

PARLIAMENT OF VICTORIA

**Mineral Resources (Sustainable Development)
Amendment Bill 2012**

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PARLIAMENT OF VICTORIA

Introduced in the Assembly

**Mineral Resources (Sustainable
Development) Amendment Bill 2012**

A Bill for an Act to amend the enforcement provisions of the **Mineral Resources (Sustainable Development) Act 1990** and for other purposes.

The Parliament of Victoria enacts:

1 Purpose

The purpose of this Act is to amend the **Mineral Resources (Sustainable Development) Act 1990** to—

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- (a) provide for additional circumstances in which an inspector may enter a worksite or give directions to a person at a worksite;

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- 5 (b) provide for additional circumstances in which the Minister may require, by notice, the holder of an authority to take an action or prohibit the holder from taking an action;
- (c) increase penalties for the breach of a notice;
- (d) enable a court to order the holder of an authority to comply with a notice;
- 10 (e) clarify that the Minister may vary a notice;
- (f) provide for the review of a variation of a notice;
- 15 (g) enable the Minister to apply to the Supreme Court for an injunction compelling the holder of an authority to comply with a notice or restraining the holder from contravening a notice;
- (h) enable the Minister to take actions required to remedy an authority holder's failure to comply with a notice;
- 20 (i) provide for compensation to owners and occupiers of private land for loss or damage resulting from remedial action.

2 Commencement

- 25 (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 June 2013, it comes into operation on that day.

3 Principal Act

In this Act, the **Mineral Resources (Sustainable Development) Act 1990** is called the Principal Act.

See:
Act No.
92/1990.
Reprint No. 8
as at
14 October
2010
and
amending
Act Nos
59/2010,
74/2010,
78/2010,
29/2011,
53/2011,
17/2012 and
43/2012.
LawToday:
www.
legislation.
vic.gov.au

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4 Power to enter

In section 94(2) of the Principal Act, for "the environment" **substitute** "public safety, the environment, land, property or infrastructure".

5 Power to give directions

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In section 95M(1) of the Principal Act, for "the environment" **substitute** "public safety, the environment, land, property or infrastructure".

6 Order to cease work etc.

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(1) For the heading to section 110 of the Principal Act, **substitute**—

"Notice requiring authority holder to take action or stop work".

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(2) In section 110(1)(a) of the Principal Act, for "the environment" **substitute** "public safety, the environment, land, property or infrastructure".

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(3) In section 110(2) of the Principal Act, for paragraph (a) **substitute**—

"(a) require the taking within a specified period of any action necessary—

(i) to remedy the contravention or non-compliance;

(ii) to avoid the likely contravention or non-compliance;

(iii) to avoid, minimise or remove the risk to public safety, the environment, land, property or infrastructure;"

(4) For the penalty and default penalty at the foot of section 110(3) of the Principal Act, **substitute**—

"Penalty: In the case of a corporation, 2500 penalty units.

In any other case, 500 penalty units.

Default penalty:

In the case of a corporation, 300 penalty units.

In any other case, 60 penalty units."

(5) After section 110(3) of the Principal Act, **insert**—

"(3A) If a holder of an authority is found guilty of an offence against subsection (3), the court may, in addition to imposing any penalty, make—

(a) an order that the holder must comply with the notice or take specified action to comply with the notice; or

(b) any other order that it considers appropriate."

(6) In section 110(4) of the Principal Act—

(a) for "A person" **substitute** "Subject to subsection (5A) and section 110AA(4), a person";

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(b) after "subsection (2)" **insert** "or vary a notice under subsection (5)".

(7) In section 110(4A) of the Principal Act—

(a) in paragraph (a), after "notice" **insert** ", or notice of the variation,";

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(b) in paragraph (b), after "serve" **insert** "or vary".

(8) In section 110(5) of the Principal Act, after "authority," **insert** "vary or".

(9) After section 110(5) of the Principal Act, **insert**—

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"(5A) A person cannot apply under subsection (4) for review of the variation of a notice if the purpose of the variation is limited to—

(a) correcting a minor or technical error in the notice; or

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(b) extending the period within which an action required by the notice must be taken; or

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(c) reducing the period during which the doing of any activity or class of activity is prohibited."

7 New sections 110AA to 110AG inserted

After section 110 of the Principal Act, **insert—**

"110AA Injunction for non-compliance with notice

- 5 (1) The Minister may apply to the Supreme Court for an injunction—
- (a) compelling the holder of an authority to comply with a notice served on the holder under section 110; or
- 10 (b) restraining the holder of an authority from contravening the notice.
- (2) The Minister may apply for an injunction under subsection (1) whether or not—
- 15 (a) an application has been made under section 110(4) for review of a decision to serve or vary the notice; or
- (b) proceedings have been brought for an offence against this Act or the regulations in relation to the notice; or
- 20 (c) proceedings have been brought in relation to a matter that gave rise to the decision to serve the notice.
- (3) If a holder of an authority has applied under section 110(4) for review of the decision to serve or vary a notice at the time the Minister applies for an injunction under subsection (1) in relation to that notice—
- 25 (a) the Tribunal must make an order staying the review proceeding pending the determination of the Minister's application; and
- 30 (b) the Tribunal must dismiss the proceeding if the Supreme Court grants an injunction on the Minister's application.

- 5 (4) If a holder of an authority has not applied under section 110(4) for review of the decision to serve or vary a notice at the time the Minister applies for an injunction under subsection (1) in relation to that notice, the holder cannot apply for review under section 110(4) in relation to that notice—
- (a) while the Minister's application is pending; or
- 10 (b) if the Supreme Court grants an injunction on the Minister's application.

110AB Minister may take action required by injunction or order

- 15 (1) The Minister may take any action that an order under section 110(3A) or an injunction granted on an application under section 110AA(1) requires to be taken if—
- 20 (a) the holder of the authority does not take the action within the time specified in the order or injunction or, if no time is specified in the order or injunction, a reasonable time; and
- 25 (b) failure to take the action is likely to result in a serious risk to public safety, the environment, land, property or infrastructure.
- 30 (2) The Minister may authorise a person and any person assisting that person to enter any land and do anything that in the Minister's opinion is necessary for the purpose of taking an action under subsection (1).
- 35 (3) If it is necessary for an authorised person or a person assisting an authorised person to enter land under subsection (2), the Minister must, except in a case of emergency—

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- (a) if the land is private land, give reasonable notice of the entry to the owner and the occupier of the land; and
 - (b) if the land is Crown land, give reasonable notice of the entry to the Crown land Minister; and
 - (c) ensure that the person enters the land at a reasonable time; and
 - (d) if the land is used only for residential purposes, obtain, or take all reasonable steps to obtain, the consent of the occupier of the land.

110AC Offence to hinder or obstruct remedial action

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- (1) A person must not, without reasonable excuse, hinder or obstruct the Minister, an authorised person or a person assisting an authorised person taking action under section 110AB.

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Penalty: In the case of a corporation,
300 penalty units.
In any other case, 60 penalty units.

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- (2) In this section, *authorised person* means a person authorised by the Minister under section 110AB(2).

110AD Immunity for remedial action

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- (1) An authorised person or a person assisting an authorised person is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the course of taking action under section 110AB; or

(b) in the reasonable belief that the act or omission was in the course of taking action under section 110AB.

(2) Any liability that would, but for subsection (1), attach to a person attaches instead to the Crown.

(3) In this section, *authorised person* has the same meaning as in section 110AC.

110AE Compensation for remedial action

(1) Subject to subsection (2), compensation is payable by the Minister to the owner or occupier of private land for any loss or damage sustained as a direct, natural and reasonable consequence of an action taken under section 110AB, including—

(a) deprivation of possession of the whole or any part of the surface of the land; and

(b) damage to the surface of the land; and

(c) damage to any improvements on the land; and

(d) severance of the land from other land of the owner or occupier; and

(e) loss of amenity, including recreation and conservation values; and

(f) loss of opportunity to make any planned improvement on the land; and

(g) any decrease in the market value of the owner or occupier's interest in the land.

(2) Subsection (1) does not apply if the owner or occupier of the land is the holder of the authority subject to the order or injunction in relation to which the action under section 110AB was taken.

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- (3) An owner or occupier of land may—
- (a) apply to the Tribunal for determination of a disputed claim for compensation under subsection (1); or
 - (b) refer a disputed claim for compensation under subsection (1) to the Supreme Court for determination—

in accordance with Part 10 of the **Land Acquisition and Compensation Act 1986** as if it were a claim for compensation under that Act and the Minister were the Authority referred to in that Part.

- (4) In its application to a claim referred under subsection (3), Part 10 of the **Land Acquisition and Compensation Act 1986** has effect as if—
- (a) it required the Tribunal or the Court (as the case requires) in determining the compensation payable to have regard to the provisions of this Part; and
 - (b) section 91(1) of that Act provided that the Minister must pay the Minister's own costs and the costs of the owner or occupier unless the owner or occupier has been frivolous or vexatious or has otherwise acted unreasonably, in which case the Tribunal or the Court (as the case requires) may, subject to that section, award such costs as it thinks proper.

110AF When claim for compensation for remedial action can be made

- (1) A claim for compensation for any loss or damage may be made under section 110AE at any time until the end of the period of 2 years after the day on which the Minister,

an authorised person or a person assisting an authorised person finishes taking the action under section 110AB.

- (2) In this section, *authorised person* has the same meaning as in section 110AC.

110AG Recovery of costs and compensation by Minister

The Minister may recover, as a debt due to the Crown, in a court of competent jurisdiction—

- (a) the value of any reasonable costs incurred in taking an action under section 110AB;
- (b) any compensation paid under section 110AE in respect of that action—

from the holder of the authority who was subject to the order under section 110(3A) or injunction under section 110AA in relation to which the action was taken."

8 New section 138 inserted

After section 137 of the Principal Act, insert—

"138 Transitional provision—2012 amendments

- (1) A court may make an order under section 110(3A) in relation to any offence against section 110(3) committed after the commencement of section 6 of the amending Act, whether or not the notice in respect of which the offence is committed is issued before or after that commencement.

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5 (2) If an offence against section 110(3) is committed between 2 dates and section 6 of the amending Act commences on a date between those 2 dates, for the purposes of subsection (1), the offence is taken to have been committed after that commencement.

10 (3) The Minister may apply for an injunction under section 110AA(1) in relation to any non-compliance with a notice that occurs after the commencement of section 7 of the amending Act, whether or not the notice is issued before or after that commencement.

15 (4) If non-compliance with a notice occurs between 2 dates and section 7 of the amending Act commences on a date between those 2 dates, for the purposes of subsection (3), the non-compliance is taken to have occurred after that commencement.

20 (5) In this section, *amending Act* means the **Mineral Resources (Sustainable Development) Amendment Act 2012**."

9 Repeal of amending Act

This Act is **repealed** on 1 June 2014.

Note

25 The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

By Authority. Government Printer for the State of Victoria.