



POSITION PAPER 4

CONDITIONAL PARTIAL SURRENDERS IN FAVOUR OF GENERAL PURPOSE LEASES

ISSUE

For the conditional partial surrender of a mining tenement lodged in favour of the grant of an application for a General Purpose Lease, to what depth does the surrender take effect?

BACKGROUND

Section 95(4) of the *Mining Act 1978* provides that where a mining tenement is being surrendered as to part only, the form of surrender shall be by reference to a written description of the area of the part to be surrendered.

Regulation 43(2) of the Mining Regulations 1981 provides that a surrender under section 95 of one or more mining tenement, may be conditional on an application for a new mining tenement in respect of the whole or any part of the area of the mining tenement so surrendered being granted to the holder of the mining tenement.

Under section 86(3) of the Mining Act, the area of land in respect of which any one General Purpose Lease may be granted shall not exceed 10 hectares and shall be limited to such depth below the natural surface of the land as may be specified in the lease or, where no depth is specified, to 15 metres below the lowest part of the natural surface of the land.

POSITION

The surrender of the mining tenement takes effect to the depth of the grant of the General Purpose Lease.

The registration of the surrender is tied to the grant of the General Purpose Lease. The land that is being surrendered is effectively granted area – there is to be no subterranean area without title. Surrendering subterranean title would require the lodgement of a separate standalone partial surrender.



The pro rata refund provided for in regulation 47A does not apply as the area remains the same for the primary tenement.

REFERENCES

Sections 86(3) and 95(4) of the *Mining Act 1978*

Regulation 43(2) and 47A of the *Mining Regulations 1981*