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FIJI ISLANDS

MINERAL (EXPLORATION AND EXPLOITATION) BILL 2006

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A BILL

FOR AN ACT TO MAKE PROVISION RELATING TO THE EXPLORATION FOR AND EXPLOITATION OF MINERALS, THE HEALTH AND SAFETY OF WORKERS AND OTHERS IN OR AFFECTED BY MINING AND OTHER ACTIVITIES, AND OTHER RELATED MATTERS

ENACTED by the Parliament of the Fiji Islands –

PART 1—PRELIMINARY AND GENERAL PROVISIONS

Division 1 – Introduction

Short title and commencement

1. – (1) This Act may be cited as the Mineral (Exploration and Exploitation) Act 2005.
- (2) This Act commences on a date appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires —

“Advisory Board” means the Mineral Industry Health and Safety Advisory Board established by this Act;

“approved code of practice” means a code of practice approved under section 299;

“area” –

- (a) of a prospector’s right – means an area in which prospecting activities are being carried out under the authority of the prospector’s right; or
- (b) of an exploration licence, development licence or mining lease – means the area over which the licence or lease is in force;

and the expression “area of a mineral authority” has a corresponding meaning;

“authorised officer” means a person who is an authorised officer under Part 10;

“coal” includes coal in all its varieties, oil shale and all other substances of a similar nature;

“code of practice” – see definition of “approved code of practice”;

“continental shelf” means the continental shelf of Fiji, including the exclusive economic zone as provided by section 7 of the Marine Spaces Act (Cap. 158A);

“Department” means the department responsible for the administration of this Act;

“development licence” means a development licence under Part 4;

“Director” means the person appointed or acting as Director of Mines within the Department or in another position prescribed by the regulations;

“earthy minerals” includes asbestos, ball-clay, barytes, bauxite, bentonite, china-clay, fuller’s earth, glass sand, graphite, gypsum, marble, mica, nitrates, phosphates, pipeclay, potash, salt, slate, soda, sulphur, talc and all other substances of a similar nature;

“EIA report” means an EIA report referred to in the Environment Management Act 2005;

“exploration licence” means an exploration licence under Part 3;

“explore” means to take action to determine the existence, quality and quantity of minerals on, in or under land by any or all of the following methods –

- (a) prospecting;
- (b) using any instruments, equipment, machinery or techniques appropriate to determine the existence, quality or quantity of minerals;
- (c) extracting or removing from land for sampling and testing an amount of material in each case reasonably necessary to determine its mineral bearing capacity or its properties as an indication of mineralisation;

“foreign country” means –

- (a) a country other than the Fiji Islands; or
- (b) a state, province or other part of a country other than the Fiji Islands;

“foreign mineral authorisation” means a lease, licence or other authority to engage in mineral exploration or mineral exploitation granted or issued under the law of a foreign country;

“inspector” means a person who is an inspector under Part 10;

“land” includes water and land covered by water;

“metalliferous minerals” includes aluminium, antimony, arsenic, bismuth, cadmium, chromium, cobalt, copper, iron, lead, manganese, mercury, molybdenum, nickel, tin, tungsten, vanadium, zinc and all ores containing them, and all other minerals and mineral substances of whatever description, but excluding the substances included in paragraphs (a) – (e) of the definition of “mineral”;

“mine” (used as a noun) means a place where a mining operation is being, will be or has been carried out;

“mineral” means a substance that normally occurs naturally in or as part of the earth’s crust or is dissolved or suspended in water in or on the earth’s crust, or a substance that may be extracted from such a substance, and includes –

- (a) precious metals;
- (b) precious stones;
- (c) earthy minerals;
- (d) radioactive minerals;
- (e) coal;
- (f) metalliferous minerals;
- (g) any substance for the time being declared under section 4 to be a mineral for the purposes of this Act;

but does not include –

- (h) living matter;
- (i) petroleum;
- (j) clay, gravel, sand, stone or other common mineral substances unless declared by the Minister to be a mineral for the purposes of this Act; or
- (k) any substance for the time being declared under section 4 not to be a mineral for the purposes of this Act;

“mineral authority” means a prospector’s right, exploration licence, development licence or mining lease;

“mining” has the meaning given by section 3; and “to mine” has a corresponding meaning;

“mining development” means any activity carried out in or on land for the purpose of assessing the land for exploitation of mineral resources in or on the land or to bring the land to mine readiness stage, and includes the following –

- (a) exploring the land or continuing to explore the land;
- (b) undertaking, in or on the land, feasibility and other studies and environmental impacts assessments relating to the exploitation of mineral resources in or on the land;
- (c) negotiating or finalising compensation arrangements in respect of the exploitation of mineral resources in or on the land;
- (d) marking out the whole or any part of the land for the purpose of applying for a mining lease;
- (e) carrying out activities in or on the land preparatory to carrying out mining operations;

“mining lease” means a mining lease under Part 5;

“mining operation” means an operation in or by which the whole process of mining is carried out, and includes a part of any such operation;

“named month” means one of the 12 named months of the year;

“native land” means native lands within the meaning of the Native Lands Act (Cap. 133);

“occupier” of land means a person (other than the owner) lawfully occupying the land, and, in relation to native land, includes a person occupying the land with the permission of the owner of the native land; and “apparent occupant” means a person who appears to be an occupier of the land;

“operator” has the same meaning as in Part 9;

“owner” of land means –

- (a) where the land has been granted or alienated in fee simple – the registered proprietor of the land;
- (b) where the land is native land –
 - (i) the Native Land Trust Board, unless subparagraph (ii) applies; or
 - (ii) for the purposes of Parts 2, 3 and 4 – the mataqali or other divisions of Fijians having customary rights to occupy and use the land;

- (c) where the land is owned in accordance with the Rotuma Lands Act (Cap. 138) – the person recognised as owner of that land;
- (d) where the land is owned in accordance with the Banaban Lands Act (Cap. 124) – the person recognised as owner of that land; or
- (e) where the land is State land – the Director of Lands;

“petroleum” means petroleum within the meaning of the Petroleum (Exploration and Exploitation) Act (Cap. 148);

“petroleum licence” means a licence granted under the Petroleum (Exploration and Exploitation) Act (Cap 148);

“precious metals” includes gold, silver, platinum, palladium, iridium or osmium, or ores containing them, and all other substances of a similar nature;

“precious stones” includes amber, amethyst, beryl, cat’s-eye, chrysolite, diamond, emerald, garnet, opal, ruby, sapphire, turquoise and all other stones of a similar nature;

“premises” includes any place, and in particular includes –

- (a) any land, building or part of any building;
- (b) any vehicle, vessel or aircraft;
- (c) any installation on land, on the bed of any waters or floating on any waters; or
- (d) any tent or moveable structure;

“prospect” means to take action to determine the existence, quality and quantity of minerals on, in or under land by any or all of the following methods –

- (a) using hand held metal detectors or other similar hand held instruments;
- (b) sampling by the use of hand held instruments or hand held implements (or both);
- (c) digging pits, holes or trenches by the use hand held implements;

“prospector’s right” means a prospector’s right under Part 2;

“protected area” means a protected area under Division 1 of Part 6;

“quarry” means –

- (a) an excavation or other place in which persons work at the removal of rock, earth, clay, soil, gravel, limestone or any substance for the time being declared under section 4 not to be a mineral for the purposes of this Act, by means of explosives;
- (b) any tunnel in the construction of which mechanical tunnelling equipment or explosives are used;
- (c) any rock crushing or rock treatment plant that is or is capable of being operated in connection with –
 - (i) operations described in paragraph (a) or identical operations except that the removal is effected by means other than explosives; or
 - (ii) operations described in paragraph (b);
- (d) any place that is for the time being declared under section 6 to be a quarry for the purposes of this Act; or

- (e) any place at which is being carried out an activity that is for the time being declared under section 6 to be a quarry activity for the purposes of this Act;

but does not include –

- (f) any mine or part of a mine;
- (g) any place that is for the time being declared under section 6 not to be a quarry for the purposes of this Act;
- (h) any place at which is being carried out an activity that is for the time being declared under section 6 not to be a quarry activity for the purposes of this Act, unless the place is a quarry by virtue of another paragraph of this definition; and
- (i) any excavation or cutting for a thoroughfare or for the foundations or site of a building, unless the excavation or cutting is for the time being declared under section 6 to be a quarry or quarry activity for the purposes of this Act;

“radioactive minerals” includes minerals either raw or treated (including residues and tailings) that contain by weight at least 0.05 per cent of uranium or thorium or any combination of them, including but not limited to –

- (a) monazite sand and other ores containing thorium; and
- (b) carnotite, pitch blende and other ores containing uranium;

“Registrar” means the person appointed or acting as Mining Registrar within the Department or in another position prescribed by the regulations;

“regulated operations” means any mining or other operations carried out in or on a regulated workplace;

“regulated workplace” means –

- (a) the area of a mineral authority;
- (b) any workplace to which Part 9 extends;
- (c) any place in or on which mining operations are being carried out, whether or not under the authority of a mineral authority; or
- (d) any premises in or on any such area, workplace or place;

“restricted zone” means a restricted zone under Division 1 of Part 6;

“road” includes a track, path or other thoroughfare;

“sub-block” means a sub-block referred to in Division 1 of Part 3;

“Tribunal” means the Mining Tribunal established by this Act;

“worker” means a person who is employed under a contract of service or who works under a contract for service;

“workplace” means any place, whether or not in a building or structure, where workers work.

Meaning of mining

3. – (1) In this Act, “mining” means carrying on an operation with a view to, or for the purpose of –

- (a) winning and transporting a mineral or mineral-bearing substance from a place where it occurs;
- (b) extracting a mineral or mineral-bearing substance from its natural state; or
- (c) disposing of mineral in connection with, or waste substances resulting from, the winning or extraction.

(2) For the purposes of subsection (1), extracting –

(a) includes –

- (i) the physical, chemical, electrical, magnetic or other way of separation of a mineral; and
- (ii) without limiting subparagraph (i), crushing, grinding, concentrating, screening, washing, jigging, tabling, electro winning, solvent extraction electro winning (SX–EW), heap leaching, flotation, fluidised bedding, carbon-in-leach (CIL) and carbon-in-pulp (CIP) processing; but

(b) does not include –

- (i) a process in a smelter, refinery or anywhere else by which a mineral is changed to another substance;
- (ii) testing or assaying small quantities of a mineral in teaching institutions or laboratories, other than laboratories situated on the area of a mining lease; or
- (iii) an activity, prescribed under the regulations, that is not directly associated with winning mineral from a place where it occurs.

(3) For the purposes of subsection (1), disposing includes the disposal of tailings and waste rock.

(4) A regulation made for the purposes of subsection (2) (b) (iii) may prescribe an activity by reference to the quantities of minerals extracted or to any other specified circumstances.

Declarations regarding minerals

4. – (1) The Minister may, by order in the Gazette, declare any specified substance to be or not to be a mineral for the purposes of this Act.

(2) If a substance is declared not to be a mineral for the purposes of this Act, ownership of the substance reverts to the person who would be the owner but for the operation of subsection (1).

Geothermal resources

5. This Act applies to geothermal resources and their heat, with any necessary modifications, in the same way as it applies to minerals.

Division 2 – Application of Act to quarries

Declarations regarding quarries

6. The Minister may, by order in the Gazette, declare –
- (a) any place to be or not to be a quarry for the purposes of this Act; or
 - (b) any activity or operation to be or not to be a quarry activity for the purposes of this Act.

Application of Act to quarries

7. – (1) A provision of this Act applies in relation to quarries to the extent that the provision expressly applies in relation to quarries.

(2) A provision of this Act that does not otherwise expressly apply in relation to quarries applies in relation to quarries in accordance with subsections (3) and (4).

(3) The Minister may, by order in the Gazette, declare that specified provisions of this Act are, subject to this section, to apply in relation to specified quarries or classes of quarries in the same way as those provisions apply in relation to mines or specified classes of mines.

(4) If a declaration under this section is in force, the provisions of this Act specified in the declaration, as far as they are applicable and with any necessary modifications and any modifications specified in the declaration, apply in relation to the specified quarries or classes of quarries, as if every reference to a mine included a reference to a quarry.

Division 3 – Reservation of minerals*Reservation of minerals to the State*

8. All minerals in or under all lands of whatsoever ownership or tenure and in whosoever possession or enjoyment they may be, continue to be, are and are deemed always to have been the property of the State and are deemed not to have been parted with under any alienation, dedication, lease, licence or permit of those lands except in so far as any such rights may in any case have been limited by any express grant made before the commencement of this Act.

Unauthorised activities

9. – (1) A person who carries out, or causes to be carried out, activities on or in any land (including the continental shelf) for the purpose of prospecting, exploration, mining development or mining commits an offence, unless the person establishes that the activities are carried out under a mineral authority.

(2) Subsection (1) applies to a person whether or not the person is an owner or occupier of the lands or waters concerned.

Division 4 – Exclusion zones*Exclusion zones*

10. – (1) For the purpose of protecting any mineral resource, the Minister may, by order in the Gazette, declare –
- (a) any area to be an exclusion zone; and
 - (b) that any specified activity, industry or development is prohibited within that exclusion zone or is restricted to being carried out within that exclusion zone in accordance only with specified conditions.
- (2) A declaration may be made under this section whether or not –
- (a) the exclusion zone is wholly or partly within the area of a mineral authority; and
 - (b) the activity, industry or development is permitted under any written law.
- (3) A person who carries out, or causes to be carried out, an activity, industry or development in an exclusion zone contrary to the terms of a declaration under this section commits an offence.
- (4) Subsection (3) applies to a person whether or not the person is an owner of the land concerned or is the holder of a mineral authority.

Division 5 – Notices relating to certain land and customary fisheries

Notices relating to native land and customary fisheries

11. – (1) This section applies if a person is required by or under this Act to give a notice of any kind to the owners of native land or customary fisheries.
- (2) The person required to give the notice must obtain a written statement of the names of the owners of the native land or customary fisheries from the Native Lands and Fisheries Commission.
- (3) The person must –
- (a) give the notice to –
 - (i) both the Turaga ni Koro and the resident Turaga ni Mataqali, unless the land is owned by the Tokatoka; or
 - (ii) the resident Turaga ni Tokatoka, if the land is owned by the Tokatoka,
 but if neither is so resident, must instead give the notice to –
 - (iii) the resident Turaga ni Yavusa, in the case of the mataqali; or
 - (iv) the resident Turaga ni Mataqali, in the case of the Tokatoka;
 - (b) give the notice to –
 - (i) the Roko Tui of the Province concerned;
 - (ii) the Manager of the Native Land Trust Board for the Division concerned; and
 - (iii) where applicable, the Commissioner of the Division concerned; and
 - (c) in the case of the Turago ni Koro, the resident Turaga ni Mataqali or the resident Turaga ni Tokatoka – cause the notice to be delivered personally.

(4) The requirement referred to in subsection (1) is satisfied by compliance with subsections (2) and (3).

(5) The person giving the notice must provide a copy of the notice, and a copy of the written statement referred to in subsection (2), to the Registrar within one month after giving the notice.

(6) A person who contravenes a requirement of this section commits an offence.

Notices relating to Rotuman and Banaban land

12. – (1) This section applies if a person is required by or under this Act to give a notice of any kind to the owners of land owned in accordance with the Rotuma Lands Act (Cap. 138) or the Banaban Lands Act (Cap. 124).

(2) The person must give the notice to such persons or bodies as are specified in or determined in accordance with the regulations.

(3) The requirement referred to in subsection (1) is satisfied by compliance with subsection (2).

(4) The person giving the notice must provide a copy of the notice to the Registrar within one month after giving the notice.

(5) A person who contravenes a requirement of this section commits an offence.

PART 2—PROSPECTORS' RIGHTS

Division 1 – Introduction

Prospectors' rights generally

13. Prospectors' rights may be granted to eligible persons in accordance with this Part.

Application of Part 6

14. This Part does not affect the operation of, and has effect subject to, Part 6.

Division 2 – Entitlements

Entitlements

15. Subject to this Act, the holder of a prospector's right is entitled –

- (a) to prospect for minerals on any land; and
- (b) to mark out the area of a proposed mining lease on any land.

Division 3 – Application and grant

Grant of prospector's right

16. – (1) The Director may grant a prospector's right on application made and approved in accordance with this Part.

(2) A prospector's right can be granted only to one person.

(3) Subject to subsection (4), a prospector's right may be granted to a person in his or her own right or as agent for a partnership, company or other person (a "principal"), and the prospector's right may contain a statement to that effect.

(4) A prospector's right must not be granted to a person as agent for a principal unless –

- (a) the applicant satisfies the Director that the applicant is the lawfully constituted agent of the principal; and
- (b) the applicant produces a document in writing signed by a director, manager, partner or agent of the principal containing an undertaking by the principal to be responsible for the acts or omissions of the applicant if the right is granted.

(5) If a prospector's right is granted to a person as agent for a principal, the principal and the agent are each responsible for the acts and omissions of –

- (a) the agent as the holder of the right; and
- (b) any person responsible to the holder.

Applications

17. – (1) An eligible person may apply for a prospector's right in accordance with this Part.

(2) An application for a prospector's right is not made in accordance with this Part unless it is –

- (a) made to the Registrar in the prescribed form and accompanied by the prescribed fee; and
- (b) accompanied by proof of the age of the applicant that is acceptable to the Registrar.

Eligible persons

18. A person is eligible to apply for and be granted a prospector's right if he or she is an individual of or over 21 years of age.

Criteria

19. An application for a prospector's right is not to be approved unless the Director is satisfied that –

- (a) the applicant has given an undertaking in a form acceptable to the Director (contained in the application or in a separate document) to comply with all

- relevant conditions attaching to the right and all applicable approved codes of practice;
- (b) the applicant understands the entitlements and obligations under the prospector's right;
 - (c) the past performance of the applicant as the holder of any mineral authority or foreign mineral authorisation has been satisfactory;
 - (d) where the applicant is applying for the prospector's right as agent – the past performance of the principal as the holder of any mineral authority or foreign mineral authorisation, or as the principal under a prospector's right, has been satisfactory;
 - (e) the activity proposed to be carried out under the prospector's right will not cause significant environmental or resource management impact; and
 - (f) the applicant will not thereby hold more than one current prospector's right (whether in his or her own right or as agent).

Decision on application

20. – (1) The Director may approve or refuse an application for a prospector's right.

(2) The Director may refuse to grant the application on any ground provided by or under this Act.

Division 4 – Term, conditions and statutory requirements

Term of currency

21. The term of a prospector's right is the period of 12 months commencing on the date it is issued or a later date specified in it.

Conditions

22. – (1) A prospector's right is subject to conditions attached to the right –

- (a) by force of this Act or the regulations; or
- (b) by the Director.

(2) The Director may attach conditions to a prospector's right on its grant or during its term and may vary or revoke any such conditions.

(3) Conditions referred to in subsection (2) must be as prescribed, or be of a kind prescribed, by the regulations or conditions of a kind that are authorised to be attached under a provision of this Act.

Security deposit

23. – (1) The Director may, in accordance with this section, require the applicant for or holder of a prospector's right, or the principal or proposed principal under the right, to deposit security.

(2) The Director may, before or on the grant of a prospector's right, require the applicant for or holder of the right, or the principal or proposed principal under the right, to deposit security ("initial security") approved or determined by the Director.

(3) If the Director is satisfied that, after the grant of a prospector's right, security or additional security (both of which are referred to as "progress security") is required having regard to any relevant matters, the Director may from time to time require the holder of or principal under the right to deposit progress security approved or determined by the Director.

(4) The amount or value of the security for a prospector's right must not be less than \$100.

(5) The Director may refuse to grant a prospector's right or may suspend or cancel a prospector's right on the ground that security if required is not deposited in accordance with this Act.

Production of prospector's right

24. – (1) A person purporting to be on land under the authority of a prospector's right must, on demand by an owner or apparent occupant of the land or an agent of the owner or apparent occupant of the land, or by the Director, the Registrar, an inspector or an authorised officer, produce the right or cause it to be produced to the person making the demand.

(2) For so long as a person fails to comply with a demand lawfully made of the person under subsection (1), the person does not have any of the entitlements under the authority.

Complaint by owner or occupier of land

25. – (1) This section applies if an owner or occupier of land on which prospecting activities are being carried out under the authority or purported authority of a prospector's right reports to the Registrar or an inspector that the owner or occupier considers the holder of the right or a person acting under the authority of the holder may have contravened or be contravening –

- (a) a provision of this Act or the regulations relating to prospectors' rights;
- (b) a provision of a relevant approved code of practice; or
- (c) a term or condition of the prospector's right.

(2) The Registrar –

- (a) must have the report investigated, unless the Registrar is satisfied that the subject-matter of the report has been previously investigated and does not require further investigation or that report is frivolous, misconceived or vexatious; and
- (b) may give any directions to the holder as the Registrar considers appropriate in the circumstances.

(3) The holder must comply with any direction given under this section.

Division 5 – Miscellaneous

Renewal not available

26. A prospector's right is not renewable, but this section does not prevent the holder from applying for and being granted another prospector's right to be in force on or after but not before the expiry the earlier prospector's right.

Cancellation or administrative penalties for breaches

27. – (1) The Director may serve a notice in writing on the holder of a prospector's right requiring the holder to show cause why punitive action should not be taken under this Act for an alleged breach, by the holder or a person acting under the authority of the holder, of –

- (a) a provision of this Act or the regulations relating to prospectors' rights;
- (b) a provision of a relevant approved code of practice; or
- (c) a term or condition of the prospector's right.

(2) Either or both of the following may be done by way of pecuniary action –

- (a) the Director may cancel the right by notice served on the holder;
- (b) the Director may recommend to the Tribunal that the Tribunal impose a pecuniary penalty on the holder.

(3) The maximum pecuniary penalty that may be imposed by the Tribunal pursuant to the recommendation is \$500.

Relationship with other mineral authorities

28. – (1) The holder of a prospector's right must not enter or carry out any activities on –

- (a) any land that is the subject of an exploration licence or development licence, unless the holder of the licence consents in writing; or
- (b) any land that is the subject of a mining lease; or
- (c) any land that is the subject of a current application for an exploration licence, development licence or mining lease.

(2) Subsection (1) does not apply to the extent that –

- (a) the holder of the prospector's right is also the holder of or applicant for the exploration licence, development licence or mining lease; or
- (b) the holder of the prospector's right lawfully enters the land for a purpose not connected with the exercise of rights under the prospector's licence and does not exercise any of those rights while on the land.

(3) Consent given under this section may be withdrawn by the holder of the exploration licence or development licence by notice in writing.

(4) A copy of a written consent or notice of withdrawal of consent must be lodged with the Registrar in accordance with the regulations, and the consent or withdrawal is not effective until it is registered by the Registrar.

(5) The holder of a prospector's right cannot mark out the area of a proposed mining lease on land that is the subject of an exploration licence or development licence for the same mineral, even with the consent of the holder of the licence, unless the holder of the prospector's right is also the holder of the licence.

(6) The mere holding of a prospector's right does not give the holder any right or priority to the grant of any other mineral authority, but this subsection does not affect the status of the holder of a prospector's licence as an eligible person in relation to an application for a mining lease for mining activities if the holder marked out the area of the proposed mining lease.

PART 3—EXPLORATION LICENCES

Division 1 – Introduction

Exploration licences generally

29. Exploration licences may be granted in accordance with this Part.

Blocks and sub-blocks

30. (1) Fiji is divided into blocks and sub-blocks for the purposes of this Act.

(2) The location of the blocks and sub-blocks is to be determined or identified in accordance with the regulations.

(3) If regulations are not in force for the purposes of subsection (2), sub-blocks are taken to be squares each consisting of one-hundredth part of a block constituted as provided in the Petroleum (Exploration and Exploitation) Act (Cap. 148).

Application of Part 6

31. This Part does not affect the operation of, and has effect subject to, Part 6.

Division 2 – Entitlements

Entitlements

32. Subject to this Act, the holder of an exploration licence is entitled –

- (a) to explore the area of the licence for minerals specified in the licence; and
- (b) to mark out and apply for development licences or mining leases (or both) in respect of an area within the area of the exploration licence for minerals specified in the exploration licence.

Division 3 – Application and grant

Grant of exploration licence

33. – (1) The Director may grant an exploration licence on application made and approved in accordance with this Part.

(2) One or more exploration licences may be held by a person.

(3) It is not a prerequisite to the grant of an exploration licence that the applicant be an individual or the holder of a prospector's right.

Categories of exploration licences

34. – (1) There are two categories of exploration licences, as follows –

- (a) metalliferous exploration licences;
- (b) special exploration licences.

(2) A metalliferous exploration licence may be granted only in respect of metalliferous minerals or precious metals or both, and must specify the minerals of those kinds in respect of which it is granted.

(3) A special exploration licence may be granted in respect of any minerals (including metalliferous minerals or precious metals or both so long as one or more other minerals are included), and must specify the minerals in respect of which it is granted.

Applications

35. – (1) An eligible person may apply for an exploration licence in accordance with this Part.

(2) An application for an exploration licence is not made in accordance with this Part unless –

- (a) it is made to the Registrar in the prescribed form and accompanied by –
 - (i) the prescribed application fee; and
 - (ii) the prescribed licence fee for the first year;
- (b) it describes the land in respect of which the licence is sought; and
- (c) it is accompanied by documentation acceptable to the Registrar that demonstrates the applicant's technical and financial capability.

(3) Financial capability may be demonstrated by reference to any one or more of the following –

- (a) the applicant's currently available financial resources or currently approved financial resources;
- (b) financial resources that are to become available within a specified period before the exploration licence takes effect, if granted;
- (c) financial resources that are to become available within a specified period after the exploration licence takes effect, if granted.

Eligible persons

36. – (1) Subject to subsection (2), any person is eligible to apply for an exploration licence.

(2) In a case where a moratorium period has been declared under section 41 in respect of any land, a person is not eligible to apply for an exploration licence over the land unless the person applies in accordance with that section after the expiry of the moratorium period.

Marking out and survey

37. – (1) This Act does not require the area of a proposed exploration licence to be marked out or surveyed before an application for the licence is made or the licence is granted.

(2) The Director may, at any time, require the whole or any part of the area of an exploration licence to be surveyed.

Criteria

38. – (1) An application for an exploration licence is not to be approved unless the Director is satisfied as to the matters referred to in subsections (2) and (3).

(2) The matter as to which the Director is to be satisfied under this subsection is as follows –

- (a) the applicant has given an undertaking in a form acceptable to the Director to satisfy the prescribed minimum expenditure requirements in relation to work to be carried out under the authority of the licence in respect of each year of the term of the licence, unless a declaration referred to in paragraph (b) is in force and applicable to the application; or
- (b) if a declaration under section 39 is in force providing a different basis for assessing an application and the declaration is applicable to the application – the application satisfies the requirements comprised in that basis.

(3) The matters as to which the Director is to be satisfied under this subsection are as follows –

- (a) the applicant has given an undertaking in a form acceptable to the Director to comply with all relevant conditions attaching to the licence and all applicable approved codes of practice;
- (b) the past performance of the applicant as the holder of a mineral authority, or as the principal under a prospector's right, has been satisfactory;
- (c) the applicant has an employment and skills strategy for local workers;
- (d) the applicant has demonstrated sufficient technical and financial capability for the work proposed to be carried out under the authority of the licence.

Declaration of special basis for assessing applications

39. – (1) The Director may, by notice in the Gazette, declare that specified applications or classes of applications for exploration licences are to be assessed on a basis specified in the declaration.

(2) Different requirements may be included in a declaration under this section for different exploration licences, different minerals or for different parts of Fiji or any combination of those factors.

(3) Without limiting subsection (2), a declaration under this section may apply to one or more specified exploration licences or classes of exploration licences by reference to the location of the land involved, the minerals involved or other factors.

(4) The power to make a declaration under this section includes a power to vary or revoke the declaration by notice in the Gazette.

Land becoming available for application for exploration licences after moratorium period

40. – (1) This section applies to –

- (a) land that ceases to be within a restricted zone that prohibited the making or processing of applications for exploration licences in respect of the land; or
- (b) land that ceases to be the subject of an exploration licence or development licence.

(2) The Director may, by notice in the Gazette on or after the date on which the land ceases to be within the restricted zone or to be the subject of the exploration licence or development licence, declare that the land is to become available for applications for exploration licences for specified minerals after a period (the “moratorium period”) ending on a specified date.

(3) The moratorium period –

- (a) begins with the date on which the land ceases to be within the restricted zone or to be the subject of the exploration licence or development licence; and
- (b) ends with the date specified in the declaration as the ending date.

(4) Applications cannot be made for an exploration licence in respect of the land until the expiry of the moratorium period.

(5) Any applications for exploration licences made or pending in respect of the land during the moratorium period must be rejected.

Decision on application

41. The Director may approve or refuse an application for an exploration licence.

Division 4 – Terms, conditions and statutory requirements

Terms

42. An exploration licence is to specify –
- (a) the minerals in respect of which it is granted;
 - (b) the area of the licence; and
 - (c) the term of the licence.

Term of currency

43. – (1) The initial term of an exploration licence is the period of years (not exceeding 5 years) specified in the licence commencing on the date it is issued or a later date specified in it.
- (2) The term for which an exploration licence is renewed is the period of years (not exceeding 5 years) specified in the instrument of renewal.

Maximum cumulative term

44. Despite any other provisions of this Part, the maximum term for which an exploration licence, as renewed, can be in force is 10 years.

Conditions

45. – (1) An exploration licence is subject to conditions attached to the licence –
- (a) by force of this Act or the regulations; or
 - (b) by the Director.
- (2) The Director may attach a condition that requires the holder of an exploration licence to undertake such work as will meet the relevant requirements for minimum expenditure referred to in section 49.
- (3) The Director may attach other conditions to an exploration licence on its grant or during its term and may vary or revoke any such conditions.
- (4) Conditions referred to in subsection (3) must be as prescribed, or be of a kind prescribed, by the regulations or conditions of a kind that are authorised to be attached under a provision of this Act.

Size and shape of area

46. – (1) Subject to this Part, an exploration licence can only be held in respect of whole sub-blocks, but the sub-blocks can be in any configuration.
- (2) The maximum number of sub-blocks that can be the subject of an exploration licence is 200, unless the Director determines in the particular circumstances that a greater number is appropriate on either or both of the following grounds –
- (a) the geological structure of or near the mineral resource warrants the greater number;

- (b) the exclusion of part of the mineral resource would result in the likelihood that the excluded resource would not be the subject of the grant of another mineral authority for a significant period.
- (3) The sub-blocks that are the subject of an exploration licence must constitute a single area and each sub-block must immediately adjoin another of the sub-blocks, unless the Director determines in the particular circumstances that the sub-blocks may constitute 2 or more separate and non-contiguous areas.
- (4) For the purposes of this section, a sub-block immediately adjoins another sub-block if the 2 sub-blocks have a side in common.
- (5) If a part of the area of an exploration licence includes or purports to include –
- (a) an area that is outside the lands and waters of Fiji; or
 - (b) an area that comprises or is within a restricted zone,
- the licence is valid but (subject to any other Act) does not authorise exploration to be carried out in that part.
- (6) An applicant for an exploration licence who has applied for a determination under subsection (2) may appeal to the Tribunal against the refusal of the Director to make the determination.
- (7) Nothing in this section prevents an exploration licence from being held in respect of a single sub-block only.

Periodic reduction in size of area

47. – (1) The area of an exploration licence (if in excess of 30 sub-blocks) must be reduced at the end of the second year of the term of the licence by at least 50 per cent, and thereafter at the end of each subsequent year of the term by at least 50 per cent of the balance of the then remaining sub-blocks, until an area of no more than 30 sub-blocks remains.
- (2) Despite subsection (1), if the area of an exploration licence is in excess of 30 sub-blocks immediately before the end of the fifth year of its term, the area of the licence must be reduced at the end of that year by the withdrawal of sub-blocks so that an area of 30 sub-blocks remains.
- (3) Despite subsections (1) and (2), the Director may, when renewing an exploration licence that will have been in force for more than 5 years on renewal, reduce the area of the licence by withdrawing sub-blocks so that an area of fewer than 30 sub-blocks remains.
- (4) The terms of an exploration licence may provide at the time of the grant that –
- (a) subsection (1) does not apply to the licence; or

- (b) subsection (1) applies to the licence with such specified modifications as are specified in those terms and as will result in the area of the licence being reduced on a different basis,
but neither this subsection nor the terms of the licence affect the operation of subsection (2) or (3).
- (5) The sub-blocks to be withdrawn from the area of an exploration licence by way of reduction of the area under this section are to be –
- (a) those nominated by the holder of the licence by notice in writing given to the Director not later than one month before the end of the year concerned or the renewal; or
 - (b) those nominated by the Director to the extent that the holder does not nominate the sub-blocks or to the extent that the nomination by the holder is invalid.
- (6) A nomination by the holder of the exploration licence is invalid to the extent that the resulting area of the licence would be in breach of section 47.
- (7) The holder of the exploration licence may choose to nominate more than the required number of sub-blocks for withdrawal even though the remaining area would consist of fewer than 30 sub-blocks.
- (8) If the exploration licence ceases to be in force in respect of any whole sub-blocks because of the grant of a development licence or mining lease during a year of the term of the exploration licence, those sub-blocks may be counted towards the reduction of sub-blocks required as at the end of that year.
- (9) The withdrawal of sub-blocks from the area of the exploration licence is effected by instrument in writing signed by the Director.
- (10) A reference in this section to the term of an exploration licence includes any term for which the licence is renewed.

Security deposit

48. – (1) The Director may, in accordance with this section, require the holder or former holder of an exploration licence to deposit security.
- (2) The Director may, on the grant of an exploration licence, require the holder of the licence to deposit security (“initial security”) approved or determined by the Director.
- (3) If the Director is satisfied that, after the grant of an exploration licence, security or additional security (both of which are referred to as “progress security”) is required having regard to any relevant matters, the Director may from time to time –
- (a) require the holder of the licence to deposit progress security approved or determined by the Director; or

- (b) require the former holder of an exploration licence to deposit progress security as approved or determined by the Director, but may do so only during the period of 3 months after the licence expired, was cancelled or was surrendered.

(4) The Director may suspend or cancel an exploration licence on the ground that initial security, if required, is not deposited in accordance with this Act.

Minimum expenditure requirements

49. – (1) The regulations may make provision for or with respect to the minimum expenditure to be incurred in relation to work to be carried out under the authority of an exploration licence.

(2) Without limiting subsection (1), the regulations may specify, or specify the method of determining, the following –

- (a) the amount of minimum expenditure to be incurred in relation to the whole area of an exploration licence or to sub-blocks in that area (or both);
- (b) the sub-blocks in the area of an exploration licence in relation to which the minimum expenditure requirements are to apply;
- (c) the period or periods in which the minimum expenditure is to be incurred (including by reference to the term of an exploration licence and any renewed exploration licence).

(3) Without limiting any power to make regulations having a differential operation, different expenditure requirements may be prescribed for different exploration licences, different minerals or for different parts of Fiji or any combination of those factors.

(4) Any alteration to the minimum expenditure requirements of the regulations made during the period of currency of an exploration licence does not apply to the licence except at the time of renewal.

Licence fees

50. – (1) It is a statutory condition of an exploration licence that the holder must pay licence fees in accordance with the regulations.

(2) Without limiting subsection (1), the regulations may make provision for or with respect to determining, or determining the method of calculating, the amount of licence fees and the times and manner of payment.

(3) Different amounts or rates of licence fees may be prescribed for different exploration licences or classes of exploration licences, and they may vary according to the size of the areas of licences, the minerals in respect of which they are in force or any other factors.

(4) Licence fees, and arrangements relating to payment of licence fees, for an exploration licence may be varied in accordance with the regulations during the term of the licence.

Division 5 – Miscellaneous

Renewal

51. The holder of an exploration licence is entitled to have the licence renewed from time to time in accordance with this Part, so long as the Director is satisfied that there has been substantial compliance with all relevant written law, the terms and conditions of the exploration licence and any applicable approved codes of practice.

Cancellation or administrative penalties for breaches

52. – (1) The Director may serve a notice in writing on the holder of an exploration licence requiring the holder to show cause why punitive action should not be taken under this Act for an alleged breach, by the holder or a person acting under the authority of the holder, of –
- (a) a provision of this Act or the regulations relating to exploration licences;
 - (b) a provision of a relevant approved code of practice; or
 - (c) a term or condition of the exploration licence.
- (2) Either of both of the following may be done by way of way of punitive action –
- (a) the Director may cancel the exploration licence by notice in writing served on the holder;
 - (b) the Director recommend to the Tribunal that the Tribunal impose a pecuniary penalty on the holder.
- (3) The maximum pecuniary penalty that may be imposed by the Tribunal pursuant to the recommendation is \$10,000.

Reports

53. – (1) The holder or former holder of an exploration licence must lodge the following reports with the Director –
- (a) an annual general report for each year of the term, to be lodged within 2 months after the anniversary date for the licence;
 - (b) a preliminary rehabilitation report for each withdrawn area, to be lodged within 2 months after the area is withdrawn from the area of the licence;
 - (c) an interim rehabilitation report for each withdrawn area, confirming that the holder of the licence has successfully rehabilitated all land in the withdrawn area affected by the work carried out under or in connection with the licence, to be lodged within a period specified by the Director;
 - (d) a final general report, to be lodged within 3 months after the licence terminates;
 - (e) a final rehabilitation report for the whole area of the licence after the licence terminates, confirming that the former holder of the licence has successfully rehabilitated all land affected by the work carried out under or in connection with the licence, to be lodged within a period specified by the Director.

(2) The form and contents of a report are to conform to any requirements prescribed by the regulations or specified in the conditions of the exploration licence.

(3) The Director may cause any report to be made available to the public in any way the Director thinks appropriate, but annual reports are to be kept confidential until the licence terminates or, if there is a moratorium period that begins with the termination of the licence, until the expiry of the moratorium period.

PART 4—DEVELOPMENT LICENCES

Division 1 – Introduction

Development licences generally

54. – (1) Development licences may be granted to eligible persons in accordance with this Part for defined mineral resources.

- (2) There are two categories of development licences, as follows –
- (a) general development licences;
 - (b) retention development licences.

Retention development licences

55. – (1) A development licence is a retention development licence if –
- (a) the application for the licence was accompanied by a retention statement under this Part indicating that the purpose or one of the purposes of applying for the licence is to retain the mineral resource concerned where market conditions are or will be unfavourable to development or further development; and
 - (b) the licence indicates that it is a retention development licence.

(2) A development licence ceases to be a retention development licence (and becomes a general development licence) if the Minister attaches a condition to the licence indicating that it ceases to be a retention development licence.

Application of Part 6

56. This Part does not affect the operation of, and has effect subject to, Part 6.

Division 2 – Entitlements

Entitlements

57. Subject to this Act, the holder of a development licence is, in or in relation to the area of the licence, entitled –
- (a) to carry out mining development in relation to the mineral resource to which the licence relates;

- (b) to develop and finalise arrangements necessary or appropriate to be made for or in respect of the making of an application for a mining lease;
- (c) to develop and finalise arrangements necessary or appropriate to be made for or in respect of the anticipated grant of a mining lease for the mineral resource and, in particular, for the exploitation of the resource in the event that the lease is granted; and
- (d) if it is a retention development licence, to take steps to secure the controlled retention of the mineral resource to which the licence relates.

Division 3 – Application and grant

Grant of development licence

58. – (1) The Minister may grant a development licence on application made and approved in accordance with this Act.

(2) One or more development licences may be held by a person.

Applications

59. – (1) An eligible person may apply for a development licence in accordance with this Part.

(2) An application for a development licence is not made in accordance with this Part unless –

- (a) it is made to the Registrar in the prescribed form and accompanied by –
 - (i) the prescribed application fee; and
 - (ii) the prescribed licence fee for the first year;
- (b) it specifies the minerals in respect of which the licence is sought;
- (c) it describes the land and the minerals in respect of which the licence is sought; and
- (d) it is accompanied by–
 - (i) a studies programme, indicating what (if any) feasibility and other studies and environmental impact assessments are to be undertaken during the first year of the licence;
 - (ii) a work programme, indicating what (if any) works are to be undertaken during the first year of the licence;
 - (iii) a retention statement, indicating whether or not the purpose or one of the purposes of applying for the licence is to retain the mineral resource where market conditions are or will be unfavourable to development or further development;
 - (iv) a capability statement, demonstrating the applicant’s technical and financial capacity; and
 - (v) a compliance undertaking, stating that the applicant undertakes to comply with all relevant conditions attaching to the licence and all applicable approved codes of conduct.

Eligible persons

60. A person is eligible to apply for and be granted a development licence if –
- (a) the person was the holder of an exploration licence over the land to which the application relates at the time the application was made;
 - (b) in a case where there was no holder of an exploration licence over the land at that time, the person –
 - (i) was the holder of an exploration licence that was formerly in force over the land; or
 - (ii) is of a description prescribed by the regulations; or
 - (c) the person applies in accordance with section 67.

Size and shape of area

61. – (1) A development licence can only be held in respect of –
- (a) the whole or part of the area of –
 - (i) an exploration licence held by the applicant for the development licence; or
 - (ii) a previous development licence referred to in section 67; and
 - (b) an adjoining area of land outside the area of the exploration licence or previous development licence but only if the adjoining area is available for inclusion and the Minister is satisfied that it relates to previously identified geological structures within the area of the exploration licence or previous development licence.

(2) In determining the size and shape of the land to be included in the area of a development licence, the Minister is, as far as practicable, to take into consideration the size and shape of the relevant zone of mineralisation and any additional land required in connection with proposed activity (including sites for plant, tailings, dams and worker accommodation).

(3) The area of a development licence must consist of a single area of land unless the Minister is satisfied that special circumstances existing warranting inclusion of separate areas.

(4) An adjoining area of land outside the area of the exploration licence or previous development licence referred to in subsection (1) is not available for inclusion in the area of a development licence if it is the subject of a current exploration licence, development licence or mining lease or a prior but current application for such a licence or lease or if it is not available for any other reason.

(5) Subject to this section, the size and shape of the area of a development licence is to be at the discretion of the Minister.

Marking out and survey

62. – (1) An application for the grant of a development licence is not to be considered unless the Director is satisfied that –

- (a) the area to which the application relates has before the application is lodged been satisfactorily marked out in accordance with the regulations, and the application is accompanied by a detailed description giving measured distances and compass bearings; or
 - (b) the area to which the application relates has before the application has been lodged been satisfactorily identified in another way approved by the Director before the application is lodged, and the application is accompanied by a description of a kind so approved.
- (2) The regulations may specify circumstances in which errors in marking out may or must be disregarded.
- (3) The Director may, at any time, require the whole or any part of the area of a development licence to be surveyed.

Criteria

63. – (1) An application for a development licence is not to be approved unless the Minister is satisfied that –
- (a) the licence will relate to a defined mineral resource;
 - (b) the size and shape of the area applied for is appropriate;
 - (c) the materials required to accompany the application are in a form acceptable to the Minister;
 - (d) the past performance of the applicant as the holder of a mineral authority, or as the principal under a prospector's right, has been satisfactory; and
 - (e) the applicant has an employment and skills strategy for local workers.
- (2) The Minister may require the applicant to provide further information relevant to the application.

Decision on application

64. The Minister may approve or refuse an application for a development licence.

Entitlement to grant

65. An eligible person who applies for a development licence in respect of the mineral for which the person held an exploration licence over the land concerned at the time the application was made is entitled to the grant of the development licence, if the application and applicant otherwise meet the requirements of this Part.

Compensation requirements

66. Despite any other provision of this Part, the Minister may refuse to approve an application for a development licence if the Minister is not satisfied that category 3 compensation arrangements under Part 7 regarding the licence have been satisfactorily finalised.

Land becoming available for application for development licences after moratorium period

67. – (1) This section applies to land that ceases to be subject of a development licence.
- (2) The Director may, by notice published in the Gazette on or after the date on which the land ceases to be the subject of the development licence, declare that the land is to become available for applications for development licences in respect of specified minerals after a period (the “moratorium period”) ending on a specified date.
- (3) The moratorium period –
- (a) begins with the date on which the land ceases to be the subject of the development licence; and
 - (b) ends with the date specified in the declaration as the ending date.
- (4) Applications cannot be made for a development licence in respect of the land until the expiry of the moratorium period.
- (5) Any applications for development licences made or pending in respect of the land during the moratorium period must be rejected.
- (6) This section does not apply to, or prevent the making of, an application for a development licence in respect of minerals other than those specified in the declaration by the holder of an exploration licence that continues in force over the land after the beginning of the moratorium period.

Division 4 – Terms, conditions and statutory requirements

Terms

68. A development licence is –
- (a) to specify the minerals in respect of which it is granted;
 - (b) to specify the area of the licence;
 - (c) to specify the term of the licence; and
 - (d) to indicate whether it is a general development licence or a retention development licence.

Term of currency

69. – (1) The initial term of a development licence is the period of years (not exceeding 5 years) specified in the licence commencing on the date it is issued or a later date specified in it.
- (2) The term for which a development licence is renewed is the period of years (not exceeding 5 years) specified in the instrument of renewal.
- (3) If the applicant for the grant or renewal of a development licence nominates in the application a period (not exceeding 5 years) for consideration as the initial or renewed

term of the licence, the nominated period is to be the period of that term if it is acceptable to the Minister, but the Director is required to consult with the applicant about the length of the term before recommending the grant or renewal for a different term.

Conditions

70. – (1) A development licence is subject to conditions attached to the licence –
(a) by force of this Act or the regulations; or
(b) by the Minister.

(2) The Minister may attach conditions to a development licence on its grant or during its term and may vary or revoke any such conditions.

(3) Conditions referred to in subsection (2) must be as prescribed, or be of a kind prescribed, by the regulations or conditions of a kind that are authorised to be attached under a provision of this Act.

Security deposit

71. – (1) The Director may, in accordance with this section, require the holder of a development licence to deposit security.

(2) The Director may, on the grant of a development licence, require the holder of the licence to deposit security (“initial security”) approved or determined by the Director.

(3) The Director may, on the renewal of a development licence or within 30 days after a work programme is lodged, require the holder of the licence to deposit security or additional security (both of which are referred to as “progress security”) approved or determined by the Director.

(4) The Minister may cancel a development licence on the ground that initial security if required is not deposited in accordance with this Act.

Licence fees

72. – (1) It is a statutory condition of a development licence that the holder must pay licence fees in accordance with the regulations.

(2) Without limiting subsection (1), the regulations may make provision for or with respect to determining, or determining the method of calculating, the amount of licence fees and the times and manner of payment.

(3) Different amounts or rates of licence fees may be prescribed for different development licences or classes of development licences, and they may vary according to the size of the areas of licences, the minerals in respect of which they are in force or any other factors.

(4) Licence fees, and arrangements relating to payment of licence fees, for a development licence may be varied in accordance with the regulations during the term of the licence.

Work programmes

73. – (1) It is a statutory condition of a development licence that the holder of the licence must lodge with the Director, at least 30 days before the start of the second and each subsequent year of the licence, a work programme for that year indicating –
- (a) what (if any) works are to be undertaken during that year; and
 - (b) the estimated expenditure to be incurred on those works.

(2) It is a statutory condition of a development licence that there must be substantial compliance with each work programme, including the work programme for the first year of the licence accompanying the application for the licence.

Retention statements

74. – (1) It is a statutory condition of a retention development licence that the holder must lodge with the Director, at least 30 days before the start of the second and each subsequent year of the licence, a retention statement for that year, indicating –
- (a) whether retention is proposed to continue during that year; and
 - (b) details supporting continued retention.

(2) It is a statutory condition of a retention development licence that the holder must, if requested to do so by the Minister, satisfy the Minister that the details provided warrant continued retention.

- (3) Subsections (1) and (2) do not apply to a retention development licence if a work programme is lodged that complies with section 73 and indicates that –
- (a) the licence is no longer required for retention purposes; and
 - (b) development activity in relation to the whole of the area of the licence is already being undertaken or is to be undertaken during the year concerned.

- (4) Without limiting any other power to cancel or attach conditions to a retention development licence, the Minister may cancel a retention development licence or attach a condition of the kind referred to in section 55 (2) if –
- (a) the holder does not lodge a retention statement as required by subsection (1);
or
 - (b) the Minister is not satisfied that continued retention is warranted, as referred to in subsection (2).

Division 5 – Miscellaneous

Renewal

75. The holder of a development licence is entitled to renewal of the licence from time to time in accordance with this Part and the regulations, so long as the Minister is satisfied that –
- (a) there has been substantial compliance with all relevant written law, the terms and conditions of the licence and any applicable approved codes of practice;
 - (b) renewal for a further term is reasonable in the circumstances; and
 - (c) in the case of a retention development licence – economic conditions beyond the holder’s control have not improved to a degree that development activity can reasonably take place.

Cancellation or administrative penalties for breaches

76. – (1) The Director may serve a notice in writing on the holder of a development licence requiring the holder to show cause why punitive action should not be taken under this Act for an alleged breach, by the holder or a person acting under the authority of the holder, of –
- (a) a provision of this Act or the regulations relating to development licences;
 - (b) a provision of a relevant code of practice or code of conduct; or
 - (c) a term or condition of the development licence.
- (2) Either or both of the following may be done by way of punitive action –
- (a) the Minister may cancel the development licence by notice in writing served on the holder;
 - (b) the Director may recommend to the Tribunal that the Tribunal impose a pecuniary penalty on the holder.
- (3) The maximum pecuniary penalty that may be imposed by the Tribunal pursuant to the recommendation is \$10,000.

Reports

77. – (1) The holder or former holder of a development licence must lodge the following reports with the Director –
- (a) an annual report for each year of the term, setting details of the activities undertaken under the authority of the licence during the year and of the expenditure paid or incurred during the year in respect of those activities, to be lodged within 2 months after the anniversary date for the licence;
 - (b) a final report, to be lodged within 3 months after the licence terminates; and
 - (c) a rehabilitation report for the whole area of the licence after the licence terminates, confirming that the former holder of the licence has successfully rehabilitated all land affected by the work carried out under or in connection with the licence, to be lodged as soon as practicable after rehabilitation has been successfully completed.
- (2) The form and contents of a report are to conform to any requirements prescribed by the regulations or specified in the conditions of the development licence

(3) A rehabilitation report is not required in respect of any land for which a mining lease is granted to the holder of the development licence concerned.

(4) The Director may cause any report to be made available to the public in any way the Director thinks appropriate, but annual reports are to be kept confidential until the licence terminates or, if there is a moratorium period that begins with the termination of the licence, until the expiry of the moratorium period.

Extraction and removal of bulk samples

78. – (1) The holder of a development licence must not, except in accordance with an authorisation given to the holder under this section, extract or remove from the area of the licence any mineral material in excess of –

- (a) the amount determined by or in accordance with the conditions of the licence;
- (b) if paragraph (a) does not apply – the amount determined by or in accordance with the regulations; or
- (c) if paragraphs (a) and (b) do not apply – the minimum amount necessary for carrying out exploration under the authority of the licence.

(2) The Director may, on application made by the applicant for or the holder of a development licence, authorise the holder of the licence to extract and remove from the area of the licence such amounts of mineral material as are necessary to undertake relevant studies or assessments or to provide materials for testing.

(3) An authorisation may include any documentation needed under any other written law that relates to the export of any such mineral material.

(4) An authorisation is subject to any conditions attached to it, including conditions for either or both of the following –

- (a) determining the amount of mineral material that may be extracted or removed during a specified period or otherwise;
- (b) requiring payment or security for payment of royalties and other imposts.

(5) A person who contravenes a requirement of this section commits an offence.

(6) In this section –

“mineral material” includes minerals and anything prescribed or of a kind prescribed by the regulations as being within this definition, but does not include anything prescribed or of a kind prescribed by the regulations as being outside this definition.

PART 5—MINING LEASES

Division 1 – Introduction

Interpretation

79. In this Part –

“associated activities” means activities that are associated with or arise from mining activities (including waste dumps, tailings dams, water storage, haul routes, and sites for the storage of water, machinery and plant and for the erection of machinery and plant), and includes activities declared by the Minister by order in the Gazette as being within this definition, but does not include activities declared by the Minister by order in the Gazette as being outside this definition;

“mining activities” means the activity of mining for minerals and activities that are necessary to carry out that activity, and includes –

- (a) associated activities; and
- (b) activities declared by the Minister by order in the Gazette as being within this definition, but does not include activities declared by the Minister by order in the Gazette as being outside this definition.

Mining leases generally

80. – (1) Mining leases may be granted to eligible persons in accordance with this Part.

(2) There are two kinds of mining leases, as follows –

- (a) mining leases for mining activities (which includes associated activities);
- (b) mining leases for associated activities.

Application of Part 6

81. This Part does not affect the operation of, and has effect subject to, Part 6.

Division 2 – Entitlements*Entitlements*

82. – (1) Subject to this Act, the holder of a mining lease for mining activities is entitled to carry out mining activities, for the minerals specified in the lease, in or on the area of the lease designated for mining activities.

(2) Subject to this Act, the holder of a mining lease for associated activities is entitled to carry out such associated activities, of the kind specified in the lease, in or on the area of the lease designated for associated activities.

Division 3 – Application and grant*Grant of mining lease*

83. – (1) The Minister may grant a mining lease on application made and approved in accordance with this Part.

(2) One or more mining leases may be held by a person.

(3) A lease or licence of any kind (but not a petroleum licence) granted, given or entered into before a mining lease is granted ceases to be in force in respect of any land within the area of the mining lease.

Applications

84. – (1) An eligible person may apply for a mining lease in accordance with this Part.

- (2) An application for a mining lease is not made in accordance with this Part unless –
- (a) it is made to the Registrar in the prescribed form and accompanied by –
 - (i) the prescribed application fee; and
 - (ii) the prescribed rental for the first year;
 - (b) it specifies the minerals in respect of which the lease is sought; and
 - (c) it is accompanied by –
 - (i) a metes and bounds description of the boundaries of the surface area of the area applied for;
 - (ii) a metes and bounds description of the boundaries of the surface area of so much of the area applied for as is required for the mining activities and associated activities (as relevant) proposed to be carried out;
 - (iii) a description of the access route proposed to be used from the surface area referred to in subparagraph (ii) to a public road;
 - (iv) where the applicant is the holder of a prospector's right in respect of the area applied for and the area consists of or includes part of the area of an exploration licence or development licence granted to another person – the written consent of the holder of the licence to the grant of the lease applied for;
 - (v) a feasibility study, demonstrating the commercial and technical viability of the project; and
 - (vi) a life of mine overview strategy.

Eligible persons

85. – (1) A person is eligible to apply for and be granted a mining lease for mining activities if –
- (a) the person, as the holder of a prospector's right, marked out the area of the proposed mining lease, provided –
 - (i) the area was so marked out within the previous 12 months; and
 - (ii) no previous application by the person, as the holder of a prospector's right, for a mining lease in respect of the whole or a part of the land concerned has been rejected under this Act or the former Act; or
 - (b) the person was, at the time of the application, the holder of an exploration licence or development licence in respect of the land concerned.

(2) A person is eligible to apply for and be granted a mining lease for associated activities if the person is an applicant for or the holder of a mining lease for mining activities.

Marking out

86. – (1) An application for the grant of a mining lease is not to be considered unless the Director is satisfied that –

- (a) the area to which the application relates has before the application is lodged been satisfactorily marked out in accordance with the regulations, and the application is accompanied by a detailed description giving measured distances and compass bearings; or
- (b) the area to which the application relates has before the application was lodged been satisfactorily identified in another way approved by the Director before the application is lodged, and the application is accompanied by a description of a kind so approved.

(2) The regulations may specify circumstances in which errors in marking out may or must be disregarded.

(3) This section does not affect the provisions of section 103 that require the survey of the area of a mining lease.

Assessment of application

87. The Registrar must reject an application for a mining lease if it is not accompanied by any consent of the holder of an exploration licence or development licence that is required by this Act.

Certificate of application

88. – (1) The Registrar is to issue to the applicant a certificate of application in the prescribed form in respect of each application for a mining lease (other than a rejected application).

(2) The certificate of application is to be issued when the scoping of the proposal (including preparation of the terms of reference of the assessment) has been completed under the Environment Management Act 2005.

(3) The certificate of application is to state that objections to the grant of the mining lease applied for, other than objections in relation to any matters or grounds that are the subject of the terms of reference for an environmental impact assessment required under the Environment Management Act 2005, may be lodged with the Registrar on or before the date specified in the certificate as the closing date for lodging objections.

Application to be advertised

89. – (1) The applicant for a mining lease must, in accordance with this section, cause a notice to be published advertising the application within 14 days after the certificate of application is issued.

- (2) A notice under this section must –
- (a) be in such form, be in such language or languages, and be published in such newspaper or newspapers or in a newspaper or newspapers of such kind or kinds, as the Director determines; and
 - (b) include the statement referred to in section 88 (3).
- (3) The applicant must provide the Registrar with a copy of each notice published under this section within 14 days after the date of publication.

Owners, occupiers and licensees to be notified

90. The applicant for a mining lease must, within 14 days after the certificate of application is issued, give a copy of the application, the certificate of application and the life of mine overview strategy to –
- (a) the owners and occupiers of the land applied for; and
 - (b) the holder of any exploration licence or development licence over the land applied for.

Objections

91. – (1) Any person may lodge an objection, other than an objection in relation to any matters or grounds that are the subject of the terms of reference for an environmental impact assessment required under the Environment Management Act 2005, to the grant of a mining lease for which a certificate of application has been issued.
- (2) An objection is to be lodged in the prescribed form with the Registrar on or before the date specified in the certificate of application as the closing date for lodging objections.
- (3) If an objection is lodged in accordance with this section, the Director must either –
- (a) direct that a mediation conference be held to attempt to resolve the objection; or
 - (b) refer the objection to the Tribunal for consideration at hearing before the Tribunal.
- (4) Despite subsection (3), the Director may, with the approval of the Minister, reject an objection if satisfied that it is frivolous, misconceived or lacking in substance.

Mediation conference

92. – (1) This section applies if the Director directs that a mediation conference be held to attempt to resolve an objection.
- (2) A mediation conference is, subject to this section, to be convened and conducted in accordance with –
- (a) any directions given by the Director; and
 - (b) any requirements prescribed by the regulations.

(3) An officer appointed by the Director is to preside at a mediation conference.

(4) The Director may refer the objection to the Tribunal if the mediation has been completed, has been terminated before completion or has lapsed, and whether or not the mediation has been wholly or partly successful.

Hearing by Tribunal into objection

93. If the Director refers an objection to the Tribunal, the Tribunal may make such recommendations with respect to the objection as it thinks fit, and in particular may recommend conditions to be imposed if the mining lease is granted.

Consideration by Director of application

94. – (1) The Director is to consider under this section an application for a mining lease, other than a rejected application.

(2) In considering the application, the Director is to have regard to –

- (a) the outcome of any mediation conference convened in connection with any objections;
- (b) any recommendations of the Tribunal made in connection with any objections;
- (c) the right of the applicant to have the application dealt with expeditiously and according to its merits;
- (d) any matters about which the Minister is required to be satisfied under this Part; and
- (e) any other matters that the Director considers relevant.

(3) If a mediation conference is directed to be convened in connection with any objections or any objections have been referred to the Tribunal for consideration, the Director may commence but not conclude consideration of the application before the receiving the outcome of any mediation conference or any recommendations of the Tribunal.

Referral of application to Tribunal

95. – (1) The Director may refer any matter relating to an application for a mining lease to the Tribunal for advice or recommendation –

- (a) before the Director makes a recommendation to the Minister about the application; or
- (b) at the request of the Minister after the Director has made a recommendation to the Minister about the application.

(2) A matter may be referred to the Tribunal under this section even if the Tribunal has already considered the matter or any other aspect of the application.

- (3) The Tribunal may make such recommendations with respect to the matter as it thinks fit.
- (4) The Director may make a recommendation or further recommendation to the Minister having regard to any recommendations made by the Tribunal under this section.
- (5) This section does not apply to a matter that is to be, is being or has been considered by the Environment Tribunal under the Environment Management Act 2005.

Criteria

96. An application for a mining lease for mining activities is not to be approved unless the Minister is satisfied that –
- (a) the applicant has made a commitment that mining operations are to commence on a timetable nominated by the applicant and satisfactory to the Director or the lease is necessary to provide mineral reserves or infrastructure for existing mining operations;
 - (b) access arrangements are satisfactory;
 - (c) the feasibility study and the life of mine overview strategy are adequate;
 - (d) the past performance of the applicant as the holder of a mineral authority, or as the principal under a prospector's right, has been satisfactory;
 - (e) the applicant has an employment and skills strategy for local workers; and
 - (f) the applicant has, or has adequate access to, sufficient technical and financial capability for the work proposed to be carried out under the authority of the lease.

Recommendations and decision on application

97. – (1) The Director is to make recommendations to the Minister about an application for a mining lease.
- (2) The Minister may, after considering the Director's recommendations about the application for a mining lease and having regard to the right of the applicant to have the application dealt with expeditiously and according to its merits, and with the concurrence of the Cabinet, approve or refuse the application.
- (3) Before seeking the Cabinet's concurrence, the Minister is to provide a copy of the Director's recommendations to the Cabinet.

Entitlement to grant

98. An eligible person who applies for a mining lease for mining activities in respect of the mineral for which the person held an exploration licence or development licence over the land concerned at the time the application was made is entitled to the grant of the mining lease, if the application and applicant otherwise meet the requirements of this Part.

Compensation requirements

99. Despite any other provision of this Part, a mining lease is not to be granted unless the Minister is satisfied that compensation arrangements under Part 7 regarding the lease have been satisfactorily finalised.

Division 4 – Terms, conditions and statutory requirements

Terms

100. – (1) A mining lease is to specify –
- (a) the minerals in respect of which it is granted;
 - (b) the area of the lease; and
 - (c) the term of the lease.
- (2) A mining lease is –
- (a) to indicate whether it is granted for mining activities or for associated activities only;
 - (b) to designate any part of the area in or on which mining activities may be carried out; and
 - (c) to designate any part of the area in or on which associated activities may be carried out.
- (3) The size and shape of the area of a mining lease are to be at the discretion of the Minister.

Term of currency

101. – (1) The initial term of a mining lease is the period of years specified in the licence commencing on the date it is issued or a later date specified in it.
- (2) The term for which a mining lease is renewed is the period of years specified in the instrument of renewal.
- (3) If the applicant for the grant or renewal of a mining lease nominates in the application a period for consideration as the initial or renewed term of the licence, the nominated period is to be the period of that term if it is acceptable to the Director, but the Director is required to consult with the applicant about the length of the term before recommending the grant or renewal for a different term.

Conditions

102. – (1) A mining lease is subject to conditions attached to the lease –
- (a) by force of this Act or the regulations; or
 - (b) by the Minister.
- (2) The Minister may attach conditions to a mining lease on its grant or during its term and may vary or revoke any such conditions.

(3) Conditions referred to in subsection (2) must be as prescribed, or be of a kind prescribed, by the regulations or conditions of a kind that are authorised to be attached under a provision of this Act.

Survey

103. – (1) If a mining lease is granted, the holder of the lease must cause the area of the lease to be surveyed within a period of 3 months after the lease is granted or a longer period approved by the Director.

(2) Access routes are not required to be surveyed unless the Director gives a direction for that purpose.

Security deposit

104. – (1) The Director may, in accordance with this section, require the holder of a mining lease to deposit security.

(2) The Director may, on the grant of a mining lease, require the holder of the lease to deposit security (“initial security”) approved or determined by the Director.

(3) The Director may, on the renewal of a mining lease or within 30 days after a mine management plan is lodged or a departmental audit is completed, require the holder of the lease to deposit security or additional security (both of which are referred to as “progress security”) approved or determined by the Director.

(4) The Minister may cancel a mining lease on the ground that initial security if required is not deposited in accordance with this Act.

Rental

105. – (1) It is a statutory condition of a mining lease that the holder must pay rental to the Director in accordance with the regulations.

(2) Without limiting subsection (1), the regulations may make provision for or with respect to –

- (a) determining, or determining the method of calculating, the amount of rental and the penalties to be paid for late payment of rental; and
- (b) the times and manner of payment of rental and penalties for late payment.

(3) Different amounts or rates of rental may be prescribed for different mining leases or classes of mining leases, and they may vary according to the size of the areas of leases, the minerals in respect of which they are in force or any other factors.

(4) Rental, and arrangements relating to payment of rental, for a mining lease may be varied in accordance with the regulations during the term of the lease.

Division 5 – Life of mine overview strategy (LOMOS) and mine management plan (MMP)

Life of mine overview strategy (LOMOS)

106. – (1) A life of mine overview strategy for a mining lease must indicate –
- (a) the overall nature of the project;
 - (b) how operational, environmental, social, employment, safety and infrastructure issues are to be dealt with during the life of the project including during the decommissioning phase; and
 - (c) the proposed final land use of the site after the project is decommissioned.
- (2) The form and contents of a life of mine overview strategy are to conform to any requirements prescribed by the regulations, and must include –
- (a) a mine development strategy;
 - (b) an infrastructure development strategy;
 - (c) an environmental management and rehabilitation strategy;
 - (d) a health and safety management strategy;
 - (e) a social adjustment strategy;
 - (f) an employment and skills training strategy; and
 - (g) a public information and education strategy.

Variation of LOMOS

107. – (1) The holder of a mining lease may at any time apply to the Director to vary the life of mine overview strategy in a specified way.
- (2) The variation may be approved by –
- (a) the Minister, in the case where the variation of the strategy is made in connection with the variation of the area of the mining lease; or
 - (b) the Director, in any other case,
- if satisfied that any requirements prescribed by the regulations for the purposes of this subsection have been complied with.
- (3) The provisions of this Act that apply to or in respect of applications for a mining lease (including provisions relating to compensation) apply, as far as they are applicable and with any necessary modifications, and subject to the regulations, to and in respect of an application for the variation of a life of mine overview strategy.

Mine management plans (MMPs)

108. – (1) The holder of a mining lease must lodge mine management plans with the Director in accordance with this section.
- (2) Each mine management plan is to apply to a period of the term of the mining lease, being either one year of the term of the lease or a longer period (not exceeding 5 years) approved by the Director in any particular case.

- (3) The initial mine management plan must be lodged within 30 days after the grant of the lease.
- (4) Each subsequent mine management plan must be lodged at least 30 days but no earlier than 60 days before the start of the period of the plan.
- (5) The holder of the mining lease must ensure that no mining activities or associated activities are undertaken before, and within the period of 30 days after, the initial mine management plan has been lodged.
- (6) The holder of a mining lease may at any time lodge with the Director a new or amended mine management plan to replace the current plan.
- (7) The Director may reject a mine management plan that does not comply with the requirements of this Division or the regulations.
- (8) A mine management plan rejected by the Director is taken for the purposes of this Division not to have been lodged with the Director.

Extension notice for current MMP

109. The holder of a mining lease may, instead of lodging a mine management plan (other than the initial plan), lodge with the Director an extension notice stating that the holder proposes that the current mine management plan continue in force without alteration for the following year of the term of the lease, and the unaltered plan is taken to have been lodged for that year in accordance with the requirements of this Division.

Failure to lodge initial MMP

110. The Minister may cancel a mining lease if the initial mine management plan is not lodged with the Director within the required period.

Failure to have current MMP

111. It is a statutory condition of a mining lease that there must be at all times during the currency of the lease a current mine management plan lodged with the Director (except for the first 30 days of the term of the lease).

Contents of and other requirements for MMP

112. A mine management plan must –
- (a) give details as to how the holder of the mining lease proposes to implement, at operational level, the strategies contained in the relevant life of mine overview strategy during the period of the plan; and
 - (b) comply with any requirements prescribed by the regulations.

MMP to include access arrangements

113. – (1) A mine management plan must specify the proposed access routes to and from the area of the mining lease.

(2) Access routes (other than public roads) may be specified only with the agreement of the owners and occupiers of the land over which access is to be provided and with the approval of the Director.

Compliance with MMP

114. It is a statutory condition of a mining lease that the provisions of the current mine management plan must be complied with and that mining activities and associated activities not be carried out otherwise than in accordance with those provisions.

Independent technical audit

115. – (1) Each mine management plan, and each extension notice, for a mining lease must be accompanied by a technical audit certificate that complies with this section.

(2) The certificate accompanying a mine management plan or extension notice must certify that the plan is in accordance with and consistent with the life of mine overview strategy for the mining lease.

(3) The certificate accompanying a mine management plan (other than the initial plan) or extension notice must indicate –

- (a) the extent to which the mine management plan for the previous period has been complied with during that period;
- (b) what action (if any) needs to be taken to rectify any areas of non-compliance;
- (c) an estimate of the third party cost (as at the date of the audit) of rehabilitating the area of the mining lease for post-mining use; and
- (d) any other matters specified in the conditions of the mining lease or prescribed by the regulations.

(4) A technical audit certificate must be prepared by an independent party in accordance with any applicable requirements of the conditions of the mining lease or of the regulations.

(5) The Director may reject a mine management plan or extension notice if it is not accompanied by a technical audit certificate that complies with this section.

Departmental technical audit

116. – (1) The Director may cause a departmental technical audit to be carried out to determine the level of compliance by the holder of a mining lease with the life of mine overview strategy and the current or any previous mine management plan.

(2) Without limiting subsection (1), a departmental technical audit may be carried out in connection with any matters that may be dealt with in technical audit certificates under this Division.

(3) For the purpose of carrying out a departmental technical audit, the persons authorised to conduct it may enter and inspect the area of the mining lease, at any time and with or without prior notice.

Division 6 – Variation of area of mining lease

Variation of area

117. – (1) The holder of a mining lease may at any time apply to the Director for a variation (by way of extension or surrender) of the area of the lease.

- (2) The Minister may approve the variation of the area if satisfied that –
- (a) the holder of the lease has lodged an application under Division 5 for the variation of the life of mine overview strategy and the variation of the strategy is likely to be approved, with or without modifications, unless the Director dispenses with the need to lodge an application for the variation of the strategy; and
 - (b) any requirements prescribed by the regulations for the purposes of this subsection have been complied with.

(3) The provisions of this Act that apply to or in respect of applications for a mining lease (including provisions relating to compensation) apply, as far as they are applicable and with any necessary modifications, and subject to the regulations, to and in respect of an application for the variation of the area of the lease.

(4) If the Minister approves the variation, the Director may issue an instrument that varies the terms of the lease by specifying the additional or excluded area or by issuing a new lease document in respect of the whole of the area as varied.

(5) An instrument of variation or new lease document is to be registered under the Land Transfer Act as if it were an original mining lease.

(6) A reference in subsection (2) to the variation of the life of mine overview strategy includes a reference to a new strategy to replace the existing strategy.

Division 7 – Miscellaneous

Registration of mining leases by Registrar of Titles

118. – (1) The Registrar is required to notify the Registrar of Titles of the grant or termination of a mining lease and of any variations of and dealings with a mining lease.

(2) The Registrar of Titles is to record and register the grant or termination of every mining lease and every variation of or dealing with a mining lease in such manner as the Registrar thinks appropriate, subject to any applicable requirements of the Land Transfer Act or the regulations under that Act.

(3) On registration, every mining lease is subject to the provisions of the Land Transfer Act in so far as those provisions are not inconsistent with the provisions of this Act, in the same manner as if the mining lease were a lease under the provisions of the Land Transfer Act, and is to be dealt with in like manner.

(4) The Registrar of Titles may charge and collect in respect of any mining lease registered by the Registrar of Titles or in respect of the termination of or any variation or dealing with any such lease –

- (a) the fees prescribed under the Land Transfer Act (including registration fees) in respect of those matters; or
- (b) to the extent that fees are not so prescribed, the fees prescribed under that Act in respect of corresponding matters for a lease granted by the owner of freehold land.

(5) The Registrar of Titles may give notice of the registration of a mining lease granted over any land to the owner of the land and may enter a memorial of the lease on the instrument of title of the owner and on the duplicate instrument if produced.

(6) The regulations may provide that a specified provision of this section does not apply to a specified class or description of variations of or dealings with mining leases or applies with prescribed modifications.

Renewal

119. The holder of a mining lease is, on application made in accordance with the regulations, entitled to have the lease renewed from time to time in accordance with the regulations, so long as –

- (a) the Minister is satisfied that there has been substantial compliance with all relevant written law, the terms and conditions of the lease and any applicable approved codes of practice; and
- (b) the holder satisfies the Minister that renewal for a further term is reasonable in the circumstances.

Mine closure or administrative penalties for breaches

120. – (1) The Director may serve a notice in writing on the holder of a mining lease requiring the holder to show cause why punitive action should not be taken under this Act for an alleged breach, by the holder or a person acting under the authority of the holder, of –

- (a) a provision of this Act or the regulations relating to mining leases;
- (b) a provision of a relevant approved code of practice; or
- (c) a term or condition of the mining lease.

- (2) Either or both of the following may be done by way of punitive action –
- (a) the Director may, with the approval of the Minister, direct, by notice in writing served on the holder, that the mine be closed until –
 - (i) the provision, term or condition is complied with to the satisfaction of the Director and all penalties imposed on the holder under this section have been paid; or
 - (ii) the Director revokes the notice;
 - (b) the Director may recommend to the Tribunal that the Tribunal impose pecuniary penalties on the holder.
- (3) If a direction is given requiring that the mine be closed –
- (a) the direction remains in force until –
 - (i) the Director notifies the holder of the mining lease that the provision, term or condition has been complied with to the satisfaction of the Director and all penalties imposed on the holder under this section have been paid; or
 - (ii) the direction is revoked by the Director or on appeal by the Tribunal;
 - (b) the holder of the mining lease must ensure that no mining activities or associated activities are carried out under the lease in or on the area of the lease while the direction remains in force, except to the extent permitted by the Director in writing from time to time to protect the health and safety of the community or to protect the mine, any mining infrastructure and any associated plant, equipment or works; and
 - (c) the holder commits an offence if mining activities or associated activities are carried out in contravention of paragraph (b).
- (5) If the Director recommends that the Tribunal impose pecuniary penalties on the holder of the mining lease, either or both of the following kinds of penalties may be imposed by the Tribunal under this Act –
- (a) a single penalty to a maximum of \$50,000;
 - (b) a daily penalty to a maximum of \$1,000 a day applicable until the provision, term or condition has been complied with to the satisfaction of the Director and all penalties imposed on the holder under this section have been paid.

Automatic termination of mining lease for associated activities

121. A mining lease for associated activities is cancelled by force of this section if there is no longer a mining lease for mining activities in force in respect of the mining lease for associated purposes.

PART 6—GENERAL PROVISIONS RELATING TO MINERAL AUTHORITIES

Division 1 – Restricted zones and protected areas

Restrictions on applications, grants and entitlements

122. – (1) The right to apply for, and the power to grant, a mineral authority is subject to any restrictions under section 123.

(2) The holder of a mineral authority is not entitled to exercise any entitlements under the authority in a protected area under section 124, unless (in a case where consent is contemplated under that section) the relevant consent is operative.

(3) This Division has effect despite anything in Part 2, 3, 4 or 5.

Restricted zones

123. – (1) For the purpose of temporarily or permanently prohibiting or restricting access under this Act to particular land, the Minister may, by order in the Gazette, declare –

- (a) any area to be a restricted zone in relation to all minerals or specified minerals; and
- (b) that specified restrictions apply in relation to either or both of the following –
 - (i) the granting or holding of mineral authorities in respect of the restricted zone;
 - (ii) prospecting on or in the restricted zone under a prospector's right.

(2) The restrictions that may be specified in a declaration in relation to the granting of mineral authorities are any or all of the following –

- (a) a prohibition on the making or processing of applications for licences or leases or specified classes of licences or leases;
- (b) a prohibition on the granting of licences or leases or specified classes of licences or leases;
- (c) limitations on the area or aggregate area or number or term of licences or leases;
- (d) limitations on the area or aggregate area or number of licences or leases held by any person (whether alone or with others).

(3) A limitation of the kind referred to in subsection (2) (d) applies in relation to licences or leases held by a person immediately before the declaration takes effect, unless the declaration otherwise provides.

(4) After any consultation required by the regulations has been undertaken –

- (a) the Minister, in the case of development licences and mining leases; or
- (b) the Director, in the case of exploration licences,

may, by written instrument, cancel or vary any licences or leases held by a person referred to in subsection (3) to the extent necessary to satisfy the limitations referred to in that subsection.

Protected areas

124. – (1) The following classes of land are closed to prospecting, exploration, mining development and mining, and to entry and occupation under the authority of a mineral authority –

- (a) any Fijian, Rotuman or Banaban village;
- (b) any land set aside or acquired for any public purpose;
- (c) any land used as a place of burial;
- (d) any land within 30 metres of an inhabited house or building, except with the consent in writing of the owner and apparent occupant of the house or building;
- (e) any land under crop and land ploughed or otherwise cultivated and rendered fit for planting and habitually used for the planting of crops, except with the consent in writing of the owner of the crops;
- (f) any land within the boundaries of any city or town, except with the consent in writing of the owner of surface rights;
- (g) any land reserved for the purpose of any railway or public road or within 15 metres of any such railway or road, except with the consent in writing of the owner of the land or, as the case may be, the responsible Minister in relation to the railway or road;
- (h) any land within 60 metres of any spring in use as a source of water supply or any area declared to be a catchment area for water supply purposes or any artificial reservoir, water works or water supply building, except with the consent in writing of the Commissioner of Water Supply;
- (i) any land declared to be a forest reserve or nature reserve under a law relating to forests, except with the consent in writing of the Conservator of Forests;
- (j) any land for the time being declared to be a protected area under subsection (2), except (if the declaration so provides) with the consent in writing of a person specified or described in the declaration.

(2) The Minister may, by order in the Gazette –

- (a) declare any land to be a protected area; and
- (b) if the Minister thinks fit, specify or describe a person who may give consent for the purposes of subsection (1) (j).

(3) If any question arises as to whether any particular land is closed under subsection (1)

–

- (a) the Director;
- (b) a person seeking the grant of an exploration licence, development licence or mining lease over the land; or
- (c) a person seeking to enter or occupy the land under the authority of a mineral authority,

may refer the question to the Tribunal for determination.

(4) If consent is refused under subsection (1), the person seeking the consent may appeal to the Tribunal, which may determine the appeal by –

- (a) refusing the appeal; or
- (b) allowing the appeal and granting consent either unconditionally or subject to any conditions it considers appropriate (whether or not those conditions are of a kind that could be granted under other provisions of this Act).

(5) Consent granted under subsection (4) has the same effect as consent granted under subsection (1).

Division 2 – Assessment of applications

Preliminary assessment of applications for mineral authorities

125. – (1) On receiving an application for a mineral authority, the Registrar is to assess the application for compliance with the requirements of this Act and the regulations regarding the form and contents of the application and may at his or her discretion require further information or supplementary material to be provided to bring the application into conformity with those requirements.

(2) The Registrar may reject the application if satisfied that it does not comply with or has not been brought into conformity with those requirements in material respects.

(3) A rejected application is taken not to have been made.

Past performance – criteria in assessing application for mineral authority

126. – (1) This section applies when the past performance of a person is being considered under this Act by the Minister or the Director in relation to an application for a mineral authority, and does not limit the matters that may be taken into account.

(2) The Minister or Director, as the case may be, may decide that the past performance of the person has not been satisfactory if satisfied that the person (or a person responsible to the person) has previously contravened –

- (a) a provision of this Act or the regulations;
- (b) a written law of Fiji, or a law of a foreign country, relating to minerals, petroleum or explosives or any similar or associated law;
- (c) a provision of any applicable approved code of practice; or
- (d) a term of or condition attached to a mineral authority,

whether or not the applicant or principal has been charged with or convicted of an offence in relation to the contravention.

Power to require further information or supplementary before decision on application for mineral authority

127. – (1) The Director may require an applicant for a mineral authority to provide further information or supplementary material relevant to the application before the application is decided.

(2) The application may be refused if the further information or supplementary material is not provided in accordance with the requirement.

Division 3 – Entitlements

General entitlements

128. – Subject to this Act, the holder of a mineral authority is, for the purposes of exercising entitlements under the authority, entitled –

- (a) to enter and remain on the land;
- (b) to use reasonable means of transport to enter the land and while on the land;
- (c) to camp on the land; and
- (d) to take water for domestic use from any natural supply on the land.

(2) This section does not limit the entitlements under a mining lease.

Exercise of entitlements

129. The holder of a mineral authority may exercise any entitlements under the authority personally or by employees, contractors or agents.

Notice and compensation requirements (other than for mining leases) before exercise of entitlements

130. – (1) The holder of a mineral authority (other than a mining lease) must not enter any land under the authority unless –

- (a) the holder has given the owners and any apparent occupants of the land notice of entry in the prescribed form indicating the type of activity proposed to be conducted on the land and where and when the activity is proposed to be conducted; and
- (b) compensation arrangements under Part 7 have been finalised in respect of the activity proposed to be conducted.

(2) If the type, location or time of activity is proposed to be altered, the holder must not enter the land in connection with the alteration or conducting the altered activities unless

–

- (a) the holder has given the owners and any apparent occupants of the land notice in the prescribed form indicating the nature of the alterations; and
- (b) further compensation arrangements under Part 7 have been finalised in respect of the activity as affected by the alterations, unless –
 - (i) the owner and occupiers agree that a further arrangements are not needed in the circumstances; or
 - (ii) the regulations provide that further arrangements are not needed in circumstances of the kind concerned.

(3) The holder must provide a copy of each notice and each compensation arrangement to the Registrar within 14 days after the notice is given or the arrangement is finalised.

(4) If the holder cannot with reasonable diligence identify or contact the owners of unoccupied land, the holder is, with the approval of the Director, taken to have given the owners the notice required under this section and to have entered into a standard compensation agreement with the owners.

Division 4 – Concurrent and incompatible mineral authorities

Certificates of compatibility

131. – (1) In this section –

“mineral authority” means an exploration licence or development licence.

(2) Two or more mineral authorities may be held over the same land (or land that includes the same land), provided –

- (a) they are granted in respect of different minerals;
- (b) a certificate of compatibility is issued under this section; and
- (c) the mineral authorities are otherwise applied for and granted in accordance with the requirements of this Act and the regulations.

(3) The prescribed person may issue a certificate of compatibility if the prescribed person –

- (a) has taken into account the particular circumstances of the case;
- (b) has considered the views of the applicants for or holders of the mineral authorities after a process of consulting and obtaining their views has been undertaken; and
- (c) is satisfied that the activities under the mineral authorities will be reasonably capable of being carried out in a mutually compatible manner or that the grant of the authority or authorities concerned is in the best interests of the State.

(4) The prescribed person is –

- (a) the Minister, except where paragraph (b) applies; or
- (b) the Director, where only exploration licences are involved.

(5) The prescribed person has an absolute discretion as to whether to issue a certificate of compatibility, subject only to complying with the requirements of subsection (3) (a), (b) and (c) if deciding to issue the certificate.

(6) This section applies to mineral authorities whether or not they are applied for or granted at the same or different times.

Statutory condition regarding concurrent mineral authorities

132. – (1) In this section –

“mineral authority” means an exploration licence or development licence.

(2) If concurrent mineral authorities over land that comprises or includes the same land are granted with effect from the same time or from different times, it is a statutory condition of each authority that the holder and the holder’s employees, contractors and agents must remain at least 100 metres away from activities carried out by the holder of each other authority in or on that land, unless the holders agree in writing to a smaller distance and a copy of the agreement is lodged with the Registrar.

Incompatible mineral authorities

133. – (1) An exploration licence cannot be granted over land in respect of which an exploration licence is already in force, unless a certificate of compatibility has been issued under this Division in respect of the licences.

(2) An exploration licence cannot be granted over land in respect of which a development licence is already in force, unless a certificate of compatibility has been issued under this Division in respect of the licences.

(3) A development licence cannot be granted over land in respect of which a development licence is already in force, unless a certificate of compatibility has been issued under this Division in respect of the licences.

(4) A development licence cannot be granted over land in respect of which an exploration licence is already in force, unless –

- (a) the applicant for the development licence is the holder of the exploration licence; or
- (b) a certificate of compatibility has been issued under this Division in respect of the licences.

(5) Despite subsection (4), an exploration licence ceases to be in force in respect of any land over which a later development licence is granted to the holder of the exploration licence, unless a certificate of compatibility has been issued under this Division in respect of the licences.

(6) An exploration licence or development licence cannot be granted over land in respect of which a mining lease is already in force, except in so far as the regulations otherwise provide.

(7) An exploration licence or development licence ceases to be in force in respect of any land over which a later mining lease is granted, except in so far as the regulations otherwise provide.

(8) The following provisions apply where an exploration licence ceases to be in force under this section in respect of any land –

- (a) if the area of the licence is wholly within the area of the later mineral authority – the licence is deemed to be cancelled;
- (b) if the area of the licence extends beyond the area of the later mineral authority –
 - (i) the licence continues in force for the remainder of the area of the licence subject to the same terms and conditions or such other terms and conditions as may be agreed on between the Director and the holder of the licence; and
 - (ii) the sub-blocks comprising or containing the land in respect of which the licence ceases to be in force are deemed to be withdrawn from the licence.

(9) The following provisions apply where a development licence ceases to be in force under this section in respect of any land –

- (a) if the area of the licence is wholly within the area of the mining lease – the licence is deemed to be cancelled;
- (b) if the area of the licence extends beyond the area of the mining lease – the licence continues in force for the remainder of the area of the licence subject to the same terms and conditions or such other terms and conditions as may be agreed on between the Director and the holder of the licence.

Division 5 – Priority of applications

Operation of this Division

134. This Division has effect subject to Division 4.

Exploration licences

135. – (1) Applications for the grant of exploration licences duly made in respect of land that comprises or includes the same land and in respect of minerals that comprise or include the same minerals are to take priority for the purpose of consideration according to the time at which they are lodged.

(2) The Director may determine the order in which applications received on the same day are to be treated as having been lodged and may determine the circumstances in which applications received on the same day are to be treated as simultaneous applications.

(3) The Director may, by notice in the Gazette, declare that applications for the grant of exploration licences made in respect of land that comprises or includes the same land and in respect of minerals that comprise or include the same minerals lodged on a specified date or during a specified period will be treated as simultaneous applications.

(4) Simultaneous applications for the grant of exploration licences made in respect of land that comprises or includes the same land and in respect of minerals that comprise or include the same minerals are to be considered on merit.

Development licences

136. – (1) Applications for the grant of development licences duly made in respect of land that comprises or includes the same land and in respect of minerals that comprise or include the same minerals are to take priority for the purpose of consideration according to the time at which they are lodged.

(2) The Director may determine the order in which applications received on the same day are to be treated as having been lodged and may determine the circumstances in which applications received on the same day are to be treated as simultaneous applications.

(3) The Director may, by notice in the Gazette, declare that applications for the grant of development licences made in respect of land that comprises or includes the same land and in respect of minerals that comprise or include the same minerals lodged on a specified date or during a specified period will be treated as simultaneous applications.

(4) Simultaneous applications for the grant of development licences made in respect of land that comprises or includes the same land and in respect of minerals that comprise or include the same minerals are to be considered on merit.

Mining leases

137. – (1) Applications for the grant of mining leases duly made in respect of land that comprises or includes the same land are to take priority for the purpose of consideration according to the time at which they are lodged.

(2) The Director may determine the order in which applications received on the same day are to be treated as having been lodged and may determine the circumstances in which applications received on the same day are to be treated as simultaneous applications.

(3) The Director may, by notice in the Gazette, declare that applications for the grant of mining leases made in respect of land that comprises or includes the same land lodged on a specified date or during a specified period will be treated as simultaneous applications.

(4) Simultaneous applications for the grant of mining leases made in respect of land that comprises or includes the same land are to be considered on merit.

Division 6 – Security deposit

Application and interpretation

138. – (1) This Division applies to security required to be deposited under Part 2, 3, 4 or 5 in respect of a mineral authority.

(2) The relevant period referred to in this Division within which security is to be deposited is –

- (a) 14 days, in the case of a prospector's right; or
- (b) 30 days, in the case of any other mineral authority.

Nature, form and application of security

139. – (1) Security is held –

- (a) as a guarantee of performance of the obligations attaching to the mineral authority; and
- (b) without limiting paragraph (a), for or towards rectification of damage to or loss of property (other than property of the holder of the mineral authority) that has been or may subsequently be incurred in the course of activities carried out under or in connection with the authority.

(2) The Director may approve or determine the form, and the amount or value, of the security.

(3) Security may be required to be with or without sureties and may be in the form of an amount of an amount of money, but the Director may accept a bond or guarantee by, or other financial arrangement with, a financial institution (or another person) approved by the Director or another form of security acceptable to the Director as the whole or part of the security to be deposited.

(4) The terms or conditions of a bond, guarantee or other financial arrangement must allow the Director to access and expend money for the purposes for which the security may be applied under this Act.

(5) If the holder of the mineral authority fails to perform any obligation, or causes any damage or loss, as referred to in this section, the Director may –

- (a) take such steps towards fulfilling the obligation or rectifying the damage or loss as the Director thinks fit; and
- (b) take and expend from the security any sum the Director considers appropriate to cover the costs incurred or to be incurred in taking those steps.

(6) The Director may dispense with a requirement for the deposit of security, or may refund security that has been deposited, to the extent that any security is or is to be held by another government agency for substantially the same purpose.

(7) A reference in this section to the holder of a mineral authority extends to the former holder of a mineral authority and the principal under a prospector's right.

Initial security

140. – (1) Initial security, if required on the grant of a mineral authority, must be deposited within the relevant period after –

- (a) the authority is granted; or
- (b) service on the holder of details of the security required;

whichever is the later, or within a further period allowed by the Director in any particular case.

(2) The holder of a mineral authority must not carry out any activities under the authority until initial security, if required, has been deposited with the Director.

(3) The Director must, if initial security is not required in respect of a mineral authority, notify the applicant or holder that initial security is not required.

Progress security

141. – (1) Progress security may not be required unless the show cause procedure has been complied with.

(2) The Director may serve a notice in writing on the holder of a mineral authority requiring the holder to show cause why progress security should not be required to be deposited under this Act.

(3) Progress security, if required in respect of a mineral authority, must be deposited with the Director within the relevant period after service on the holder of details of the security required or within a further period allowed by the Director in any particular case.

(4) The holder of a mineral authority on whom a notice has been served requiring the deposit of progress security must not carry out any activities under the authority after the end of the relevant period referred to in subsection (3) or the end of a further period allowed by the Director in any particular case unless and until the progress security has been deposited with the Director.

(5) It is a statutory condition of a mineral authority that progress security, if required in respect of the authority, must be deposited in accordance with this Act and the terms of the requirement.

Refund or return of security

142. – (1) Any unexpended portion of security for a prospector's right is refundable or returnable not earlier than one month after the right terminates, but only if the Director is satisfied that any necessary rehabilitation of land has been successfully completed.

(2) Any expended portion of security for a mineral authority (other than a prospector's right) is refundable or returnable not earlier than 3 months after the authority terminates, but only if the final rehabilitation report required under this Act has been lodged with the Director and the Director is satisfied that rehabilitation has been successfully completed.

(3) Despite subsection (1), all or any part of the unexpended portion of security for a prospector's right may be used as security for another prospector's right applied for or held by the same person in the same capacity (as holder of both in his or her own right or as holder of both as agent for the same principal).

Division 7 – Rehabilitation of land

Rehabilitation of land

143. – (1) When a prospector's right terminates, the Director may direct the former holder of the right, or the principal under the right, to carry out such work to rectify actual damage to or loss of property (other than property of the holder or the principal) incurred in the course of activities carried out under or in connection with the right.

(2) When any other mineral authority terminates, the Director may direct the former holder of the authority to carry out such work to rectify actual damage to or loss of

property (other than property of the holder) incurred in the course of work carried out under or in connection with the authority.

(3) Subsection (2) does not apply in respect of any land included in an application for a mining lease made by the holder of the development licence, unless the application is refused or the land is not included in the mining lease.

(4) A direction under this section must be in writing and must specify the work to be carried out and the period within which it is to be carried out.

Application of security deposit

144. Without affecting Division 6 or any other provision of this Act relating to security, security deposited under this Act may be applied towards the work required to be carried out under this Division.

Division 8 – Dealings

Interpretation

145. In this section –

“dealing”, in relation to a mineral authority, means –

- (a) the transfer of the authority;
- (b) the transfer of any right, interest or share in or connected with the authority;
- or
- (c) any transaction of a prescribed kind relating to the kind of authority concerned;

“holder” of a mineral authority includes the holder of any right, interest or share in the authority.

Dealings

146. – (1) A prospector’s right cannot be transferred, leased, sub-let or mortgaged.

(2) Subject to subsection (5), an exploration licence or development licence can be transferred or otherwise dealt with by the holder of the licence, but cannot be leased, sub-let or mortgaged.

(3) Subject to subsection (5), a mining lease can be transferred, mortgaged, sub-let or otherwise dealt with by the holder of the lease.

(4) A mining lease cannot be transferred unless the proposed transferee –

- (a) deposits any security required by the Director;
- (b) lodges with the Registrar an instrument by which the proposed transferee agrees to be bound by and to comply with the life of mine overview strategy;
- and
- (c) lodges with the Registrar –

- (i) an instrument by which the proposed transferee agrees to be bound by and to comply with the current mine management plan; or
- (ii) a new mine management plan that complies with the requirements of this Act,

and, on completion of the transfer, the strategy and the current or new plan binds the transferee as holder of the mining lease.

(5) The regulations may regulate or prohibit a prescribed kind of dealing in an exploration licence, development licence or mining lease.

(6) A dealing in contravention of this section or the regulations is void.

Approval and registration of dealings

147. – (1) The holder of a mineral authority cannot effect a dealing in relation to the authority without first obtaining the approval in writing of the Director and no evidence of any such dealing is admissible in any court unless the Director's prior approval to effect the dealing has been obtained.

(2) The Director cannot give approval for a dealing in relation to a development licence or mining lease without the prior approval of the Minister.

(3) Every dealing in a mining lease must be in writing and must state the full and true consideration passing between the parties, otherwise the dealing is void.

(4) Every dealing in a mining lease is to be presented to the Director for endorsement of approval together with a certified copy (which is to be retained by the Director), and until so endorsed the dealing is void.

(5) Every dealing in a mining lease is to be presented for approval and registration under this Act within 21 days of the date of the dealing or a longer period approved at the discretion of the Director on reasonable cause being shown.

(6) This section does not apply to prospectors' rights.

Division 9 – Notifications

Notice of grant or renewal to be published

148. – (1) The holder of a mineral authority (other than a prospector's right) must cause a notice to be published notifying the grant or renewal of the authority within 14 days after –

- (a) the deposit of the required security, where initial security is required; or
- (b) the grant or renewal of the authority, where initial security is not required.

(2) A notice under this section must be in such form, be in such language or languages, and be published in such newspaper or newspapers or in a newspaper or newspapers of such kind or kinds, as the Director determines.

(3) The holder of the mineral authority must provide the Registrar with a copy of each notice published under this section within 14 days after the date of publication.

Native Land Trust Board to be notified

149. – (1) The Registrar must notify the Native Land Trust Board in writing of –
- (a) the grant, renewal or termination of a mineral authority (other than a prospector's right) over land that is or includes native land;
 - (b) the withdrawal of land that is or includes native land from the area of an exploration licence;
 - (c) the exclusion of native land from the area of a mining lease, where the application for grant or renewal of the lease included the native land; and
 - (d) the refusal of an application for the grant or renewal of a mining lease over land that is or includes native land.

- (2) A notification under this section must –
- (a) identify the native land concerned; and
 - (b) be given within 7 days after the date of the grant, renewal, termination, withdrawal, exclusion or refusal.

(3) A notification is not required under this section in respect of the termination of a development licence in respect of native land that was not entered under the development licence nor under the exploration licence previously held by the holder of the development licence.

Owners and occupiers to be notified

150. – (1) The holder or former holder of an exploration licence must notify the owners and occupiers of land on which activities have been carried out under the licence of –
- (a) the withdrawal of the land from the area of the licence; and
 - (b) the termination of the licence, unless they have been notified pursuant to paragraph (a).

(2) The holder or former holder of a development licence must notify the owners and occupiers of land in the area of the licence of the grant, renewal or termination of the licence.

- (3) The holder or former holder of a mining lease must notify –
- (a) the owners and occupiers of land in the area of the lease of the grant, renewal or termination of the lease; and
 - (b) the owners and occupiers of land of the exclusion of the land from the area of the lease, where the application for grant or renewal of the lease included that land.

(4) An applicant for the grant or renewal of a mining lease must notify the owners and occupiers of land in the area of the lease or proposed lease of the refusal of the application.

(5) A notification under this section must –

- (a) identify the land concerned; and
- (b) be in a form approved by the Director and be given in accordance with the regulations.

(6) A notification is not required under this section in respect of native land.

(7) A notification is not required under this section in respect of the termination of a development licence in respect of land that was not entered under the development licence nor under the exploration licence previously held by the holder of the development licence.

Applicant to be notified of refusal

151. – If an application for the grant or renewal of a mineral authority is refused, the Director must give the applicant a written notification of the refusal and of the reasons for it within 7 days –

- (a) after the refusal, in the case of a prospector's right or exploration licence; or
- (b) after being notified of the Minister's decision, in the case of a development licence or mining lease.

Division 10 – Miscellaneous

Amendment of applications

152. An application for a mineral authority may be amended with the consent of the Registrar.

Form of mineral authority

153. A mineral authority is to be in the prescribed form.

Statutory condition regarding compliance with Act and regulations

154. It is a statutory condition of a mineral authority that the holder must comply with the applicable provisions of this Act and the regulations.

Expiry

155. – (1) A prospector's right expires at the end of the period for which it is granted, unless it is sooner cancelled or suspended.

(2) A mineral authority (other than a prospector's licence) expires at the end of the period for which it is granted or renewed, unless it is sooner cancelled or suspended or it is renewed or further renewed.

Renewal

156. – (1) A mineral authority (other than a prospector's right) may be renewed under this Act even though it has expired, so long as the application for renewal was lodged with the Director before the end of its current term.

(2) If a mineral authority is renewed after its expiry, it is taken to have continued in force during the period between the expiry of the previous term and the date of renewal.

Surrender

157. The holder of a mineral authority may surrender the authority, at any time before the expiration of its term, by notice in writing to the Registrar.

Company ceasing to exist

158. A mineral authority held by a company is cancelled by force of this section if the company ceases to exist and no other person becomes the holder of the authority or can lawfully exercise the entitlements under the authority.

Termination and suspension

159. – (1) A mineral authority terminates if –

- (a) its term expires, unless (except in the case of a prospector's right) it is renewed;
- (b) it is surrendered;
- (c) it is cancelled; or
- (d) in the case of an exploration licence or development licence, it ceases to be in force in respect of the whole of its area under section 133.

(2) A mineral authority confers no entitlements during any period it is suspended under this Act.

(3) A power to suspend a mineral authority under this Act includes a power to lift the suspension.

Show cause notices for refusal or cancellation of mineral authority

160. (1) Before an application for a mineral authority is refused or a mineral authority is cancelled, the Director must give the applicant a written notice requiring the applicant or holder to show cause why the application should not be refused or the authority should not be cancelled.

(2) Subsection (1) does not apply to –

- (a) the cancellation of a mineral authority on the ground that the holder or applicant for the authority has not lodged initial security as required by this Act; or
- (b) in such other circumstances as may be prescribed by the regulations.

Administrative pecuniary penalties

161. – (1) If the Director recommends to the Tribunal by way of punitive action that a pecuniary penalty be imposed on the holder of a mineral authority as an administrative penalty under this Act –

- (a) the holder is entitled to be notified of the recommendation and to appear before or be represented before the Tribunal and make representations to the Tribunal; and
- (b) the Tribunal may, after considering any representations made by the holder and any other matters it thinks fit, impose a pecuniary penalty (not exceeding the relevant maximum amount) on the holder.

(2) A penalty imposed under this section is payable by the holder within a period specified by the Tribunal and any unpaid amount may be recovered from the holder as a debt due to the State.

(3) Without limiting subsection (2), the whole or any part of a penalty imposed under this section may be taken from the security deposited in respect of the mineral authority.

(4) The holder is not liable to be punished both by a pecuniary penalty under this section and by a fine imposed by a court for the same breach.

(5) A reference in this section to the holder of a mineral authority extends to the former holder of a mineral authority.

Estate or interest not created

162. The grant of a prospector's right, exploration licence or development licence does not create an estate or interest in land.

Registers

163. – (1) The Registrar is required to keep the following registers –

- (a) the Register of Prospectors' Rights;
- (b) the Register of Exploration Licences;
- (c) the Register of Development Licences;
- (d) the Register of Mining Leases.

(2) Each register is to contain the following particulars –

- (a) the name, address and other identifying particulars of every person to whom a mineral authority of the relevant kind is granted;
- (b) any particulars required by the regulations to be recorded in the register;

- (c) any particulars considered appropriate by the Director and relating to mineral authorities of the relevant kind (including applications for any such mineral authorities).

(3) Each register referred to in subsection (1) is to be kept in accordance with any requirements prescribed by the regulations and (subject to any such prescribed requirements) in such manner as the Director considers appropriate.

Transmission of mineral authorities

164. – (1) In this section –

“mineral authority” means an exploration licence, development licence or mining lease, but does not include a prospector’s right.

(2) If the holder of a mineral authority –

- (a) dies;
- (b) has a receiving order in bankruptcy made against the holder; or
- (c) is found to be of unsound mind under any law relating to mental treatment for the time being in force in Fiji,

the obligations on the holder by or under this Act are not enforceable until after the expiration of 90 days (or a longer period approved or determined by the Director) from whichever of the following is relevant –

- (d) the date of the grant of probate or the issue of letters of administration;
- (e) the date of the receiving order; or
- (f) the date of the appointment of any committee of the estate of the person of unsound mind.

(3) The personal representative, receiver in bankruptcy or committee of the deceased, bankrupt or person of unsound mind may apply to the Director or the Registrar of Titles, as may be appropriate, to be registered as the proprietor of the mineral authority.

(4) The Director or Registrar of Titles is, on production of the probate, letters of administration, receiving order, order of appointment or such other documentation as he or she requires, required to enter in the appropriate register, a memorial of the date and hour of the production of the documentation, with such further particulars as he or she thinks appropriate.

(5) On the making of the entry, the personal representative, receiver in bankruptcy or committee becomes the registered holder of the mineral authority, and the Director or Registrar of Titles is required to note the registration by memorial on the probate, letters of administration, receiving order or order of appointment.

(6) The title to the mineral authority relates back and takes effect from the date of the death, receiving order or order of appointment.

Surveys

165. Every survey required under this Act is to be carried out in accordance with the Surveyors Act (Cap. 260), subject to such modifications as may be prescribed by the regulations.

Markings to be maintained

166. – (1) The holder of a development licence or mining lease must ensure that the markings of the area of the licence or lease made for the purposes of the application for the lease or licence are maintained until the area has been surveyed or the licence or lease terminates.

(2) A person who fails to comply with this section commits an offence.

Offences regarding applications for mineral authorities

167. A person who, in or connection with an application for the grant or renewal of a mineral authority, makes a statement knowing it to be false or misleading in a material particular commits an offence.

PART 7—COMPENSATION

Division 1 – Introduction

Categories of compensation

168. There are three categories of compensation under this Act, as follows –

- (a) category 1 compensation – compensation for land disruption;
- (b) category 2 compensation – compensation for cultural disruption;
- (c) category 3 compensation – compensation for external disruption.

Division 2 – Category 1 compensation – land disruption

Category 1 compensation

169. Category 1 compensation is to be provided in accordance with this Division.

Nature of category 1 compensation

170. – (1) Category 1 compensation is to be provided by the holder of a mineral authority to or in respect of the affected owners or occupiers of land within the area of the authority in respect of land disruption occurring or likely to occur as a consequence of –

- (a) in the case of an exploration licence, development licence or mining lease – the grant or renewal of the licence or lease; or
- (b) in the case of a prospector’s right – the exercise of entitlements under the right.

(2) The matters covered by land disruption for the purposes of this Act are to be as prescribed by the regulations.

How category 1 compensation is provided – generally

171. – (1) Category 1 compensation is to be provided in accordance with this Act and whichever of the following is applicable –

- (a) compensation arrangements contained in a standard compensation agreement adopted under this Division;
- (b) compensation arrangements negotiated under this Division;
- (c) compensation arrangements determined by the Tribunal under this Division.

(2) Category 1 compensation is to be provided in monetary form.

How category 1 compensation is provided

172. – (1) Category 1 compensation is payable directly to –

- (a) the affected owners, except in the case of native land or land that is held under the Rotuma Lands Act (Cap. 138) or the Banaban Lands Act (Cap. 124); and
- (b) the affected occupiers.

(2) In the case of native land that is native land –

- (a) category 1 compensation under a standard compensation agreement is payable to the Turaga ni Mataqali or Turaga ni Tokatoka for the affected owners of land; or
- (b) category 1 compensation under negotiated compensation arrangements or under determined compensation arrangements is payable to the Native Land Trust Board for the affected owners of land.

(3) In the case of land that is held under the Rotuma Lands Act or the Banaban Lands Act, category 1 compensation is payable to the person or body recognised as owner under the relevant Act.

(4) Category 1 compensation referred to in section 173 is payable to the affected owners in the form of payments of accrued interest or capital, as referred to in that section.

How category 1 compensation is dealt with in the case of land not able to be rehabilitated

173. – (1) This section applies to category 1 compensation payable to the owners of land within the area of a mineral authority in respect of disturbance of or damage to the surface of the land, where the land is not capable of being substantially rehabilitated.

(2) Compensation payments are to be made to an interest-bearing trust fund during and after the currency of the mineral authority for the purpose of making payments from the

accrued interest to or in respect of the affected owners for the time being of the land under section 171.

(3) The conditions of the mineral authority may require and make provision for or with respect to the creation of a trust for the purposes of this section, including the execution of a trust instrument creating and setting out the terms of the trust.

(4) The regulations may make provision for or with respect to trusts under this section, and the terms of a trust have effect subject to the provisions of the regulations.

(5) A trust under this section may not be varied or terminated except with the approval of the Minister and in accordance with any directions of the Minister.

(6) Without limiting subsection (5), the directions of the Minister may include directions for the payment of any remaining capital to the owners for the time being of the affected land.

Standard compensation agreements for prospectors' rights, exploration licences and development licences

174. – (1) The Director may, in accordance with prescribed procedures, prepare and adopt forms of agreement, to be known as “standard compensation agreements”, containing compensation arrangements in respect of category 1 compensation for prospectors' rights, exploration licences and development licences.

(2) Without limiting the matters that may be included in a form of standard compensation agreement, a form may provide for the determination of amounts payable by way of compensation by reference to any or all of the following ways –

- (a) specified amounts;
- (b) specified minimum amounts and specified maximum amounts;
- (c) specified minimum amounts without specified maximum amounts;
- (d) any prescribed method.

(3) The Director may, in accordance with prescribed procedures, revise or replace a form of standard compensation agreement.

(4) The revision or replacement of a form of standard compensation agreement does not affect an agreement already entered into.

Acceptance of standard compensation agreement

175. – (1) The applicable standard compensation agreement may be accepted and entered into by the holder of the mineral authority concerned and by an affected owner or occupier of land.

(2) In the case of native land, the applicable standard compensation agreement is to be entered into by the resident Turaga ni Mataqali or resident Turaga ni Tokatoka for the affected owners.

(3) In the case of land that is held under the Rotuma Lands Act or the Banaban Lands Act, the applicable standard compensation agreement is to be entered into by the person or body recognised as owner under the relevant Act.

(4) If an affected owner or occupier accepts the applicable standard compensation agreement, the holder of the mineral authority is taken to have accepted and entered into the agreement and the agreement binds the holder accordingly.

(5) If the form of standard compensation agreement includes a range of specified amounts by way of compensation, the affected owner or occupier may, when accepting the agreement, insert in the agreement an amount within the relevant range as –

- (a) agreed to by or on behalf of the holder of the mineral authority concerned; or
- (b) determined by the Tribunal,

but in the absence of any such specification the agreement is taken to specify the minimum amount in the range.

(6) If the form of standard compensation agreement includes a specified minimum amount by way of compensation, the affected owner or occupier may, when accepting the agreement, insert an amount that is not lower than the specified minimum amount as –

- (a) agreed to by or on behalf of the holder of the mineral authority concerned; or
- (b) determined by the Tribunal

but in the absence of any such specification the agreement is taken to specify the minimum amount.

(7) The Tribunal may make a determination referred to in this section on application by a party or by the Director.

Negotiated compensation agreements for prospectors' rights, exploration licences and development licences

176. – (1) If an owner or occupier of land refuses or fails, within one month from being requested to do so by the holder of a mineral authority, to accept a standard compensation agreement, the holder of the authority may negotiate an agreement containing the compensation arrangements.

Compensation arrangements for prospectors' rights, exploration licences and development licences by determination

177. – (1) If agreement cannot be reached regarding compensation arrangements that are to be applicable for any land within the area of a prospector's right, exploration licence or development licence within the prescribed period, or the owners of the land cannot be contacted, any party may apply to the Tribunal for a determination of the compensation arrangements.

(2) The Tribunal may, on application made in accordance with this section, determine the compensation arrangements that are to be applicable to the land concerned.

Negotiated compensation agreements for mining leases

178. – (1) An applicant for a mining lease may negotiate and enter into an agreement, containing compensation arrangements applicable to any land within the area of the lease, with an owner or occupier of the land.

(2) In the case of native land, the negotiations are to be conducted, and the agreement is to be entered into, by the Native Land Trust Board for the affected owners.

(3) In the case of land that is held under the Rotuma Lands Act or the Banaban Lands Act, the negotiations are to be conducted, and the agreement is to be entered into, by the person or body recognised as owner under the relevant Act.

Compensation arrangements for mining leases by determination

179. – (1) If agreement cannot be reached regarding compensation arrangements that are to be applicable for any land within the area of a mining lease, any party to the negotiations may apply to the Tribunal for the determination of the compensation arrangements.

(2) An application cannot be made until a period of 6 months has elapsed from the date of approval of the relevant EIA report or the date of issue of the relevant certificate of application, whichever is the later.

(3) The Tribunal may, on application made in accordance with this section, determine the compensation arrangements that are to be applicable to the land concerned.

Division 3 – Category 2 compensation – cultural disruption*Category 2 compensation*

180. Category 2 compensation is payable in accordance with this Division.

Nature of category 2 compensation

181. – (1) Category 2 compensation is to be provided by the holder of a mining lease to or in respect of affected local communities in respect of cultural disruption occurring or likely to occur as a consequence of the grant or renewal of the lease.

(2) Cultural disruption is disruption to the traditional social and cultural existence of the communities identified in the relevant EIA report.

How category 2 compensation is provided

182. – (1) Category 2 compensation is to be provided in accordance with this Act, the regulations and a community development plan formulated in accordance with the regulations.

(2) Category 2 compensation may be provided in monetary form or non-monetary form or a combination of both, as provided in the community development plan.

Community development plans

183. – (1) The regulations may require a community development plan containing compensation arrangements for category 2 compensation be formulated in accordance with the regulations.

(2) The regulations may require the community development plan to contain a socio-economic programme.

(3) The community development plan must include provisions for –

- (a) the enhancement of the economic climate of the communities concerned, and in particular the provision of opportunities for members of the communities to obtain employment, training, education and participation in business development;
- (b) the minimisation of adverse social and cultural impacts on the communities from mining and mining development, and in particular the maintenance of traditional cultures and lifestyle;
- (c) determining how compensation in monetary form is to be assessed, calculated and provided;
- (d) determining how compensation in non-monetary forms is to be formulated, assessed and provided;
- (e) establishing a community development committee; and
- (f) providing detailed arrangements about the respective roles of the community development committee and the community liaison officer;

and may contain other relevant provisions as required or permitted by the regulations.

(4) The community development committee is responsible for the implementation of the community development plan.

(5) The community development committee is to consist of an equal number of representatives of the holder of the mining lease, the community and the Government.

(6) The regulations may contain provisions about –

- (a) the appointment, removal and qualifications of members of a community development committee;
- (b) the activities, responsibilities and duties of a community development committee; and
- (c) the procedures to be followed by a community development committee,

and those provisions prevail over the provisions of a community development plan to the extent of any inconsistency.

(7) The procedure for the calling of meetings of a community development committee and for the conduct of business at those meetings is, subject to the regulations, to be as determined by the committee.

Division 4 – Category 3 compensation – external disruption

Category 3 compensation

184. Category 3 compensation is payable in accordance with this Division.

Nature of category 3 compensation

185. – (1) Category 3 compensation is to be provided by the holder of a mining lease or development licence in respect of specific classifications of damage (including permanent or temporary environmental damage) caused outside the area of the lease or licence, arising from activities carried out under the lease or licence.

(2) The classifications of damage, including the kinds of damage to be covered, are to be as specified –

- (a) by the Tribunal in the compensation arrangements applicable to the mining lease or development licence concerned, except to the extent provided by the regulations; or
- (b) in the regulations.

(3) Category 3 compensation does not include compensation within any other category of compensation under this Part.

How category 3 compensation is provided – generally

186. – (1) Category 3 compensation is to be provided in accordance with this Act and compensation arrangements determined by the Tribunal under this Division.

(2) Category 3 compensation is to be provided in monetary or non-monetary form or both as provided in the compensation arrangements.

Category 3 compensation arrangements

187. – (1) The Tribunal may, on application by an applicant for or the holder of a mining lease or development licence, determine the compensation arrangements to apply in relation to category 3 compensation for the lease or licence.

(2) The compensation arrangements make provision for or with respect to the following–

- (a) the classifications of damage, including the kinds of damage to be covered, to be the subject of the arrangements;
- (b) determining how damage and compensation are to be assessed;
- (c) determining the persons to whom and the manner in which payment of compensation are to be made;
- (d) any other matter considered appropriate and relevant by the Tribunal; and
- (e) any other matters prescribed by the regulations.

(3) The Tribunal may, on application by the holder of a mining lease or development licence or by the Director, vary any compensation arrangements for the lease or licence.

(4) A mining lease is not to be granted unless compensation arrangements have been determined for the lease.

(5) The Minister may refuse to grant a development licence unless compensation arrangements have been determined for the licence.

Division 5 – Review of category 1 and 2 compensation arrangements for mining leases

Compensation review panels

188. – (1) It is a statutory condition of a mining lease that the holder of the lease must convene one or more compensation review panels at least once every 5 years.

(2) The functions of the compensation review panel are –

- (a) to review all compensation arrangements;
- (b) to make such recommendations with respect to the arrangements for category 1 compensation as it considers appropriate and as are consistent with this Act; and
- (c) to make such recommendations or variations to the arrangements for category 2 compensation as it considers appropriate and as are consistent with this Act.

(3) A compensation review panel is to consist of an equal number of members within each of the following categories –

- (a) representatives of the holder of the mining lease;
- (b) representatives of the owners of the land within the area of the lease;
- (c) representatives of the Government.

(4) A decision to vary the compensation arrangements must be supported by a majority of the members of the compensation review panel and by a majority of the representatives within each category.

(5) The regulations may contain provisions about –

- (a) the appointment, removal and qualifications of members of a compensation review panel;
- (b) the powers, responsibilities and duties of a compensation review panel; and
- (c) the procedures to be followed by a compensation review panel.

(6) The procedure for the calling of meetings of a compensation review panel and for the conduct of business at those meetings is, subject to this section and the regulations, to be as determined by the panel.

Review of compensation arrangements by Tribunal

189. – (1) If a compensation review panel does not or is unable to reach agreement on any matter within 2 months, proceedings may be commenced in the Tribunal to determine the matter.

(2) Proceedings may be commenced by the holder of the mining lease concerned, an owner or occupier of land within the area of the lease, the Native Land Trust Board or the Director.

(3) The Tribunal may determine the matter in any way it considers appropriate.

Effect of variation of compensation arrangements

190. – (1) A variation of compensation arrangements by a compensation review panel or the Tribunal takes effect from the date of its registration or a later date specified in the decision of the panel or Tribunal.

(2) Any instrument containing compensation arrangements is taken to be modified to the extent necessary to give effect to any variation of the arrangements.

Agreement for variation by parties

191. Nothing in this Part prevents the holder of a mining lease and the owners of land within the area of the lease from making such variations to the compensation arrangements for category 1 compensation as they agree on and as are consistent with this Act.

Division 6 – Miscellaneous

Compliance with compensation arrangements

192. It is a statutory condition of a mineral authority that the holder must comply with the terms and requirements of all compensation arrangements in force in relation to the authority.

Registration of compensation agreements

193. – (1) The holder of a mineral authority must submit each new compensation agreement and each variation of a compensation agreement to the Registrar, in accordance with any applicable requirements of the regulations and within 7 days after the agreement is entered into or the variation is made.

(2) The Registrar must register each submitted compensation agreement or variation in accordance with any applicable requirements of the regulations, but may decline to do so if satisfied that the agreement or variation does not comply with the requirements of this Act or the regulations in any material respect.

(3) If a registered compensation agreement or variation relates to native land, the Registrar must within 7 days after registration make a copy of the agreement or variation available to –

- (a) the Native Land Trust Board;
- (b) the relevant local Provincial Office and Divisional Commissioner; and
- (c) the Turaga ni Mataqali or Turaga ni Tokatoka as relevant.

(4) If a registered compensation agreement or variation relates to land to which the Rotuma Lands Act (Cap. 138), the Registrar must within 7 days after registration make a copy of the agreement or variation available to –

- (a) the Rotuma District Office; and
- (b) the Rotuma Island Council or other prescribed body.

(5) If a registered compensation agreement or variation relates to land to which the Banaban Lands Act (Cap. 124) applies, the Registrar must within 7 days after registration make a copy of the agreement or variation available to the Banaban Island Council or other prescribed body.

(6) A compensation agreement or variation referred to in this section is void until registered.

(7) If a compensation agreement is varied, the agreement as varied may be submitted, registered and (if relevant) made available in addition to the variation.

Community liaison officers for mining leases

194. – (1) The holder of a mining lease must appoint a person to be or act as community liaison officer in respect of all compensation arrangements in force for the lease.

(2) The community liaison officer is –

- (a) responsible for the overall implementation of the compensation arrangements and in particular (in consultation with the community development committee) for the management of the policies and programmes under the community development plan in force in respect of those arrangements; and
- (b) to act as a liaison between owners and occupiers of land, the Government and the holder of the lease in connection with those arrangements and in particular in connection with the resolution of any dispute arising in connection with their implementation.

(3) It is a statutory condition of the mining lease that the position of community liaison officer must not be vacant for a period or periods exceeding one month in total during any year of the term of the lease, but nothing in this subsection prevents the imposition of further conditions relating to the appointment, removal, qualifications, responsibilities and duties of community liaison officers.

(4) The regulations may contain provisions about the appointment, removal, qualifications, responsibilities and duties of community liaison officers, and those provisions prevail over the conditions of a mining lease to the extent of any inconsistency.

State's power to hold compensation payments

195. Compensation payable to an owner or occupier of land may, with the approval of the Minister, be paid to and held by the State or an authority of the State in trust for the owner or occupier.

No double compensation

196. – (1) If compensation (however described) has been paid under another written law in respect of any matter for which compensation is payable under this Part, the compensation already paid is to be taken into account in determining the compensation (if any) payable under this Part.

(2) If compensation has been paid under this Part in respect of any matter for which compensation (however described) is payable under another written law, the compensation already paid may be taken into account in determining the compensation (if any) payable under the other written law.

PART 8—ROYALTY

Interpretation

197. In this Part –

“mining” a mineral includes extracting a mineral under the authority of a development licence;

“royalty mineral” means a mineral in respect of which royalty is payable under this Part;

“royalty records” means records required to be kept under section 207;

“royalty return” means a royalty return under this Part.

Royalty payments

198. – (1) It is a statutory condition of a mining lease or development licence that the holder must pay royalty as prescribed, at the rate for the time being prescribed, in respect of minerals mined from land within the area of the lease or licence (whether mined by the holder or by another person under an arrangement of any kind with the holder).

(2) A person must not export a royalty mineral unless the required royalty has been –

- (a) paid; or
- (b) secured in accordance with the prescribed conditions.

Royalty returns

199. – (1) It is a statutory condition of –

- (a) a mining lease; or
- (b) a development licence whose holder is authorised to extract a mineral from the area of the licence,

that the holder of the lease or licence must lodge royalty returns as required by the regulations.

- (2) A royalty return for a mining lease must be made in respect of –
- (a) any royalty mineral mined from land within the area of the lease during the period of the return; and
 - (b) any royalty mineral of a kind authorised by the lease to be mined, in a case where no mineral of that kind was mined from land within the area of the lease during the period of the return and the regulations do not dispense with the need for the return to be made.
- (3) A royalty return for a development licence must be made in respect of any royalty mineral mined from land within the area of the licence during the period of the return.
- (4) If, during a period in respect of which a royalty return is required to be lodged, minerals are mined by more than one person under a mining lease or development licence, the holder must lodge the required royalty return in respect of all the mineral mined during the whole of the period under the authority of the lease or licence.

Prescription of royalty

200. – (1) The regulations may prescribe the royalty payable in respect of minerals mined.

(2) Royalty is to be calculated at such rate or rates, in such manner and on such basis or bases as are prescribed by the regulations.

Mineral Royalty Trust Fund and customary owners

201– (1) This section establishes a Mineral Royalty Trust Fund, into which is to be paid royalties received under this Act.

(2) The Fund is established for the purpose of holding the money standing to its credit pending payment from the Fund of –

- (c) an equitable share of royalties, payable to the Native Land Trust Board, for the customary owners of land as referred to in subsection (3); and
- (d) the balance from time to time to the Consolidated Fund.

(3) Subject to and in accordance with this section, customary owners are granted an equitable share of royalties paid to the State in respect of the grant by the State of rights to extract minerals.

(4) The total amounts granted to customary owners in respect of royalties received each year commencing on 1 January must be 87.5 per cent of the adjusted amount of royalties received by the State in that year (the “adjusted amount” being the amount of royalties received in that year less the amount of taxes or other imposts paid or payable from that amount on or after its receipt).

(5) Taxes or other imposts payable from royalties received by the State may be deducted before or after the royalties are paid into the Mineral Royalty Trust Fund and before the royalties are paid to the Native Land Trust Board.

(6) The regulations may make provision for or with respect to the manner of payment of amounts to the Native Land Trust Board under this section.

(7) The money standing to the credit of the Fund may be paid out by the chief executive (or delegate) with the approval of the Minister.

(8) The State is entitled to retain royalties paid to the Consolidated Fund.

(9) In this section –

“customary owners” means owners referred to in section 186 (3) of the Constitution.

Re-assessment of royalty

202. – (1) If the Director, at any time, is satisfied that royalty has been assessed on incorrect or inaccurate facts, the Director may re-assess the royalty payable.

(2) If on re-assessment the royalty payable is greater than any amount paid, it is a statutory condition of the mining lease or development licence concerned that the holder must pay the difference within the time specified by the Director.

(3) If on re-assessment the royalty already paid is greater than the royalty payable, the difference is refundable.

Interest on paid royalty

203. – (1) A person who fails to pay any amount of royalty payable by the person under this Part by the prescribed time for payment is liable at the discretion of the Director to pay interest on the amount outstanding at the rate prescribed for the time being.

(2) The interest forms part of the royalty payable.

Recovery of unpaid royalty

204. Without limiting any other means by which unpaid royalty may be recovered, the Director may recover any unpaid royalty (including any unpaid interest), from the person by whom it is payable, in a court of competent jurisdiction, as a debt due to the State.

Utilisation of security deposit towards royalty payments

205. – (1) Any unpaid royalty may be recovered by the Director by utilisation of security deposited by or on behalf of the person liable to pay the royalty in respect of the mineral authority under which the minerals were mined.

(2) This section does not limit the right to utilise security for any purpose under any other provision of this Act.

Royalty return and payment on assignment or surrender of lease or licence

206. – (1) A person who assigns or surrenders, otherwise than for the purpose of a grant of a new mineral authority, a mining lease or development licence must –

- (a) lodge with the document of assignment or surrender a royalty return with respect to the mineral mined under the authority of the lease or licence for the current return period up to the last day of the month immediately preceding the lodgment of the assignment or surrender; and
- (b) lodge with the return the prescribed royalty (including any interest) in respect of that mineral.

(2) Nothing in subsection (1) affects the person's liability to pay royalty on minerals mined after the period of the royalty return and before the date the assignment or surrender takes effect.

Royalty records

207. – (1) The holder of a mining lease or development licence must keep accurate and proper records (including accounting records) such as are necessary to determine the amount of royalty payable from time to time under this Part.

(2) The holder of a mining lease or development licence must comply with any requirements of the regulations or the conditions of the lease or licence regarding the form or contents, or both, of the records.

(3) The holder of a mining lease or development licence must retain the records for a period of 7 years, or a longer or shorter period prescribed by the regulations, after the completion of the transactions, acts or operations to which they relate.

(4) A person who fails to comply with a provision of this section commits an offence.

Access to records and information

208. – (1) An authorised officer may, by notice served on the holder of a development licence or mining lease, require the holder to produce, at a specified time and place, either or both of the following –

- (a) any specified royalty records (or a copy or print of those records) kept or required to be kept under this Act;
- (b) written information of a specified kind that is relevant to determine whether royalty is payable under this Act or the amount of royalty payable under this Act, or both.

(2) A person who fails to comply with a requirement under this section commits an offence.

(3) It is a defence for failing to comply with a requirement relating to information referred to in subsection (1) (b) if the person establishes that –

- (a) the person could not, by the exercise of reasonable diligence, have complied with the requirement; or
- (b) the person complied with the requirement to the extent of the person's ability to do so.

(4) A person is not excused from complying with a requirement under this section on the ground that the records or information might tend to incriminate the person.

False or misleading particulars

209. – (1) A person must not –

- (a) make or lodge a royalty return that contains information knowing that it is false or misleading in a material particular; or
- (b) supply information knowing that is false or misleading in a material particular with respect to a royalty return.

(2) A person must not, in providing information under section 208, make a statement or representation knowing it to be false or misleading in a material particular.

(3) A person who fails to comply with a provision of this section commits an offence.

Exemptions

210. – The Minister may, by order in the Gazette, exempt a person or class of persons from any or all of the following –

- (a) paying royalty (in whole or in part);
- (b) lodging royalty returns; or
- (c) keeping royalty records,

either generally or in specified circumstances, and may do so unconditionally or subject to specified conditions.

(2) The Director may, by instrument in writing, exempt from royalties small quantities of such minerals exported as commercial samples or scientific specimens for the purpose of analysis or experiment as the Director thinks fit, and may do so unconditionally or subject to specified conditions.

(3) Without limiting the conditions that may be imposed under subsection (2), a condition may be imposed, in connection with the export of minerals for the purpose of analysis or experiment, requiring the person exporting the minerals to obtain a certificate of the result of any analysis or experiment and to deliver a certified true copy of the certificate to the Director within a specified period after the export.

Mineral export licences

211. – (1) A mineral must not be exported from Fiji unless the Director has issued in relation to that export a mineral export licence endorsed with a certificate to the effect that –

- (a) all royalties payable in respect of the mineral have been paid;
- (b) all royalties payable in respect of the mineral have been secured to the satisfaction of the Director; or
- (c) no royalties are payable in respect of the mineral.

(2) A person who exports or attempts to export a mineral in contravention of this section commits an offence.

PART 9—HEALTH AND SAFETY**Division 1 – Introduction***Interpretation*

212. – (1) In this Part –

“incident” includes a state of affairs and a set of circumstances;

“operator” of a regulated workplace means –

- (a) in the case of –
 - (i) operations at the workplace that are conducted under a mineral authority – the holder of the authority (except where the holder is a company) or the directors of the company (where the holder is a company); or
 - (ii) in the case of operations at the workplace that are not conducted under a mineral authority – the person having overall control of the operations (except where the person is a company) or the directors of the company (where the person is a company), unless paragraph (b), (c) or (d) applies;
- (b) the person nominated as operator of the workplace under section 278 and that nomination is not rejected by the Director, unless paragraph (c) or (d) applies;
- (c) the person declared to be operator of the workplace under section 279; or
- (d) the person prescribed by, or determined in accordance with, the regulations to be the operator of the workplace.

(2) For the purposes of this Part, a person is at work at a regulated workplace throughout the time the person is at the workplace, but not otherwise.

Risks arising from activities at work

213. For the purposes of this Part, risks arising out of the activities of persons at work include risks attributable to –

- (a) the manner of conducting an undertaking;

- (b) the plant or substances used for the purposes of an undertaking; or
- (c) the condition of premises (or any part of premises) used for the purposes of an undertaking.

Division 2 – Application of this Part

Application to area of mineral authority

214. This Part applies to any workplace that is in the area of a mineral authority and at which operations are carried out under the authority of the mineral authority.

Other places to which this Part applies

215. – (1) This Part extends to any workplace that is within the area of a mining lease and is not a mine as defined by section 2.

- (2) This Part also extends to the following places of work –
- (a) any place within the site of a quarry;
 - (b) any place within the area of a petroleum licence but only in relation to activities undertaken or to be undertaken under the authority of the licence, including activities undertaken or to be undertaken on, in, under or over offshore-land within the meaning of the Petroleum (Exploration and Exploitation) Act;
 - (c) any place where the extraction of material from land for the purpose of recovering minerals or quarry product is carried out;
 - (d) any place where the treatment of any such extracted material, or the treatment of minerals or quarry product, is carried out, if that place is at the place from which the material, minerals or quarry product were extracted;
 - (e) any place where the storage of or treatment of waste resulting from the extraction of material from land for the purpose of recovering minerals or quarry product, or the treatment of quarry product, is carried out, if that place is at the place from which the material, minerals or quarry product were extracted;
 - (f) any place where recycling operations are carried out, if that place is at the place from which material was extracted from land for the purpose of recovering quarry product to be used in the recycling operations;
 - (g) any place where the manufacturing of ready-mix concrete or bitumen hot mix is carried out, if that place is –
 - (i) at the place from which material was extracted from land for the purpose of recovering quarry product; and
 - (ii) is under the control of the same person that has control of the place referred to in subparagraph (i);
 - (h) any place where the treatment of zircon, rutile, ilmenite, monazite and associated minerals is being carried out;
 - (i) any place where operations associated with the care, security or maintenance of a place referred to in any other paragraph are carried out during any time when activities or operations at that place are suspended;

- (j) any place where operations associated with the decommissioning or abandonment of a place referred to in any other paragraph are carried out;
- (k) any place where an activity or operation referred to in any preceding paragraph is or has been carried out and that is being rehabilitated;
- (l) any place that has ceased to be within the area of a mineral authority and that is being rehabilitated.

(3) Any building, structure, pit, shaft, drive, level, incline, decline, excavation or work that is –

- (a) at a place referred to in subsection (2);
- (b) in the course of construction; and
- (c) intended to be part of a regulated workplace,

is taken to be part of the regulated workplace constituted by that place.

(4) This Part also extends to the following places, whether or not they are places of work –

- (a) an abandoned mine (other than an abandoned mine used for the storage, treatment or disposal of waste that is not connected with an activity or operation referred to in subsection (2));
- (b) any place described in subsection (2) during any time when activities or operations at that place are suspended;
- (c) any place on which drilling operations are carried out.

(5) For the purposes of this section, the extraction of material from land for the purpose of recovering minerals or quarry product includes:

- (a) any activity that is ancillary to, or connected with, extracting material for such a purpose; and
- (b) such other activities as may be prescribed by the regulations,

but does not include any activity or class of activity that is excluded from the operation of this subsection by the regulations.

(6) In this section –

“abandoned mine” means a discontinued mine, a closed mine or a former mine, but does not include a mine at which mining operations are merely suspended;

“drilling operation” means any drilling operation, not within the area of a mining lease, carried out from the surface in the course of searching for minerals, quarry products or geothermal resources, and includes the preparation and restoration of drill sites;

“quarry product” means any material that is extracted from a quarry for commercial or industrial purposes;

“recycling operation” means the sorting, grading and preparation of recycled concrete, recycled brick, recycled bitumen, recycled stone or recycled rock to be blended with any quarry product.

Part binds Government

216. This Part binds the Government so far as the Government or an agency of the Government carries out regulated operations.

Exemptions

217. – (1) The Minister may, by order published in the Gazette, exempt any place or operation, or any class of places or operations, from specified provisions of this Part, and may do so unconditionally or subject to specified conditions.

(2) A mine or mining operations carried out at a mine cannot be exempted from all the provisions of this Part.

Small workplaces

218. – (1) In this section –

“small workplace” means a regulated workplace at which fewer than 10 persons are employed.

(2) The regulations may modify the operation of this Part in relation to small workplaces.

(3) This section does not limit the power of the Minister to grant exemptions under section 217 in relation to small workplaces.

(4) A person does not commit an offence for a contravention of this Part or the regulations made for the purposes of this Part during the period of one month after the number of persons employed at a workplace increased to 10 or more.

Decision on question of whether this Part applies

219. – (1) If any question arises, otherwise than in proceedings before a court, as to whether a place is a place to which this Part applies, the Director or an owner or occupier of the place may apply to the Tribunal for the question to be determined.

(2) The Tribunal may determine the question, and the determination is binding, except in court proceedings in connection with anything done or omitted to be done before the determination was made.

(3) A determination under this section does not, in itself, operate to impose any liability on a person for anything done or omitted to be done before the determination was made.

Division 3 – Health and safety management plans*Preparation of health and safety management plan*

220. – (1) The operator of a regulated workplace must prepare a written health and safety management plan, in accordance with this Part and the regulations, stating

how the health and safety of the persons who work at the workplace, or who are directly affected by the operations at the workplace, will be protected.

(2) For the purposes of this section, a person may be directly affected by the operations at a mine or other regulated workplace even if the person is not inside the mine or other workplace.

(3) The regulations may specify persons or a class of persons as being directly affected by a mine or other regulated workplace for the purposes of this Division, whether –

- (a) by reference to an area, specified or described in or in accordance with the regulations, where persons reside, work or otherwise frequent; or
- (b) by reference to other matters.

(4) This section does not require an operator to prepare a health and safety management plan for a regulated workplace if a previous operator of the workplace prepared a plan that complies with this Part and the regulations and the plan is adopted by the subsequent operator.

No work directly related to regulated operations without plan

221. – (1) The operator of a regulated workplace must ensure that work directly related to regulated operations is not carried out by any person at the workplace unless a health and safety management plan has been implemented for the workplace.

(2) The regulations may declare that work at any specified class or description of regulated workplaces is or is not directly related to regulated operations for the purposes of this section.

Duty of operator to ensure compliance with plan

222. – (1) The operator of a regulated workplace must ensure that work at the workplace is carried out in compliance with the health and safety management plan for the workplace.

(2) Subsection (1) extends to work undertaken by contractors who undertake work at the workplace.

Contents of plan

223. – (1) The health and safety management plan for a regulated workplace must –

- (a) contain a health and safety policy;
- (b) establish strategies to meet the objectives and targets of the policy;
- (c) describe the capabilities and support mechanisms (including operating procedures and work instructions) necessary to implement those strategies;
- (d) provide for auditing (by measurement, monitoring and evaluation) the health and safety performance at the workplace and taking preventative or corrective action; and

- (e) provide for the regular review of the plan with the objective of continually improving health and safety performance at the workplace.
- (2) The health and safety management plan for a regulated workplace must include summaries of or references to –
- (a) prescribed provisions of regulations under this Part that apply to the workplace;
 - (b) any systems, policies, programmes, plans and procedures developed and implemented under this Part in relation to the workplace; and
 - (c) any codes, standards or guidelines that apply to the workplace.
- (3) The health and safety management plan for a regulated workplace must provide –
- (a) the basis for the identification of hazards, and of the assessment of risks arising from those hazards, by the operator of the workplace;
 - (b) for the development of controls for those risks; and
 - (c) for the reliable implementation of those controls.
- (4) A health and safety management plan must include –
- (a) the document that sets out the management structure required under Division 4 (Management structure);
 - (b) the contractor management plan required under Division 5 (Contractors);
 - (c) the emergency plan required under Division 6 (Emergency management); and
 - (d) any other matter required by the regulations.
- (5) A health and safety management plan must comply with any other requirements of the regulations regarding the form and contents of the plan.

Consultation

224. The persons who work at a regulated workplace must be consulted, in accordance with the regulations, during the preparation of the health and safety management plan for the workplace and before its amendment.

Obligations concerning health and safety management plan

225. – (1) The operator of a regulated workplace must –
- (a) provide the health and safety management plan, or a summary of the plan, to the persons working at the workplace;
 - (b) regularly review the plan in consultation with those persons or their representatives; and
 - (c) ensure that no contractor starts work at the workplace without having been provided with a copy of, or with access to, the plan, so far as the plan is relevant to the places where the contractor will work.
- (2) The regulations may make provision for or with respect to the manner in which an operator's obligations under this section are to be met.

Access to health and safety management plan

226. – (1) An up-to-date copy of the health and safety management plan for a regulated workplace must be kept at the workplace by the operator and must be accessible to or made available for inspection by an authorised officer or by any person who works at the workplace.

(2) The operator of a regulated workplace must immediately supply an authorised officer with an up-to-date copy of the health and safety management plan for the workplace on request.

Nominator must give operator health and safety information

227. – (1) A person who nominates another person as the operator of a regulated workplace must provide the person nominated with all information available to the nominating person that may reasonably be relevant to the development and implementation of a health and safety management plan for the workplace.

(2) The regulations may prescribe the information that must be provided under this section.

Former operator must return information

228. – (1) If a person ceases to be the operator of a regulated workplace, the person must take all reasonable steps to return to the current mine holder or other responsible person any information provided to the person under section 227 (1) or otherwise obtained by the person in the course of exercising the functions of an operator that are prescribed by the regulations, whether or not updated by the operator.

(2) The information must be returned as soon as practicable after the person ceases to be the operator.

Division 4 – Management structure

Operator

229. The operator of a regulated workplace has the primary responsibility for the health and safety of the persons who work at the workplace.

Site manager

230. – (1) The operator of a regulated workplace must ensure that work directly related to regulated operations is not carried out by any person at the workplace unless a person holds an appointment or is designated as site manager for the workplace.

(2) The site manager for a regulated workplace is the most senior person within the operator's organisation whose place of work is at the site of the workplace and who is responsible for all activities and persons at the site.

(3) The operator of a regulated workplace must ensure that the Director is notified in writing of any appointment or designation, or termination of appointment or designation, of a person as site manager for the workplace before or as soon as practicable (but within 7 days) after the appointment, designation or termination.

Underground mine manager

231. – (1) The operator of an underground mine must ensure that work directly related to mining is not carried out underground by any person at the mine unless a person with a first class certificate of competence as a mine manager holds an appointment as underground mine manager for the mine.

(2) Subsection (1) does not apply to an underground mine at which fewer than 10 persons are employed underground, unless a direction under subsection (3) is in force.

(3) The Director may, by notice in writing to the operator of a mine referred to in subsection (2), give a direction that subsection (1) is to apply to the mine if satisfied that it is appropriate in the circumstances to give the direction.

(4) The operator of an underground mine must ensure that the Director is notified in writing of any appointment or termination of appointment of a person as underground mine manager for the mine before or as soon as practicable (but within 7 days) after the appointment or termination.

Operator must prepare management structure document

232. – (1) As part of the health and safety management plan for a regulated workplace, the operator of the workplace must prepare a document that sets out the management structure of the workplace.

(2) The management structure must –

- (a) nominate persons within the structure by position and must outline their areas of responsibility and accountability;
- (b) include competent persons with appropriate engineering competence; and
- (c) include competent persons to perform the functions of supervisors of the workplace.

(3) An operator must take all reasonable steps to maintain the management structure, including having others acting in, and the timely filling of, vacant positions in the structure.

(4) During an emergency, the management structure of a regulated workplace may be suspended and a different management structure may be put into place for the duration of the emergency.

Register of persons occupying positions

233. – (1) The operator of a regulated workplace must ensure that a register is kept at the site of the workplace containing the names of persons occupying positions in the management structure of the workplace.

(2) The register must cover both current occupants of positions and occupants for the previous 5 years.

(3) The register is to be accessible to or made available for inspection on request by an authorised officer or by any person who works at the mine.

Division 5 – Contractors

Operator must prepare contractor management plan

234. As part of the health and safety management plan for a regulated workplace, the operator of a workplace at which contractors are proposed to be used must prepare a contractor management plan stating how the risks arising from the use of contractors at the workplace will be managed.

Content of contractor management plan

235. A contractor management plan for a regulated workplace must make provision for the matters required by the Director or prescribed by the regulations.

Operator to ensure contractor's familiarity with systems

236. The operator of a regulated workplace at which any contractor proposes to work must ensure, before that work commences, that consultation occurs with the contractor so that –

- (a) the contractor is familiar with the relevant parts of the health and safety management plan for the workplace; and
- (b) the contractor's arrangements for safety management are consistent with the health and safety management plan for the workplace.

Duties of operator regarding contractors

237. – (1) An operator of a regulated workplace must ensure –

- (a) that every contractor who works at the workplace is directed to comply with the requirements of this Part and the regulations;
- (b) that the activities of the contractor are monitored to the extent necessary to determine whether or not the contractor is complying with the operator's health and safety management plan (including the contractor management plan) and with the requirements of this Part and the regulations;
- (c) that, if the contractor is not so complying, the contractor is directed to take action immediately to comply with the plan and those the requirements;
- (d) that if a risk to the health or safety of a person arises because of such non-compliance, the contractor is directed to stop work immediately and to not resume work until those requirements are complied with, unless an immediate cessation of work is likely to increase the risk to health and

safety, in which event the contractor must be directed to stop work as soon as it is safe to do so;

- (e) that the contractor and the contractor's employees receive induction training with respect to occupational safety and health as specified in the health and safety management plan for the workplace; and
- (f) that the contractor is provided with details of any relevant changes made to the health and safety management plan for the workplace.

(2) A failure by an operator to give a direction, or to ensure that a direction is given, under this section, does not affect any liability of the contractor under this Part or the regulations.

Division 6 – Emergency management

Meaning of emergency

238. For the purposes of this Division, an emergency exists at a regulated workplace when a situation is not controlled by the health and safety management plan for the mine and there is a threat to the life or physical well-being of persons at or outside the workplace.

Operator must prepare emergency plan

239. The operator of a regulated workplace must ensure that an emergency plan that complies with this Division is prepared for the workplace.

No regulated operations without emergency plan

240. The operator of a regulated workplace must ensure that regulated operations are not carried out at the workplace unless an emergency plan that complies with this Division is implemented for the workplace.

Contents of emergency plan

241. – (1) An emergency plan must contain an up-to-date plan of the regulated workplace and any other plan required by the regulations.

(2) An emergency plan must adequately address emergency evacuation and any other matter prescribed by the regulations.

Review and testing

242. – (1) The operator of a regulated workplace must ensure that the emergency plan for the workplace is reviewed and tested –

- (a) as soon as practicable after any emergency has occurred at the workplace; and
- (b) whenever the health and safety management plan for the workplace is reviewed.

(2) The persons who work at the workplace must be consulted, in accordance with the regulations, during the review.

Division 7 – Duties of care and rights

Operation of this Division

243. This Division imposes duties of care and confers rights on persons at regulated workplaces.

Operator

244. Without limiting any other provision of this Part, the operator of a regulated workplace must ensure that –

- (a) all persons working at the workplace (including managers and supervisors) have the necessary skills, competence and resources to undertake their work safely and to ensure the safety of others;
- (b) the workplace and work methods are safe;
- (c) hazards at the workplace are identified and that associated risks are controlled;
- (d) safety information concerning the workplace are communicated to relevant persons;
- (e) risk management practices are implemented in areas of risk at the workplace; and
- (f) systems are established to ensure that workers at the workplace are able and are encouraged to comply with their duties under section 245.

Workers

245. – (1) A worker at a regulated workplace must –

- (a) comply with the health and safety management plan for the workplace;
- (b) follow the operator's procedures for emergencies as set out in the emergency plan for the workplace;
- (c) before commencing work and at frequent intervals during the worker's work day, examine carefully the workplace and any machinery or system within the worker's responsibility and intended to be used at the workplace, so as to be satisfied that it is safe;
- (d) take any actions within the worker's responsibility to control a danger at the workplace;
- (e) if the worker is employed by a contractor, comply with any contractor management plan;
- (f) ensure that the workplace and work methods for which the worker is responsible are safe;
- (g) ensure that hazards at the workplace for which the worker is responsible are identified and that associated risks are controlled;
- (h) ensure that safety information concerning the workplace for which the worker is responsible is communicated to relevant persons, particularly at the change of a shift;
- (i) have regard to appropriate risk management standards at the workplace for which the worker is responsible; and
- (j) implement risk management practices in areas that the worker controls.

(2) A worker at a regulated workplace must immediately report to the worker's immediate supervisor (if any) any situation that the worker believes could present a risk to health and safety and that is not within the worker's competence to control.

(3) If the worker's supervisor is not immediately available, the worker must instead immediately report the situation to another senior person (if any) at the workplace.

(4) This section extends to a worker employed by a contractor who works at a regulated workplace, to the extent that it applies to work done by the worker, in the same way as it applies to a worker employed by an operator.

Persons in management positions

246. – (1) A person who holds a management position at a regulated workplace must comply with the health and safety management plan for the workplace.

(2) A person who holds a management position at a regulated workplace and is an employee of a contractor must comply with the contractor management plan.

(3) A person who holds a management position at a regulated workplace must inform the site manager if the person is aware that the conduct of the workplace does not conform to this Part or the regulations.

(4) A failure by a person to inform the site manager under subsection (3) does not affect any liability of the operator under this Part or the regulations.

(5) A person who holds a management position at a regulated workplace –

- (a) must ensure that the workplace and work methods for which the person is responsible are safe;
- (b) must ensure that hazards at the workplace for which the person is responsible are identified and that associated risks are controlled;
- (c) must ensure that safety information concerning the workplace for which the person is responsible is communicated to relevant persons, particularly other supervisors at the change of a shift;
- (d) must have regard to appropriate risk management standards at the workplace for which the person is responsible;
- (e) must implement risk management practices in areas that the person controls; and
- (f) must comply with any other requirements imposed by or under the regulations.

Rights of workers

247. – (1) A worker at a regulated workplace has the right to cease work or to remove himself or herself from any location at the workplace, when circumstances arise that appear to the worker, with reasonable justification, to pose a serious danger to the worker's own health or safety.

(2) This section extends to a worker employed by a contractor who works at a regulated workplace, to the extent that it applies to work done by the worker, in the same way as it applies to a worker employee by an operator.

Other duties and obligations not affected

248. Nothing in this Division affects any duties or obligations imposed on a person under any other provision of this Act or the regulations or under any other law.

Division 8 – Serious incidents

Meaning of serious incident

249. In this Division –

“serious incident” at a regulated workplace means –

- (a) any incident at the workplace that has resulted in the death of or serious injury to a person;
- (b) any incident at the workplace that presents an imminent threat of death or serious injury to a person; or
- (c) any other incident at or relating to the workplace that is of a kind prescribed by the regulations for the purposes of this definition.

Notifying serious incidents

250. – (1) The site manager for a regulated workplace must give an inspector notice of any serious incident in accordance with this section.

(2) Notice must be given by the quickest means available immediately after the site manager becomes aware of the incident and also in writing as soon as practicable after the serious incident occurs.

(3) The operator of a regulated workplace must keep records at the workplace of every notice given under this section for at least 5 years or a longer or shorter period prescribed by the regulations.

Investigation of serious incidents involving death and certain other serious incidents

251. – (1) This section applies to a serious incident –

- (a) that has resulted in the death of a person; or
- (b) that has not resulted in the death of a person but in respect of which an inspector has directed that the site of the incident not be disturbed.

(2) The operator of a regulated workplace at which the serious incident occurred must take measures to ensure that the site of the incident is not disturbed for 24 hours after the incident or a longer or shorter period specified by an inspector.

(3) An inspector must –

- (a) inspect the site of the incident;

- (b) investigate and determine as far as practicable the nature and cause of the incident; and
- (c) make a report about the incident to the Director.

Investigation of other serious incidents

252. – (1) This section applies to a serious incident that is not referred to in section 251.

(2) The site manager for a regulated workplace at which the serious incident occurred must take measures to ensure that the site of the incident is not disturbed until the site manager has made the investigation and determination required under this section.

(3) The site manager must –

- (a) investigate and determine as far as practicable the nature and cause of the serious incident;
- (b) prepare a report about the incident and containing recommendations designed to prevent future similar incidents; and
- (c) give an inspector a copy of the report if requested to do so by the inspector.

Inquiries by Tribunal

253. – (1) The Minister may, by notice in the Gazette, direct the Tribunal to conduct an inquiry into a serious incident.

(2) The Tribunal is to conduct an inquiry into the technical aspects of the serious incident (including any technical aspects specified in the notice) and into any other aspects relating to the incident that are specified in the notice.

Permitted actions

254. This Division does not prevent any action –

- (a) to help or remove a trapped or injured person or to remove a body;
- (b) to avoid injury to a person or serious damage to property;
- (c) for the purposes of any police investigation;
- (d) in accordance with a direction of an inspector; or
- (e) in any other circumstances prescribed by the regulations.

Division 9 – Records and reports

Records

255. – (1) The operator of a regulated workplace must keep the records concerning health and safety that are required by this Part or the regulations for at least 5 years or a longer or shorter period prescribed by the regulations.

(2) The regulations may make provision for or with respect to the manner in which the records are to be kept.

Reports by operator

256. The operator of a regulated workplace must make the reports concerning health and safety that are required by the regulations, in the manner required by the regulations.

Monthly reporting of reportable incidents by site manager

257. – (1) In this section –

“reportable incident” at a regulated workplace means –

- (a) any serious incident as defined in section 249 (Meaning of serious incident) at the workplace;
- (b) any incident at the workplace that has resulted in lost time, other than an incident that has no adverse implications for health and safety at the workplace;
- (c) any incident at the workplace that has resulted in the need for first-aid, medical or surgical treatment; or
- (d) any other incident at or relating to the workplace that is of a kind prescribed by the regulations for the purposes of this definition.

(2) The site manager for a regulated workplace must give an inspector a written report setting out details of all reportable incidents for each named month.

(3) The details must include –

- (a) details of the date and nature of each reportable incident;
- (b) details of the causes of each reportable incident;
- (c) a statement of the operational time lost as a result of each reportable incident, where the incident involved the closure of the whole or a part of the operations;
- (d) a statement of the time lost in respect of individual workers as a result of each reportable incident, where the incident did not involve closure of the whole or a part of the operations; and
- (e) any other information required by the regulations.

(4) The report for a named month must be given to an inspector by the end of the following named month or by such other date as an inspector directs or approves.

Annual reports by companies and other bodies corporate

258. If –

- (a) in the case where the operations at a regulated workplace are conducted under a mineral authority – the holder of the authority is a company or other body corporate; or
- (b) in the case where the operations at a regulated workplace are not conducted under a mineral authority – the person having overall control of the operations of the workplace is a company or other body corporate,

the company or body corporate must include in any annual report made under another written law or under its memorandum or articles of association or other constituting

instrument a report on the performance of the workplace's health and safety plan, including any corrective and preventative actions taken and any improvements made.

Division 10 – Health and safety representatives

Health and safety representatives generally

259. – (1) One or more individuals may be elected as health and safety representatives for a regulated workplace.

(2) The site manager for a regulated workplace must take all reasonable steps to ensure that there is at all times at least one health and safety representative for the workplace.

(3) If two or more individuals are elected for a regulated workplace, then, subject to the regulations –

- (a) they are to exercise their responsibilities by majority decision; but
- (b) they may agree to have separate responsibilities for different health and safety issues at the workplace.

Functions of representative

260. The functions of a health and safety representative for a regulated workplace are as follows –

- (a) to represent, assist and advise the persons employed at the workplace in health and safety matters;
- (b) to investigate any matter that may be a risk to health and safety at the workplace;
- (c) to participate in inspections and investigations with the site manager, supervisor or an inspector;
- (d) to review procedures at the workplace for the purpose of assessing health and safety factors;
- (e) to make recommendations about procedures at the workplace for the purpose of improving health and safety matters at the workplace;
- (f) to investigate complaints made by persons employed at the workplace about health and safety issues relating to the workplace;
- (g) to help resolve health and safety issues relating to the workplace;
- (h) to exercise other functions conferred by this Act or prescribed by the regulations.

Functions of representative concerning serious danger to health and safety

261. – (1) If a health and safety representative for a regulated workplace considers that operations at the workplace pose or will pose a serious danger to health and safety of persons at the workplace, the representative must notify and consult the supervisor or site manager about the danger.

(2) The representative may direct that the operations or any part of the operations be stopped or that persons affected or potentially affected by the danger be evacuated to a safe area or both, if the representative considers –

- (a) that time does not permit notification or consultation or both, or that no satisfactory agreement is being reached during consultation; and
- (b) that the danger is immediate or imminent and of a nature that warrants action under this subsection.

(3) The representative must notify the site manager of the direction as soon as practicable after it is given.

(4) The site manager must not restart the operations or order the persons to return to work unless a determination is made that the danger is reduced to an acceptable level or is not existent or imminent or of a nature that warrants continuation of the direction.

(5) A determination under subsection (4) is to be made by agreement between the site manager and the representative or, in the absence of agreement, by an inspector.

(6) A site manager who fails to give effect to a direction under this section commits an offence.

(7) A person who, being directed to be evacuated to a safe area, fails to comply with any reasonable orders given for the purposes of the direction commits an offence.

Trigger for election

262. An election of a health and safety representative for a regulated workplace must be held if one or more positions are vacant and –

- (a) a person employed at the workplace requests in writing that an election be held; or
- (b) an inspector directs that an election be held.

Conduct of election

263. – (1) An election of a health and safety representative is to be conducted in accordance with any applicable requirements of this Division and the regulations and otherwise is to be conducted in accordance with any directions of an inspector.

(2) An election of a health and safety representative for a regulated workplace is to be conducted by a person authorised by an inspector to conduct the election.

(3) A person may be a candidate if and only if the person is employed at the workplace.

(4) Subject to the regulations, all individuals (including employees of contractors) employed at the workplace are entitled to vote in the election.

(5) If there is only one candidate for the election, that person is taken to have been elected.

Term of office

264. Subject to section 265, a health and safety representative for a regulated workplace holds office for 2 years after the date on which the representative was elected but is eligible to be elected for further terms of office.

Ceasing to hold office

265. – (1) A person ceases to be a health and safety representative for a regulated workplace if –

- (a) the person resigns as a health and safety representative;
- (b) the person ceases to be employed at the workplace;
- (c) the person's term of office expires without the person having been elected for a further term; or
- (d) the person is removed from office at a poll of persons employed at the workplace.

(2) A person may resign as a health and safety representative by written notice given to the site manager.

Removal from office

266. – (1) A person may be removed from office as a health and safety representative for a regulated workplace at a poll of workers whom the person represents at the workplace.

(2) An inspector may resolve any issue as to whom a representative represents at the workplace.

(3) A poll is to be conducted by secret ballot in accordance with any applicable requirements of this section and the regulations and otherwise is to be conducted in accordance with any directions of an inspector.

(4) A poll is to be conducted by a person authorised by an inspector to conduct the poll.

(5) A person entitled to do so votes at the poll if the person is issued with a voting paper.

Duties of operators

267. – (1) The operator of a regulated workplace must ensure the site manager arranges a course of appropriate training for a health and safety representative for the workplace in matters relating to the representative's functions within a reasonable time (not exceeding 2 months) after the representative's election, unless the representative has already undertaken a course of training for that purpose and does not need retraining or further training.

(2) The operator of a regulated workplace must ensure a health and safety representative for the workplace is given access and facilities to facilitate the exercise of the representative's functions.

(3) The operator of a regulated workplace must permit a health and safety representative for the workplace to exercise the representative's functions, and to undertake any course of training required by this section, without loss of remuneration or other entitlements.

Duty of representative to undertake training

268. – (1) A health and safety representative for a regulated workplace must undertake a course of training provided under section 267.

(2) However, the representative need not undertake the course if the representative has already undertaken a course of training for that purpose unless the site manager informs the representative that the site manager believes the representative needs retraining or further training.

Protection of representative

269. – (1) A person who obstructs a health and safety representative in the exercise of any function conferred on the representative by or under this Part commits an offence.

(2) A person who intimidates, disadvantages or penalises a health and safety representative in the exercise of any function conferred on the representative by or under this Part commits an offence.

Division 11 – Health and safety committees

Health and safety committee

270. – (1) The site manager for a regulated workplace must establish a health and safety committee for the workplace.

(2) The committee is established by a written document, referred to in this Division as the committee's charter.

(3) The committee's charter is to include a statement establishing the committee and statements about the following –

- (a) how and by whom appointed members are to be appointed;
- (b) how an appointed member ceases to hold office as a member;
- (c) the term of office of appointed members and their eligibility for re-appointment.

(4) The committee's charter may include statements about any of the following –

- (a) the number, or minimum number or maximum number or both, of appointed members;

- (b) the procedure of the committee;
- (c) additional functions of the committee.

(5) The provisions of this Part and the regulations prevail to the extent of any inconsistency with the terms of the committee's charter.

(6) The site manager may amend the committee's charter with the concurrence of an inspector given after consultation with the committee.

Membership and procedure

271. – (1) A health and safety committee for a regulated workplace consists of –

- (a) the site manager for the workplace;
- (b) the health and safety representatives for the workplace; and
- (c) other persons appointed in accordance with the committee's charter.

(2) At least half the members of the committee must consist of workers at the workplace who are not holding management positions.

(3) The procedure of the committee is to be as determined by the committee subject to this Part, the regulations and the committee's charter.

Functions of committee

272. The functions of a health and safety committee for a regulated workplace are as follows –

- (a) to facilitate consultation and co-operation between managers and workers in risk management at the workplace;
- (b) to review injuries, hazards and incidents at the workplace, and workers' illness, and to recommend corrective and preventative action;
- (c) to carry out inspections at the workplace;
- (d) to consider issues referred to the committee by a health and safety representative for the workplace or by the site manager or operator of the workplace;
- (e) to help resolve health and safety matters relating to the workplace;
- (f) to recommend improvements to the health and safety management plan for the workplace and other health and safety arrangements for the workplace;
- (g) to promote health and safety awareness programmes;
- (h) to ensure that emergency procedures at the workplace are kept up to date;
- (i) to exercise other functions prescribed by the regulations.

Protection of committee

273. – (1) A person who obstructs a health and safety committee, or a member of the committee, in the exercise of any function conferred on the committee by or under this Part commits an offence.

(2) A person who intimidates, disadvantages or penalises a member of a health and safety committee in the exercise of any function conferred on the committee by or under this Part commits an offence.

Division 12 – Mineral Industry Health and Safety Advisory Board

Establishment of Advisory Board

274. This section establishes the Mineral Industry Health and Safety Advisory Board.

Membership and procedure of Advisory Board

275. – (1) The Minister may appoint such number of persons to be members (including a Chairperson) of the Advisory Board as the Minister thinks fit.

(2) The procedure of the Advisory Board is to be as determined by the Board subject to the regulations and any directions of the Minister.

Functions of Advisory Board

276. – (1) The functions of the Advisory Board are as follows –

- (a) to advise and make recommendations to the Minister about health and safety at regulated workplaces;
- (b) to provide a forum for discussion about written law relating to health and safety at regulated workplaces, and in particular to review the effectiveness of written law in ensuring risks to health and safety at regulated workplaces are at acceptable levels;
- (c) to advise on standards of competence for mine managers and persons in other positions at regulated workplaces;
- (d) to exercise other functions determined by the Minister or prescribed by the regulations.

(2) In exercising its functions, the Advisory Board is to communicate with and liaise with the National Occupational Health and Safety Advisory Board established under the Health and Safety at Work Act 1996 and any advisory committees established under that Act, if so directed by the Minister and in other circumstances considered appropriate by the Mineral Industry Health and Safety Advisory Board.

(3) The Chairperson of the Advisory Board, or another member for the time being nominated by the Board, is deemed to be, *ex officio*, an additional member of the National Occupational Health and Safety Advisory Board.

Division 13 – Miscellaneous

Nomination of person as operator

277. – (1) In the case of a regulated workplace where operations are being conducted under a mineral authority, the holder of the authority may nominate, as the

- operator of the workplace, one person who is the employee with the day to day control of the workplace.
- (2) In the case of a regulated workplace where operations are not being conducted under a mineral authority, the person having overall control of the operations of the workplace may nominate, as the operator of the workplace, one person who is the employee with the day to day control of the workplace.
- (3) A nomination must be made in writing to the Director and must be in the form approved by the Director.
- (4) The Director may request the person who made a nomination to provide further information concerning the nomination in a specified manner and within a specified time.
- (5) The Director may reject a nomination –
- (a) if the Director believes that the nominated person is not the employee with the day to day control of the workplace;
 - (b) if the person who made the nomination provides no information, or provides inadequate information, in accordance with a request for further information; or
 - (c) in such other circumstances as may be prescribed by the regulations.
- (6) The Director must tell the person who made the nomination if it is rejected, and must do so within 28 days of receiving the nomination or within any further time specified for the purpose by the Director when requesting further information.

Declaration of person as operator

278. The Director may declare, by notice in writing, that a person specified by name, position or other description is the operator of a regulated workplace, if it appears to the Director that uncertainty otherwise exists as to the identity of the operator or that otherwise there would be no operator.

Certificates of competence

279. – (1) Certificates of competence may, in accordance with the regulations, be granted to perform the functions of a mine manager or other specified functions relating to regulated workplaces or regulated operations.
- (2) The regulations may provide that specified functions relating to regulated workplaces or regulated operations must not be performed by a person who does not hold a certificate of competence of a specified category.
- (3) The regulations may make provision for or with respect to any or all of the following –
- (a) the development of competence standards;
 - (b) the assessment of competence standards of persons, including the conduct of examinations;

- (c) the granting and replacement of certificates of competence;
- (d) the categories of certificates of competence, which may relate to specified activities or specified levels of expertise (including first class certificates of competence as a mine manager);
- (e) the imposition of conditions on certificates of competence;
- (f) the maintenance of competence by those to whom certificates of competence have been granted;
- (g) the suspension or cancellation of certificates of competence, including suspension or cancellation because of incompetence or negligence;
- (h) the restoration of certificates of competence that have been suspended or cancelled;
- (i) the circumstances in which a certificate of competence (however described) granted by an authority of a foreign country will be accepted as being sufficient qualification for the grant of a certificate of competence under this Part and the circumstances in which it will not be accepted;
- (j) the range of specified functions that the holder of specified evidence of competence is allowed to perform without breaching this Part;
- (k) the keeping of a register of certificates of competence;
- (l) the appointment and functions of examiners;
- (m) the charging of fees for or in connection with certificates of competence.

Offences – certificates of competence

280. – (1) A person must not, with intent to deceive –
- (a) use a certificate of competence granted under this Act;
 - (b) lend to another person a certificate of competence granted under this Act; or
 - (c) allow to be used by another person a certificate of competence granted under this Act.
- (2) A person must not –
- (a) make a document so closely resembling a certificate of competence granted under this Act as to be calculated to deceive; or
 - (b) have in the person's possession a document so closely resembling a certificate of competence granted under this Act as to be calculated to deceive.
- (3) A person must not make a statement knowing it to be false or misleading in a material particular, or produce, furnish, send or otherwise make use of a document knowing it to be false or misleading in a material particular for the purpose of obtaining for himself, herself or another person –
- (a) the grant of a certificate of competence or the issue of a duplicate certificate or the restoration of a certificate; or
 - (b) employment at a regulated workplace to perform functions for which a certificate of competence is required.

Offences generally

281. – (1) Subject to subsection (3), a person who contravenes, whether by act or omission, a provision of this Part commits an offence.

- (2) A person who commits an offence under this Part is liable on conviction to –
- (a) in the case of an individual, any or all of the following –
 - (i) a fine not exceeding \$50,000;
 - (ii) a daily fine not exceeding \$5,000 for a continuing offence;
 - (iii) imprisonment for a term not exceeding 12 months; or
 - (b) in the case of a body corporate, either or both of the following –
 - (i) a fine not exceeding \$250,000;
 - (ii) a daily fine not exceeding \$10,000 for a continuing offence.

(3) A contravention of any provision of this Part prescribed by the regulations or in circumstances prescribed by the regulations does not give rise to an offence, but this subsection does not affect any duty of care arising under or in connection with the provision concerned.

Regulations – specific powers

282. The regulations may make provision for or with respect to the following –
- (a) the conduct of elections and polls under this Part;
 - (b) the functions of health and safety representatives;
 - (c) the membership, procedures and functions of health and safety committees or the Advisory Board;
 - (d) the specification or determination of management positions at a mine.

PART 10—ADMINISTRATIVE AND OTHER FUNCTIONS

Division 1 – Officers

Inspectors

283. – (1) For the purposes of this Act, the following persons are inspectors –
- (a) persons appointed as inspectors of mines by the Public Service Commission;
 - (b) persons designated under subsection (2) as inspectors.
- (2) The Director may, with the approval of the Public Service Commission, designate any persons or any class of persons as inspectors for the purposes of this Act, whether the persons are public officers or not.
- (3) A designation may be general, or may be limited to the exercise of particular functions specified in the instrument of designation.
- (4) A person with a limited designation may exercise functions as an inspector in connection only with the specified functions.

(5) A limited designation may be made by reference to functions other than specified functions.

- (6) A designated person ceases to be an inspector if –
- (a) the Director revokes the designation; or
 - (b) where relevant, the person ceases to be within a class of persons referred to in subsection (2).

Authorised officers

284. – (1) For the purposes of this Act, the following persons are authorised officers -

- (a) the Director;
- (b) the Registrar;
- (c) inspectors;
- (d) officers designated under subsection (2) as authorised officers.

(2) The Director may, by written instrument, designate public officers or any class of public officers as authorised officers for the purposes of this Act.

(3) A designation may be general, or may be limited to the exercise of particular functions specified in the instrument of designation.

(4) A person with a limited designation may exercise functions as an authorised officer in connection only with the specified functions.

(5) A limited designation may be made by reference to functions other than specified functions.

- (6) A designated person ceases to be an authorised officer if –
- (a) the Director revokes the designation;
 - (b) the person ceases to be a public officer; or
 - (c) where relevant, the person ceases to be within a class of public officers referred to in subsection (2).

Functions of inspectors

285. – (1) An inspector has the functions conferred on inspectors and authorised officers by or under this Act.

- (2) An inspector has the following powers –
- (a) to enter and inspect any regulated workplace for the purpose of –
 - (i) inquiring into and assessing regulated operations;
 - (ii) determining whether health and safety risks are at acceptable levels; or
 - (iii) facilitating the exercise of other powers under this Act;
 - (b) to enter, inspect and search any premises for the purpose of –

- (i) determining whether or not any provisions of this Act, the regulations, the conditions of a mineral authority or a direction given under this Act have been or are being complied with; or
- (ii) collecting and seizing evidence of contraventions of this Act, the regulations or the conditions of a mineral authority;
- (c) to stop and search any vehicle the inspector reasonably believes is used in connection with any regulated operations;
- (d) to seize –
 - (i) any mineral or mineral-bearing ore;
 - (ii) any substance the inspector reasonably suspects to be a mineral or mineral-bearing ore; or
 - (iii) any machinery or equipment,

that the inspector reasonably suspects has been or is being obtained or used in contravention of this Act, the regulations, the conditions of a mineral authority or a direction given under this Act;
- (e) to collect and analyse information on health and safety matters relevant to the mining industry and any other industry relating to regulated workplaces or regulated operations and to provide relevant information and advice to management, employees, other organisations and the public;
- (f) to monitor and analyse data on the risk control performance of individual regulated workplaces and regulated operations or parts of regulated workplaces and regulated operations;
- (g) to assess the state of risk management at regulated workplaces and regulated operations on an on-going basis to determine whether significant risks are being controlled within acceptable limits;
- (h) to review the adequacy of health and safety systems;
- (i) to investigate any accidents and other incidents at regulated workplaces and regulated operations;
- (j) to investigate complaints, and unresolved disputes, concerning risk management at regulated workplaces and regulated operations;
- (k) to issue directions to comply with this Act, the regulations or the conditions of a mineral authority;
- (l) to issue directions to stop any regulated operations, or any plant or equipment used in regulated operations, if the inspector reasonably believes that the continued operations or continued use of the plant or equipment is likely to cause death, injury or illness;
- (m) to issue directions requiring a responsible person at or in charge of a regulated workplace or regulated operations to obtain and provide to the inspector an independent engineering study about any aspect of the place or operations so far as it relates to health and safety, and in particular about the incidence or possible incidence of reportable incidents (as defined in section 257).

(3) A direction under this section may specify the manner in which, and the time at or by which, the direction must be complied with.

(4) An inspector may be accompanied by other persons to assist in, and may use reasonable force in, the exercise of the inspector's powers under this section.

(5) The powers conferred on inspectors under this section are additional to the powers conferred on them as authorised officers.

Functions of authorised officers

286. – (1) An authorised officer has the functions conferred on authorised officers by or under this Act.

(2) An authorised officer has the following powers –

- (a) to enter any premises and to make such inspections, carry out such investigations and do such acts ordinarily connected with prospecting, exploring or mining as the officer thinks fit for the purpose of searching for minerals (including drilling, digging, taking cores or samples of soil, air, water or rock);
- (b) to enter any premises and to make such investigation and inquiry as is necessary to ascertain whether or not any provisions of this Act, the regulations, the conditions of a mineral authority or a direction given under this Act have been or are being complied with;
- (c) to direct a person to produce to the officer –
 - (i) any mineral authority granted to the person or alleged by that person to have been granted to the person; or
 - (ii) any books, accounts, records or documents that relate to or are used for or in connection with prospecting, exploring or mining, and make copies of or extracts from any authority, book, account, record or document so produced;
- (d) to question any person the officer reasonably believes to be committing an offence against this Act or the regulations and require the person to state the person's name and address.

(3) An authorised officer may give such reasonable directions to any person as are necessary to enable or facilitate the exercise of the officer's functions.

(4) A direction under this section may specify the manner in which, and the time at or by which, the direction must be complied with.

(5) An authorised officer may be accompanied by other persons to assist in, and may use reasonable force in, the exercise or performance of the officer's functions (including powers under this section).

(6) The State is liable to pay compensation to the owners or occupiers of premises in respect of damage caused in connection with the exercise of the powers of authorised officers under subsection (2) (a).

Exercise of power of entry

287. A power of entry under this Part may be exercised –
- (a) in the case of entry to a place that is a regulated workplace or on State land (other than a dwelling at or on such a place) – at any reasonable time and without the need for a warrant or consent; or
 - (b) in the case of entry to any other place – under the authority of a warrant or with the consent of a person who is or appears to be an owner or occupier of the premises.

Warrants

288. – (1) In the case of a place that is a regulated workplace or on State land (other than a dwelling at or on such a place), a Magistrate may, upon written application from an inspector stating that –

- (a) entry to that place has been denied to or restricted for an authorised officer; and
- (b) the inspector has reasonable grounds to believe that entry will continue to be so denied or restricted,

issue, if the Magistrate is satisfied that there are such reasonable grounds, a warrant authorising entry to that place.

(2) In a case of any other place, a Magistrate may, upon written application from an inspector stating that the inspector has reasonable grounds to suspect or believe –

- (a) that an offence against this Act or the regulation has been or is being committed; and
- (b) that there is, in or on that place, evidence or information relating to the commission of that offence,

issue, if the Magistrate is satisfied that there are such reasonable grounds, a warrant authorising entry to and search of that place.

(3) A warrant issued under subsection (1) authorises any inspector and any person accompanying the inspector –

- (a) to enter the place, using reasonable force, at any reasonable time or at the times specified in the warrant; and
- (b) to exercise any powers conferred on the inspector under this Act (including powers as an authorised officer).

(4) A warrant issued under subsection (2) authorises any inspector and any person accompanying the inspector –

- (a) to enter and search the place, using reasonable force, at any reasonable time or at the times specified in the warrant; and
- (b) to seize any evidence or information reasonably suspected to relate to the commission of the offence.

Offences

289. – (1) A person to whom a direction is given under this Division commits an offence if the person fails to comply with the direction.

(2) A person who is directed under this Division to state the person's name and address commits an offence if the person provides a name or address knowing it to be false or misleading in a material particular.

Division 2 – Mining Tribunal

Establishment of Tribunal

290. – (1) This section establishes the Mining Tribunal.

(2) The Tribunal consists of -

- (a) a member appointed as Chairperson, who is to be a retired judge of the High Court or a person qualified for appointment as a judge of the High Court; and
- (b) two other members, who are to be persons with relevant experience or relevant technical expertise in subject-matters in respect of which the Tribunal may exercise its functions.

(3) The Chairperson is to be appointed by the Judicial Service Commission after consultation with the Minister, and the other members are to be appointed by the Minister.

(4) A member holds office for a period specified in the instrument of appointment not exceeding 3 years, but is eligible for re-appointment.

Right of appeal or to apply to Tribunal

291. – (1) The rights of appeal conferred by this section are additional to those conferred by other provisions of this Act.

(2) An applicant for a prospector's right, exploration licence or development licence may appeal to the Tribunal against the decision of the Minister or the Director to refuse to approve the application.

(3) The holder of a mineral authority may appeal to the Tribunal against the decision of the Director or Minister to suspend or cancel the authority.

(4) The holder of a mineral authority may appeal to the Tribunal against a decision of the Minister or Director to vary a condition attached to the authority or to attach a condition to the authority after the grant of the authority.

(5) The principal under a proposed prospector's right may appeal to the Tribunal against a decision of the Director to refuse to approve the application.

(7) The principal under a prospector's right may appeal to the Tribunal against a decision of the Director to cancel the right.

(8) The operator of a regulated workplace may appeal to the Tribunal against a decision or direction made or given under Part 9 (or regulations in force for the purposes of that Part) in relation to the workplace by the Minister, the Director, the Registrar, an inspector or an authorised officer.

(9) A person who is a party to a dispute between the holder of a mineral authority and other persons, including the owners or occupiers of land within the area of the authority, may apply to the Tribunal for the dispute to be determined by the Tribunal.

(10) There is no right of appeal from –

- (a) a decision of the Minister to grant or refuse an application for a mining lease;
- (b) a decision of the Minister or the Director to issue or not to issue a certificate of compatibility; or
- (c) any advice or recommendation by the Director to the Minister about an application for a development licence or mining lease; or
- (d) a decision of the Minister or Director to attach a condition to a mineral authority on its grant, unless the regulations provide otherwise.

Functions of Tribunal

292. The Tribunal may –

- (a) hear and determine appeals and applications made to the Tribunal under this Act;
- (b) settle matters relating to compensation under this Act;
- (c) inquire into technical aspects of reportable incidents (as defined in section 257) at the request of the Minister; and
- (d) exercise other functions conferred on the Tribunal by or under this Act or any other written law.

Procedure of Tribunal

293. – (1) The Tribunal –

- (a) may hear such persons, take such evidence and inform itself in such manner as it considers appropriate in order to determine the merits of any matter before it;
- (b) is not bound by any rule or practice of evidence; and
- (c) may enter and inspect regulated workplaces and regulated operations in connection with the exercise of its functions.

(2) The Tribunal may require evidence to be given on oath or by affirmation, and a member of the Tribunal may administer an oath or take a declaration for this purpose.

(3) The decision of a majority of the members is the decision of the Tribunal.

(4) The proceedings of the Tribunal are to be open to the public when it is conducting hearings or announcing its determinations.

(5) A party to proceedings before the Tribunal may appear and conduct the party's own case in person or may be represented by a legal practitioner or, with the leave of the Tribunal, by another person.

(6) The Tribunal may dismiss an appeal, or refuse to consider or to continue considering an application, if satisfied that the appeal or application is frivolous, misconceived or vexatious.

Rules of Tribunal

294. – (1) The Chief Justice may from time to time make rules for the purpose of regulating the practice and procedure of the Tribunal.

(2) In the absence of any such rules, or where no provision is made for a particular circumstance, the Magistrates' Courts Rules apply to the proceedings before the Tribunal.

Right of appeal from Tribunal to High Court

295. An appeal lies to the High Court from a decision of the Tribunal on a point of law only.

PART 11—MISCELLANEOUS

Division 1 - General

Other written laws

296. This Act has effect subject to any requirements of –
- (a) the Environment Management Act 2005; and
 - (b) any written law for the time being in force in relation to employment and associated matters.

Working plans

297. The operator of a regulated workplace must ensure that working plans for the workplace, containing prescribed plans and other information, are prepared, maintained and available for inspection as required by the regulations.

Show cause procedure

298. – (1) In this section –
- “show-cause notice” means a notice under this Act or the regulations served on or given to a person requiring the person to show cause why particular action should not be taken in relation to the person.
- (2) A show-cause notice must –
- (a) give particulars of the alleged breach or other matter to which the proposed action relates; and
 - (b) specify the period within which the person is required to respond to the notice.
- (3) Any response to a show-cause notice must be in writing.
- (4) If the person fails, within the period specified in the notice or any further period allowed by the Director, to respond to the notice or otherwise to show cause to the satisfaction of the Director why the proposed action should not be taken, the proposed action may be taken.
- (5) The regulations may provide that any specified kind of action that may be taken under this Act or the regulations may not be taken unless a notice is served on a person to show cause why the action should not be taken in relation to the person.

Codes of practice – preparation, approval, publication, amendment and revocation

299. – (1) The Director may prepare, or cause to be prepared draft codes of practice for regulated operations or regulated workplaces.

(2) A draft code of practice may refer to or incorporate, with or without modification, a document prepared or published by a body specified in the code, as in force at a particular time or from time to time.

(3) A draft code of practice may apply to –

- (a) all regulated operations or regulated workplaces;
- (b) specified classes of regulated operations or regulated workplaces; or
- (c) specified regulated operations or specified regulated workplaces.

(4) The Director is to arrange for any organisations or persons, that the Director may think appropriate, to be consulted about a draft code of practice.

(5) The Minister may approve a code of practice following consultation under subsection (4).

(6) An approved code of practice –

- (a) is to be published by notice in the Gazette; and
- (b) takes effect when it is published or on a later day specified in the notice or in the code.

(7) An approved code of practice may be amended or revoked by an instrument prepared, approved and published in accordance with the relevant procedures of this section with respect to codes of practice.

Approved codes of practice – use

300. – (1) A condition of a mineral authority requiring compliance with all applicable approved codes of practice or with specified approved codes of practice may be attached to the authority.

(2) A certified copy of an approved code of practice is admissible in evidence in any proceedings for an offence against this Act for a failure to comply with a condition referred to in subsection (1) in respect of a failure to comply with the code or a provision of the code.

(3) A person is not otherwise liable to any civil or criminal proceedings by reason only that the person has failed to observe an approved code of practice.

Registers

301. – (1) The Registrar is required to keep any registers prescribed by the regulations, in addition to other registers required to be kept under this Act.

(2) A register required by the regulations to be kept is to contain any particulars required by the regulations and any particulars considered appropriate by the Director.

Delegation

302. – (1) The Minister may delegate any functions conferred or imposed on the Minister by this Act or the regulations to the Director or any other officer of the Department, and may revoke or vary any such delegation.

(2) The Director may delegate any functions conferred or imposed on the Director by this Act to the Registrar or any other officer of the Department, and may revoke or vary any such delegation.

(3) The power to approve or not approve an application for a mining lease or to grant a mining lease cannot be delegated under this Act or the Interpretation Act (cap. 7).

Sub-delegation

303. – (1) If authorised to do so by the relevant instrument of delegation, a delegate of the Minister or of the Director may sub-delegate a delegated function to an officer of the Department of Mineral Resources, and may revoke or vary any such sub-delegation.

(2) Sections 31A to 31C of the Interpretation Act (Cap. 7) apply to sub-delegations under this section in the same way as they apply to delegations.

Conditions of delegation or sub-delegation

304. – (1) A function delegated under this Act may be exercised or performed only in accordance with any conditions to which the delegation is subject.

(2) A function sub-delegated under this Act may be exercised or performed only in accordance with any conditions to which the delegation or sub-delegation is subject.

Certified copies of mineral authorities and other documents

305. – (1) The Registrar may, on application to the Registrar, issue to the applicant a certified copy of any mineral authority or other document filed with the Director or Registrar on payment of the prescribed fee, but only if the Registrar is satisfied that the applicant for the certified copy has a proper interest in obtaining the copy.

(2) A certified copy of a mineral authority or other document issued under this section is admissible in evidence in any court.

Duplicates of lost or destroyed mineral authorities

306. – (1) The Registrar may, on application to the Registrar by the holder of a mineral authority, issue to the applicant a duplicate of the authority that the Registrar is satisfied has been lost or destroyed, but only if the applicant has –

- (a) paid the prescribed fee;
- (b) given not less than 14 days' notice in the Gazette and in one newspaper circulating in Fiji of the applicant's intention to apply for the duplicate; and
- (c) complied to the satisfaction of the Registrar with such conditions as to proof of loss or destruction of the authority as the Registrar thinks fit.

(2) A duplicate of a mineral authority issued under this section has the same force and effect for all purposes as the original mineral authority.

Offences – impersonation

307. A person who impersonates, or falsely represents that the person is, an inspector, an authorised officer or a health and safety representative commits an offence.

General penalty for offences

308. – (1) A person who commits an offence against this Act is liable on conviction to –

- (a) in the case of an individual – a fine not exceeding \$50,000 or imprisonment for a term not exceeding 12 months or both; or
- (b) in the case of a body corporate – a fine not exceeding \$250,000,

unless a different penalty is specified in this Act for the offence.

(2) A person who commits an offence against the regulations is liable on conviction to –

- (a) in the case of an individual – a fine not exceeding \$10,000; or
- (b) in the case of a body corporate – a fine not exceeding \$50,000,

unless a lower penalty is specified in the regulations for the offence.

Protection from liability

309. – (1) A matter or thing done or omitted to be done by a government official, in good faith, in the exercise or performance, or purported exercise or performance, of a function under this Act or otherwise for the purpose of administering or executing this Act does not subject the official to any personal liability.

(2) In this section –

“government official” means –

- (a) the Minister;
- (b) the Director, the Registrar, an inspector or an authorised officer;
- (c) the Tribunal or a member or officer of the Tribunal; or
- (d) a person acting under the authority of any of them.

Declarations

310. A declaration under this Act may apply generally or be limited in its application by reference to specified exceptions or factors.

Regulations

311. – (1) The Minister may make regulations to give effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision for or with respect to any matter to which this Act relates, including for or with respect to any aspect of or relating to –

- (a) mineral authorities, including applications for, the grant of and the duties of holders of mineral authorities; and
- (b) health and safety of persons at regulated operations and at regulated workplaces.

(3) Without limiting the generality of subsections (1) and (2), the regulations may, in particular, make provision for or with respect to any matters specified in Schedule 1, but the specification of a matter in an item of that Schedule does not limit another item of that Schedule or any other provision of this Act.

(4) The regulations may –

- (a) apply generally or be limited in their application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by an specified person or body,

or may do any combination of those things.

Division 2—Groundwater

Interpretation

312. In this Division –

“area” of a groundwater permit means the area over which the permit is in force;

“explore” means to take action to determine the existence, quality and quantity of groundwater;

“extract” includes treat and transport groundwater, and includes any activity prescribed by the regulations to be within this definition, but does not include any activity of a kind prescribed by the regulations to be outside this definition;

“groundwater” means sub-surface water;

“groundwater permit” means a groundwater permit referred to in this Division.

Groundwater protection zones

313. – (1) For the purpose of protecting any groundwater resource, the Minister may, by order in the Gazette, declare –

- (a) any area to be a groundwater protection zone; and
- (b) that any specified activity, industry or development is prohibited within that protection zone or is restricted to being carried out within that protection zone in accordance only with specified conditions.

(2) A declaration may be made under this section whether or not –

- (a) the groundwater protection zone is wholly or partly within the area of a mineral authority; and
- (b) the activity, industry or development is permitted under any written law.

(3) A person who carries out, or causes to be carried out, an activity, industry or development in a groundwater protection zone contrary to the terms of a declaration under this section commits an offence.

(4) A person who explores for or extracts groundwater, for commercial use, from the area of a groundwater protection zone commits an offence, unless the person does so under the authority of a groundwater permit.

(5) Subsections (3) and (4) apply to a person whether or not the person is an owner of the land concerned or is the holder of a mineral authority.

Groundwater permits

314. – (1) The Minister may, on application, grant a groundwater permit, entitling the holder to do either or both of the following –

- (a) to explore the area of the permit for groundwater;
- (b) to extract groundwater from the area of the permit.

(2) Subject to this Act, the holder of a groundwater permit is, for the purposes of exercising entitlements under the permit, entitled –

- (a) to enter and remain in the area of the permit;
- (b) to use reasonable means of transport to enter and while in the area of the permit;
- (c) to camp on the area of the permit; and
- (d) to take water for domestic use from any natural supply on the area of the permit.

(3) The holder may exercise any entitlements under the right alone or be accompanied or assisted by other persons.

(4) A groundwater permit is to be in a form approved by the Minister or prescribed by the regulations and is to specify the area and term of the permit.

(5) The size and shape of the area of a groundwater permit is to be at the discretion of the Minister.

(6) The term of a groundwater permit is the period not exceeding 5 years specified in the permit, but the permit may, on application, be renewed for a further period or periods each not exceeding 5 years.

(7) An application for the grant or renewal of a groundwater licence must be made in accordance with any applicable requirements of the regulations.

(8) A groundwater permit cannot be granted in respect of land within the area of a mining lease except to the holder of the lease or to another person in circumstances prescribed by the regulations.

Conditions for groundwater permits

315. – (1) A groundwater permit is subject to conditions attached to the permit by the regulations or by the Minister under this section.

(2) The Minister may attach conditions to a groundwater permit on its grant or during its term and may vary or revoke any such conditions.

(3) The Minister may revoke a groundwater permit if a condition of the permit is contravened.

Rental and licence fees for groundwater permits

316. – (1) Without limiting conditions that may be attached to a groundwater permit, conditions may require the payment of –

- (a) rental to the owners of land within the area of the permit; or
- (b) licence fees to the State, including licence fees payable by reference to groundwater extracted under the authority of the permit,

or both.

(2) The regulations may prescribe rental and licence fees payable.

(3) Licence fees are to be calculated at such rate or rates, in such manner or manners and on such bases or bases as are prescribed by the regulations.

(4) The provisions of Part 8 apply to licence fees payable by reference to groundwater extracted under the authority of a groundwater permit, in the same way as those provisions apply in relation to royalty payable under that Part, as so apply with any necessary modifications and any modifications specified in the regulations.

Division 3—Repeals, amendments, and savings and transitional provisions

Repeals

317. The following Acts are repealed –

- (a) Mining Act (Cap. 146);
- (b) Quarries Act (Cap. 147).

Amendments

318. The Acts mentioned in Schedule 2 are amended as provided in that Schedule.

Transitional and savings provisions

319. Schedule 3 has effect.

SCHEDULE 1 – SPECIFIC REGULATION-MAKING POWERS

The particular matters for or with respect to which regulations may be made under this Act are as follows –

- (1) forms, fees and charges for the purposes of this Act;
- (2) the conditions to be observed and the duties to be performed by holders of mineral authorities;
- (3) the method of determining the priority of applicants;
- (4) the area, dimensions and shape of the areas of mineral authorities and the manner in which the area, boundaries and other particulars of land the subject of a mineral authority are to be ascertained, described, marked out and maintained;
- (5) the duration of mineral authorities;
- (6) tribute agreements and contracts;
- (7) powers of attorney;
- (8) the extension, transfer, amalgamation, assignment, sublease, encumbrance, surrender and determination of mineral authorities, the registration thereof and the fees payable thereon;
- (9) the ascertainment and payment of royalties in respect of minerals;
- (10) the allocation of and payment of rents, fees and other amounts;
- (11) the keeping of records of minerals found;
- (12) the keeping and verification of accounts and plans and sections of mines;
- (13) the mode of working mining leases and the disposal of waste and tailings;
- (14) the labour conditions to be observed and the housing and other accommodation required for labourers and the minimum number of labourers to be employed on mining tenements;
- (15) surveys and plans;
- (16) the regulation and use of the surface of the land and the cutting of timber and fuel;
- (17) the use of water and the cutting, constructing, use and maintenance of races, dams and reservoirs;
- (18) trespass;
- (19) the employment and registration of labourers, the payment of wages and the duties of employers;
- (20) securing the safety of workers and other employees;
- (21) the employment of persons having charge of winding machinery and providing for their periodical medical examination;
- (22) the issue of certificates and permits for managers and certain employees at mines;
- (23) the regulation of regulated workplaces;
- (24) the handling, storage and use of explosives at regulated workplaces;
- (25) the determination of disputes;
- (26) the sanitary regulation of regulated workplaces and adjacent lands;
- (27) the examination, restriction of employment and exclusion from regulated workplaces of persons found to be infected with ankylostomiasis, pneumoconiosis, tuberculosis or other infectious or contagious diseases;

- (28) the preservation of public health and the prevention of nuisances of all kinds arising from mining operations or quarrying operations or the smelting or other treatment of any mineral product and the calculation and payment of compensation for any damage caused thereby;
- (29) the disposal of forfeited minerals;
- (30) the regulation of alluvial working by dredging, sluicing or otherwise and, among other things, the areas and methods of working;
- (31) securing the bailing of water from mines so as to prevent injury from water to any mine workings;
- (32) the manner in which compensation is to be ascertained and paid;
- (33) the compilation of statistics by requiring persons carrying on prospecting, mining operations or other operations to furnish to the Director periodical returns;
- (34) the regulation, restriction and control of the disposal and export of ores and minerals;
- (35) determining and enforcing the distance at which shafts and other mine workings are to be kept from public and private roads, ways and passages and from private land, dwellings and other buildings and for ensuring the fencing and protection of mines and works for the safety of people and animals;
- (36) the inspection, supervision and control of machinery used for mining purposes and prescribing the fees to be paid therefor and for the certificates which to be issued by an inspector after an examination of any machinery;
- (37) the manner in which registers are to be kept;
- (38) conferring powers and duties on persons appointed under this Act in all cases;
- (39) the manner in which certified copies of or duplicate certificates of lost documents may be issued and the fees therefor;
- (40) the mode of recording documents issued under the provisions of this Act;
- (41) the payment of rewards by way of money payments or mining leases to persons discovering precious metals or precious stones;
- (42) the manner of doing or performing anything by this Act required to be done or performed;
- (43) enabling the Director, the Registrar, an inspector or any authorised officer to enforce orders or directions;
- (44) the manner in which consultation under this Act or a specified provision of this Act is to be undertaken.

SCHEDULE 2 – AMENDMENTS

CONTINENTAL SHELF ACT (Cap 149)

Section 2 (Interpretation) – Delete the definition of “minerals” and substitute:

“mineral” has the same meaning as in the Mineral (Exploration and Exploitation) Act 2005;

Section 3 (Exploration and exploitation of continental shelf) – Delete “mining” from subsection (3) (b) and substitute “the exploration for, and exploitation of, minerals”.

HEALTH AND SAFETY AT WORK ACT 1996

Section 3 (Application of Act) – Delete “except those workplaces or operations connected with the Mining Act, Quarries Act, Explosives Act and Petroleum (Exploration and Exploitation) Act” from subsection (1) and substitute “except those workplaces or operations to which Part 9 of the Mineral (Exploration and Exploitation) Act 2005 applies or those workplaces or operations connected with the Explosives Act”.

LAND TRANSFER ACT (Cap 131)

Section 5 (What lands subject to Act) – Delete “all mining leases, special mining leases, special site rights and road access licences granted pursuant to the provisions of the Mining Act” and substitute “all mining leases granted pursuant to the provisions of the Mineral (Exploration and Exploitation) Act 2005”.

NATIVE LAND TRUST ACT (Cap 134)

Section 7 (Native land not to be alienated save in accordance with Act) – Delete “Mining Act” and substitute “Mineral (Exploration and Exploitation) Act 2005”.

PETROLEUM (EXPLORATION AND EXPLOITATION) ACT (Cap. 148)

Section 14A – Insert after section 14 –

Operation of health and safety provisions of Mineral (Exploration and Exploitation) Act 2005

14A. Nothing in this Act affects the operation of –

- (a) Part 9 of the Mineral (Exploration and Exploitation) Act 2005;
- (b) any other provisions of that Act that are relevant to that Part; or
- (c) any regulations under that Act that are relevant to that Part or those provisions,

in relation to licensed areas or in relation to operations to which a licence applies.

Section 48 (Registers of Production Licences and Pipeline Licences) – Delete “Mining Act and the provisions of subsections (2), (3) and (4) of section 45 of the Mining Act” and substitute “Mineral (Exploration and Exploitation) Act 2005 and the provisions of subsections (2), (3) and (4) of section 118 of that Act”.

Section 48 – Insert after subsection (2) –

(3) The regulations may provide that a specified provision of section 45 of the Mineral (Exploration and Exploitation) Act 2005 does not apply (under this section) to a specified class or description of variations of or dealings with a production licence or pipeline licence or applies with prescribed modifications.

SCHEDULE 3 – TRANSITIONAL AND SAVINGS PROVISIONS

Interpretation

1. In this Schedule –

“repealed legislation” means an Act repealed by this Act or the regulations under such a repealed Act.

Prospectors’ rights

2. – (1) An application for a prospector’s right pending under the Mining Act immediately before the commencement of this Act is taken to be an application made under this Act for the grant of a prospector’s right under this Act, but the Director may require the applicant to provide additional information or may require the applicant to substitute a new application.

(2) A prospector’s right in force immediately before the commencement of this Act is taken to be a prospector’s right granted under this Act for the balance of its term.

(3) Subject to the regulations, the prospector’s right is subject to the applicable entitlements and obligations of this Act, including the obligations regarding entry of any land.

Exploration licences

3. – (1) An application for a prospecting licence or special prospecting licence pending under the Mining Act immediately before the commencement of this Act is taken to be an application made under this Act for the grant of a prospecting licence under this Act, but the Director may require the applicant to provide additional information or may require the applicant to substitute a new application.

(2) A prospecting licence or special prospecting licence in force immediately before the commencement of this Act is taken to be an exploration licence granted under this Act in respect of the area of the prospecting licence or special prospecting licence for a term of 5 years commencing on the date of commencement of this Act.

(3) Subject to this clause and the regulations, the exploration licence is subject to the applicable entitlements and obligations of this Act, including minimum expenditure requirements and security deposit requirements.

(4) The area of the exploration licence is to be reduced in accordance with section 47, and that section applies in relation to the 5-year term of the licence referred to in subclause (2).

(5) Unless the Director in a particular case approves otherwise –

- (a) the first reduction of area may be effected in respect of the whole sub-blocks or parts of sub-blocks, and

- (b) the area to be retained as from the first reduction is to be indicated in terms of whole sub-blocks.

Mining leases

4. – (1) An application for a mining lease, special mining lease, permit to mine or special site right pending under the Mining Act immediately before the commencement of this Act is taken to be an application made under this Act for the grant of a mining lease under this Act, but the Director may require the applicant to provide additional information or may require the applicant to substitute a new application.

(2) A mining lease, special mining lease, permit to mine or special site right in force immediately before the commencement of this Act is taken to be a mining lease granted under this Act in respect of the area of the lease, permit to mine or right for the balance of its term.

(3) A road access licence in force immediately before the commencement of this Act is, as determined by the Director after consultation with the holder of the licence, taken to be either –

- (a) a mining lease granted under this Act for the balance of its term; or
- (b) the specification, in a mine management plan (whether or not such a plan exists), of an access route to and from the area of a mining lease.

(4) Subject to this clause and the regulations, a mining lease taken to be granted under this Act is subject to the applicable entitlements and obligations of this Act.

(5) The holder of the mining lease is required to lodge with the Director a life of mine overview strategy, applicable to the mining lease, within 12 months after the commencement of this Act or a longer period determined by the Director in any particular case.

(6) The life of mine overview strategy must take into account any special conditions attaching to the mining lease.

(7) The Director may accept or reject the life of mine overview strategy, and if it is rejected the holder of the mining lease is required to lodge a revised strategy within a period specified by the Director.

(8) The requirements of Part 5 relating to the mine management plans (including their audit) become applicable to the mining lease when the life of mine overview strategy is accepted by the Director, but so that the initial mine management plan –

- (a) is lodged within 12 months after acceptance of the strategy; and
- (b) applies to the following period of 12 months or a longer period (not exceeding 5 years) approved by the Director in any particular case.

(9) Any special conditions applying to the lease, permit, right or licence immediately before the commencement of this Act continue to apply to the mining lease taken to be granted under this Act, unless the holder and the Director agree otherwise

(10) If there is a conflict between this Act or the regulations and any special conditions attaching to the lease, permit, right or licence immediately before the commencement of this Act, the inconsistent special conditions continue in force until the mining lease expires or is renewed or the holder and the Director agree otherwise, but this subsection does not affect the requirements of this clause relating to life of mine overview strategies and mine management plans.

(11) Without limiting any other power to cancel a mining lease, the Director may, after giving the holder the opportunity to show cause and with the approval of the Minister, cancel a mining lease taken to be granted under this clause in respect of which a life of mine overview strategy, mine management plan or security have not been lodged within the required time.

Other authorisations

5. Subject to the regulations, any authorisation (however described) under the repealed legislation and not referred to in clauses 2 – 4 are taken to be given or granted under the appropriate provisions of this Act or the regulations.

Dealings and actions

6. Any dealings or actions commenced under the repealed legislation and pending immediately before the commencement of this Act in respect of any lease or other authorisation (however described) under that legislation are to proceed as though that legislation were still in force.

Compensation

7. The holder of prospector's right or exploration licence taken to be granted under this Act who does not have current compensation arrangements with relevant owners and occupiers of land that comply with this Act must not enter the land for the purpose of exercising any entitlements under the right or licence until compensation arrangements that comply with this Act have been entered into in relation to the land.

Royalty

8. – (1) Any royalty returns or royalty payments due or outstanding immediately before the commencement of this Act remain due and payable to the State, and the provisions of Part 7 apply to or in respect of any such royalty.

(2) Royalty payable in respect of any mineral produced after the commencement of this Act under a mining lease taken to be granted under this Act is to be at the rate or rates prescribed for the mineral pursuant to this Act.

Health and safety

9. – (1) The holder of a mining lease taken to be granted under this Act is required to ensure that the life of mine operating strategy and mine management plans relating to the lease cover the requirements of this Act and the regulations relating to health and safety, so that all relevant systems and procedures are in place and operating within 12 months after the acceptance of the strategy by the Director unless the Director in a particular case approves otherwise.

(2) The operator of a regulated workplace (other than a mining lease) operational at the commencement of this Act is required to ensure that all relevant systems and procedures required by this Act and the regulations relating to health and safety are in place and operating within 12 months after that commencement unless the Director in a particular case approves otherwise.

(3) Any orders or directions given or actions commenced under the repealed legislation relating to health and safety and pending immediately before the commencement of this Act are to continue as though that legislation were still in force.

Officers

10. Inspectors appointed and other officers authorised under the repealed legislation or the Petroleum (Exploration and Exploitation) Act are taken to be inspectors and authorised officers respectively under this Act unless the Director in a particular case determines otherwise.

Mining Appeal Board

11. Any matter before the Mining Appeal Board immediately before the commencement of this Act is to continue and be finalised by the Board under the provisions of the Mining Act as though that Act were still in force, and the Board accordingly continues in existence for that purpose.

Mining Tribunal

12. Proceedings may be commenced in the Tribunal in relation to any matter in respect of which proceeding could have been commenced before the Mining Appeal Board had this Act not been passed, and the Tribunal accordingly has the jurisdiction, powers and functions of the Board for that purpose.

References to repealed Acts

13. A reference in any written law or in any document issued or made under a written law to –

- (a) the Mining Act or the Quarries Act is taken to include a reference to this Act; and
- (b) a provision of the Mining Act or the Quarries Act is taken to include a reference to the appropriate corresponding provision of this Act.

General saving

14. Subject to this Schedule and the regulations, anything done under or for the purposes of any of the repealed legislation is taken to have been done or for the purposes of this Act or the regulations, to the extent that this Act and the regulations make provision (with any necessary modifications) for the thing to be done.

Regulations

15. The regulations may contain other provisions of a transitional or savings nature consequent on the enactment of this Act.