

South Australia



MINING (SPECIAL ENTERPRISES) AMENDMENT ACT 1995

No. 41 of 1995

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PART 8A

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ELIZABETHAE II REGINAE

A.D. 1995

No. 41 of 1995

An Act to amend the Mining Act 1971.

[Assented to 4 May 1995]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Mining (Special Enterprises) Amendment Act 1995*.
- (2) The *Mining Act 1971* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Insertion of s. 41

3. The following section is inserted after section 40 of the principal Act:

Suspension or cancellation of lease

41. (1) The Minister may suspend or cancel a mining lease if the lessee contravenes or fails to comply with a term or condition of the lease or a provision of this Act.

(2) Before exercising powers under subsection (1), the Minister must comply with any stipulations in the lease relating to the taking of such action.

(3) If a mining lease is suspended or cancelled under this section, the lessee may, within 28 days of the suspension or cancellation, appeal to the ERD Court and the Court may, if satisfied that there is no proper ground for the suspension or cancellation, declare the suspension or cancellation void.

Amendment of s. 56—Suspension and cancellation of licence

4. Section 56 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsections:

(2) Before exercising powers under subsection (1), the Minister must comply with any stipulations in the licence relating to the taking of such action.

(3) If a licence is suspended or cancelled under this section, the licensee may, within 28 days of the suspension or cancellation, appeal to the ERD Court and the Court may, if satisfied that there is no proper ground for the suspension or cancellation, declare the suspension or cancellation void.

Insertion of Part 8A

5. The following Part is inserted after Part 8 of the principal Act:

PART 8A SPECIAL MINING ENTERPRISES

Object of this Part

56A. The object of this Part is to facilitate the establishment, development or expansion of mining enterprises of major significance to the economy of this State by allowing greater security and flexibility of tenure.

Special mining enterprises

56B. (1) For the purposes of this Part, a mining enterprise (whether existing or proposed) is a "special mining enterprise" if—

- (a) the person who conducts or proposes to establish the enterprise has made application to the Minister for the exercise of powers under this Part; and
- (b) the Governor is satisfied that the enterprise is of major significance to the economy of this State; and
- (c) the Minister and the applicant have entered into an agreement, ratified by the Governor, for the exercise of powers under this Part and the grant of appropriate mining tenements in relation to the enterprise.

(2) An application under subsection (1) must be made in the form approved by the Minister and must be accompanied by a written proposal containing full particulars of the mining enterprise, including—

- (a) a sufficient delineation of the land to which the proposal relates; and
- (b) a statement of the nature, extent and proposed scheduling of the mining operations and related or ancillary operations or works that the applicant carries out or proposes to carry out under the enterprise; and
- (c) an economic analysis of the enterprise, including financial projections and details of the financial resources available to the applicant for the purposes of the enterprise; and
- (d) an assessment of the benefits to the State derived or expected to be derived from the enterprise; and
- (e) an assessment of the expected social and environmental effects of the enterprise; and
- (f) a statement of the measures that the applicant considers appropriate to protect the environment, and to remedy environmental damage that may result on account of operations or activities carried out for the purposes of the enterprise; and

- (g) a statement of the measures that the applicant considers appropriate for the protection of any Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988* that may be affected by the enterprise; and
- (h) any other information required by the regulations.

(3) The Minister may require the applicant to provide other information or documents, and to comply with any requirement specified by the Minister.

(4) An applicant must, in accordance with the regulations, pay an application fee prescribed or determined under the regulations.

(5) An application under this section—

- (a) may be made in respect of an area of land of any size, and whether or not a mineral claim has been pegged out or registered over the land in relation to the enterprise; and
- (b) will, in relation to any mining tenement subsequently granted to the applicant, be taken to be an application duly made under this Act for that tenement.

(6) The Minister may (at any time before entering into an agreement under this Part), by notice in writing given personally or by post to the applicant, refuse an application under this section on any reasonable ground, and an application will be taken to be refused if the Governor indicates that the Governor is not satisfied that the enterprise is of major significance to the economy of this State or refuses to ratify an agreement entered into under this Part with the applicant.

(7) No mineral claim may be pegged out by or mining tenement granted to any other person over the land to which an application under this section relates until—

- (a) 28 days after the application is refused or withdrawn; or
- (b) a mining tenement, or tenements, is, or are, granted to the applicant over the land.

Power to exempt from or modify Act

56C. (1) The Minister may, in accordance with the terms of an agreement under this Part (as ratified by the Governor)—

- (a) exempt a special mining enterprise from any provision of this Act; or
- (b) modify the application of a requirement of this Act in relation to the enterprise.

(2) An exemption or modification may only be granted or made under subsection (1) in respect of—

- (a) the requirement to peg out or register a mineral claim; or
- (b) the maximum area of land over which a mining tenement may be granted; or
- (c) the maximum term for which a mining tenement may be granted; or

- (d) the period within which an application for renewal of a mining tenement must be made, and the term for which the renewal may be granted; or
- (e) the rate of royalty required to be paid under this Act; or
- (f) the rental payable under a mining tenement; or
- (g) any other prescribed requirement of this Act (except a requirement under Part 9B).

(3) An exemption or modification may be subject to conditions stipulated in the agreement.

(4) An exemption or modification may not be granted or made under this section so as to discriminate against the holders of native title in land.

(5) The Minister may vary or revoke an exemption or modification in accordance with and subject to the terms of the agreement.

(6) The Minister must cause notice of an exemption or modification, and of any subsequent variation or revocation of it, to be published in the *Gazette*.

(7) A person who contravenes or fails to comply with a condition of an exemption or modification under this section is guilty of an offence.

Penalty: \$50 000.

Existing tenements

56D. (1) If land comprised in a mining tenement granted in relation to a special mining enterprise pursuant to an agreement under this Part was, immediately before the granting of the tenement, comprised in a lease or licence held under this Act in respect of the same enterprise—

- (a) the lease or licence is, by force of this subsection, subsumed into the new mining tenement; and
- (b) subject to a determination of the Minister or a court—
 - (i) an interest (whether legal or equitable) in, or affecting, the lease or licence so subsumed (being an interest in force immediately before the granting of the mining tenement) continues to have the same effect in respect of the mining tenement as it had before the tenement was granted; and
 - (ii) a liability of the holder of the mining tenement in existence immediately before the granting of the tenement is not affected by the granting of the tenement; and

- (iii) an approval, consent, licence or exemption granted under another Act or law with respect to the carrying out of an operation or activity under the lease or licence will be taken to have been granted with respect to the carrying out of the same operation or activity under the new mining tenement if the extent of the operation or activity, and the area of land over which it is to be carried out, are not to be substantially increased.

(2) If—

- (a) an existing lease or licence is to be subsumed into a new mining tenement under this Part; and
- (b) the existing lease or licence is subject to a term or condition that has been included to protect—
 - (i) the natural beauty of a locality or place; or
 - (ii) flora or fauna; or
 - (iii) buildings of architectural or historical interest, or objects or features of scientific or historical interest; or
 - (iv) Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988*,

then the Minister must ensure that a comparable term or condition is included in the new tenement.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor