



MINERALS COUNCIL OF AUSTRALIA

- VICTORIAN DIVISION

SUBMISSION TO -

THE STATE SERVICES AUTHORITY:

REVIEW OF THE VICTORIAN MINING WARDEN

31 July 2009

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Executive Summary

The Minerals Council of Australia (MCA) welcomes the opportunity to make a submission to the State Services Authority (SSA) review of the long term roles, functions and responsibilities of the Victorian Mining Warden.

The Victorian government decision to remove the review of the Mining Warden role and functions from the Department of Primary Industries (DPI) review of the Mineral Resources (Sustainable Development) Act (MRSD Act) is fully supported by MCA.

The Mining Warden has a positive functional role in supporting the Purpose and Objectives of the Act that governs the minerals industry which is a highly regulated industry. MCA supports the retention of the Mining Warden.

Whilst the dispute resolution case load of the Mining Warden is not great the office provides an efficient, effective and well respected service which is highly valued by the minerals industry.

The current functions of the Warden remain valid today. They are:

- to investigate, attempt to settle or arbitrate disputes that may arise under the MRSD Act and are referred by a party to the dispute. Where appropriate make recommendations to the Minister.
- to investigate, report and make recommendations on matters referred by the Minister or Secretary, including advice on consent waivers under s25A.

The Mining Warden provides the expert dispute resolution service that effectively manages the complex laws for the benefit of all parties associated with mineral tenements and affected land. Other bodies such as VCAT and the Supreme Court cannot respond effectively to what can be a highly volatile and threatening situation. They are far too costly, take far too long for resolution and are conducted in an adversarial manner.

In addition to the matters expressly raised by the terms of reference, MCA recommends that the following reforms:

- Resource independence to maintain the impartiality of the office.
- Extend dispute resolution powers to –
 - disputes between licence holders and all approval agencies.
 - consents for land access and compensation for proposed exploration or mining work.
- Extend review or inquiry powers to –
 - preliminary investigations prior to a formal inquiry request by the Minister.
 - publish recommendations following any inquiry.

In summary, there is a demonstrated need to maintain the functions of the Mining Warden which are essentially to review executive decisions and actions.

1. Introduction

The Minerals Council of Australia (MCA) welcomes the opportunity to make a submission to the State Services Authority (SSA) review of the long term roles, functions and responsibilities of the Victorian Mining Warden. The MCA represents Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. MCA member companies produce more than 85 per cent of Australia's annual mineral output. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, environmentally responsible and attuned to community needs and expectations. The Victorian Division of the MCA represents the interests of member companies operating, exploring and providing services to the industry in Victoria.

The minerals industry is an important contributor to Victoria's economic growth, particularly in regional and rural areas. To enable the minerals industry to continue to grow and contribute the regulatory framework must be balanced between promoting investment, good environmental practice and the expectations of the community. This is to be achieved in an efficient manner whilst minimising the requirement for direct control by government authorities. The Victorian Mining Warden has played, and continues to play, an important role in this regard.

The Victorian government decision to remove the review of the Mining Warden role and functions from the Department of Primary Industries (DPI) review of the Mineral Resources (Sustainable Development) Act (MRSD Act) is fully supported by MCA. We support the referral to the State Services Authority.

2. MCA Response to DPI Discussion Paper

In its response to the DPI Issues Paper MCA stated the following:

The State Mining Warden provides an invaluable service to the industry, Minister and DPI. MCA recommends that the Office of the Victorian Mining Warden should be based on the following principles:

- Judicial independence (resource independence).
- Appropriate powers to carry out the duties of the office.
- Power to make orders and enforce decisions (where appropriate).
- Fee Free service.
- Timely decision making.
- Clear Jurisdiction.
- Clear and well written statutory provisions.
- A commitment to the Principles of Natural Justice.

The Wardens court is currently provisioned by DPI. This is an unreasonable structure as it could be perceived to compromise the independence of the Office and therefore other arrangements are worthy of review.

This very general position remains current. The detailed position in response to the terms of reference is presented below.

3. Informal Mining Warden Stakeholder Group

MCA participated in a recent informal stakeholder group established by the Mining Warden. The group prepared a position on the Office of the Victorian Mining Warden for presentation to DPI. The position included nine principles some of which are consistent with the MCA broad policy position.

On 1 July 2009, MCA provided conditional endorsement to the position of this informal stakeholder group. The conditional endorsement read:

“MCA endorses the broad intent of the nine principles but cannot endorse the specific discussion associated with several of the principles. For example, we do not comment on the pay and conditions of Statutory Officials; we do not advocate the extension of jurisdiction on behalf of other industries; nor do we have a position on the extension of the powers of the Warden to investigate decisions of the Minister.”

4. MCA Response to the Specific Terms of Reference

The aim of SSA review is to determine:

- whether the objectives of the MRSD Act are best met by maintaining the office of the mining warden in its current form,
- whether the current provisions require amendment, or
- whether the current role and functions could be performed by another mechanism or mechanisms.

The terms of reference are generally adequate and should serve to ensure a comprehensive review and enable appropriate functions and roles to be explored with the exception of “other reforms” required to enhance the role. Consequently, we have added an “other reforms” section to the discussion on the terms of reference. We do not see the value in exploring structural forms until the functions are agreed.

4.1. Functions of the Mining Warden

The current functions of the Warden are:

- to investigate, attempt to settle or arbitrate disputes that may arise under the MRSD Act and are referred by a party to the dispute. Where appropriate make recommendations to the Minister.
- to investigate, report and make recommendations on matters referred by the Minister or Secretary, including advice on consent waivers under s25A.

These functions remain valid today.

An additional function that has developed over recent years is the mediation of disputes between parties prior to referral to the Victorian Civil and Administrative Tribunal (VCAT). This function has proved very effective in limiting the matters considered by VCAT. In fact there have been no matters related to licence disputes referred to VCAT for arbitration in the past 5 or more years.

The Warden cannot challenge decisions of the Minister. This is appropriate under the current structure. Licensees with concerns regarding the decisions of the Minister (or his/her delegate) are entitled to appeal to the Minister for a review or take the matter through the courts.

However, a major limitation of the current powers is the ability to inquire into the decisions and actions of agencies other than DPI who are integral to the exploration and mining regulatory process.

4.2. Mining Warden's in Other Jurisdictions

A review of the dispute settling procedures used in the minerals industry in other jurisdictions has been undertaken by MCA, the results of which are summarised in the **Attachment 1**.

The review shows that every jurisdiction has a different process, different scope and different powers for dealing with administrative disputes and judicial appeals. The Victorian structure, powers and functions are not replicated in any of the jurisdictions. In some ways the Victorian Mining Warden has greater powers of inquiry but reduced powers of review. No other Warden has the power to undertake inquiries on behalf of the Minister but most other processes enable the Warden or Tribunal to review and rule on the decisions of the Minister.

MCA is of the view that on balance the Victorian Warden's powers of inquiry and advice to the Minister are a benefit well worth keeping.

4.3. Contribution to the Objectives of the MRSD Act

The purpose and objectives of the MRSD Act with the amendments that will take effect from 1 January 2010 are as follows:

s1 Purpose

The purpose of this Act is to encourage ~~an~~ economically viable mining and extractive industries industry which ~~make~~ makes the best use of ~~mineral~~ resources in a way that is compatible with the economic, social and environmental objectives of the State.

s2 Objectives

(1) The objectives of this Act are—

(a) to encourage and facilitate exploration for minerals and foster the establishment and continuation of mining operations by providing for—

(i) an efficient and effective system for the granting of licences and other approvals;
and

- (ii) a process for co-ordinating applications for related approvals; and
 - (iii) an effective administrative structure for making decisions concerning the allocation of mineral resources for the benefit of the general public; and
 - (iv) an economically efficient system of royalties, rentals, fees and charges; and
 - (b) to establish a legal framework aimed at ensuring that—
 - (i) mineral and stone resources are developed in ways that minimise impacts on the environment and the community; and
 - (ii) consultation mechanisms are effective and appropriate access to information is provided; and
 - (iii) land which has been mined or from which stone has been extracted or removed is rehabilitated; and
 - (iv) just compensation is paid for the use of private land for exploration and mining; and
 - (v) conditions in licences and approvals are enforced; and
 - (vi) dispute resolution procedures are effective; and
 - (vii) the health and safety of people is protected in relation to work being done under a licence; and
 - (c) to recognise that the exploration for, and mining or extraction of, mineral resources and stone must be carried out in a way that is not inconsistent with the Native Title Act 1993 of the Commonwealth and the **Land Titles Validation Act 1994**.
- ~~(2) For the purpose of achieving the objective of providing for a process for co-ordinating applications for related approvals the Minister may—~~
- ~~(a) in respect of any project, convene meetings of representatives of relevant Ministers, municipal councils and other public bodies; or~~
 - ~~(b) after consultation with each relevant Minister and subject to the provisions of any other Act, do anything else that is necessary or convenient to be done for or in connection with the achievement of that objective.~~

The above amendments to the Purpose and Objectives of the MRSD Act would appear to limit the scope of the Minister to intervene in the actions, or lack of action, of other government agencies involved in approvals and permits related to the MRSD Act. We do not agree with the deletion of Clause 2(2) from the Act. Therefore there is a need to expand the scope of the Mining Warden to include review, investigation, mediation and recommendations related to the actions of all regulators involved in mineral licensing and work plan approvals, not just those of DPI.

The Mining Warden has a positive functional role in supporting the Purpose and Objectives of the Act that governs the minerals industry which is a highly regulated industry. **MCA supports the retention of the Mining Warden.**

4.4. The Number and Nature of Issues

Dispute resolution and in particular the mediation of issues and questions from landowners are critical to the development of the State's mineral resources. Land use conflict resolution is the most critical contribution to the Purpose of the Act that the Mining Warden can make. Land use conflict generally involves matters related to understanding the MRSD Act and rights and obligations for access conditions, consents for access and compensation for the impacts of work to be done.

Another significant group of issues relate to licence holder (small and corporate) disputes with DPI over tenement or regulatory matters. The final group of issues include disputes between licence holders over any range of matters related to adjoining or disputed licences and the rights they bestow.

Generally, these later two groups of issues require a sound understanding of exploration and mining practice as well as a sound understanding of the MRSD Act.

In addition to the dispute resolution functions related to the above three groups of issues, the Mining Warden also conducts inquiries for the Minister and Secretary, including inquiries for "fit and proper" persons applying for a licence.

Whilst the case load in these various categories is not great, the Mining Warden provides an efficient, effective and well respected service which is highly valued by the minerals industry.

4.5. Special or Short-term Mining Wardens

Legally trained Warden's bring sound legal procedural and interpretative skills to the role. Special inquiries established by the Minister under Part 11 of the MRSD Act that require the engagement of technical specialists can always be accommodated by appointment of an assistant Mining Warden. Maintaining the integrity of the Mining Warden's jurisdiction is important for ensuring that all parties respect the office. There is no justification for stand-alone specialist Mining Wardens unless the matter being investigated involves the substantive Mining Warden in a conflict of interest.

4.6. Clients of the Mining Warden other than Minister and Secretary

Clients or stakeholders of the Mining Warden include:

- Landowners with concerns regarding access consents and compensation for exploration or mining
- Prospectors and small miners in dispute with DPI
- Exploration and mining companies in dispute with DPI
- Exploration and mining companies in dispute with other explorers, miners or prospectors
- The DPI seeking advice on "fit and proper" person assessments

The work of the Mining Warden is mostly directed at the gold and metalliferous sectors although there is a growing interest and awareness within the coal sector.

4.7. Other Review Mechanisms Used in the MRSD Act

The “other” review processes available under the MRSD Act include the following:

- Departmental reviews
- Mining and Environment Advisory Committee (MEAC)
- Ministerial Advisory Panels
- Earth Resources Development Council (ERDC)

Departmental reviews are a valid and common process used to investigate specific regulatory cases and for the identification of systemic problems or the identification of reforms to reduce red tape. However, it is difficult for departmental reviews to impartially seek to settle disputes between the department and licence holders.

MEAC has not met for more than 10 years and is effectively defunct. MCA has recommended that it be removed from the MRSD Act.

Ministerial Advisory Panels were introduced into the Act in 2006 and until recently with the establishment of a technical review board have not been used. These powers should more than adequately replace the functions of MEAC and the need for specialist technical mining wardens.

The ERDC provides high level business advice to the Minister on the development of the State’s earth resources. It has no role in specific or individual licence matters.

4.8. Need for a Specialist Dispute Resolution Body for Mining Disputes

There is a need for a specialist expert body to resolve exploration and mining licence disputes because:

- The exploration and mining tenement administration laws are very complex;
- The industry is heavily regulated;
- Involve property and resource rights that can be very significant commercially; and
- Victoria has a very high population density and is predominantly freehold land when compared to other States. This leads to complex land use issues that must be managed.

The Mining Warden provides the expert dispute resolution service that effectively manages the complex laws for the benefit of all parties associated with mineral tenements and affected land.

Other bodies such as VCAT and the Supreme Court cannot respond effectively to what can be a highly volatile and threatening situation. They are far too costly, take far too long for resolution and are conducted in an

adversarial manner. The track record of the Mining Warden over the past five or more years during which time there has not been a single minerals tenement case heard by either VCAT or the Courts is testament to the effectiveness of the role.

4.9. Review Mechanisms Available Under the *Petroleum Act 1998*

The Petroleum Act provides different processes for the resolution of disputes on private land and Crown land. On private land the process allows for the owner of the land or the licence holder to seek resolution of a dispute regarding compensation through VCAT or the Supreme Court (depending upon the quantum of the claim). On Crown land the licensee may seek a review of any decision of the Minister through VCAT.

In many ways the process for the determination of disputes regarding compensation are similar to those applying to under the MRSD Act. However, there is no provision or process for the review or appeal of administrative activities or decisions of the Department.

The relevant dispute resolution clauses for the Petroleum Act 1998 are included in **Attachment 2**.

MCA considers the dispute resolution provision of the Petroleum Act to be inferior to those of the MRSD Act.

4.10. Effectiveness with Respect to Issues Referred by the Minister

This question can only be answered by the Minister.

However, the effectiveness of the Warden would be enhanced if he/she had the power to undertake preliminary investigations on matters brought to his/her attention and to then make a recommendation to the Minister for a comprehensive inquiry.

4.11. Cost Recovery for Services Provided to Industry

Currently costs of running the Mining Warden's office are carried by the government through the DPI budget. There is no fee for the service that the Warden provides. Also, the Mining Warden does not conduct proceedings in a manner that makes it imperative for parties to be represented by a lawyer. The Warden does not usually award costs following a dispute although he/she has that power.

MCA supports the notion of an effective dispute resolution service that does not include additional sitting fees or registration/lodgement fees. MCA members are of the opinion that the licence fees already paid for exploration and mining rights include funds for the provision of the regulatory functions and the Mining Warden functions. Whilst we appreciate concerns with the hypothecation of licence fees for Departmental operating expenses we do not see the need for an identifiable levy on licences to cover the Warden's office. We do not see the need for additional cost recovery.

However, if the government were to require additional cost recovery from licence holders the minerals industry would expect to be consulted on the resources required and the quantum of any costs. We would also insist on

the provision of a quality service that meets high standards of competence, timely decisions and processes to discourage vexatious litigants.

4.12. Other Reforms

Other matters requiring reform related to the functions and role of the Mining Warden that have not been covered by the terms of reference include the following:

- Resource independence is important to ensure the Mining Warden is perceived by all parties as impartial when seeking to resolve disputes. This is particularly important in protecting the integrity of DPI and its officials. The Mining Warden is a statutory official not a Departmental officer. Therefore, it is recommended that the office of the Mining Warden budget and governance structure is effectively separated from the Earth Resources Division of DPI.
- Extended dispute resolution powers –
 - As mentioned earlier there is a need to extend the powers of the warden to enable disputes between licence holders and all approval agencies (in addition to DPI) to be resolved on matters related to establishing licence conditions or work plan approvals under the MRSD Act.
 - Currently the Mining Warden has no formal powers related to consents for land access and compensation for proposed exploration or mining work. These matters are the jurisdiction of VCAT or the Supreme Court. However, these matters are referred to the Warden for mediation. It is recommended that the role of the Warden in mediation of consent and compensation matters is formalised and that the entire process for resolving disputes be referred to the Mining Warden; appeals should remain with the Supreme Court.
- Extend review powers –
 - Currently the Mining Warden can only undertake inquiries when commissioned by the Minister or Secretary. Often the Warden can become aware of an emerging issue of concern but is unable to investigate the veracity of those concerns before taking them to the Minister. The Warden should have the power to undertake preliminary investigations for reporting to the Minister and if necessary requesting that a full inquiry be undertaken.
 - In the interests of transparency of process it is recommended that the Warden's report to the Minister following any inquiry is published. The Act neither expressly permits nor denies such transparency.
- Extension of jurisdiction to other industries –
 - The MCA makes no representation in respect to discussions on whether or not the Mining Warden should also have jurisdiction to resolve disputes and undertake inquiries in earth resource sectors (other than the minerals industry) also covered by the MRSD Act. This is a matter for the specific industry sectors.

5. Minimum Effective Regulation

It is recognised that whilst the core functions of the Mining Warden relate to dispute resolution, there is also a regulatory component to the function such as assessment of “fit and proper” persons. The following discussion on minimum effective regulation and regulatory practice is relevant to these regulatory functions.

The mining and minerals processing sector acknowledges the need for regulation as an essential element underpinning the industry’s ongoing ‘social licence to operate’. Regulations should be focused, however on enhancing rather than impeding the minerals industry’s contribution to achieving an enduring balance between the financial viability of the industry, its environmental performance and its positive social contribution.

Accordingly, the MCA strongly advocates the principle of minimum effective regulation – specifically, that the development of good regulatory process should be informed by the following principles:

- regulation should only be adopted in cases of demonstrated market failure, and there should generally be an assumption that the open and transparent operation of markets will lead to efficient outcomes;
- regulatory approaches should not be used unless a clear case for action exists, including an evaluation of why existing measures are not sufficient to deal with the issue;
- regulation should only be adopted after a range of policy options (including self-regulatory and co-regulatory approaches) have been assessed and found wanting;
- the regulation represents the greatest net benefit to the community;
- the regulation developed is the most efficient means of achieving the desired outcome at least cost to industry;
- effective guidance is provided for both regulators and stakeholders to ensure that the regulations are correctly implemented and monitored;
- mechanisms such as sunset clauses or periodic reviews are built into the legislation to ensure that the regulations remain relevant over time; and
- there is effective consultation with stakeholders at key stages of the development and implementation of the regulation.

6. Regulatory Practice

The law represents only part of the story, the administration of legislation is fundamental to its successful and effective implementation.

The regulator should develop and maintain effective internal policies and processes to administer legislation that are based on consistency, transparency, probity, clarity of role, flexibility and rational pragmatism.

A good Regulator is competent, consistent, transparent and fair.

Regulators must have the resources and skills to administer the legislation effectively and efficiently. Without the application of adequate resources and skills the best legislation can founder.

7. Conclusions

The Mining Warden has a positive functional role in supporting the Purpose and Objectives of the Act that governs the minerals industry which is a highly regulated industry. MCA supports the retention of the Mining Warden.

Whilst the dispute resolution case load of the Mining Warden is not great the office provides an efficient, effective and well respected service which is highly valued by the minerals industry.

The current functions of the Warden remain valid today. They are:

- to investigate, attempt to settle or arbitrate disputes that may arise under the MRSD Act and are referred by a party to the dispute. Where appropriate make recommendations to the Minister.
- to investigate, report and make recommendations on matters referred by the Minister or Secretary, including advice on consent waivers under s25A.

When comparing the dispute resolution provisions in other States and Territories, the Victorian Mining Warden has greater powers of inquiry but reduced powers of review. No other Warden has the power to undertake inquiries on behalf of the Minister but most other processes enable the Warden or Tribunal to review and rule on the decisions of the Minister. MCA is of the view that, on balance, the Victorian Warden's powers of inquiry and advice to the Minister are a benefit well worth keeping.

The Mining Warden provides the expert dispute resolution service that effectively manages the complex laws for the benefit of all parties associated with mineral tenements and affected land. Other bodies such as VCAT and the Supreme Court cannot respond effectively to what can be a highly volatile and threatening situation. They are far too costly, take far too long for resolution and are conducted in an adversarial manner. The track record of the Mining Warden over the past five or more years during which time there has not been a single minerals tenement case heard by either VCAT or the Courts is testament to the effectiveness of the role.

MCA considers the dispute resolution provision of the Petroleum Act to be inferior to those of the MRSD Act.

MCA supports the notion of an effective dispute resolution service that does not include additional sitting fees or registration/lodgement fees.

Other matters requiring reform related to the functions and role of the Mining Warden that have not been covered by the terms of reference include the following:

- Resource independence to maintain the impartiality of the office.
- Extend dispute resolution powers to –
 - disputes between licence holders and all approval agencies.
 - consents for land access and compensation for proposed exploration or mining work.

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- Extend review or inquiry powers to –
 - preliminary investigations prior to a formal inquiry request by the Minister.
 - publish recommendations following any inquiry.
- Extension of jurisdiction to other industries –
 - The MCA makes no representation in respect to other industry sectors.

In summary, there is a demonstrated need to maintain the functions of the Mining Warden which are essentially to review executive decisions and actions. The review of judicial decisions should remain with VCAT and the Supreme Court.

ATTACHMENT 1

Dispute Resolution and Inquiry Processes - Analysis of “Other” Jurisdictions

Jurisdiction	Legislation	Commentary
WA	<p>Mining Act 1978; s132</p> <p>Any person holding office as a Stipendiary Magistrate may be appointed as a Warden.</p> <p>A warden's court has jurisdiction in respect of all rights claimed in, under or in relation to any mining tenement or purported mining tenement, or relating to any matter in respect of the Mining Act. See below.</p>	<p>The Magistrates who preside over the Court are pulled off of their usual duties to hear and decide Warden's Court matters. Although in theory any Magistrate can be a warden, there are of course a few who have a great deal of expertise and experience as Wardens.</p> <p>The existence of a Warden's Court is uncontentious and unquestioned in Western Australia - although the efficiency question has been considered at various times, including by the Keating Review of Approvals in 2002.</p> <p>Members of the CMEWA have raised issues of resourcing - the court does tend to get backlogged as it sits limited days, and Magistrates then return to their other duties, so written decisions tend to be delayed for some time. Otherwise it operates exactly as a court with same rules of evidence, procedure etc.</p>
Qld	<p>Mineral Resources Act 1989; s363</p> <p>There is no separate mining warden's court. In 2007 the Land and Resources Tribunal jurisdiction was transferred to the Land Court.</p> <p>The Land Court has jurisdiction to hear and determine actions, suits and proceedings arising in relation to prospecting, exploration or mining or to any permit, claim, licence or lease granted or issued under the Mineral Resources Act or any other Act relating to mining. See below.</p>	<p>The industry was anxious about the merger of the Land and Resources Tribunal (LRT) into the Land Court in 2007 because of the confidence they had in the expertise in the LRT and their fast track processes.</p> <p>During the 2007 process of merging the LRT into the Land Court, QRC worked closely with the State Government to obtain assurances as to service and resourcing levels of the mining related functions that were transferred into the Land Court. The QRC also met with the head of the Land Court and the Registrar to make sure they understood the industry's concerns.</p> <p>The QRC approach was to ensure service and expertise was not lost in the new process. This has been productive in that the Land Court (now bedding down the process of the merger) is seeking to broaden the experience of those less familiar with mining related matters - again, the experience of the Land and Resources Tribunal which was directly transferred into the Land Court is the key.</p> <p>The experience of the Land Court and use of well-established processes (including state legislative framework) have been key features which has given the Court a good reputation for considered and generally timely decision-making. Importantly, the Court benefits from the extensive experience in hearing/considering matters which have a mining related focus.</p> <p>The bottom line is to ensure there is someone on the Court with mining knowledge.</p>

NSW	<p>Mining Act 1992; s293 In April 2009 the Mining Warden's jurisdiction was transferred to the NSW Land and Environment Court (LEC). Certain functions previously undertaken by the Warden were retained by the Director-General or Minister for Mineral Resources. These predominantly relate to lodgement of objections. Mining matters referred to the LEC are designated as Class 8 proceedings (a new category for mining). The LEC has jurisdiction in matters related to mineral tenements, access for exploration and mining and compensation related to the land.</p>	<p>The NSWMC actively opposed the changes to the jurisdiction of the Mining Warden's Court. The LEC is viewed as bureaucratic, Sydney based, legalistic, and expensive. The Attorney General made a number of amendments to the Act taking the views of industry around specific problems into account but refused to maintain the old jurisdiction. It is still relatively new (introduced April, 2009) and the former Chief Mining Warden is providing an invaluable transition to the LEC. NSWMC remains concerned that the Court will not have enough specific mining expertise. At this stage, it is too soon for industry to indicate a view on how the new process is working.</p>
NT	<p>Mining Management Act 2008; s65 Any person may apply for a review of a decision of the Minister and any person affected by a decision of a mining officer may apply for a review of that decision.</p> <p>Decisions of a mining officer are reviewed by the Chief Executive Officer whilst decisions of the Minister are reviewed by the Mining Board. The Mining Board comprises 5 persons nominated by industry and appointed by the Minister.</p>	<p>Most disputes relate to mineral tenements and are dealt with through a three stage process. First stage is an administrative review by the Department. The second stage is mediation undertaken by in-house Departmental Wardens. The CEO of the Department signs off on these first two stages. The third stage is a determination by a Magistrate appointed as a warden. In the past 6 years there has only been 3 cases heard by a magistrate sitting as a warden.</p> <p>The Mining Board meets only infrequently.</p> <p>The proposed changes to the Mining Administration Act reduce the process to two stages; an administrative review and a hearing in a proposed Land Planning and Mining Tribunal.</p>
SA	<p>Mining Act 1971; s67 The Warden's Court has jurisdiction on mining tenement matters and monetary claims up to \$40,000. Complex or unusual matters are referred to the Environment, Resources and Development (ERD) Court. The ERD Court hears all matters related to Native Title lands.</p>	<p>The Warden's Court is a relatively informal court. It hears cases of dispute between tenement holders, tenement holders and PIRSA and tenement holders and landowners. The warden will hear the evidence and will also use the proceedings to encourage the parties to reach an agreement without the need for a determination.</p> <p>In disputes related to exempt land the Warden generally will first explore the options for conditions to be applied to the parties (mainly the mining company), and then how much compensation is justified under those conditions.</p> <p>Disputes related to compensation for exploration work are generally dealt with by the Warden. Warden's Court determinations are enforceable as court orders.</p>

<p>Tas</p>	<p>Mineral Resources Development Act 1995; s128 The Mining Tribunal is a Division of the Magistrates Court and is constituted by a magistrate who sits as the Warden.</p> <p>The Mining Tribunal has jurisdiction to all matters related to mineral tenements, access to land and compensation. It also hears objections to licence applications from any party.</p>	<p>The major area of dispute resolution relates to objections to licence applications. In these cases the Department attempts to mediate a solution. Disputes between parties to a tenement, including landowners and others with a financial interest are dealt with by the Mining Tribunal following mediation undertaken by the Department.</p> <p>Appeals against Ministerial decisions are heard by the Mining Tribunal, there is no mediation. Anyone can object to a mining project through the land use planning approval process and be heard during the public process although costs can be awarded against objectors.</p>
<p>Vic</p>	<p>Mineral Resources (Sustainable Development) Act 1990; ss97-99 Any party to a dispute related to a mineral licence can refer the matter to the Warden for resolution. The mining warden must investigate the dispute, attempt to settle, or arbitrate in relation to, the matters in dispute and, where appropriate, make recommendations to the Minister concerning those matters.</p> <p>The Minister or Head of Department may refer a matter for inquiry by the Warden.</p> <p>The Warden has powers similar to those of a Magistrate.</p>	<p>The Warden's judicial independence is compromised by the Departmental governance and resourcing arrangements.</p> <p>The Warden can only make recommendations to the Minister on disputes and can only undertake inquiries on matters not the subject of a dispute between parties when requested by the Minister or Head of Department.</p> <p>The Warden's powers do not include review of Ministerial delegate decisions, nor compensation and land access consents, although he is able to mediate in these matters on behalf of VCAT.</p> <p>The Warden has been very successful as a mediator in that there have been no cases heard by VCAT or the Supreme Court for more than 5 years.</p>

WA Mining Act 1978

132. Jurisdiction of warden's court

(1) A warden's court has jurisdiction to hear and determine all such actions, suits and other proceedings cognizable by any court of civil jurisdiction as arise in respect of —

- (a) the area, dimensions, or boundaries of mining tenements;
- (b) the title to, and ownership or possession of, mining tenements or mining products;
- (c) water to be used for mining and any questions or disputes relating thereto;
- (d) trespass or encroachment upon, or injuries to, mining tenements;
- (e) specific performance of contracts relating to mining tenements or mining;
- (f) transfers and other dispositions of, and charges upon, mining tenements;
- (g) trusts relating to mining tenements or mining;
- (h) partnerships relating to mining tenements or mining, the existence, formation, and dissolution thereof, the taking of accounts connected therewith, the contribution of the partners as between themselves and the determination of all questions arising between the partners;
- (i) contribution by or between persons holding joint or several interests in mining tenements towards rent or other expenses in relation thereto;
- (j) encroachment or trespass upon, or injury to, land by reason of mining, whether the land is held under this Act or otherwise;
- (k) encroachments upon, injuries to, and matters affecting roads, tramways, railroads or other property of whatever kind constructed, held or occupied under this Act;
- (l) the partition, sale, disposal, or division of any mining property, or the proceeds thereof, held by 2 or more persons having conflicting interests therein,

and generally all rights claimed in, under or in relation to any mining tenement or purported mining tenement, or relating to any matter in respect of which jurisdiction is under any provision of this Act conferred upon the warden's court.

(2) Every warden's court has jurisdiction throughout the State but any action, suit or other proceeding within the jurisdiction of a warden's court in respect of, or in relation to, any mining tenement shall be brought in the warden's court for the mineral field or the district thereof assigned to the court and in which the mining tenement is.

(3) Where a warden's court is satisfied that any action, suit or other proceeding pending in the court has been erroneously brought before the court, or could more conveniently be dealt with in another warden's court, the court may, notwithstanding subsection (2), order the mining registrar of the court —

- (a) to transmit a copy of the record of the proceedings to the mining registrar of such other court; and
- (b) to give notice thereof to the parties to the action, suit or proceeding.

(4) When the mining registrar receives a copy of the record transmitted to him pursuant to subsection (3) —

- (a) he shall appoint a day for the hearing or further hearing or other consideration of the action, suit or proceeding so transmitted; and
- (b) he shall give notice thereof to the parties thereto,

and the action, suit or proceeding shall be heard or considered accordingly.

Qld Mineral Resources Act

Division 2 The Land Court

363 Substantive jurisdiction

(1) The Land Court shall have jurisdiction to hear and determine actions, suits and proceedings arising in relation to prospecting, exploration or mining or to any permit, claim, licence or lease granted or issued under this Act or any other Act relating to mining.

(2) Without limiting the generality of subsection (1), the Land Court shall have jurisdiction to hear and determine actions, suits and proceedings with respect to—

- (a) the right to possession of or other interest or share in any mining claim, exploration permit, mineral development licence or mining lease; and
- (b) the rights and entitlements to minerals mined under any mining tenement or other authority granted under this Act or any other Act relating to mining and to the products of mining; and
- (c) the area, dimensions and boundaries of land (including the surface area of land) the subject of a mining tenement; and
- (d) any encroachment or trespass upon or interference with or damage to land the subject of a prospecting permit, mining claim, exploration permit, mineral development licence, mining lease or other authority granted under this Act or the buildings, plant, machinery or equipment thereon; and

(e) any matter arising between applicants or holders in relation to prospecting, exploring or mining, or arising between applicants or holders and owners of land in relation to prospecting, exploring or mining; and

(ea) any dispute or other matter arising between persons identified in native title protection conditions as an explorer or as a native title party, if the conditions—

(i) under section 25AA, are included in the conditions imposed on a prospecting permit; or

(ii) under section 141AA, are included in the conditions determined for an exploration permit; or

(iii) under section 194AAA, are included in the conditions determined for a mineral development licence; and

(f) any determination or review of compensation as provided for under this Act or any other Act relating to mining; and

(g) the enforcement of any agreement or determination as to compensation under this Act or any other Act relating to mining; and

(h) any assessment of damage, injury or loss arising from activities purported to have been carried on under the authority of this Act or any other Act relating to mining; and

(i) any application required by this Act or any Act relating to mining to be made or heard in the Land Court.

(3) The Land Court also has jurisdiction to hear and determine actions, suits and proceedings with respect to any demand for debt or damages arising out of or made in respect of—

(a) the carrying on of prospecting, exploring or mining;

(b) any agreement relating to prospecting, exploring or mining.

(4) This section does not confer jurisdiction on the Land Court in relation to the recovery of wages or amounts owing under an industrial award or agreement.

NSW Mining Act

Part 15 Land & Environment Court Proceedings

293 Jurisdiction of Land and Environment Court

(1) The Land and Environment Court has jurisdiction to hear and determine proceedings relating to any of the following matters:

- (a) the area, dimensions or boundaries of land subject to an authority or mineral claim,
- (b) the right to the possession or occupation of any land by virtue of an authority or mineral claim,
- (c) any question or dispute arising as to:
 - (i) a right of way, right of access to water or right of entry conferred by or under this Act, or
 - (ii) any condition imposed by or under this Act (including any condition imposed pursuant to a registered access management plan) on a person's exercise of any such right of way, right of access to water or right of entry,
- (d) the right to the use and enjoyment of water for prospecting or mining and any dispute or question relating to such a right,
- (e) trespass or encroachment on, or injury to, land subject to an authority or mineral claim, or interference with, or injury to, any mining improvement,
- (f) any demand for debt or damages arising out of prospecting or mining,
- (g) any demand for specific performance of any contract relating to any authority or mineral claim,
- (h) the right to any mineral in, or to be recovered from, any land subject to an authority or mineral claim, and the rights under, or arising out of, any contract relating to any such mineral,
- (i) any transfer or disposition of, or charge on, land subject to an authority or mineral claim,
- (j) matters concerning:
 - (i) any partnership relating to an authority or mineral claim, or to prospecting or mining, or
 - (ii) the existence, formation and dissolution of any such partnership, or
 - (iii) the taking of accounts in connection with any such partnership, or

- (iv) the contributions of the partners as between themselves, or
- (v) the determination of questions arising between the partners,
- (k) contributions by or between persons holding joint or several interests in an authority or mineral claim towards rent or other expenses in relation to the authority or claim,
- (l) trespass or encroachment on, or injury to, land as a result of prospecting or mining,
- (m) trespass or encroachment on, injury to or any matter affecting, roads, railways or other property of whatever kind constructed, held or occupied under this Act,
- (n) the partition, sale, disposal or division of any mining improvements, or the proceeds of the sale of any mining improvements, held by 2 or more persons,
- (o) any question or dispute arising as to the working or management of land subject to an authority or mineral claim,
- (p) all rights claimed in, under or in relation to an authority or mineral claim or purported authority or mineral claim,
- (q) any question or dispute as to:
 - (i) the validity of an authority, mineral claim or opal prospecting licence, or
 - (ii) the decision of the Minister or a mining registrar in relation to an application for the granting, renewal or transfer of an authority, a mineral claim or opal prospecting licence, or
 - (iii) the decision of the Minister or a mining registrar to cancel an authority, a mineral claim or opal prospecting licence,
- (r) any question or dispute in connection with a consolidated mining lease arising under section 109, including any question or dispute concerning the rights and obligations conferred or imposed by an interest referred to in that section or the priority of any such interest,
- (s) any question or dispute in connection with an interest (whether legal or equitable) in, or affecting, an authority or mineral claim,
- (t) any question or dispute in connection with an assessment or agreement in respect of compensation under Part 13, arising because of the transfer of an authority or mineral claim or of part of such an authority or claim,
- (u) the review of an arbitrator's determination under Division 2 of Part 8 or of a mining registrar's decision referred to in section 206,

- (v) any question or dispute as to the provisions of an access arrangement or as to any matter arising as a consequence of such an arrangement,
- (w) any question or dispute as to whether section 20 (1), 31 (1), 39 (1), 49 (1), 60 (1), 62 (1) (a) or (b), 185 (1) or 188 (1) applies in a particular case,
- (x) any other matter in respect of which jurisdiction is conferred on the Court by this Act.

(2) Nothing in this section limits or restricts the jurisdiction conferred on any other court by any other Act or law.

NT Mining Management Act

Part 8 Review of decisions

65 Applications for review

- (1) A person may apply for a review of a decision of the Minister or a delegate of the Minister –
- (a) under section 36 refusing to grant an Authorisation;
 - (b) under section 37 imposing a condition of an Authorisation;
 - (c) under section 38 varying or refusing to vary, revoking or refusing to revoke, a condition of an Authorisation; or
 - (d) under section 44 claiming on a security.
- (2) A person affected by a decision of a mining officer under this Act may apply for a review of the decision.
- (3) A person applying for a review of a decision must lodge the application with the Chief Executive Officer within 28 days after the date of the decision or service of the notice relating to the decision (as applicable).
- (4) An application for a review of a decision is to be in a form approved by the Chief Executive Officer and is to set out the reasons for the application.
- (5) In subsection (2), *decision* includes a requirement of or instruction or direction given by a mining officer in the exercise or performance, or purported exercise or performance, of the officer's powers or functions under this Act.

66 Review

- (1) If a person applies under section 65(1) for a review of a decision of the Minister or a delegate of the Minister –

- (a) the Chief Executive Officer must provide the Chairperson of the Mining Board with a copy of the application as soon as practicable after it is lodged; and
 - (b) the decision is to be reviewed by a review panel.
- (2) If a person applies under section 65(2) for a review of a decision of a mining officer, the decision is to be reviewed by the Chief Executive Officer or a delegate of the Chief Executive Officer.

SA Mining Act

66A—Removal of cases to ERD Court

- (1) A case of unusual difficulty or importance in the Warden's Court may be removed by order of the Warden's Court or the ERD Court into the ERD Court.
- (2) The ERD Court may exercise (in addition to its ordinary jurisdiction and powers) any of the powers of the Warden's Court in relation to a case removed into the ERD Court under this section.

The *ERD Court* means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*

67—Jurisdiction relating to tenements and monetary claims

- (1) The Warden's Court shall have jurisdiction to determine, in such manner as may be just, all actions concerning any right claimed in, under, or in relation to, any mining tenement, or purported mining tenement, or any miner's right.
- (1a) The Warden's Court will have jurisdiction to determine a monetary claim for not more than \$40 000 arising in relation to any contract, partnership or joint venture arrangement related to, or otherwise associated with—
- (a) the acquisition or holding of any mining tenement, or purported mining tenement, or any miner's right; or
 - (b) the performance of any mining operations under this Act; or
 - (c) the recovery of any minerals under this Act.

(2) The Warden's Court shall have jurisdiction in any matter in which it is invested with jurisdiction by regulation.

(3) The Director of Mines is entitled to appear in any proceedings before the Warden's Court.

Tasmania Mineral Resources Development Act

127. Mining Tribunal

(1) There is established a Mining Division of the Magistrates Court of Tasmania to be known as the Mining Tribunal.

(2) For the purposes of exercising its jurisdiction, the Mining Tribunal is to be constituted by a magistrate.

128. Jurisdiction of Mining Tribunal

The Mining Tribunal has jurisdiction to hear and determine proceedings relating to any of the following matters:

- (a) the area, dimension or boundary of land which is subject to a mineral tenement;
- (b) the right to the possession or occupation of land under a licence or lease;
- (c) the right to the use and enjoyment of water for exploring or mining;
- (d) trespass or encroachment on, or injury to, land which is subject to a mineral tenement;
- (e) any demand for debt or damages arising out of prospecting, exploring or mining;
- (f) any demand for specific performance of any contract relating to a mineral tenement or mining;
- (g) the right to any mineral in, or to be recovered from, any land which is subject to mineral tenement and the rights under, or arising out of, any contract relating to any such mineral;
- (h) any transfer or disposition of, or charge on, a mineral tenement;
- (i) any matter concerning –
 - (i) any partnership or joint venture relating to a mineral tenement, prospecting, exploring or mining; or

- (ii) the existence, formation and dissolution of that partnership or joint venture; or
 - (iii) the taking of accounts in connection with that partnership or joint venture; or
 - (iv) the contributions of the partners as between themselves; or
 - (v) the determination of questions arising between the partners;
- (j) contributions by or between persons holding joint or several interests in a mineral tenement towards rent or other expenses in relation to a mineral tenement;
- (k) trespass or encroachment on land as a result of prospecting, exploring or mining;
- (l) trespass or encroachment on, injury to or any matter affecting roads, railways or other property constructed, held or occupied under this Act;
- (m) the working or management of land which is subject to a mineral tenement;
- (n) all rights claimed in, under or in relation to a mineral tenement or purported mineral tenement;
- (o) any interest in, or affecting, a mineral tenement;
- (p) the unauthorised removal of any mineral from land which is subject to a mineral tenement;
- (q) the refusal of the holder of an exploration licence to give consent to the holder of a prospecting licence to prospect on land which is subject to the exploration licence;
- (r) the infringement of, or interference with, any right under this Act;
- (s) the amount of compensation payable for loss or damage caused to land;
- (t) any dispute relating to a mineral tenement or former mineral tenement between the holder of the mineral tenement and the owner or occupier of land;
- (u) any dispute relating to a mineral tenement or former mineral tenement in respect of private land;
- (v) any appeals and objections under this Act.

Victoria Mineral Resources (Sustainable Development) Act

97 Disputes

(1) A party to a dispute may refer the dispute to a mining warden.

(2) The mining warden must investigate the dispute, attempt to settle, or arbitrate in relation to, the matters in dispute and, where appropriate, make recommendations to the Minister concerning those matters.

98 Matters referred to mining warden

The Minister or the Department Head may refer a matter to a mining warden for investigation, report and recommendations.

99 Powers of mining warden

(1) In investigating a dispute or other matter referred to him or her, a mining warden has power to do all or any of the following—

(a) conduct a hearing;

(b) enter and inspect any relevant land;

(c) make an order for the inspection, detention, custody or preservation of any relevant minerals, whether or not in the possession, custody or power of a party to the dispute or other matter;

(d) make an order restraining a person from removing from Victoria or otherwise dealing with any minerals specified in the order, whether or not that person is domiciled, resident or present within Victoria;

(e) require an employee of the Department to produce any record or other document kept by, or in the custody, possession or control of, the Department and give any other information or assistance that the mining warden requests and the employee is able to give.

(2) For the purpose of an investigation a mining warden has the powers conferred on a board appointed by the Governor in Council by sections 14, 15, 16 and 21A of the **Evidence Act 1958**.

(3) An order made by a mining warden under subsection (1)(c) or (d) may be enforced as if it were an order made by the Magistrates' Court in a civil proceeding.

ATTACHMENT 2

Petroleum Act 1998: Extract

s134 Determination of disputes—private/native title land

(1) Subject to section 136 (native title land), the owner or occupier of land or the holder of an authority may—

(a) apply to the Tribunal for the determination of a disputed claim for compensation in relation to private land or native title land (other than a claim for just terms compensation under section 53(1) of the Native Title Act); or

(b) refer a disputed claim referred to in paragraph (a) 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 as if the authority holder were the Authority referred to in that Part.

(2) A person may only make an application to the Tribunal in respect of a claim, or refer a claim to the Supreme Court under subsection (1), after the expiry of any period of time specified for the purposes of this section by the regulations.

(3) A party who makes an application in respect of, or who refers, a claim under subsection (1) is only entitled to have that claim determined by the Tribunal or the Court (as the case requires) if the Tribunal or the Court is satisfied that the party has attempted to settle the claim by conciliation, but has not been able to do so because the other party has refused to negotiate a settlement or because both parties are unable to agree.

(4) In its application to a claim that is the subject of an application or reference under subsection (1), 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) provided that the holder of the authority must pay its own costs and the costs of the other party unless—

(i) the other party is not the owner or occupier of land in the authority area; or

(ii) the other party 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 the costs that it thinks are appropriate.

(5) In determining how much compensation is due to a native title holder in any dispute concerning native title land, the Tribunal or Court must take into account any relevant amount that has been determined or agreed as compensation under the Native Title Act in relation to that land.

(6) The holder of the authority must lodge a copy of a determination under this section with the Minister.

s135 Determination of disputes—Crown land

(1) The holder of an authority may apply to the Tribunal for a review of any requirement made by the Minister under section 132.

(2) A person who is authorised to undertake activities on Crown land under a lease, licence, permit or other authority granted under an Act may apply to the Tribunal for a review of any decision made by the Minister under section 132 that affects the person.

(3) An application for a review under this section must be made within 28 days after the later of—

(a) the day on which the decision is made;

(b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the applicant requests a statement of reasons for the decision, the day on which the statement of reasons is given to the applicant or the applicant is informed under section 46(5) of that Act that a statement of reasons will not be given.

** *Tribunal* means the Victorian Civil and Administrative Tribunal;