This amendment will clarify this requirement and allow the applicant for an exploration licence to provide evidence of such cover just prior to the grant of a tenement, and not at the initial application stage as is currently the case.

Clause 9 - Section 28 amended (Annual report)

The principle Act is amended to reflect the change in terminology used for the reporting guidelines. *Annual Report Guidelines*, is substituted with '*Reporting Guidelines*'.

Clause 10 - Section 28AA inserted (Final Report)

This clause provides for a new provision in the *Mineral Resources Development Act 1995* that requires the holder of an exploration licence to provide a Final Report at the end of life of the licence. The report must be provided within 3 months of the end of the licence and be in accordance with the requirements of the Reporting Guidelines, as provided for under section 204A of the Act. The final report will ensure that important geological data gathered in the course of works over the life of the tenement is not lost to the State and future explorers.

Clause 11 - Section 28A amended (Returns)

Clause 11 amends section 28A of the *Mineral Resources Development Act 1995* so that Returns are only required when the Director requests them from licensees, not on a quarterly basis as is currently the case. It is expected that in most cases Returns will be required on an annual

basis. This will bring Tasmania into line with the reporting requirements of other jurisdictions. Terminology reflecting the proposed change from *Annual Report Guidelines*, to '*Reporting Guidelines*' has also been included.

Clause 12 - Section 34 amended (Revocation of exploration licence)

Clause 12 amends section 34(7)(a) of the *Mineral Resources Development Act 1995* to clarify the requirements for notifying a licensee when a licence has been revoked. The proposed amendment makes it clear that the revocation takes effect if the licensee has been notified or if the revocation has been published in the Gazette. Currently it can be read that it only takes effect 28 days after the publication in the Gazette, but this publication requirement is not mandatory.

Clause 13 - Section 40 amended (objection to special exploration licence)

This clause amends the principal Act by including a mineral tenement holder (in respect of the same area of land) as a person who can lodge an objection to the proposed grant of a mineral tenement (special exploration licence), expanding the existing provision that provides this opportunity only for those persons with an '*interest or estate in the land*'.

Clause 14 - Section 41A amended (When Minister may grant application)

This clause amends section 41A of the *Mineral Resources Development Act 1995* to confirm that the applicant must provide evidence of a valid public liability insurance policy prior to the Minister granting an application for a special exploration licence. Public liability insurance cover is required to be held by all mineral tenement holders. This amendment will clarify this requirement and allow the applicant for a special exploration licence to provide evidence of such cover just prior to the grant of a tenement, and not at the initial application stage as is currently the case.

Clause 15 - Section 43B amended (Annual report)

The principle Act is amended to reflect the change in terminology used for the reporting guidelines. *Annual Report Guidelines*, is substituted with '*Reporting Guidelines*'.

Clause 16 - Section 43BA inserted (Final Report)

Clause 16 provides for a new provision in the *Mineral Resources Development Act 1995* that requires the holder of a special exploration licence to provide a Final Report at the end of life of the licence. The report must be provided within 3 months of the end of the licence and be in accordance with the requirements of the Reporting Guidelines, as provided for under section 204A of the Act. The final report will ensure that important geological data gathered in the course of works over the life of the tenement is not lost to the State and future explorers.

Clause 17 - Section 43C amended (Returns)

Clause 17 amends section 43C of the *Mineral Resources Development Act 1995* so that Returns are only required when the Director requests them from licensees, not on a quarterly basis as is currently the case. It is expected that in most cases Returns will be required on an annual basis. This will bring Tasmania into line with the reporting requirements of other jurisdictions. Terminology reflecting the proposed change from *Annual Report Guidelines*, to '*Reporting Guidelines*' has also been included.

Clause 18 - Section 46 amended (Revocation of special exploration licence)

Clause 18 amends section 46(7)(a) of the *Mineral Resources Development Act 1995* to clarify the requirements for notifying a licensee when a licence has been revoked. The proposed

amendment makes it clear that the revocation takes effect if the licensee has been notified or if the revocation has been published in the Gazette. Currently it can be read that it only takes effect 28 days after the publication in the Gazette, but this publication requirement is not mandatory.

Clause 19 - Section 51 amended (Objection to retention licence)

This clause amends the principal Act by including a mineral tenement holder (in respect of the same area of land) as a person who can lodge an objection to the proposed grant of a mineral tenement (retention licence), expanding the existing provision that provides this opportunity only for those persons with an '*interest or estate in the land*'.

Clause 20 - Section 53 amended (Granting application for retention licence)

This clause amends section 53(2) of the *Mineral Resources Development Act 1995* to confirm that the applicant must provide evidence of a valid public liability insurance policy prior to the Minister granting an application for a retention licence. Public liability insurance cover is required to be held by all mineral tenement holders. This amendment will clarify this requirement and allow the applicant for a retention licence to provide evidence of such cover just prior to the grant of a tenement, and not at the initial application stage as is currently the case.

Clause 21 - Section 60A amended (Annual report)

The principle Act is amended to reflect the change in terminology used for the reporting guidelines. *Annual Report Guidelines*, is substituted with '*Reporting Guidelines*'.

Clause 22 - Section 60AAB inserted (Final report)

Clause 22 inserts a new section 60AAB in the *Mineral Resources Development Act 1995* that requires the holder of a retention licence to provide a *Final Report* at the end of life of the licence. The report must be provided within 3 months of the end of the licence and be in accordance with the requirements of the Reporting Guidelines, as provided for under section 204A of the Act. The final report will ensure that important geological data gathered in the course of works over the life of the tenement is not lost to the State and future explorers.

Clause 23 - Section 60AB amended (Returns)

Clause 23 amends section 60AB of the *Mineral Resources Development Act 1995* so that Returns are only required when the Director requests them from licensees, not on a quarterly basis as is currently the case. It is expected that in most cases Returns will be required on an annual basis. This will bring Tasmania into line with the reporting requirements of other jurisdictions. Terminology reflecting the proposed change from *Annual Report Guidelines*, to '*Reporting Guidelines*' has also been included.

Clause 24 - Section 66 amended (Revocation of retention licence)

Clause 24 amends section 66(7)(a) of the *Mineral Resources Development Act 1995* to clarify the requirements for notifying a licensee when a licence has been revoked. The proposed amendment makes it clear that the revocation takes effect if the licensee has been notified or if the revocation has been published in the Gazette. Currently it can be read that it only takes effect 28 days after the publication in the Gazette, but this publication requirement is not mandatory.

Clause 25 - Section 67E amended (Objection to production licence)

This clause amends the principal Act by including a mineral tenement holder (in respect of the same area of land) as a person who can lodge an objection to the proposed grant of a mineral

tenement (production licence), expanding the existing provision that provides this opportunity only for those persons with an '*interest or estate in the land*'.

Clause 26 - Section 67I amended (When Minister may grant application)

This clause amends section 67I of the *Mineral Resources Development Act 1995* to confirm that the applicant must provide evidence of a valid public liability insurance policy prior to the Minister granting an application for a production licence. Public liability insurance cover is required to be held by all mineral tenement holders. This amendment will clarify this requirement and allow the applicant for a production licence to provide evidence of such cover just prior to the grant of a tenement, and not at the initial application stage as is currently the case.

Clause 27 - Section 67R amended (Annual Report)

The principle Act is amended to reflect the change in terminology used for the reporting guidelines. *Annual Report Guidelines*, is substituted with '*Reporting Guidelines*'.

Clause 28 - Section 67RA inserted (Final report)

Clause 28 inserts a new section 60RA in the *Mineral Resources Development Act 1995* that requires the holder of a production licence to provide a *Final Report* at the end of life of the licence. The report must be provided within 3 months of the end of the licence and be in accordance with the requirements of the Reporting Guidelines, as provided for under section 204A of the Act. The final report will ensure that important geological data gathered in the course of works over the life of the tenement is not lost to the State and future explorers.

Clause 29 - Section 67S amended (Returns)

Updates this section of the principal Act to reflect the scope of the new '*Reporting Guidelines*' that may include specific information required to be included in the licensees production Returns.

Clause 30 - Section 68 amended (Notice to apply for mining lease)

Clause 30 amends section 68(4) of the *Mineral Resources Development Act 1995* by substituting '*section 75(3)*' with '*section 78A*' to correct the existing erroneous reference.

Clause 31 - Section 76 amended (Objections to a mining lease)

This clause amends the principal Act by including a mineral tenement holder (in respect of the same area of land) as a person who can lodge an objection to the proposed grant of a mineral tenement (mining lease), expanding the existing provision that provides this opportunity only for those persons with an '*interest or estate in the land*'.

Clause 32 - Section 78A amended (When Minister may grant application)

Clause 32 amends section 78A(1) of the *Mineral Resources Development Act 1995* to omit paragraph (f). Paragraph (f) requires the applicant to provide information on the environment, yet the environmental performance of a lessee is not regulated under this Act.

This clause also will amend the principal Act to confirm that the applicant must provide evidence of a valid public liability insurance policy prior to the Minister granting an application for a mining lease. Public liability insurance cover is required to be held by all mineral tenement holders. This amendment will clarify this requirement and allow the applicant for a mining lease to provide evidence of such cover just prior to the grant of a tenement, and not at the initial application stage as is currently the case.

Clause 33 - Section 80 amended (Conditions of a mining lease)

Clause 33 amends section 80 of the *Mineral Resources Development Act 1995* by inserting a new sub section (3A) to provide the Minister with the authority to vary the category of mineral to which a lease relates. This will allow the lessee to, if a market exists, sell what may previously have been considered waste materials with the resultant benefit to the economy and environment.

Clause 34 - Section 84 amended (Authority of mining lease)

Clause 34 amends section 84(1)(c) of the *Mineral Resources Development Act 1995* by replacing the words “*with the owner or occupier of that land*” with “*in respect of that land*” to clarify that the mining operator can continue to carry on mining operations even if the land is sold. The words ‘*or the Mining Tribunal has made a determination under section 150*’ have been inserted to clarify that mining operations on private land can be undertaken if the Mining Tribunal has determined the compensation required in the absence of a negotiated compensation agreement.

Clause 35 - Section 87 amended (Returns)

Clause 35 amends section 87 of the *Mineral Resources Development Act 1995* to correct an erroneous reference to ‘*licensee*’ that has been replaced with the correct term ‘*lessee*’. The new ‘*Reporting Guidelines*’ term has also been inserted in subsection 3(c) as these guidelines may include specific information that will required to be included in the lessees Returns.

Clause 36 - Section 87A amended (Annual report)

Clause 36 amends the principle Act to reflect the change in terminology used for the reporting guidelines. *Annual Report Guidelines*, is substituted with ‘*Reporting Guidelines*’.

Clause 37 - Section 87AB inserted (Final Report)

This clause inserts a new section 87AB in the *Mineral Resources Development Act 1995* that requires the holder of a mining lease to provide a *Final Report* at the end of life of the lease if the Director requests one to be provided via the serving of a notice on the lessee. The report must be provided within 3 months of the end of the lease and be in accordance with the requirements of the Reporting Guidelines, as provided for under section 204A of the Act. The final report will ensure that important geological data gathered in the course of works over the life of the tenement is not lost to the State and future explorers.

Clause 38 - Section 102A amended (Royalty rebate)

This clause amends section 102A(2) of the *Mineral Resources Development Act 1995* clarifying that a rebate on royalty payable, if granted, can be at a prescribed rate **or** as per a prescribed method.

Clause 39 - Section 113 amended (Term of prospecting licence and group prospecting licence)

This clause amends section 113 of the *Mineral Resources Development Act 1995* to allow the Director of Mines to issue Prospecting Licences for a period of up to five years. The current restriction to one year licences is an excessive administrative burden on both the applicant and the administrators.

Clause 40 - Section 144 amended (Compensation for compensable loss)

Clause 40 amends section 144 of the *Mineral Resources Development Act 1995* by providing compensation to be payable by a mineral tenement holder to the holders of a forestry right

(under the *Forestry Rights Registration Act 1990*) on private land. Currently the provisions for compensation on private land are restricted to those with an interest or estate in that land. The holder of a forestry right only has an interest or estate in the trees not the land.

Clause 41 - Section 145 amended (Compensation agreement for compensable loss)

Clause 41 provides amendments to section 145 of the *Mineral Resources Development Act 1995* that will:

- a) clarify that, in addition to the holder of a mineral tenement, an applicant for a mineral tenement can also negotiate a compensation agreement. A compensation agreement is required before the Minister may grant an application for a mining lease, and as such the provision for the applicant to be able to negotiate such an agreement is required to be clarified.
- b) allow the holder of a forestry right (under the *Forestry Rights Registration Act 1990*) to enter into a compensation agreement with the holder of a mineral tenement on that private land.
- c) provide clarification that a valid compensation agreement, made between the lessee and the owner of the land prior to the sale of the land, continues in force with a new land owner, until such time as it is renegotiated, terminated or expires. Without this amendment it could be read that the compensation agreement that allows the operator of a mining lease to undertake mining operations on private land is rendered invalid upon the sale of that land. This is not the intent of the Act.

Clause 42 - Section 147 amended (Compensation for damage to improvements)

Clause 42 amends section 147(2) in the *Mineral Resources Development Act 1995* to provide for compensation to be payable by a mineral tenement holder to the holder of a forestry right (under the *Forestry Rights Registration Act 1990*) on Crown land, where the actions of that mineral tenement holder have impacted on the forestry right holders assets. Currently the Act only authorises for compensation to be paid to the Crown, or to Crown Licensees or Lessees, yet some privately held forestry rights exist on Crown land.

Clause 43 - Section 148 amended (Compensation agreement for damage to improvement)

This clause provides an amendment to the *Mineral Resources Development Act 1995* that will allow the holder of a forestry right (under the *Forestry Rights Registration Act 1990*) to enter into a compensation agreement with the holder of a mineral tenement on Crown Land.

Clause 44 - Section 150 amended (Determination of compensation)

This clause provides an amendment to the Principal Act that will allow for the holder of a forestry right to apply to the Mining Tribunal for the determination of compensation where no agreement has been reached. The amendment reflects the existing provisions in relation to compensation, which now extend to the holder of a forestry right.

Clause 45 - Section 196A inserted (Variation of security deposit)

This clause provides for a new section to be inserted in the *Mineral Resources Development Act 1995* that will allow the Minister to vary the amount of security deposit required to be provided by the holder of a mineral tenement. This change will clarify the Ministers ability to do so, and provide an important tool to encourage progressive rehabilitation and ensure the amounts held are reflective of the true value of the current rehabilitation obligations. The value of the required security deposit required can be either increased or reduced.

Clause 46 - Section 197 amended (Refund of security deposit)

This clause amends section 197 of the *Mineral Resources Development Act 1995* by inserting a new subsection (1A) that clarifies that the Minister has the authority to provide refunds of security deposits to mineral tenement holders so the amount held is commensurate with the potential for environmental liabilities, which can vary over time.

Clause 47 - Section 198 amended (Forfeiture of security deposit)

This clause amends section 198 of the *Mineral Resources Development Act 1995* to stipulate that the security deposit supplied by a mineral tenement holder may be forfeited (in all or in part) to the Crown where the holder of a mineral tenement has failed to fulfil their obligations under the Act in relation to the provision of required reports.

Clause 48 - Section 204A amended (Reporting guidelines)

This clause amends section 204A of the *Mineral Resources Development Act 1995* to provide for mineral tenement returns and the newly provided for final report to be included in the guidelines issued under this section, in addition to annual reporting requirements that are already provided for under the Annual Report Guidelines. The guidelines assist in the provision of the details required to be included in the reports that are important to ensure that the State and future explorers receive all the relevant geological information and data collected during the life of a mineral tenement.

Part 3 Forest Management Act 2013 Amended**Clause 49 - Principal Act**

This clause provides that the *Forest Management Act 2013* is referred to as the Principal Act in this part.

Clause 50 - Schedule 3 amended (Certain forest reserves declared to be reserved land under Nature Conservation Act 2002)

This clause amends the table at clause 6 of schedule 3 of the Principal Act, to correct an error in the drafting of the Act in relation to the applicability of the *Mineral Resources Development Act 1995* to three of the forest reserves referred to in the Schedule: Alma Tier, Dismal Swamp and Lake Pieman. These three reserves were the subject of an order (SRI998 #83) under the *Mineral Resources Development Act 1995*, prior to the Royal Assent of the *Forest Management Act 2013*. The status of these reserves had not been updated in the government database at the time of drafting the new legislation.

Part 4 - Repeal of Act**Clause 51 - Repeal of Act**

This clause provides that the Bill is repealed on the 365th day from the day on which it commences.