MINING IN VICTORIA — ENVIRONMENTAL REGULATION AFTER THE MINES (AMENDMENT) ACT 1983

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The Mines (Amendment) Act 1983 introduced the most significant changes to Victorian mining law for over 100 years. Of great importance were the new provisions which inserted numerous environmental considerations and safeguards into the Mines Act 1958. Together these new provisions can be seen as a new environmental code applying to mining in the State. Unfortunately, however desirable or well intentioned, the new environmental code appears so unnecessarily complex that it may have created an administrative nightmare.

This paper contains the core of a paper delivered to the Leo Cussen Institute in Melbourne in November 1984. Although the legislative provisions referred to in the paper are still current, many of the references to administrative titles have changed. The reader should note the following more important changes: the Minister for Minerals & Energy is now the Minister for Industry, Technology & Resources; the Department of Minerals & Energy is now the Office of Minerals & Energy within the new Ministry; the Minister for Conservation is now the Minister for Conservation, Forests & Lands; and the Soil Conservation Authority is now the Land Protection Service.[1]

In this paper the author has endeavoured to extract all the major 'environmental' legislative provisions in Victoria as they relate to mining and then explain their operation without critical analysis or commentary. This restrained approach to the topic does not reflect my strong belief that the existing provisions are both confusing and administratively cumbersome. There is a very real need for urgent reform to achieve a more effective and efficient legislative arrangement which, while making life easier for the miner, need not detract from the necessary environmental measures now required by the community at large.

ENVIRONMENTALLY SIGNIFICANT AREAS EXCLUDED FROM MINING

The Victorian Mines Act has always contained provisions restricting mining activity in areas considered to be environmentally sensitive or significant. (I use these terms in a broad sense.) Other legislation, such as the Forests Act 1958, the Crown Land (Reserves) Act 1978 and the National Parks Act 1975 have also contained provisions which restricted or excluded mining activity from areas of concern within the terms of those Acts. The Mines (Amendment) Act 1983, which came

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1 The Department which recently was changed to the Office of Minerals and Energy. As the legislation discussed in this paper refers to the 'Department' I have used that description to retain consistency.

into operation on 30 October 1983, revised and expanded some of the previous categories of excluded areas and clarified, by redrafting, the position with respect to other areas.

Crown lands applied to a public use or purpose

Pursuant to section 4(1) of the Mines Act, all Crown lands which have been applied to any public use or purpose shall be exempted from occupation for prospecting or mining purposes under any miner's right. (These terms are defined in section 3(4)(c) of the Act.) To determine whether the land has been applied to any public use or purpose, two prerequisites (which are set out in section 4(2)) must be met. First, the Crown land in question must have been reserved under the Crown Land (Reserves) Act 1978 or reserved under some other Act. Secondly, (and this aspect is not widely understood), the land must be specifically *excepted* from occupation for prospecting or mining purposes under a miner's right. The 'exception' of the area from mining can be pursuant to either:

(a) section 7 or 8 of the Mines Act;
(b) a provision in a previous enactment corresponding to the Mines Act;
(c) section 7 of the Crown Land (Reserves) Act 1978; or
(d) a provision providing for exception of the area in any other Act.

So, in short, in order to prohibit mining under section 4, the land must have been applied to a public use or purpose and then it must have been specifically excepted from mining activity. Thus it could be possible to have an area of Crown land which has been reserved yet has not been excepted; or it could be possible to have an area of Crown land which has not been applied to a public use or purpose (*i.e.* it has not been reserved). In the latter case, a recommendation by the Land Conservation Council, pursuant to the provisions of the Land Conservation Council Act 1970, has no effect if the recommendation to reserve the area has not been acted upon. A further possibility is an area of Crown land which has been zoned under a planning scheme as, say, proposed public purposes — this is not a form of reservation sufficient to satisfy section 4(2). In all these situations the land would be still available for mining.

It should be understood that the section 4 exemption relates to prospecting and mining activity as defined in section 3(4)(c). The distinction between the protection of sensitive areas afforded by section 4 as compared with section 4A and section 7 is apparent when considering section 40 of the Mines Act. Section 40 prescribes that:

> The Minister in the name and on behalf of Her Majesty upon application made to him for that purpose may grant to any person a development lease or a mining lease to be effectual *in under or upon lands granted or reserved for railways waterworks public parks places of recreation or other public purposes,* subject to such regulations as may be from time to time passed by the Governor in Council for that purpose and with the consent of any persons or body in whom or in which the lands are vested or, in the case of Crown lands not granted to or vested in any persons or body, with the consent of the Minister of Lands.[2]

2 Emphasis added.

It is clear that section 4 does not contain the same powers prohibiting leasing and licensing as are found in section 4A (reference areas) and in section 7 (excepted land).

Crown lands used for house or garden *etc.*

Pursuant to section 4(1) all Crown lands which are lawfully and bona fide used as a yard, garden, cultivated field or orchard or upon which any house, outhouse, shed or other building provided it is in actual use and occupation, shall be exempted from occupation for prospecting or mining purposes under any miner's right. This exemption ceases if compensation is paid to the person occupying the land or building. (The procedure for determining compensation is set out in the Act.)

Crown lands used for artificial dam or reservoir

Also pursuant to section 4(1), all Crown land on which an artificial dam or reservoir is lawfully standing is exempted. Likewise, the payment of compensation will end the exemption.

Further, pursuant to section 8, where there is a reservoir or water-dam on land which was once held under a lease, licence or claim, the reservoir and water-dam may be excepted by Governor in Council's order published in the Government Gazette. However, use of the water may be authorized.

Catchment areas

Under Division 1 of Part III of the Soil Conservation and Land Utilization Act 1958, water supply catchment areas may be proclaimed by the Governor in Council after considering the recommendation of the Land Conservation Council. Pursuant to sections 512H(2)(a) and (4)(a) of the Mines Act, a mining tenement, (which for the purposes of this provision does not include miner's right claims, exploration licences, searching permits and prospecting area licences[3] may not be granted if the land is within a proclaimed catchment area and the Soil Conservation Authority (now the Land Protection Service ('LPS')) has not consented in writing to the granting of the mining tenement. If the LPS does consent, mining may proceed. Excluded titles (that is, those not defined as a mining tenement) may still be granted in a catchment area.

Land subject to a planning scheme or interim development order.

Pursuant to sections 512H(2)(b) and (4)(b), where land is under a planning scheme or an interim development order in force under the Town and Country Planning Act 1961, unless a planning permit is obtained from the relevant planning authority, or the usage is permissible without a planning permit, a mining tenement — (as restrictively defined above) — may not be granted. If mining is not a prohibited use and a planning permit is granted or mining is a permitted use not requiring a planning permit,

3 See ss. 512D and 512H(1).

then mining can proceed. Further, the four titles excluded from the definition of mining tenement for the purposes of this provision, may be granted and so the mining related activities permitted thereunder may proceed.

Reference areas

Pursuant to section 4A of the Mines Act (a provision inserted by the Mines (Amendment) Act 1983), all Crown land included in any area of public land in respect of which the Governor in Council has made a proclamation under section 4 of the Reference Areas Act 1978 is

> exempted from occupation for prospecting or mining purposes under any miner's right, and no lease, licence, permit or other authority shall be granted under this over land so exempted.

It should be noted that this 'exemption' prohibits any lease, licence, permit or other authority. Unlike any other exception or exemption, exploration licences and searching permits are prohibited in such areas. Only if the proclamation under the Reference Areas Act is revoked, does the area in question cease to be exempt from mining activity. No other type of land is given such full protection.

Reference areas are presumably given this absolute protection due to the very nature and purpose of areas so proclaimed. It is a critical part of the reference area concept to retain in as near pristine state as possible the area so set aside — these areas are to be, in essence, time capsules enclosing land for future study or reference. On this basis it can be understood why every effort is made to exclude any intrusion.

Exceptions under section 7 of the Mines Act

Section 7 of the Mines Act permits the Governor in Council at any time to

> except from occupation for prospecting or mining purposes under any miner's right or from being leased under a mining lease or development lease or from being licensed under Sections 81, 82 and 85 [various tailings licences] or 325 [prospecting area licences] any specific portion of Crown lands or any class of Crown lands.

Unless an exception under this section is revoked, it is unlawful to occupy, mark out or make an application for the land — any marking out or application is null and void. (It should be noted that this provision would override section 40 of the Act.)

As this section's exception provision only relates to the mining activity or tenements listed above, Part V of the Act is not affected — that is, exploration licences and searching permits can still be granted in areas excepted under this section.

In order to assist in identifying the categories of land which may be excepted pursuant to the provisions of section 7, section 7(4) was inserted by the Mines (Amendment) Act 1983. This section states:

> Without limiting the generality of the foregoing provisions of this section, the Governor in Council shall consider as a subject for the exercise of a power under sub-section (1) land

mentioned in the succeeding provisions of this sub-section and may (but need not) exercise that power in relation to land —

(a) which is in his opinion of such environmental importance that in the public interest mining and prospecting ought not to be carried on;
(b) the environment of which would in his opinion be wholly or partially destroyed if mining or prospecting were carried on or would in his opinion be affected detrimentally and irreversibly by mining or prospecting;
(c) the environment of which is in his opinion because of special circumstances unusually sensitive to the effects of prospecting or mining and ought in the public interest to be protected or preserved;
(d) which is proclaimed to be an archaeological area or a temporary archaeological area pursuant to the Archaeological & Aboriginal Relics Preservation Act 1972;
(e) within which, although the land is not an archaeological area or a temporary archaeological area mentioned in paragraph (d), the Governor in Council is satisfied that a significant archaeological or aboriginal relic is known to occur;
(f) which in the opinion of the Governor in Council is a site sacred to aboriginal people or a tribe or clan of aboriginal people; or
(g) which in the opinion of the Governor in Council is a site of social, cultural or religious significance to aboriginal people or a tribe or clan of aboriginal people.

The Governor in Council may at any time vary or revoke either in whole or in part an exception made under section 7. Further, pursuant to section 9, with the authorization of the Governor in Council the holder of a miner's right may be permitted to occupy any excepted land, and to cut drives under any exempted land, subject to such conditions as may be prescribed. These provisions are intended to enable persons to occupy and use for non-mining purposes excepted land which is near other land on which they are prospecting or mining. (An example of a Government Gazette notice of one of these authorizations appeared in Government Gazette No 119 of 24 October 1984).

Crown Land (Reserves) Act — Section 7 exception

The Crown Land (Reserves) Act 1978, which is the principal legislation in this State for the reservation of Crown land for specified purposes ranging from reserves for the 'protection of the bed or channels and the banks of rivers creeks streams and watercourses'[4] to 'the propagation or management of wildlife or the preservation of wildlife habitat'[5] provides in its section 7 for reserved land to be excepted from mining.

Reserved land can be excepted from mining activity in the original Order of the Governor in Council which created the reserve or in a subsequent Order. The Order must relate to a specific portion of the reserved land and once excepted shall remain so until either the reservation or the exception is revoked. These reserves when protected by such an Order except the area from 'prospecting or from occupation for mining purposes under any miner's right'. Accordingly, as with an exception under the Mines Act, exploration licences and searching permits may still be granted. Likewise, the provisions of section 9 of the Mines Act (which relate to occupation and cutting drives) are not affected by an exception.

4 S. 4(1)(e).
5 S. 4(1)(o).

Exception of areas from exploration licences

Apart from the absolute exemption of reference areas from all mining activity including exploration licences, the Minister for Minerals and Energy has the power to except any lands or class of lands from being the subject of exploration licences or searching permits under Part V of the Act. Pursuant to section 514(17) to (19), once the Minister has excepted such land, no licence or permit shall be granted in respect of the land to which the exception relates. However, it should be noted that even if an exploration licence has been granted in a national park, it may subsequently become inoperative by virtue of the power in section 40(1B) of the National Parks Act 1975.

Section 108 of the Mines (Amendment) Act 1983 inserted into the National Parks Act two new sections – 40(1A) and 40(1B) as follows:

> (1A) An exploration licence may be granted under Part V of the Mines Act 1958 without the consent of the Minister for Conservation over an area which is part of a park, but the licence shall not operate in relation to that area unless and until the Minister for Conservation consents in writing to that part of the park being included in the licence area and during the period between the granting of the licence and the grant or refusal of that consent, no application shall be made or received under the Mines Act 1958 or Extractive Industries Act 1966 for a lease licence claim permit or other authority in respect of that part of the park.
>
> (1B) Where in relation to a part of a park the Minister for Conservation refuses to give his consent to the part of the park being included in a licence area the licence shall upon that refusal cease to be in force in respect of that part of the park.

National Parks

Section 40(1) of the National Parks Act 1975 provides that:

> Except as provided in sub-section (1A) a lease licence permit or other authority shall not be granted under the Mines Act 1958 or the Extractive Industries Act 1966 in respect of any part of a park and the land which is part of a park shall not be registered as a claim under the Mines Act 1958 except with the consent of the Minister [for Conservation, Forests and Lands] and subject to such terms and conditions as he thinks fit to impose.

As explained above, this section was amended by section 108 of the 1983 Act, which provided for the grant of exploration licences without requiring the consent of the Minister for Conservation, Forests and Lands. However, as seen, the new subsection provides that such an exploration licence shall not operate over the park area until the Minister's consent in writing has been obtained. If the Minister refuses, the exploration licence shall cease to be in force in respect of that part of the park over which it was granted.

Where the Minister for Conservation, Forests and Lands is contemplating granting a consent for any mining lease licence permit or authority he is required by section 40(3) to first obtain the advice of the National Parks Advisory Council. This Council is comprised of the Director of the National Parks Service and six other persons. These six persons are chosen from panels of names submitted by two conservation organizations and the Municipal Association of Victoria, a University teacher in relevant studies, and two others representing community interests.

If the Minister decides to refuse consent or grants it subject to conditions or restrictions, then any person aggrieved may appeal to the Governor in Council, who is empowered to resolve the matter. Should the Minister decide to grant his consent, it has no force or effect until it has laid before both Houses of Parliament for 14 days. Such consent is deemed to be revoked it either House of Parliament passes a resolution to that effect.

Pursuant to section 32D of the National Parks Act (as amended by section 8 of the National Parks (Amendment) Act 1984 (Act No. 10073)), fossicking for gemstones may be permitted in certain parks — notice of which is given by the Minister in the Government Gazette. In these specified parks persons who have obtained permits in writing from the Director of National Parks may 'fossick or prospect or fossick and prospect (as the case may be)... subject to any restrictions and conditions which the Director may determine'.

Forests Act

Pursuant to section 8 of the Forests Act 1958, the Governor in Council may by notice published in the Government Gazette except any reserved forest or any specified portion thereof from occupation under any lease licence permit or authority — which includes such leases *etc,* which may be granted under the Mines Act.[6] I should indicate that this section is poorly drafted — it being somewhat ambiguous.

In relation to those State forests that are made available for mining activity, section 7 prescribes that no person shall cut or remove any timber or forest produce except in accordance with the regulations under the Act. Further, section 7(2) prescribes that: 'the exercise of any rights as to mining within a State forest shall be subject to such conditions for the protection and maintenance of the forest as are prescribed ... '. In this respect the Mines (Amendment) Act 1983 inserted a new section 50(5A) into the Forests Act, which prescribes that:

> Before submitting to the Governor in Council regulations proposed to be made under sub-section (5) that prohibit or restrict mineral exploration or mining activity on land set aside pursuant to sub-section (1), the Minister shall consult with the Minister administering the Mines Act 1958 in relation to the content of the proposed regulations.

Wildlife Act 1975

Section 19(1) of the Wildlife Act 1975 prescribes that:

> Notwithstanding anything to the contrary in the Mines Act 1958 or in any other Act or law no person has any rights of entry, prospecting, exploration, or mining in respect of lands being part of a State Wildlife Reserve without the written permission of the Minister [the Minister administering the Wildlife Act] after consultation with the Minister of Minerals & Energy and subject always to any conditions, limitations, or restrictions the Minister thinks fit to impose.

If the Minister for Conservation, Forests and Lands determines not to give his permission under this section, this provision would appear to provide an absolute protection to such wildlife reserves. It will be

6 See s. 4 Mines Act 1983 (Vic.).

interesting to monitor the legislative reforms in the area of wildlife protection which are proposed to be implemented in the next 12 months following the imminent endorsement by the State Government of the Native Flora and Fauna Guarantee Programme. It is inevitable that such reforms will include further protection of wildlife through the protection of wildlife habitat which in turn will probably involve the exclusion of further areas from mining activity.

Aboriginal Land Claims Bill 1983

In September 1984 the State Government released its 'Victorian Government Aboriginal Affairs Discussion Paper'. The Discussion Paper contains a redrafted version of the 1983 Aboriginal Land Claims Bill which is proposed to be introduced as legislation after revision which will take into account public submissions. The draft Bill contains a number of provisions which affect mining activity.

The Bill is intended to provide the mechanism by which Victorian Aborigines may make claim for the grant of Crown land. It provides for the establishment of an Aboriginal Land Claims Tribunal, procedures for the lodging of claims of land, the hearing of such claims by the Tribunal, and the grant of Crown land by the Governor in Council following the receipt of a recommendation from the Tribunal. Clause 14 of the Bill is concerned with those conditions which apply to the grant of land in the case of mineral exploration or mining activity.

Clause 14(1) provides that a lease, licence, permit *etc.* for any mining activity, other than an exploration licence under the Mines Act, shall not be granted without the consent of a majority of adult members of the land-holding Aboriginal body. Terms, conditions and payment of fees are to be negotiated with the land-holding body. Clause 14(2) provides that where a person holds an exploration licence, or permit, they cannot enter onto or carry out operations on the land or interfere with the use of the land without the consent of a majority of adult members of the land-holding body. Clause 14(3) grants the right to both Houses of Parliament to overturn the decision of the land-holding body in the case of decisions made under either sub-clauses (1) or (2). Clause 14(4) allows the holder of a licence or permit which has been granted after a resolution of both Houses of Parliament to enter onto and carry out operations on the land. Finally, clause 14(5) provides for mining royalties or rents payable under the Mines Act to be paid: 50 per cent to the Victorian Aboriginal Authority (which is a body of Aboriginals representative of the Victorian Aboriginal community established under clause 24 of the Bill) and 50 per cent to the land-holding group.

It should be noted that where a grant of land is made of an area containing existing mining leases or licences, clause 13(4)(a) of the Bill provides that such existing leases or licences shall continue on the same terms, but may not be renewed or extended without the permission of the claimant body. There does not appear to be a power granted to Parliament similar to that in clause 14 with respect to decisions made by the land-holding body under this sub-clause.

These provisions in the proposed Aboriginal Land Claims Bill would appear to be additional to the powers of the Governor in Council to except areas of significance to Aboriginal people under section 7 of the Mines Act.

Private land protected from mining activity

The provisions relating to the exemption of private land from mining activities are found in section 301 of the Mines Act. In short, this section identifies a number of private land uses which are considered to be of such worth that they should not be available for mining unless the applicant for a mining lease has first obtained authority from the land owner. Once such an authority is granted, compensation is then usually available to the land owner. The types of private land use which are dealt with in this section are: gardens, orchards, vineyards, city town or borough land smaller than 0.2 hectares, hospitals, asylums and public buildings, cemeteries, churches, springs, dams, sheep-washes, woolsheds, dwelling-house building or manufactory, lakes and reservoirs.

Pursuant to section 347 the Governor in Council may at any time except from occupation for prospecting or mining purposes under any miner's right or from being leased under a mining lease or development lease any specific portions of private land. Such exceptions may be made as regards the surface of the land or down to such depth as specified.

Land surrounded by exempted or excepted land

A rather overlooked provision is section 17A(6) of the Act which deals with the registration of claims. The section provides that:

> The Mining Registrar may refuse to renew the registration of land as a claim if the claim is surrounded by land which is —
> (a) exempted under section 4 or section 4A; or
> (b) excepted under section 7 of this Act or section 7 of the Crown Land (Reserves) Act 1978 —
> and shall cause notice in writing of the refusal to be delivered to the owner of the claim.

APPLICATIONS — THE CONSIDERATION OF ENVIRONMENTAL ISSUES

I do not intend to examine in great detail the procedure by which applications for mining tenements are lodged and considered. Instead I recommend that the reader obtain a copy of the publication jointly produced by the Ministry for Planning and Environment and the Department of Minerals and Energy entitled *Planning Guidelines for Responsible Authorities for Exploration and Mining Activities.*[7] It contains a useful summary of the relevant provisions by which environmental and planning matters are taken into account at the time an application is processed.

Very briefly, when an application for a claim is lodged with the Department, pursuant to section 17(9), (10) and (11), the Inspector of

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Mines is required to determine (in addition to the prescribed conditions) other special conditions relating to the working and rehabilitation of the claim and whether a bond should be lodged. As part of his task the Inspector is to consult persons or bodies vested with the power to manage the land and responsible authorities under the Town and Country Planning Act. By following this procedure issues concerning the environment are intended to be dealt with. It should be noted there is no involvement of third parties (*i.e.* objectors) in relation to claims.

In relation to applications for mining tenements (which due to section 512H(1) do not include miner's rights claims, exploration licences, searching permits and prospecting area licences), section 512H(6) requires the Secretary for Minerals and Energy to forward a copy of the application to the Soil Conservation Authority (now part of the Land Protection Service — ('LPS')) and the Secretary for Planning and Environment. Section 512E(5) requires the Secretary to give notice of the application to a person or body nominated by the Minister as representing the interests of Aborigines in Victoria.

The Soil Conservation Authority (LPS) informs the Secretary whether or not the land is within a water catchment area. The Secretary for Planning and Environment is required to inform the Secretary whether the land is within an area affected by a planning scheme or interim development order.

In no planning permit is required, the Secretary shall forward a copy of the application together with the notice of application to (i) the Council of every municipality in which the land is situated; (ii) adjoining municipalities; (iii) any public authority or body (including the Minister) owning or having vested control of the land; (iv) any public authority or body whose interests in the opinion of the Minister may be affected; (v) any person occupying adjoining land as owner or tenant; and (vi) any person who, in the opinion of the Minister, ought to be given notice of the application.[8]

The applicant is required to publish a notice in a newspaper circulating in the neighbourhood of the land within 10 days, and post a notice on the land within 10 days which must remain on the land for 28 days. If required, the applicant must apply to the relevant planning authority for a planning permit using the procedures laid down in the Town and Country Planning Act 1961. These procedures may include public notification, the receipt of objections from third parties, the making of a determination by the responsible planning authority to grant a planning permit which will include land use conditions, appeals to the Planning Appeals Board on planning issues and finally the issue of a planning permit with conditions.

If after completing these steps (of which I have only highlighted the more important ones) the Department forms the intention to grant an application then, pursuant to section 512E(1), the notice of intention to grant (or renew or extend) shall be published by the applicant in a newspaper circulating generally in Victoria and to other persons in the

8 S. 512H(5)(c).

manner prescribed within 10 days. In response to this notice, any person may lodge an objection.[9]

It can be seen that by following this process very few, if any, concerned or interested parties could fail to miss out on hearing of an application. It is presumably intended that this process will enable all environmental and planning issues to arise and be dealt with. Unfortunately, due to the onerous and cumbersome procedure (and the fact that many consulted parties don't reply at all or within a reasonable time) these provisions are very unpopular with the mining industry. There is considerable scope for improving this consultation process without weakening the intention to have due regard given to the protection of the environment.

CONDITIONS AND BONDS – THE ENVIRONMENTAL SAFEGUARDS

All mining titles (including claims) are conditioned – some conditions are determined by the Inspector of Mines and some are determined by the Minister – the consideration of objections to conditions is either handled by the Mining Warden or the Minister. It should be understood that conditions attached to mining titles are additional to any conditions that may be attached to a planning permit.

Claims

The provisions in the Mines Act regarding conditions on claims – commencing at section 17(9) are more explicit than the equivalent provisions relating to other mining titles. In addition to prescribed conditions[10] special conditions on claims are determined by the Inspector of Mines in consultation with the claim owner and the land management body.[11] Although a claim is automatically granted upon application, pursuant to section 17(12) it is unlawful for a claim owner to work a claim unless the special conditions have been communicated to him (or he has been informed that there will be no special conditions) and he has lodged a bond if so required.

At any time during the currency of a claim, the Inspector of Mines may (on his own initiative or at the request of the claimholder or the land manager) vary the special conditions which apply to the claim.[12] Further, the Minister himself can, pursuant to section 17(33), issue directions to the Inspector of Mines with respect to conditions to be determined by the Inspector.

Regulation 209 of the Mines (Mining Titles) Regulations 1983 prescribes that the certificate of registration of land as a claim shall be in or to the same effect as that in Schedule 3 to the Regulations. The schedule to

9 See 'Objections and Appeals' *infra*.
10 S. 17(9)(a).
11 S. 17(9)(b).
12 S. 17(16).

the Schedule 3 certificate contains three environmental protection conditions as follows:

> 2. Operations on the claim shall not involve or cause the erosion of land.
> 3. Adequate provisions shall be made within the claim for the retention of sludge and sediment involved in or caused by the disturbance of land.
> 4. All derelict and redundant plant, vehicles, machinery and equipment shall be disposed of in a location and in such manner as directed by an Inspector of Mines.

Pursuant to section 18(2) of the Act, the penalty for breaching conditions attached to claims is 10 penalty units. Further, if the registration of a claim is cancelled or expires and the owner has not carried out rehabilitation or stabilization of the land concerned in accordance with the conditions applicable to the claim then, pursuant to section 21(2) of the Act, the Chief Inspector of Mines or an Inspector of Mines may cause the necessary work to be carried out and the cost of doing so will be retained out of the bond or security lodged in accordance with the conditions. In determining whether the land stabilization or rehabilitation works have been carried out satisfactorily, the Inspector of Mines is required to consult the land manager and any relevant responsible authority under the Town and Country Planning Act.[13]

Leases and Licences

Pursuant to section 35 of the Act the Minister is empowered to grant leases.[14] Such leases are granted subject to the Act (and so, for instance, the exception and exemption provisions); conditions (standard and special as may be prescribed); and any reservations and exceptions as may be prescribed.

With respect to licences, section 65 of the Mines Act empowers the Minister to grant licences to the holders of miners' rights to enter upon any Crown land held under a development or mining lease and prospect. These licences are subject to a depth limitation and to conditions as may be prescribed in the Regulations.[15] Such licences may be revoked if the licensee fails to comply with the conditions attached to the licence.[16] Section 66 contains further powers to enable the granting of licences again subject to conditions and with a power of revocation if the conditions are not complied with section 66(5C).

Eductor dredge licences are granted pursuant to section 66A of the Act. Such licences may be granted only in prescribed zones agreed to by the Mining Consultative Committee[17] and do not give right to prospect in certain excepted, exempted or protected areas. As with other mining licences, conditions are prescribed (section 66A(6)(b)) and may be revoked if the conditions are breached.[18] Detailed restrictions on eductor dredging are contained in Regulation 606 of the Mines (Mining Titles) Regulations

13 S. 21(3).
14 Defined as either 'development leases' s. 36 or 'mining leases' s. 37.
15 S. 65(2).
16 S. 65(4).
17 See s. 66A(2), and ss. 66A(4)(b) and 66A(5).
18 Ss. 66A(6)(b), 66A(6)(d).

1983 which include provisions for the protection of banks of any water course and provisions aimed at preventing disturbance due to noise pollution.

Pursuant to sections 81 and 82 the Minister may grant licences to remove or treat tailings. By sections 81(3) and 82(5) such licences are granted subject to conditions and Regulations.

As all mining titles (including claims) are subject to conditions, the Governor in Council has been given a broad regulation making power in section 93(1)(h) to deal with the creation and variation of conditions to apply to leases, licences and claims. Further relevant regulation powers are found in section 93(1)(mac) and (mf). The latter provides for regulations:

> providing for the protection of land on which mining operations are conducted and requiring the restoration, to the satisfaction of an inspector, of land disturbed by mining operations and the giving of security by deposits of money or otherwise for the proper performance of any such restoration.

Section 79A of the Mines Act contains a further general Ministerial power to cancel a licence if the licensee fails to comply with a condition or provision to which the licence is subject.

Part III Division 1 contains the principal provisions relating to rehabilitation conditions and bonds which are to be prescribed for leases, licences and claims under the Act. The basic scheme of the provisions in section 361A, is for a bond to be paid as security for the carrying out of rehabilitation works which will have been prescribed in conditions on the title. A claim cannot be worked and leases and licences cannot be granted until the prescribed bond or security has been lodged. The amount of the bond in relation to such conditions, is determined by the Inspector of Mines in consultation with the applicant, the authority responsible for the land management and, where applicable, the local planning authority.

In relation to the quantum of the bond section 361A(9) and Regulation 1105 prescribe that where the nature of the operations to be carried out by a lessee, licensee or owner of a claim has changed significantly from the time of the original bond or security, then the Secretary of the Department can require the lodgement of a further bond or a variation by way of an increase or decrease. Provisions dealing with bonds in relation to exploration licences are set out in Regulation 906, and with respect to searching permits, Regulation 1004 contains the rehabilitation requirement.

Regulation 1108 prescribes that:

> It shall be a condition of every —
> (a) claim;
> (b) lease;
> (c) prospecting area licence;
> (d) mining purposes licence;
> (e) tailing licence;
> (f) exploration licence; and
> (g) searching permit
>
> that the owner or holder thereof (as the case may be) shall take such action as may be required by the Secretary in relation to the protection, rehabilitation and stabilization of land held under any such claim, lease, licence or permit to the satisfaction of an Inspector.

The Mines (Mining Titles) Regulations 1983 contain in Schedules 9, 10, 12, 14, 17, 19, 22, 23, 25, 27, 31 and 33 the prescribed licences or leases that are granted under the Mines Act. A perusal of these Schedules will give an indication of the terms of standard environmental conditions. In the standard exploration licence, for instance, (Condition 6) the rehabilitation condition prescribes that:

> The licensee shall restore the land after exploration as far as practicable to its former condition and shall carry out operations for the rehabilitation and stabilization of the land as may be required by an Inspector.

A similar provision is found in nearly all the titles set out in the Regulations.

The provisions throughout the Act with respect to conditions, their formulation, review and variation are too numerous to refer to even briefly. However an important provision which was inserted into the Act by the Mines (Amendment) Act 1983 was section 78A which provides that:

> (1) During the currency of a lease or licence the Minister may —
> (a) at the written request of the holder of the lease or licence; or
> (b) on his own initiative, if he believes it necessary —
> (i) for the protection of the environment; or
> (ii) for the progressive or eventual rehabilitation and stabilization of the land demised or to ensure that works for that purpose are carried out by the lessee or licensee —
>
> vary any covenant, condition or provision subject to which the lease or licence was granted or may delete any such covenant, condition or provision or add any additional covenant, condition or provision.

By section 78A(3), such a Ministerial variation may include a variation in the amount of bond or security required under the lease or licence.

The Mines (Mining Titles) Regulations 1983 contain in some detail further provisions specifying certain conditions of an environmental nature together with related provisions dealing with bonds. If the characteristics of a particular area are particularly environmentally sensitive and it is considered that the standard conditions are inadequate, then the power to prescribe special conditions can ensure that suitable rehabilitation measures are made to apply.

OBJECTIONS AND APPEALS

The role of the Mining Warden with respect to objections

Given that the duties of the mining warden with respect to the hearing of objections are so numerous, I can only briefly highlight the provisions. The duties of the mining warden are set out in section 108 while the procedure he is to follow for any investigation or enquiry is set out in section 109 of the Act.

It will be of particular interest to lawyers that subsection 109(9) provides that:

> A person may make written submissions to the mining warden or may appear before him

> in person or by an agent who is not a barrister or solicitor but is not entitled to be represented by a barrister or solicitor unless all persons to whom in the opinion of the mining warden the inquiry relates have agreed to that representation or the mining warden has granted leave to him to be so represented.

First, pursuant to section 11(4) the holder of a miner's right or of a lease or the owner of a claim may apply to the mining warden to hold an inquiry if (a) he is dissatisfied with a condition, limitation or restriction imposed by an order (in relation to working on or under public roads) or (b) application to so work has been refused.

Secondly, pursuant to section 17(17), if the owner of a claim objects to any special condition or any addition to or variation of a special condition of which notice is given to him, he may object to the mining warden who is required to hold an inquiry into the matter. The mining warden may uphold the objection or refer it to the Minister.

Thirdly, pursuant to section 74 it is part of the duties of the mining warden to hear receive and examine evidence in relation to applications for any lease or licence (the subject of that Part) and the objections thereto — as may be prescribed by the regulations under the Act.

Finally, pursuant to section 107 of the Act the mining warden has wide powers to investigate complaints or disputes and to hold inquiries in relation to such matters. However it is probable that section 107 matters will not relate to environmental issues. In any event, Regulation 1109 sets out some of the procedures with respect to these powers of the mining warden.

The role of the Minister with respect to objections

Like the mining warden, the Minister has numerous duties with respect to objections. Again, I shall only highlight rather than analyse the provisions.

First, pursuant to section 11(5), the recommendation of the mining warden following an inquiry with respect to the working of public roads is sent to the Minister for determination.

Secondly, where the mining warden does not uphold a claim owner's objections to special conditions, the Minister must resolve the matter pursuant to section 17(19). Note that the Minister does not deal with the matter if the mining warden agrees with the claim owner's objections.

A most important provision involving the Minister in determining objections to the grant of a mining tenement, is that in section 512E of the Act which was inserted by the Mines (Amendment) Act 1983. The provision relates to mining tenements as defined in section 512D which are: a lease under the Act, a mining purposes licence, a prospecting licence area under section 325, an exploration licence under Part V, a searching permit under section 514(7), and a tailing treatment licence. Section 512E requires a notice of intention to grant an application for a mining tenement (or the renewal or extension of a mining tenement) to be published by the applicant in a daily newspaper circulating generally in Victoria and further such notice will be otherwise brought to the notice of the public as may be prescribed.

An additional notice requirement is that contained in section 512E(5) which requires the Secretary of the Department, in relation to any application for a mining tenement or the extension or renewal of a mining tenement, to give notice to a person or body nominated by the Minister as representing the interests of Aborigines in Victoria. This is presumably to ensure that the Aboriginal community are aware of a proposal so as to enable them to object.

Pursuant to section 512E(2), where an application has been made for the grant, renewal or extension of a mining tenement any person may lodge an objection to the application. By section (3), the Secretary of the Department and any officer of the Department who is required to consider the application for the purposes of making a recommendation, is required to consider any objections lodged. The Minister may seek the advice of the Mining Consultative Committee with respect to the objection before he determines the objection.

It should be noted that in accordance with Regulation 1104, where any person lodges an objection to any application or in relation to the subject matter of any notice referred to in section 512E(1) of the Act then: the objection must be in writing; lodged with the Secretary; set out the grounds of the objection; be accompanied by a fee; and must be lodged within 21 days after the publication of the section 512E(1) notice.

Mining and Extractive Industries Division — Planning Appeals Board

The Mines (Amendment) Act 1983 created a new Division of the Planning Appeals Board, called the Mining Division. In November 1984, the Extractive Industries (Amendment) Act 1984 passed through Parliament. This Amendment Act further amended the Mines Act and the Planning Appeals Board Act 1980 by, *inter alia*, renaming the Mining Division as the Mining and Extractive Industries Division, increasing its jurisdiction and making various other related amendments.

The Mining and Extractive Industries Division of the Board shall consist of three members of whom one is to be legally qualified and the other two are to be suitably qualified by knowledge and experience to discharge the duties imposed on them as members of the Division.[19] As a consequence of the latest Amendment Act, if the Division is to sit on an extractive industry appeal, then the two persons other than the legal member are to have knowledge of and experience in extractive industry operations.[20]

Section 512G of the Mines Act (which was inserted by the Mines (Amendment) Act 1983) provides for a limited right of appeal to this Division. It provides that:

> A person who is dissatisfied with —
> (a) a condition to which the grant extension or renewal of a mining tenement is subject;
> (b) the variation of the conditions to which the grant renewal or extension of a mining tenement is subject; or

19 S. 17A(2) Planning Appeals Board Act 1980 (Vic.).
20 S. 32 of the Amendment Act inserted a new s. 17A(2A) into the Planning Appeals Board Act.

> (c) a recommendation made by the mining warden on an application under section 21A or the failure of the mining warden to make a recommendation
>
> may appeal to the Planning Appeals Board.

Copies of any Notice of Appeal must be lodged with the Secretary of the Department of Minerals and Energy.[21]

Given that the section 21A applications only relate to claim applications within exploration licences, the appeal rights to the Planning Appeals Board are rather limited. This fact was confirmed in the determination of the Board on the only occasion, as at 10 November 1984, when it has sat as the Mining Division. In *Australian Feldspar Corporation Pty. Ltd. v. Minister for Minerals & Energy*[22] the Board in holding that there was not a valid appeal before it said:

> . . . the pre-requisites of appeal are that a grant, extension or renewal of a mining tenement has occurred and that a condition to which the grant, extension or renewal of such a tenement is subject has been imposed or varied. The Minister has refused to grant a mining tenement (in this case) and accordingly no appeal against that refusal lies to this Board. . . . I am satisfied on the material before me that the Minister for Minerals & Energy has refused to grant an application for Development Lease No 35 over the appeal site and that the Governor in Council has by Order excepted part of the appeal site from being leased under a Development Lease and that against such refusal and such exception no appeal to the Planning Appeals Board may be brought under the provisions of Section 512G of the Mines Act 1958.

In practice, appeals under this section are likely to be very limited indeed, because although it allows any person who is dissatisfied with, say, a condition to appeal, due to other provisions in the Act only the applicant will have received a notice regarding conditions. Third parties (who may have been objectors to the original application) are unlikely to hear about or have access to the conditions prescribed so are unlikely to be able to find themselves as dissatisfied third parties. That is not to say, that if they did receive notice of the conditions they would not be heard — on the contrary they would be entitled to be heard.

Section 17(A)(3)(a) of the Planning Appeals Board Act provides that the Mining and Extractive Industries Division may hear and determine an appeal in another jurisdiction (such as a pollution licence appeal or planning permit appeal) which is related to a section 512G Mines Act appeal if it concerns the same land or the same or related subject matter. The intent of this sensible provision is unfortunately negated by section 512H(2)(b) which provides that a mining tenement shall not be granted or renewed unless (where it is necessary) a planning permit has been granted. As the process for obtaining a planning permit can involve appeals to the Planning Appeals Board before the grant of a permit, it means an applicant may have to go to the Board twice with no opportunity for the appeals to be heard together.

The fact that section 512H requires a planning permit to be sought first, means that appeals are being heard at the Planning Appeals Board in relation to mining applications which are not being heard by the Mining Division. These appeal hearings deal with the planning issues in isolation.

21 Reg. 1110.

22 Appeals M84/916, M84/963 (21 August 1984).

Inevitably, these 'planning/mining' appeals will be more commonplace than straight mining appeals. Accordingly, the practitioner wishing to review determinations of the Board dealing with mining applications should look for planning appeals where the land use is described as mining rather than look for mining appeals.

POLLUTION CONTROL PROVISIONS

Pollution control by licence/lease condition

The Mines Act contains various provisions intended to provide a means to combat pollution from mining. The first level of attack is the usual provision of conditions in a lease or licence requiring the lessee or licensee to take measures to prevent pollution. To cite one example, I refer to Condition 9 in the standard mining lease which is prescribed in Schedule 9 to the Mines (Mining Titles) Regulations 1983. This condition states that the lessee covenants that he:

> . . . will make such provision for the disposal of the silt sludge detritus dirt waste or refuse of or from the said mine or any works connected therewith so that the same will not flow or find its way into any water channels leading into or from the storage works of any public body or so as to injure or interfere with any land set apart for water supply purpose or become an inconvenience nuisance or obstruction to any roads ways rivers creeks or private or Crown land or in any manner occasion any public or private damage or inconvenience.

In summary, the pollution control provisions contained in the standard conditions attached to the various mining titles are found in the Mines (Mining Titles) Regulations 1983 as follows:

(a) claim — Schedule 3 — schedule paragraph 3;
(b) mining lease — Schedule 9 — paragraph 9;
(c) development lease — Schedule 10 — paragraph 9;
(d) water line licence — Schedule 25 — paragraphs 3 and 9;
(e) mining area licence — Schedule 27 — paragraphs 3, 5, 11, and 13.

Although the standard conditions of eductor dredge licences are not set out in Schedule 17, the Department of Minerals and Energy's standard licence conditions do contain a number of pollution safeguards. With respect to eductor dredge licensing, the Department and Minister are assisted by a non-statutory Interdepartmental Committee on Eductor Dredge licensing. This Committee is comprised of representatives from relevant government agencies — such as the Environment Protection Authority, the Fisheries and Wildlife Service and the Rural Water Commission. The tasks of the Committee include advising the Department and Minister on appropriate controls for eductor dredging including the determination of usual conditions to be attached to licences.

The following mining titles do not contain standard pollution control conditions — some of which may cause minimal pollution: prospecting area licence (Schedule 12); leased area licence (Schedule 14); tailings treatment licence (Schedule 19); tailings removal licence (Schedule

22); exploration licence (Schedule 31) and searching permit (Schedule 33).

Section 70D of the Mines Act prescribes that where the Minister is of the opinion that the working of land the subject of a lease or a claim may involve the dewatering of a disused mine which would be likely to affect the water table or the distribution of groundwater within the meaning of the Groundwater Act 1969, then the Minister may prescribe special conditions relating to the groundwater and the operations. Before prescribing such special conditions the Minister is required to consult with the Groundwater Advisory Committee.

The sludge abatement provisions of the Mines Act

Sections 451 to 463 contain the provisions of the Mines Act dealing with the Minister in his role as successor in title to the former Sludge Abatement Board (which was abolished by the Mines (Amendment) Act 1983). These sections contain various detailed provisions dealing with powers to abate sludge and pollution arising from mining operations. The principal duties of the Minister are set out in section 457 where it is prescribed that it shall be his duty:

> (a) to investigate any complaint made of or (whether a complaint has been made or not) to make enquiry concerning pollution or injury caused by sluicing dredging or other mining operations to any such water-course lake or reservoir not so exempted or to any such land and to order any person carrying on causing or directing such operations to refrain from doing or continuing any act or operation or to make such provision or take such steps as the Minister directs to prevent the continuance of such pollution or injury;
> (b) to order any person who carries on causes or directs or is about to commence or authorize sluicing dredging or other mining operations which cause or will in the opinion of the Minister cause pollution or injury to any such water-course lake or reservoir not so exempted or to any such land to refrain from doing or continuing any act or operation or to make such provision or take such steps as the Minister directs to prevent such pollution or injury

In order to prevent an overlap of authorities taking action to regulate pollution, the Mines (Amendment) Act 1983 inserted into the Mines Act section 459(1A) which gives the Minister the power to exempt from the operation of the sludge abatement provisions in Division 5 of Part III, any particular class or classes of mining operations or land or class of land. In order for the Minister to use this exemption power, he must be satisfied that adequate provision is being taken under another Act with respect to possible pollution.

The Minister is assisted in carrying out his tasks under sections 451 to 453 by another Interdepartmental Committee. This Committee is non-statutory and is comprised of departmental representatives from relevant Government agencies such as the Rural Water Commission, the Environment Protection Authority and the Ministry of Planning and Environment. Being an internal Government committee its actions, tasks and recommendations are not generally known.

At the time of application for a mining title, the Department of Minerals and Energy gives to the applicant descriptive guides which explain, *inter alia*, the pollution control measures which are usually required to be carried out. The applicant is required to lodge detailed

technical data together with accompanying plans which are to explain and describe the measures the applicant proposes to take to minimize pollution by way of sludge or impure water. The application is not processed until sufficient data is provided to the satisfaction of the Minister.

The Environment Protection Act

This Act is the principal Victorian legislation for the control of pollution. It applies to mining activity. It should be understood that this Act has overriding jurisdiction for section 3(2) provides:

> Where the provisions of this Act or of any regulations or orders made under this Act are inconsistent with any of the provisions of any other Act, or of any regulations, by-laws, or other laws made under any other Act the provisions of this Act or of regulations or orders made under this Act shall prevail.

Further, pursuant to section 2, the Act binds the Crown.

In the past the Environment Protection Act has required the discharge of wastes (as defined broadly in section 4(2)) to be licensed. The scheme of the Act was to prescribe conditions in such licences to control or gradually reduce the licensed discharges. The Act has always permitted the exemption of certain discharges from such licensing requirements and among those exempt categories were mining discharges subject to the control of the old Sludge Abatement Board.[23]

The whole scheme of the Environmental Protection Act is in the process of significant change due to the gradual coming into operation of the Environment Protection (Review) Act 1984. The final and most significant changes became operative on 1 January 1985 at which time the existing exemption and licensing procedures changed.

In short, following the changes in arrangements under the Environment Protection Act, only very significant discharges of waste are required to be licensed (as identified by the Environment Protection (Prescribed Waste) Regulations 1984) while all smaller discharges are subject to abatement procedures which enable the Environment Protection Authority to respond to situations of pollution by notifying the discharger and requiring the abatement of the pollution concerned. In addition, prior to the commencement of works associated with certain 'scheduled premises' *i.e.* industries or works identified as being likely to give off emissions of waste) which are identified as such in the Environment Protection (Scheduled Premises and Exemption) Regulations (which came into force on 1 January 1985), works approvals are required to be obtained from the Authority.

It is clear from a perusal of the Environment Protection (Scheduled Premises and Exemption) Regulations that '(ao) Extractive industries, including mining, quarrying and eductor dredging' are defined as Schedule 2 premises and Schedule 3 premises for the purposes of the Act. Schedule 2 premises are those involving activity likely to give off discharges to water or land while Schedule 3 premises are those involving activity likely to

23 The relevant exemption orders are set out in the Vic. Government Gazette No. 51, 19 May 1982, 1601–1605.

emit noise. Mining activity is not defined as falling within Schedule 1 — that is, activities likely to give off emissions to the air.

The procedure with respect to works approval is somewhat similar for each type of Schedule, so I shall, for the purposes of this paper, only summarize the procedure by indicating that in order for an occupier of a scheduled premises to install, construct or modify any equipment or plant which will involve the discharge of waste or prior to the carrying out of any works or acts on such premises which are likely to cause a discharge, then a works approval or licence must be obtained from the Authority.

It should be noted that apart from certain exemptions from these procedures relating to the extractive industry, dredging is exempt from the Schedule 3 category and eductor dredging (where a search licence has been granted by the Department) is exempt from works approval and licensing in the Schedule 2 category. Although the Regulations state this exemption in this form it should be noted that search licences are no longer granted for eductor dredging.

It is presumed that if a mining operation is fully controlled either by a works approval granted under section 19A(2) of the Environment Protection Act or a licence granted pursuant to section 20(2) of that Act, then the Minister for Minerals and Energy will exercise his powers under section 459(1A) of the Mines Act and exempt the operation concerned from the Mines Act's sludge abatement provisions.

Finally, it is not sufficiently well appreciated that even if a mining activity is supposedly controlled by sludge abatement measures under the Mines Act or by a licence or works approval under the Environment Protection Act, should an actual discharge of pollution occur then that discharge of pollution could be an offence under the Environment Protection Act — say, sections 39, 41 or 45. Likewise, an offence can still be committed if pollution actually occurs even if the premises are exempt from licensing or works approval requirements.

MAJOR MINING PROPOSALS AND THE ENVIRONMENT EFFECTS ACT

The Environment Effects Act

It should be appreciated that if a mining project is of sufficient significance to involve a number of public authorities and raise public interest and concern, it is likely that it may be considered to have a significant effect upon the environment. If this is the case, then it should be understood that compliance with the Mines Act environmental provisions does not mean the provisions of the Environment Effects Act can be avoided.

Pursuant to section 8(1) of the Environment Effects Act:

> Where any person or body is required by any Act or law [which includes the Mines Act] to make a decision which could have a significant effect upon the environment the person or body required to made the decision may and shall, if so requested by the Minister responsible for the administration of the Act or law, seek the advice and assistance of the Minister who may give such advice and assistance as he deems fit to enable that decision to be made.

Most probably if the environmental ramifications of a proposed mining operation are likely to be significant then the advice from the Minister for Planning and Environment under section 8 will be that an environment effects statement should be prepared. In Victoria, examples of recent uses of the Environment Effects Act in the mining field have included the CRA proposal for solution deep-lead gold mining at Eastville and the Walhalla Resources Limited goldmining and processing operation at Walhalla.

It is not appropriate for the purposes of this paper to give a detailed analysis of the provisions of the Environment Effects Act. Suffice it to say, the process is somewhat similar to the arrangements in other States and at the Federal level with respect to preparation of environmental impact statements. Once directed to do so, it is the responsibility of the proponent to prepare an Environment Effects Statement (EES) after consultation with the Assessments Division of the Ministry for Planning and Environment with respect to its contents. The proposed content of an EES may itself be subject to public review and comment. The proponent then proceeds to prepare the EES at its own expense usually using external consultants. During the EES preparation there is usually continual consultation between the proponent and relevant Government agencies. Once prepared and accepted by the Ministry as being acceptable for public release, it is placed on public exhibition for a period of either one or two months. The public are invited to submit comments to the Ministry. The public submissions are then reviewed by the Assessments Division so that a report to the Minister can be prepared. Sometimes, as a consequence of matters raised in the submissions, the proponent may be requested to examine further aspects of the project in greater detail. When this process is complete the Minister releases an Assessment Report which summarizes the public submissions, presents a critical analysis of the proposal, and then sets out recommendations to the 'decision maker' who is to grant some approval, say a mining lease/licence or planning permit, to the proponent. It is not mandatory for the decision maker to follow the recommendations in the Assessment Report — it is merely advisory. In the case of a mining project, the recommendations may, for instance, include suggestions for special conditions to be prescribed in a lease.

Special legislation — Project Agreement Acts

In other Australian States — such as Western Australia and to a lesser extent South Australia and Queensland — it has become common for special legislation to be introduced which is project specific. Called either Project Agreement Acts or Franchise Agreement Acts, such legislation usually gives force and effect to an agreement between the State Government and a project proponent. The agreement usually provides in detail for the various permitting requirements to be completed to a timetable to the satisfaction of the proponent while at the same time fixing the proponent to agreed development standards desired by the Government.

I briefly mention this type of legislation as being a possible option for any party involved in a major mining development. Whereas in Victoria there is little indication that the requirements of other legislation will be overridden in the interests of facilitating the development of a project, certainly in other States there has been no such reluctance.

This issue becomes relevant in the context of the 1984 Spring Session of Victorian Parliament as we saw the introduction of three pieces of project agreement legislation — which to varying degrees eased the way for the project proponent concerned — I refer to the South Yarra Project Act, the Alcoa (Portland Aluminium Smelter) (Amendment) Act and the Port Bellarine Tourist Resort (Amendment) Act. With the passing of these three Bills it may well be an indication that the State Government is prepared to negotiate special legislation for major projects of importance to economic growth of the State.

Economic Development Act 1981

The principal function of this Act is to 'facilitate, encourage, promote and carry out . . . activities leading to . . . the balanced economic development of the State . . .'.[24] Although in recent times the 'expedition procedures' in this Act seem to be out of favour, there is some potential for obtaining government assistance to expedite the startup approval of projects which have economic potential. Mining projects (especially in decentralized areas) should fall into this category.

The prerequisite for taking advantage of this Act, is for the project to be gazetted pursuant to section 8(1) as being of special significance to the economic development of the State. Once gazetted, special provisions affecting environmental and planning matters are set out in section 10 as follows:

> (1) The Minister may with the consent of the Minister for Conservation, Forests and Lands and the Minister for Planning and Environment request any relevant responsible body to carry out its function in or in relation to any matter pertaining to the planning construction or operation of a special project within such time as is specified by the Minister.
> (2) Subject to any Act or law to the contrary a relevant responsible authority shall comply with any request made under sub-section (1).
> (3) Nothing in this section authorizes the Minister to vary any time prescribed by or under any Act of the Parliament for the carrying out of any function by a relevant responsible body

THE MINING CONSULTATIVE COMMITTEE

The 1983 Act inserted into the Mines Act provisions creating an advisory committee called the Mining Consultative Committee. The main provisions relating to this Committee are found in Division 1 of Part IVA of the Mines Act. Pursuant to section 512A it consists of six persons — a person with knowledge and experience of matters relating to persons working in the mining industry, a geologist, an engineer with experience in the mining industry, a town planner, a conservationist and another person who shall be the chairman.

24 S. 3.

This Committee is intended to have an important role with respect to certain environmental matters or issues arising under the Mines Act. Section 512C prescribes that the Committee shall investigate, report and make recommendations to the Minister on any matter referred to it by the Minister. Given the great number of tasks which the Minister is required by the legislation to perform, it is conceivable that the Minister could rely on the Committee for advice on many matters.

There are three specific environmentally related matters which are identified in the Mines Act as being suitable matters for referral to the Committee. Firstly, pursuant to section 512E(4), where a person has lodged an objection to an intention to grant an application for a mining tenement or the renewal or the extension of a mining tenement, before the Minister determines the objection, he may refer the objection to the Committee. Presumably the Committee considers the objection *in camera* and then makes a recommendation to the Minister.

Secondly, in section 66A(2)(a) of the Mines Act it is prescribed that the Minister may not make a recommendation to the Governor in Council in relation to the prescription of zones for eductor dredges (that is, rivers and creeks that may be made available for eductor dredging) unless he has first submitted the proposals for the prescribed zones to the Mining Consultative Committee and the Committee has agreed to the proposals. Given the environmental concern which is associated with eductor dredge operations — particularly amongst the fishing associations — the Committee is by this provision required to resolve a rather environmentally controversial issue.

Finally, in section 451A(d) of the Mines Act, the Minister may refer to the Committee

> any matter relating to hydraulic mining or sluicing or to any form of mining by which impure water sludge or mining debris may be discharged into any watercourse lake or reservoir, including any condition proposed to be inserted in a lease or licence or to which the registration of land as a claim is to be made subject and any other matter arising in connexion with the Minister's powers and obligations as the successor in law of the Sludge Abatement Board.

It will be appreciated that with the creation of the Mining Consultative Committee, a facility is provided by which many controversial environmental issues can be referred to an independent committee of persons who can be seen to advise the Minister in a non-political forum. Given that the Minister does retain such an important role under the Mines Act with respect to so many matters, the existence of such a Committee must be seen as a very valuable resource.

CLOSING REMARKS

The time when mining activity can occur without environmental safeguards has gone for ever. There is a legitimate expectation on the part of the community at large that the mining industry will share the social responsibility of safeguarding our natural environment. Governments around the world and especially the Victorian Government have responded to that public expectation. To a large extent the mining industry

does accept this responsibility and endeavours to work within those legislative provisions designed to protect the environment.

My analysis of environmental provisions in the Victorian Mines Act has to a large extent, glossed over the practical problems of working within the new 'environmental code'. Real problems have arisen due to the superimposing of new provisions over an old Act. It is ironic for me, of all people, to say that the time has come to sweep away the old law — largely based on the work in the 1860s and 1870s of my forbear, the founder of Australian mining law, Sir Robert Molesworth — and replace it with an entirely new formulation of mining laws to better suit the challenges and expectations of the coming decades.

There are internal inconsistencies, there are ambiguities and there are requirements so difficult to comply with within a reasonable time, that working within the current statutory provisions can be a real disincentive to even contemplate mining activity. In saying that, I am not saying that we should remove environmental safeguards from the Act — neither the community nor Government would accept that — rather I believe a more efficient and effective mining code, subject to appropriate environmental provisions, is required. If legislation is confusing or ambiguous or impracticable people cannot be expected to fully or willingly comply with it. Some people will be ignorant of such provisions. Others will avoid entering the legislative maze. If the legislation is subject to criticism, such as can be levelled at the Victorian Act, not only will the mining industry lose out but so will environmentalists and the community at large. To better safeguard the environment while, at the same time, effectively regulating the mining industry in a way so as not to discourage it, there is a need for clear, unambiguous and consistent legislation providing certainty of interpretation and application. If that legislation reflects a responsible attitude towards the acceptance of environmental regulation then the environment, the community at large, the mining industry and environmentalists will all benefit.