

15 Mining

State, Territory and Commonwealth governments hold the rights to mineral deposits but generally elect to transfer these rights to private companies that undertake exploration and development. As a result the mining industry comprises mostly private companies with some government assistance in relation to matters such as research and information. The industry's largely private ownership means few issues arise in relation to the competitive neutrality and structural reform strands of the NCP. However, jurisdictions still have obligations to review mining legislation.

In the 2001 NCP assessment, the National Competition Council considered whether all governments reviewed relevant mining legislation and removed restrictions on competition that were not identified as providing a net community benefit. Two main types of legislation are relevant to the implementation of NCP in the mining sector: agreement Acts and general mining legislation.

Agreement Acts

Agreement Acts in the mining sector ratify contractual arrangements between government and private companies. They are most common in Western Australia (where there are some 64 resource development agreement Acts), but also exist in other jurisdictions. Some jurisdictions listed agreement Acts for review. Other jurisdictions have been reluctant to do so because they are concerned about the sovereign risk implications.

In view of the sovereign risk implications of amending agreement Acts, the Council was satisfied that Western Australia, rather than listing all agreement Acts for review, instead undertook during the 1999 NCP assessment to:

- repeal all nonoperative and nonresource development agreement Acts;
- consider, each time an agreement Act is reviewed or varied, removing restrictions that impose a net cost on the community; and
- through the legislative gatekeeping processes, increase the focus on the community impacts of new State agreement Acts to prevent provisions that do not confer a net community benefit.

The Council considers that this approach meets NCP commitments.

General mining legislation

General mining legislation covers issues such as:

- the issue and control of exploration and mining licences;
- resource royalty payments; and
- occupational health and safety.

Exploration and mining licences allocate exploration acreage, regulate who can undertake mining activities, restrict where exploration and mining can occur, and place conditions on how the licence-holder can conduct these activities. The New South Wales *Mining Act 1992*, for example, prohibits mining or prospecting without a permit; provides for tendering of exploration licences; inserts environmental conditions in permits; provides for authorisation of assessment leases and mining leases; clarifies company rights and duties under mining leases; and makes rules governing the renewal, transfer, suspension and cancellation of authorisations for mining and other leases.

Governments reviewing this legislation need to balance the restrictions on competition with the need to establish mining rights that encourage companies to extract minerals efficiently when extraction generates optimum benefits for Australia. Table 15.1 summarises governments' review and reform activity relating to general mining legislation. The Petroleum (Submerged Lands) Acts of the Commonwealth, States, and Northern Territory are discussed in chapter 7.

Table 15.1: Review and reform of legislation regulating mining

<i>Jurisdiction</i>	<i>Key restrictions</i>	<i>Description</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Commonwealth	<i>Aboriginal Land Rights (Northern Territory) Act 1976</i> and Regulations	Provides for the granting of land to traditional Aboriginal owners and gives certain rights over granted land, including a veto over mineral exploration.	Review completed.	Government considering recommendations.	Council to assess progress in 2002.
	<i>Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993</i> and Regulations		Review completed 1997.	Government accepted all but one recommendation	Council to assess progress in 2002.
New South Wales	(1) <i>Coal Ownership (Restitution) Act 1990</i> and (2) <i>Coal Acquisition Act 1981</i>	(1) Provides for the restitution of certain coal acquired by the Crown as a result of the <i>Coal Acquisition Act 1981</i> . (2) Vests all coal in the Crown.	Review considered unnecessary because the Acts not considered to restrict competition.	Acts superseded by the <i>Coal Acquisition Amendment Act 1997</i> and to be repealed when the Coal Compensation Board is abolished.	Meets CPA obligations (June 1997).
	(1) <i>Mines Inspection Act 1901</i> and (2) <i>Coal Mines Regulation Act 1982</i>	(1) Makes provision for the regulation and inspection of mines and regulates the treatment of the products of such mines. (2) Regulates coal mines (and oil shale and kerosene shale mines) and certain related places.	Review underway.		Council to assess progress in 2002.
	<i>Mining Act 1992</i>	Makes provisions for prospecting for, and mining of, minerals.	Review completed.	Licensing requirements dealt with under the Licence Reduction Program. Other restrictions will be the subject of further review.	Council to assess progress in 2002.

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Table 15.1 continued

<i>Jurisdiction</i>	<i>Key restrictions</i>	<i>Description</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria	<i>Extractive Industries Development Act 1995</i>	Regulates quarrying for stone. The main purposes of the Act are to: provide a coordinated assessment and approvals process for extractive industries; ensure that extractive industry operations are carried out with safe operating standards and in a manner that ensures the rehabilitation of quarried land to a safe and stable landform; provide a procedure for notification of proposed extractive industries to licence-holders under the <i>Mineral Resources Development Act 1990</i> ; and provide for the payment of royalties for stone extracted from Crown land.	Review underway. Review period extended to allow for additional consultation. Review expected to be completed in 2001.		Council to assess progress in 2002.
	<i>Mineral Resources Development Act 1990</i>	Vests ownership of minerals in the Crown. Establishes a uniform system for access to land for mineral search and development, and for the management of environmental issues. Restrictions relate to exclusive rights to explore and mine, and the granting of licences and permits to explore and mine.	Review completed. Review concluded that the majority of restrictions are necessary to achieve the objectives of the legislation and are justified in the public interest.	Government rejected some review recommendations, but accepted and implemented most recommendations in spring 2000. Other recommendations have been or will be implemented through changes in policies and practices, including Ministerial guidelines on fit and proper person provisions.	Meets CPA obligations (June 2001).

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Table 15.1 continued

<i>Jurisdiction</i>	<i>Key restrictions</i>	<i>Description</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria (continued)	<i>Mines Act 1958</i>	Act largely repealed. The few remaining provisions relate to occupational health and safety.	Act removed from the review timetable. Occupational health and safety provisions to be reviewed in consultation with the WorkCover Authority with a view to consolidating them with occupational health and safety legislation.		Council to assess progress in 2002.
	<i>Petroleum Act 1958</i>	Provides for Crown ownership of petroleum resources and a permit system for petroleum exploration and production.	Review completed. Review recommended changes to remove obstacles to the exploration and production of petroleum and to improve administrative efficiency	Repealed and replaced by the <i>Petroleum Act 1998</i> . New Act implements review recommendations.	Meets CPA obligations (June 1999).

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Table 15.1 continued

<i>Jurisdiction</i>	<i>Key restrictions</i>	<i>Description</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland	<i>Coal Industry (Control) Act 1948 and Orders</i>	Contains reserve powers in relation to regulation of the industry by the Queensland Coal Board, including powers to: compulsorily acquire coal; regulate prices for sale, purchase or resale of coal; and regulate the opening, closing and abandonment of coal mines (all currently dormant). Certain orders issued under the Act require certain users of coal to purchase coal from specific coal mines; however, the orders relate only to three small mines in the south-east of the State and therefore do not affect the major export coal mining operations.	Departmental examination of legislation resulted in its repeal, but without formal NCP review occurring.	Repealed.	Meets CPA obligations (June 1999).
	<i>Coal Mining Act 1925</i>	Regulates the operation of coal mines, particularly health and safety issues.	Not listed for review.	Repealed by the <i>Coal Mining Safety and Health Act 1999</i> and Regulations. Act and regulations deal with health and safety issues across coal, metalliferous and quarrying industries. Act and regulations reviewed under the gatekeeper provisions and considered to be in public interest and less restrictive than the previous legislation.	Meets CPA obligations (June 2001).

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Table 15.1 continued

<i>Jurisdiction</i>	<i>Key restrictions</i>	<i>Description</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland (continued)	<i>Mineral Resources Act 1989</i>	Facilitates prospecting and exploring for and mining of minerals; seeks to minimise land use conflict with respect to prospecting, exploring and mining; regulates environmental and land care impacts of mining; provides for royalties from mining; and provides an administrative framework to expedite and regulate prospecting and exploring for and mining of minerals.	Not listed for review. Act not considered restrictive.	Some amendments made after industry consultation.	Meets CPA obligations (June 2001).
Western Australia	<i>Coal Industry Superannuation Act 1989</i> and Regulations	Deals with competitive neutrality issues	Review deferred pending expected changes to Commonwealth superannuation industry regulatory framework.		Council to assess progress in 2002.
	<i>Gold Corporation Act 1987</i> and Regulations	Deals with competitive advantages and disadvantages arising from Government ownership.	Review recommended removal of the advantages enjoyed by the Gold Corporation and subsidiaries over other businesses operating in precious metals markets.	Previous Government endorsed recommendations. Legislation to implement recommendations introduced in May 2000.	Council to assess progress in 2002.

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Table 15.1 continued

<i>Jurisdiction</i>	<i>Key restrictions</i>	<i>Description</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia (continued)	<i>Mining Act 1978</i> and <i>Regulations 1981</i>	Establishes licensing regime for exploration and development of minerals.	Review found restrictions necessary for orderly exploitation of mineral resources, minimising land use conflict, protecting third-party rights, minimising environmental impacts and promoting efficiency.	Government accepted findings.	Meets CPA obligations (June 1999).
	<i>Petroleum Act 1967</i>		Review deferred pending completion of the national review of <i>Petroleum (Submerged Lands) Act 1982</i> and related legislation.		Council to assess progress in 2002.
South Australia	<i>Mining Act 1971</i>	Creates barrier to market entry and restricts market conduct.	Review underway.		Council to assess progress in 2002.
	<i>Mines and Works Inspection Act 1920</i>	Remainder of Act committed to responsibility of Minister for Mines. Creates barrier to market entry and restricts market conduct.	Review underway.		Council to assess progress in 2002.
	<i>Opal Mining Act 1995</i>	Creates barrier to market entry and restricts market conduct.	Review underway.		Council to assess progress in 2002.
	<i>Radiation Protection and Control Act 1982</i>	Provides for licence to mine.	Subject to national review.		Council to assess progress in 2002.
	<i>Roxby Downs (Indenture Ratification) Act 1982</i>	Authorises behaviour contrary to <i>Trade Practices Act 1974</i> .	Desktop review completed in May 2000. No reform recommended.		Council to assess progress in 2002.

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Table 15.1 continued

<i>Jurisdiction</i>	<i>Key restrictions</i>	<i>Description</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania	<i>Mineral Resources Development Act 1995</i>	Provides for a system of licences and leases governing the exploitation of mineral resources.	Review underway. Preliminary view is that maintaining the Act in its current form achieves the objectives of the Act and that all the restrictions are in the public interest.		Council to assess progress in 2002.
ACT	No legislation listed				Meets CPA obligations.
Northern Territory	<i>Energy Resource Consumption Levy Act</i>	Requires bulk consumers of oil (consuming more than 830 000 litres per month) to register with Commissioner of Taxation (s7).	Review found the registration arrangement was designed to facilitate collection of levy monies and does not restrict competition.	Government accepted findings.	Meets CPA obligations (June 1999).
	<i>Merlin Project Agreement Ratification Act</i>	Provides mechanism for levying royalties and imposing more stringent security conditions than apply elsewhere to mining sites.	Review not yet commenced. Newly listed for review.		Council to assess progress in 2002.

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Table 15.1 continued

<i>Jurisdiction</i>	<i>Key restrictions</i>	<i>Description</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Northern Territory (continued)	<i>Mine Management Act</i>	Regulates occupational health and safety in mining.	Act not to be reviewed.	<p>To be repealed and replaced by the new Mining Management Bill (combining the essential elements of the existing <i>Mine Management Act</i> and <i>Uranium Mining (Environmental Controls) Act</i>.</p> <p>New Bill introduced in February 2001 Legislative Assembly sittings and to be subject to an NCP review before enactment.</p> <p>New Bill described as essentially administrative in nature, adopting a less prescriptive approach to mine site management. Mine operators required to take greater responsibility for decisions by satisfying industry-agreed competencies and standards. New Bill does not deal with property rights.</p> <p>Amendments to be made to the <i>Mining Act</i> to eliminate duplication with new Bill.</p>	Council to assess progress in 2002.

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Table 15.1 continued

<i>Jurisdiction</i>	<i>Key restrictions</i>	<i>Description</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Northern Territory (continued)	<i>Mining Act</i>	Creates regime for the valid grant of mining tenure in the Northern Territory, as well as ongoing regulation.	Review underway, to be finalised in September 2001.	Amendments to be made to the <i>Mining Act</i> to eliminate duplication with new Mine Management Bill. (Refer above to <i>Mine Management Act</i> .)	Council to assess progress in 2002.
	<i>Oil Refinery Agreement Ratification Act</i>	Requires Mereenie joint venture partners to meet certain lease conditions in investigating the possibility of constructing an oil refinery in Alice Springs. The refinery is not currently viable and has not been constructed.	Review considered restrictions were justified in achieving regional development objectives, but considered Act was no longer relevant. Accordingly, review recommended Act be repealed after the due date for renewal of the leases in 2002-03.	To be repealed.	Council to assess progress in 2002.
	<i>Petroleum Act</i>	Regulates exploration and recovery of petroleum in Northern Territory; grants exclusive rights; and provides for technical and financial prescriptions.	Review underway.		Council to assess progress in 2002.
	<i>Petroleum (Prospecting and Mining) Act</i>			Repealed.	Meets CPA obligations June (1999).

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Table 15.1 continued

<i>Jurisdiction</i>	<i>Key restrictions</i>	<i>Description</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Northern Territory (continued)	<i>Uranium Mining (Environmental Control) Act</i>	Controls uranium mining in the Alligator Rivers Region; imposes restrictions, conditions and requirements that could discourage innovation, add to costs, etc.	Act not to be reviewed.	To be repealed and replaced. Certain provisions of the Act to be incorporated in a newly drafted Mining Management Bill. (Refer above to <i>Mine Management Act</i> .)	Council to assess progress in 2002.