

MINING ACT 1971

Reprint No. 1—1.10.91

Reprint No. 2—4.3.93

Reprint No. 3—15.1.94

Reprint No. 4—3.11.94

Reprint No. 5—1.6.95

Reprint No. 6—17.6.96

[Whole Act replaced]

[Each Part is numbered from page 1. Subscribers to the Consolidation Service will receive complete replacement Parts incorporating amendments to this Act as they come into force.]

SOUTH AUSTRALIA

MINING ACT 1971

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 17 June 1996.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 31 July 1986.

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being

Mining Act 1971 No. 109 of 1971 [Assented to 9 December 1971]¹

as amended by

Mining Act Amendment Act 1972 No. 142 of 1972 [Assented to 7 December 1972]²
Mining Act Amendment Act 1973 No. 72 of 1973 [Assented to 6 December 1973]
Mining Act Amendment Act 1975 No. 1 of 1975 [Assented to 6 March 1975]
Mining Act Amendment Act 1976 No. 105 of 1976 [Assented to 16 December 1976]³
Mining Act Amendment Act (No. 2) 1978 No. 51 of 1978 [Assented to 20 July 1978]
Mining Act Amendment Act 1981 No. 71 of 1981 [Assented to 5 November 1981]⁴
Mining Act Amendment Act 1982 No. 97 of 1982 [Assented to 23 December 1982]⁵
Mining Act Amendment Act 1983 No. 50 of 1983 [Assented to 16 June 1983]
Statute Law Revision Act 1986 No. 14 of 1986 [Assented to 20 March 1986]⁶
Aboriginal Heritage Act 1988 No. 12 of 1988 [Assented to 17 March 1988]⁷
Mining Act Amendment Act 1988 No. 86 of 1988 [Assented to 1 December 1988]⁸
Mining (Precious Stones Field Ballots) Amendment Act 1993 No. 3 of 1993 [Assented to 4 March 1993]
Statutes Repeal and Amendment (Development) Act 1993 No. 54 of 1993 [Assented to 27 May 1993]⁹
Mining (Royalties) Amendment Act 1994 No. 60 of 1994 [Assented to 27 October 1994]¹⁰
Mining (Special Enterprises) Amendment Act 1995 No. 41 of 1995 [Assented to 4 May 1995]¹¹
Mining (Native Title) Amendment Act 1995 No. 43 of 1995 [Assented to 11 May 1995]¹²

¹ Came into operation 3 July 1972: *Gaz.* 29 June 1972, p. 2689.

² Came into operation 25 January 1973: *Gaz.* 25 January 1973, p. 274.

³ Came into operation 23 December 1976: *Gaz.* 23 December 1976, p. 2317.

⁴ Came into operation 5 November 1981: *Gaz.* 5 November 1981, p. 1431.

⁵ Came into operation 5 November 1981: s. 2.

⁶ Came into operation (except Scheds. 3, 4 and 6) 31 July 1986: *Gaz.* 17 July 1986, p. 269; Sched. 6 came into operation 1 September 1986: *Gaz.* 7 August 1986, p. 474; Sched. 3 came into operation 24 July 1989: *Gaz.* 29 June 1989, p. 1756.

⁷ Came into operation 1 March 1989: *Gaz.* 9 February 1989, p. 354.

⁸ Came into operation 1 July 1989: *Gaz.* 29 June 1989, p. 1755.

⁹ Came into operation 15 January 1994: *Gaz.* 27 October 1993, p. 1889.

¹⁰ Came into operation 3 November 1994: *Gaz.* 3 November 1994, p. 1442.

¹¹ Came into operation 1 June 1995: *Gaz.* 1 June 1995, p. 2529.

¹² Came into operation 17 June 1996: *Gaz.* 9 May 1996, p. 2440.

N.B. The amendments effected to this Act by the *Opal Mining Act 1995* had not been brought into operation at the date of, and have not been included in, this reprint.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

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An Act to regulate and control mining operations; to repeal the Mining Act 1930; to amend the Petroleum Act 1940; to amend the Crown Lands Act 1929; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Mining Act 1971*.

Commencement

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

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Interpretation

6. (1) In this Act, unless the contrary intention appears—

"**appropriate court**" means—

- (a) the Supreme Court; or
- (b) the ERD Court; or
- (c) if proceedings do not involve a monetary claim, or a claim for more than \$100 000—the Warden's Court;¹

"**authorised person**" means a person authorised in writing by the Director of Mines to exercise the powers conferred by the provisions of this Act in which the expression is used;

"**council**" means a municipal or district council within the meaning of the *Local Government Act 1934* and includes a body corporate that is, by virtue of any Act, deemed to be, or vested with the powers of, a municipal or district council;

"**Crown lands**" means lands that are Crown lands within the meaning of the *Crown Lands Act 1929*;

"**declared equipment**" means—

- (a) a trench digger or excavator; or
- (b) mechanically driven equipment, equipped with a blade or bucket of a width exceeding 750 mm, capable of ripping, gouging, scooping or digging earth or rock material; or
- (c) equipment that is capable of digging, boring or tunnelling underground, generally in a horizontal plane, with a cross sectional dimension greater than 750 mm;

"**the Director of Mines**" or "**the Director**" means the person assigned by the Minister to exercise the powers and discharge the duties of the officer so designated by this Act;

"**ERD Court**" means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*;²

"**exempt land**" means land that is exempt from mining operations under section 9;

"**exploration authority**" means—

- (a) a miner's right;
- (b) a precious stones prospecting permit;
- (c) a mineral claim;
- (d) an exploration licence;
- (e) a retention lease (but only if the mining operations to which the lease relates are limited to exploratory operations);

"**exploring**" means operations of any kind in the course of—

- (a) exploring for minerals; or
- (b) establishing the extent of a mineral deposit,

and includes prospecting, and "**to explore**" and "**exploratory**" have corresponding meanings;

"**extractive minerals**" means sand, gravel, stone, shell, shale or clay, but does not include—

- (a) any such minerals that are mined for a prescribed purpose; or
- (b) fire clay, bentonite or kaolin;

"**fossicking**" means the gathering of minerals—

- (a) as a recreation; and
- (b) without any intention to sell the minerals or to utilise them for a commercial or industrial purpose,

but does not include the gathering of minerals by any means involving disturbance of land or water by machinery or explosives;

"**inspector**" means a person for the time being holding or acting in the office of inspector of mines under this Act, and includes the Chief Inspector;

"**the Land and Valuation Court**" means the Land and Valuation Court constituted under the *Supreme Court Act 1935*;

"**machinery**" means any device operated otherwise than by muscular force exerted by the operator;

"**mine**" means any place in which mining operations are carried out;

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"mineral land" means any land that is mineral land in consequence of a declaration under this Act;

"minerals" means—

- (a) any naturally occurring deposit of metal or metalliferous ore, precious stones or any other mineral (including sand, gravel, stone, shell, coal, oil shale, shale and clay); or
- (b) any metal, metalliferous substance or mineral recoverable from the sea or a natural water supply; or
- (c) any metal, metalliferous ore or mineral that has been dumped or discarded—
 - (i) in the course of mining operations or operations incidental to mining operations; or
 - (ii) in other prescribed circumstances;

but does not include—

- (d) soil; or
- (e) petroleum or any other substance, the recovery of which is governed by the *Petroleum Act 1940*;

"mining" or **"mining operations"** means all operations carried on in the course of prospecting, exploring or mining for minerals, or quarrying, and includes operations by means of which minerals are recovered from the sea or a natural water supply, but does not include fossicking, and **"to mine"** has a corresponding meaning;

"mining operator" means a person by whom, or on whose behalf, mining operations are carried out under this Act;

"a mining registrar" means the Mining Registrar or a person for the time being holding, or acting in, the office of Deputy Mining Registrar under this Act;

"the Mining Registrar" means the person for the time being holding, or acting in, the office of Mining Registrar under this Act;

"mining tenement" means a claim, lease or licence under this Act;

"native title", **"native title holder"** and **"native title land"**—see *Native Title (South Australia) Act 1994*;³

"native title mining determination" means a determination authorising a mining operator to enter land and carry out mining operations on the land under Part 9B;

"owner" of land means—

- (a) a person who holds a registered estate or interest in the land conferring a right to immediate possession of the land; or
- (b) a person who holds native title in the land; or

- (c) a person who has, by statute, the care, control or management of the land; or
- (d) a person who is lawfully in occupation of the land;

"**precious stones**" means opal and any other minerals declared by regulation to be precious stones for the purposes of this Act;

"**precious stones field**" means mineral land declared by proclamation under this Act to be a precious stones field but, where the mineral land has been divided into strata under this Act, the precious stones field consists only of the surface stratum;

"**prescribed notice of entry**"—see section 58A(1);

"**production tenement**" means—

- (a) a precious stones claim;
- (b) a mining lease;
- (c) a retention lease (if the mining operations to which the lease relates are not limited to exploratory operations);

"**proprietor**", in relation to a private mine, means the person divested of his property in the minerals for the recovery of which the mine is operated or a person lawfully claiming under him;

"**prospecting**" means operations of any kind in the course of exploring for minerals except such as involve the disturbance of land or water by machinery or explosives, and "**to prospect**" has a corresponding meaning;

"**radioactive mineral**" means uranium or any other prescribed radioactive mineral;

"**registered representative**" of native title holders—see Part 4 *Native Title (South Australia) Act 1994*;

"**the repealed Act**" means the *Mining Act 1930* repealed by this Act;

"**subsurface stratum**" means a stratum resulting from the division of mineral land into strata under this Act, being a stratum that lies beneath a surface stratum;

"**surface stratum**" means a stratum resulting from the division of mineral land into strata under this Act, being a stratum of which the upper surface is the surface of those lands;

"**warden**" means—

- (a) a magistrate nominated by the Attorney-General to exercise the jurisdiction and powers of a warden under this Act; or
- (b) a person appointed under this Act as a warden;

"**the Warden's Court**" means the Warden's Court constituted under Part 10.

(2) Where mineral land is divided into strata under this Act, a reference to land, or an area, shall, where appropriate, be construed as a reference to the surface stratum or a subsurface stratum, as the case may require.

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(3) An explanatory note to a provision of this Act forms part of the provision to which it relates.

¹ All native title questions arising in proceedings before the Warden's Court must be referred to the ERD Court—see Part 3 *Native Title (South Australia) Act 1994*.

² The *Environment, Resources and Development Court Act 1993* and the *Native Title (South Australia) Act 1994* contain provisions under which the ERD Court may refer cases to the Supreme Court, or the Supreme Court may remove cases commenced before the ERD Court into the Supreme Court.

³ Part 5 of the *Native Title (South Australia) Act 1994* sets out the method of service on native title holders.

Application of Act

7. (1) Except as otherwise provided, this Act applies only in respect of mineral land.

(2) This Act does not regulate mining operations for the recovery of extractive minerals, or require payment of royalty in respect of extractive minerals recovered in the course of such operations, where the operations are authorised under some other Act.

Declaration of mineral land, precious stones fields, etc.

8. (1) The Governor may, by proclamation—

- (a) declare any land in the State (including land within any gulfs, bays, inlets and harbors of the State and within 3 nautical miles of the low water mark on the seashore) to be mineral land; or
- (b) declare any mineral land to be a precious stones field; or
- (ba) divide mineral land into a surface stratum and one or more subsurface strata and fix the depth of the surface stratum and the depth of any subsurface stratum below which lies any further subsurface stratum resulting from the division; or
- (c) reserve from the operation of this Act, or any provisions of this Act, any land specified in the proclamation,

and the proclamation shall have effect according to its terms.

(2) The Governor may, by subsequent proclamation, vary or revoke any proclamation made pursuant to this section.

(3) The depth of strata into which mineral land is divided under this section may vary from place to place but, where the mineral land constitutes a precious stones field or part of a precious stones field, the depth of the surface stratum must be at least 50 metres.

Exempt land

9. (1) Subject to this section—

- (a) land that is lawfully and genuinely used—
 - (i) as a yard, garden, cultivated field, plantation, orchard or vineyard;
 - (ii) as an airfield, railway or tramway;
 - (iii) as the grounds of a church, chapel, school, hospital or institution; or
- (b) land that constitutes any parklands or recreation grounds under the control of a council; or

(ba) land—

- (i) that is dedicated or reserved, pursuant to statute, for the purpose of waterworks; or
- (ii) that is vested in the Minister of Public Works for the purpose of waterworks; or
- (iii) that is comprised within an easement in favour of the Minister of Public Works; or

(bb) land that constitutes a forest reserve under the *Forestry Act 1950*; or

(c) any separate parcel of land of less than 2 000 square metres within any city, town or township; or

(d) land that is situated—

- (i) within 400 metres of a building or structure used as a place of residence (except a building or structure of a class excluded by regulation from the ambit of this paragraph); or
- (ii) within 150 metres of—
 - (A) a building or structure, with a value of \$200 or more, used for an industrial or commercial purpose; or
 - (B) a spring, well, reservoir or dam,

(but not if it is an improvement made for the purposes of mining operations),

shall be exempt from mining operations in pursuance of this Act and, unless the land ceases to be so exempt, no miner's right, precious stones prospecting permit, claim, lease or licence shall authorise prospecting, exploring or mining upon such land (but this section does not prevent the pegging out of a claim upon such land).

(2) Where any land is subject to a claim, lease or licence under this Act and that land would, but for this subsection, be land exempt from mining operations in pursuance of this Act by reason only of a fact or circumstance occurring or arising subsequent to the pegging out, or granting, of the claim, lease or licence, that land shall not be exempt from operations in pursuance of this Act.

(3) Where—

- (a) the person who has the benefit of an exemption under this section, by agreement with a mining operator, waives the exemption; or
- (b) the appropriate court, on the application of a mining operator, determines compensation to be paid by the mining operator to the person or persons who have the benefit of the exemption,

the land shall cease to be exempt land, but the exemption shall revive upon completion of the mining operations in respect of which the agreement or determination was made or at such earlier time as may be stipulated in that agreement or determination.

(3a) An agreement or determination under subsection (3) may be made upon such terms and conditions as the parties or the appropriate court thinks fit.

(3b) The following persons shall, for the purposes of this section, be regarded as having the benefit of an exemption under this section:

- (a) the owner of the exempt land; and
- (b) in the case of land that is exempt from mining operations under subsection (1)(d) by reason of its proximity to other land on which a building, structure, spring, well, reservoir or dam is situated—the owner of that other land.

(3c) An agreement or determination under subsection (3) is binding on—

- (a) successors in title to those owners of land who had the benefit of the former exemption; and
- (b) the holders from time to time of any mining tenement in pursuance of which mining operations (being mining operations in respect of which the agreement or determination was made) are carried out.

(4) This section does not affect any provision of the *Pastoral Act 1936* prohibiting or restricting the conduct of mining operations on lands subject to that Act.

(5) In this section—

"**mining operations**" include any operations or activity for which a miscellaneous purposes licence may be granted.

Mining in respect of public roads and places

10. Subject to the appropriate regulations for preventing undue interference with public use, the rights conferred by this Act may be exercised in respect of any public road, reserve or place.

Special conditions attaching to mining of radioactive minerals

10A. (1) Subject to this section, no person shall carry out mining operations (other than exploratory operations) for the recovery of any radioactive mineral unless he is the holder of a mining lease or retention lease upon which the Minister has endorsed an authorisation to carry out mining operations for that purpose.

(2) An authorisation to carry out mining operations for the recovery of a radioactive mineral may be granted upon such conditions as the Minister thinks fit and may be revoked upon breach of any condition.

(3) This section does not prevent the recovery of any radioactive mineral in the course of mining operations carried out for the recovery of other minerals provided that the radioactive mineral—

- (a) is stockpiled in accordance with conditions stipulated by the Minister; or
- (b) is of such low concentration that it may, in the opinion of the Minister, be safely discarded as waste and is in fact discarded as waste.

- (4) Notwithstanding any other provision of this Act, the property in any radioactive mineral—
- (a) stockpiled in pursuance of conditions imposed by the Minister under subsection (2); or
 - (b) stockpiled in pursuance of subsection (3)(a),

does not pass from the Crown unless and until the Minister, by instrument in writing, authorises the person by whom the radioactive mineral was mined to sell and dispose of the mineral.

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**PART 2
ADMINISTRATION**

The Minister and the Director to be corporations sole

11. The Minister and the Director of Mines shall each be a corporation sole.

Delegation

12. (1) The Minister may delegate any power or function vested in or conferred on the Minister under this Act.

(2) The Director of Mines may, with the Minister's consent, delegate any power or function (including a delegated power or function) vested in or conferred on the Director under this Act.

(3) A delegation under this section—

(a) may be absolute or conditional; and

(b) may be made—

(i) to a particular person or body; or

(ii) to the person for the time being occupying a particular office or position; and

(c) does not derogate from the power of the delegator to act in any matter; and

(d) is revocable at will by the delegator.

(4) In any legal proceedings an apparently genuine certificate, purportedly signed by the Minister or the Director, containing particulars of a delegation under this section, will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

Officers and employees

13. (1) For the purposes of the administration of this Act, officers and employees—

(a) may be appointed to the Public Service subject to, and in accordance with, the *Government Management and Employment Act 1985*; or

(b) may be appointed on some other basis determined by the Governor or the Minister.

(2) A person who is appointed pursuant to subsection (1)(b) is not a member of the Public Service.

Misuse of information

14. Any person employed in the administration of this Act or in the Department of Mines who uses any information derived by him in the course of, or by reason of, his employment for the purpose of personal gain shall be guilty of an offence and liable to a penalty not exceeding \$2 000 or imprisonment for 2 years.

Powers of Minister, Director and authorised persons

15. (1) For the purpose of making any geological, geophysical or geochemical investigation or survey, the Minister or the Director of Mines, or any person authorised in writing by the Minister or the Director, may—

- (a) enter and remain upon any land with such assistants, vehicles and equipment as may be necessary or expedient for the purposes of the investigation or survey; and
- (b) conduct such an investigation or survey on the land; and
- (c) take, and remove from the land, any geological specimens or samples.

(2) A person exercising a power under this section must not unnecessarily impede or obstruct the lawful use or enjoyment of the land by an owner of the land.

(3) A person who interferes with or obstructs any person in the exercise of any power conferred by this section shall be guilty of an offence and liable to a penalty not exceeding \$200.

(4) The Minister may publish, in such manner as he thinks fit, the results of an investigation or survey under this section.

Register of mining tenements, etc.

15A. (1) The Mining Registrar shall keep a register of—

- (a) miner's rights and precious stones prospecting permits issued under this Act; and
- (b) registered claims; and
- (c) leases and licences issued under this Act; and
- (d) instruments registered under this Act.

(2) Any person may, upon payment of the prescribed fee, inspect the register.

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**PART 3
RESERVATION OF MINERALS AND ROYALTY**

Reservation of minerals

16. (1) Notwithstanding the provisions of any other Act or law, or of any land grant or other instrument, the property in all minerals is vested in the Crown.

(2) This section applies in respect of all mineral land and in respect of all other land (including reserved land) in the State.

Royalty

17. (1) Subject to this section, royalty shall be payable to the Minister on all minerals recovered from mineral land and—

(a) sold or intended for sale; or

(b) utilised, or to be utilised, for any commercial or industrial purpose.

(2) The amount of the royalty shall be 2.5 per cent of the value of the minerals as assessed for the determination of royalty.

(3) The Minister shall assess the value of minerals for the determination of royalty.

(4) The assessed value shall be such as, in the opinion of the Minister, fairly represents the amount that could reasonably be expected to be realised upon sale of the minerals, assuming that any processing that would normally be carried out by the mining operator were in fact carried out by him, or at his expense, and the minerals were delivered to a purchaser, at the expense of the mining operator, at the nearest port within the State.

(5) The Minister shall cause a copy of his assessment of the value of any minerals to be served—

(a) upon the holder of the lease in respect of the mine from which the minerals were recovered; or

(b) in the case of a private mine, upon the proprietor of the private mine.

(6) The person upon whom a copy of an assessment is served under subsection (5) may, within 60 days after the date of service, appeal against the assessment to the ERD Court.

(7) Upon the hearing of any such appeal, the ERD Court may vary the assessment of the Minister to such extent as it thinks fit.

(8) The Minister may, with the concurrence of the person liable to pay royalty, determine that royalty shall be payable according to the weight or volume of minerals recovered, and royalty shall thereupon be payable by that person in accordance with that determination.

(9) Royalty may be recovered by the Minister as a debt due to him in any court of competent jurisdiction.

(10) Royalty is not payable on precious stones.

(11) The Minister may, upon the application of a person liable to pay royalty, having regard to the effect that payment of royalty as required by this section would be likely to have on the viability or profitability of mining operations, or related processing operations, carried on by that person, waive payment of royalty, or reduce the rate at which royalty is payable, on minerals recovered in the course of those operations.

Passing of property in minerals

18. The property in minerals shall pass to the person by whom the minerals are lawfully mined upon, and in consideration of, payment of royalty or, if royalty is not payable in respect of the minerals, upon recovery of the minerals.

Private mine

19. (1) Where—

- (a) a person is divested of his property in any minerals under this Act; and
- (b) mining operations have been commenced before or after the commencement of this Act for the recovery of any of those minerals or for the purpose of ascertaining whether any of them may be profitably exploited; and
- (c) an application is made in writing to the Minister within 3 years after the commencement of this Act for a declaration under this section, and the application is supported by such plans and information as the Minister may require,

an area determined in accordance with this section shall, subject to this section, be declared, by proclamation, to be a private mine and, where such a declaration is made, the mine shall, subject to this section and any other section that explicitly applies to a private mine or the operator of such a mine, be exempt from the provisions of this Act.

(2) The Minister may reject an application under subsection (1) where no mining operations have been conducted on the land subject to the application within a period in excess of 12 months before the date of the application, but otherwise no application shall be rejected on the ground of the discontinuance of mining operations.

(3) The Minister may reject an application under subsection (1)—

- (a) where, in his opinion, the mining operations in the area to which the application relates have been insignificant or have not been genuinely conducted for the recovery of minerals or for the purpose of ascertaining whether a deposit of minerals that may be profitably exploited exists; or
- (b) where the area, or any portion of the area to which the application relates was, at the commencement of this Act and at the date of the application, subject to a mining tenement.

(4) The area to be declared a private mine under this section shall be the whole of the area comprised in the application in which the prospective proprietor of the mine held property in minerals immediately before the commencement of this Act and which is reasonably required for exploitation of minerals.

(5) In the event of any difference between the Minister and the applicant for the declaration as to the area to be declared a private mine under this section, the applicant, or the Minister, may apply to the ERD Court for a determination of the difference.

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(6) The ERD Court shall, upon the hearing of an application under subsection (5), determine the area to be declared a private mine in such manner as it considers just and reasonable.

(7) The Governor may, by proclamation, vary or revoke a declaration under subsection (1) if he is of the opinion that the whole or any part of the private mine is not being effectively operated.

(8) A declaration under this section shall not be varied or revoked unless the Warden's Court has determined that proper ground exists for the proposed variation or revocation of the declaration under subsection (7).

(9) Royalty is, subject to and in accordance with the provisions of this Act, payable upon extractive minerals recovered from a private mine, but is not payable upon any other minerals so recovered.

(10) The proprietor of a private mine who is liable to pay royalty upon extractive minerals may apply to the ERD Court for an order that any other person named in the application should indemnify him wholly or partly for the payment of that royalty.

(11) The Court may, upon an application under subsection (10), make such order for indemnity as it considers just and equitable having regard to the relative proportions in which the proprietor and the other person, or persons, named in the application derive profit from the operation of the mine.

(12) While a mine continues as a private mine under this Act, the property in any minerals recovered from the mine shall—

- (a) in the case of all minerals except extractive minerals, pass to the proprietor of the mine upon recovery of the minerals; or
- (b) in the case of extractive minerals, pass to the proprietor of the mine upon, and in consideration of, payment of royalty,

and any contract, agreement, assignment, mortgage, charge or other instrument in operation immediately before the commencement of this Act and relating to proprietary rights in the minerals shall, subject to its terms, apply to the minerals so recovered upon the passing of property in those minerals in accordance with this subsection.

(13) Any interested party may, by application to the ERD Court, seek the determination of any question or dispute as to the effect or enforcement of a contract, agreement, assignment, mortgage, charge or other instrument affected by the provisions of subsection (12).

(14) The Court may, upon the hearing of an application under subsection (13), make such orders as it considers necessary or expedient to give effect, consistently with the provisions of this Act, to the intentment of the contract, agreement, assignment, mortgage, charge or other instrument or to achieve a just settlement of any matters of dispute.

(15) Land comprised within a private mine shall not be subject to a mining tenement under this Act.

(16) An application for the declaration of a private mine may be made under subsection (1) by the person divested of his property in the minerals in respect of which the declaration is sought or a person who, immediately before the commencement of this Act, held any interest in those minerals in pursuance of any contract, agreement, assignment, mortgage, charge or other instrument.

(17) Where—

- (a) a person is divested of his property in any minerals under this Act; and
- (b) a mine is established at any time before or after the commencement of this Act for the recovery of the minerals; and
- (c) an application is made, by the person so divested of his property in the minerals or a person lawfully claiming under him, to the Minister for the payment of royalty under this section,

the Minister shall pay all royalty collected upon such of those minerals as are recovered after the date of the application to the person so divested of his property in the minerals or the person or persons claiming under him.

(18) An application shall not be made under subsection (17) in respect of extractive minerals.

(19) The Minister may, subject to the rules of the Supreme Court, refer an application under subsection (17) to the ERD Court.

(20) Where an application is so referred to the ERD Court, the Court shall determine whether the application is valid and, if so, to whom, and in what proportions, the royalty should be paid.

(21) Where the property in the minerals in any land was, immediately before the commencement of this Act, vested in a person who was then the proprietor of an estate in fee simple in the land, that person, if he remains the proprietor of an estate in fee simple in the land or, if not, the person who is, for the time being, the successor in title to that person, shall, subject to subsection (22), be the sole legitimate claimant to royalty under subsection (17).

(22) A person may, by instrument in writing lodged with the Director of Mines, divest himself of any actual or potential right to claim royalty under subsection (17) in favour of any other person named in the instrument, and thereupon that person, or a person claiming under him, shall be the sole legitimate claimant to royalty under subsection (17).

(23) A right to claim royalty under subsection (17) shall not be transferred otherwise than in accordance with this section.

(24) The Director of Mines shall maintain a register of the instruments lodged with him under subsection (22).

(25) The register and any such instrument shall, upon payment of the prescribed fee, be available for inspection by any member of the public.

(26) Where a person, upon application to the ERD Court, proves to the satisfaction of the Court that he was, immediately before the commencement of this Act, in adverse possession of minerals and that, on the balance of probabilities, he would, if this Act had not been enacted, have acquired an indefeasible title to the minerals, the Court may order that the provisions of this section shall apply to that person in all respects as if he had been divested of property in those minerals by this Act, and thereupon the provisions of this section shall apply accordingly.

(27) The Court may, in the course of proceedings under subsection (26), make such orders as it thinks just to ensure, as far as reasonably practicable, that adequate notice of the application is received by persons who may have had, immediately before the commencement of this Act, a better enforceable right to the minerals than the applicant, and to ensure that the interests of any such persons are adequately protected.

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**PART 4
PROSPECTING FOR MINERALS**

Issue, transfer, surrender, etc., of miner's right

20. (1) A mining registrar may, upon receipt of an application in the prescribed form containing the prescribed particulars, issue to any person a miner's right.

(2) An application for a miner's right must be accompanied by the prescribed fee.

(3) A person shall not hold more than 1 miner's right.

(4) A miner's right is not transferable.

(5) A person shall not—

(a) lend a miner's right to any other person; or

(b) permit any other person to make use, or take the benefit, of his miner's right.

Penalty: \$1 000.

(6) A miner's right may, subject to this Act and in accordance with the regulations, be surrendered.

Term and renewal of miner's right

21. (1) A miner's right shall, subject to this Act, remain in operation for a period of 3 years from the date of issue.

(2) A mining registrar may, upon receipt of an application in the prescribed form lodged with him within 1 month before the date on which a miner's right is due to expire and accompanied by the prescribed fee, renew the miner's right for a further period of 3 years.

Rights attaching to miner's right

22. (1) A miner's right shall, subject to this Act, authorise the holder to prospect for minerals (except precious stones) and to peg out a mineral claim in accordance with the regulations.

(1a) Subject to subsection (1b), where mineral land is divided into strata, a mineral claim may be pegged out, in accordance with the regulations, in respect of land within either the surface stratum or a subsurface stratum.

(1b) A mineral claim shall not be pegged out in respect of land within a subsurface stratum except by a person who holds an exploration licence in respect of that land.

(2) A miner's right does not authorise the conduct of mining operations that involve disturbance of land by machinery or explosives.

(3) A miner's right does not authorise the pegging out of a mineral claim in respect of land within a precious stones field but, where a precious stones field consists of the surface stratum of land that is divided into strata, this subsection does not prevent the pegging out on the precious stones field of a claim in respect of land within a subsurface stratum.

(4) Any number of claims may be pegged out by virtue of a single miner's right.

Area of claim

23. (1) The area of a mineral claim must not exceed the maximum permissible area stipulated by the regulations.

(2) The maximum permissible area of a mineral claim may vary according to the nature of the minerals in respect of which the claim is pegged out.

Registration of claim

24. (1) Application for registration of a mineral claim must be lodged at the office of the Mining Registrar within 30 days after the day on which the claim is pegged out.

* * * * *

(3) A mining registrar shall, subject to this Act and any order of the Warden's Court, register a mineral claim upon receipt of due application for registration of the claim in the prescribed form and accompanied by the prescribed particulars.

(4) A mining registrar may refuse to register a mineral claim (other than a claim that relates solely to extractive minerals) if satisfied that—

- (a) before the claim was pegged out, an application had been lodged for an exploration licence for an area comprising the area of the claim or portion of the area of the claim; and
- (b) the application has not been refused.

(4a) A mining registrar cannot register a mineral claim if to do so would be inconsistent with a public undertaking by the Minister to the mining industry.

(5) If application for registration of a mineral claim is not made as required by this section, or if the mining registrar lawfully refuses to register the claim, the claim shall lapse.

Rights conferred by ownership of mineral claim

25. (1) A mineral claim confers on the owner of the claim an exclusive right, subject to the provisions of this Act—

- (a) to prospect for minerals in the land comprised in the claim; and
- (b) to carry out such other exploratory operations on, or in respect of, the land comprised in the claim as are approved in writing by the Director of Mines; and
- (c) to apply for a mining lease or a retention lease in respect of the whole or part of the land comprised in the claim.

(2) A person shall not remove from the area of a mineral claim minerals, or soil and minerals, exceeding a mass of 1 tonne unless authorised to do so by the Director of Mines.

Penalty: \$500.

(3) The ownership of a mineral claim does not confer any right—

- (a) to sell or dispose of any minerals recovered in the course of mining operations; or
- (b) to utilise any such minerals for any commercial or industrial purpose.

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(4) A mineral claim has no force or effect in relation to precious stones.

Mineral claim not transferable, etc.

26. (1) A mineral claim is not transferable.

(2) Where an application has not been made for a mining lease or a retention lease in respect of land comprised in a mineral claim within 12 months after registration of the claim, the claim shall lapse.

(3) Where an application is made for a mining lease or a retention lease in respect of land comprised in a mineral claim, and the application is refused, the claim shall lapse.

(4) A mineral claim may, subject to this Act and in accordance with the regulations, be surrendered.

Land not to be repegged where claim lapses, etc.

27. Where a mineral claim lapses or is surrendered or forfeited, no claim covering any of the area of that previous claim shall, without the authority of the Warden's Court, be pegged out by, or on behalf of, the person who held the previous claim within 2 years of its lapse, surrender or forfeiture.

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**PART 5
EXPLORATION LICENCE**

Grant of exploration licence

28. (1) Subject to this Act, the Minister may grant an exploration licence to any person.

(2) An exploration licence authorises the licensee to carry out exploratory operations of a kind described in the licence in respect of land described, or referred to, in the licence.

(3) An exploration licence shall not be granted in respect of precious stones or extractive minerals.

(4) The area of the land in respect of which an exploration licence is granted shall not exceed 2 500 square kilometres unless, in the opinion of the Minister, circumstances exist that justify the grant of a licence in respect of a greater area.

(5) At least 28 days before the Minister grants an exploration licence, a notice describing the land over which the licence is to be granted and, if the licence is to relate to a particular stratum, specifying the stratum, must be published by the Minister—

(a) in the *Gazette*; and

(b) in a newspaper circulating generally in the State; and

(c) if there is a regional or local newspaper circulating in the part of the State in which the licence area is situated—in the regional or local newspaper.

(6) An exploration licence may be granted to the Director of Mines and, in obtaining and holding such a licence, the Director shall be exempt from the provisions of sections 29, 31 and 32.

Application for exploration licence

29. (1) An application for an exploration licence must be in writing and must be lodged with the Director of Mines.

(2) The applicant shall forward with an application for an exploration licence—

(a) the prescribed application fee; and

(b) a map on which are delineated the boundaries of the land in respect of which the licence is sought; and

(c) a statement outlining the exploratory operations that the applicant proposes to carry out in pursuance of the licence, showing the estimated expenditure to be incurred in carrying out those operations; and

(d) a statement of the technical and financial resources available to the applicant; and

(e) a statement of the nature of the minerals for which the applicant proposes to explore.

(3) An applicant shall, at the request of the Minister, furnish such further information in relation to his application, or such evidence in support of his application, as the Minister may require.

Incidents of licence, etc.

30. (1) An exploration licence shall—

- (a) describe or delineate the lands in respect of which it is granted; and
- (b) be subject to such conditions as may be prescribed and to such additional conditions as the Minister thinks fit and specifies in the licence.

* * * * *

(2) The Minister shall, in determining the conditions subject to which a licence is to be granted under this Part, give proper consideration to the protection of—

- (a) the natural beauty of any locality or place that may be affected by the conduct of operations in pursuance of the licence;
- (b) flora and fauna that may be endangered or disturbed by those operations;
- (c) buildings of architectural or historical interest, and objects and features of scientific or historical interest, that may be affected by those operations;
- (d) any Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988* that may be affected by those operations,

and may take into consideration such other factors as he considers appropriate in the particular case.

(3) It shall be a condition of an exploration licence that the Minister may, at any time, require the holder of the licence to pay to any person an amount of compensation, stipulated by the Minister, to which that person is, in the opinion of the Minister, entitled in consequence of loss or damage suffered by him as a result of operations conducted in pursuance of the licence.

Term of licence

30A. (1) An exploration licence is to be granted for a term decided by the Minister of up to five years.

(2) If an exploration licence is granted for a term of less than five years, the licence may include a right of renewal but not so the aggregate term of the licence exceeds five years.

(3) An exploration licence that does not include in its terms a right of renewal may be renewed at the discretion of the Minister from time to time, but not so the aggregate term of the licence exceeds five years.

(4) An application for renewal of an exploration licence must be made to the Minister in the prescribed form at least one month before the date of expiry of the licence.

(5) If an application for the renewal of an exploration licence is not decided before the date on which the licence is due to expire, the licence continues in operation until the application is decided and, if the licence is renewed, the renewal dates from the date on which the licence would, but for this subsection, have expired.

(6) The Minister may, on renewing an exploration licence or, with the consent of the licensee, at any other time, alter an exploration licence in one or more of the following ways:

- (a) by adding, varying or revoking a term or condition of the licence; or

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(b) by reducing the licence area.

Fee

31. (1) The holder of an exploration licence shall pay to the Minister, annually and in advance, such fee as may be prescribed.

(2) The Minister may reduce, remit or refund a fee under this section if, in his opinion, it is necessary or expedient so to do.

Licensee to keep and, on request, furnish Director with geological records, etc.

32. (1) The holder of an exploration licence shall keep complete and detailed records of the surveys and other operations conducted in pursuance of the licence and shall, at the request of the Director of Mines, produce the records for the inspection of the Director or an inspector.

Penalty: \$200.

(2) The holder of an exploration licence shall furnish the Director of Mines with such information relating to the surveys and other operations conducted by him in pursuance of the licence, and such geological samples obtained by him in the course of those operations, as the Director may require.

Penalty: \$200.

Cancellation, suspension, etc., of licence

33. (1) Where the holder of an exploration licence has contravened, or failed to comply with, any provision of this Act or any condition of the licence, the Minister may suspend the licence (in which case the licence shall, during the period of suspension, be of no force or effect) or cancel the licence.

(2) Where a licence is cancelled or suspended under subsection (1), the licensee may, within 28 days after the cancellation or suspension, appeal to the ERD Court and the Court may, if it is satisfied that there is no proper ground for the cancellation or suspension, declare that cancellation or suspension void.

* * * * *

(4) Where, in the opinion of the Minister, any land comprised in an exploration licence is required for a public purpose, the Minister may, by notice published in the *Gazette*, excise that land from the total area comprised in the licence, and the licence shall then cease to apply to that land.

(5) Where the Minister exercises his powers under subsection (4), the holder of the licence may apply to the ERD Court for an order that the Minister compensate him for the money expended by him in prospecting for minerals in the area excised from the total area comprised in the licence, and the ERD Court, upon the hearing of any such application, may determine what amount would fairly compensate the holder of the licence for such expenditure and order that the amount so determined be paid by the Minister to the holder of the licence.

(6) The Minister shall pay any amount that he is ordered to pay under subsection (5) out of money provided by Parliament.

(7) The holder of an exploration licence may, with the consent of the Minister, surrender any land comprised in the licence, and the licence shall then cease to apply to that land.

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**PART 6
MINING LEASES**

Grant of mining lease

34. (1) Subject to Part 9B, the Minister may grant to the holder of a registered mineral claim a mining lease of the whole or part of the land comprised in the claim.

(1a) Where the registered mineral claim relates to a particular stratum, the lease shall, if granted, relate to the same stratum.

(1b) A mining lease shall not be granted in respect of land within a subsurface stratum except upon the authority of a resolution passed by both Houses of Parliament.

* * * * *

(3) Mining leases shall be of prescribed classes and subject to prescribed terms and conditions appropriate to each class.

(4) A mining lease shall, in addition to such terms and conditions as may be prescribed, be subject to such additional terms and conditions (if any) as the Minister thinks fit and specifies in the lease.

(5) The maximum permissible area of the land in respect of which a mining lease may be granted shall be as prescribed.

(6) The Minister shall, in determining the terms and conditions subject to which a lease is to be granted under this Part, give proper consideration to the protection of—

- (a) the natural beauty of any locality or place that may be affected by the conduct of operations in pursuance of the lease;
- (b) flora and fauna that may be endangered or disturbed by those operations;
- (c) buildings of architectural or historical interest, and objects and features of scientific or historical interest, that may be affected by those operations;
- (d) any Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988* that may be affected by those operations,

and may take into consideration such other factors as he considers appropriate in the particular case.

(7) It shall be a condition of a mining lease that the Minister may, at any time, require the holder of the lease to pay to any person an amount of compensation, stipulated by the Minister, to which that person is, in the opinion of the Minister, entitled in consequence of the conduct of mining operations in pursuance of the lease.

Application for lease

35. (1) An application for a mining lease must be in the prescribed form and must be accompanied by—

- (a) a statement of—
 - (i) the mining operations that the applicant proposes to carry out in pursuance of the lease; and

(ii) the measures that the applicant proposes to take to remedy damage to land that may result from the proposed mining operations; and

(iii) such other information as is prescribed; and

(b) the prescribed fee.

(2) The Minister may require the applicant to furnish him with such information and surveys as the Minister thinks fit.

(3) The Minister shall not grant a mining lease unless he is satisfied that there is a reasonable prospect that the land in respect of which the lease is sought could be effectively and efficiently mined.

Representations in relation to grant of lease

35A. (1) The Minister must not grant a mining lease unless he or she has caused to be published in a newspaper circulating generally throughout the State a notice—

(a) describing the land to which the application relates and, if relevant, the particular stratum to which a lease would relate; and

(b) specifying a place at which the application may be inspected; and

(c) inviting members of the public to make written submissions in relation to the application to the Minister within a period specified in the notice (which must be a period of at least 14 days from the date of publication of the notice).

(1a) The Minister must, within 14 days after receiving an application for a mining lease, give written notice of the application to the owner of the land to which the application relates together with an invitation to submit written representations on the application within a specified time.

(2) Where application is made for a mining lease in respect of land within the area of a council, the Minister shall, within 14 days after receiving the application, send a copy of the application to the council and invite it to submit written representations on the application to the Minister within a time fixed in the invitation.

(3) In determining whether to grant or refuse an application for a mining lease and, if so, the terms and conditions on which it should be granted, the Minister shall have regard to any representations made in response to an invitation under this section.

Approval of application

36. (1) Where a person has applied for a mining lease and has been notified in writing by or on behalf of the Minister that the Minister has approved the application, the applicant shall be liable for the payment of rent, and any other sum, payable by the holder of a mining lease of the kind for which approval has been granted, and shall be deemed to be the holder of such a lease comprising the land in respect of which the lease is sought as from the date of the notification.

(2) Where written notification that the Minister has approved an application for a lease is given under subsection (1), the term of the lease shall commence from the date of the notification.

Nature of lease

37. (1) A mining lease must describe or delineate the land in respect of which it is granted with as much particularity as is reasonably practicable.

(2) A mining lease is not required to be registered under the *Real Property Act 1886*.

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Term and renewal of mining lease

38. (1) A mining lease may be granted for such term, not exceeding 21 years, as may be determined by the Minister and specified in the lease.

(2) Subject to the terms and conditions of a mining lease, the holder of the lease shall, if he has complied with the provisions of this Act, and the terms and conditions of the lease during the term for which the lease was granted or last renewed, be entitled, at the expiration of that term, to the renewal of the lease for a further term.

(3) Where a person who is entitled to the renewal of a mining lease under this section makes due application in the prescribed form for the renewal of the lease not more than 6 months, and not less than 3 months, before the date of its expiry, the Minister shall renew the lease for a term, not exceeding 21 years, determined by the Minister.

(4) If an application for the renewal of a mining lease is not decided before the date of expiry, the lease continues in operation until the application is decided and, if the lease is renewed, the renewal dates from the date on which the lease would, but for this subsection, have expired.

Rights conferred by lease

39. A mining lease—

- (a) confers an exclusive right upon the holder of the lease to conduct mining operations subject to the provisions of this Act and the terms and conditions of the lease for the recovery of minerals from the land comprised in the lease; and
- (b) authorises the holder of the lease to sell, or dispose of, minerals recovered in the course of mining operations conducted in pursuance of the lease or to utilise any such minerals for any commercial or industrial purpose.

Rental

40. (1) A mining lease shall provide for the payment, by way of rental, of such sum as may be prescribed.

(2) If a mining lease is granted over land consisting of, or including, land subject to a relevant interest (*ie* an estate of fee simple or native title conferring a right to exclusive possession of the land), the amount paid to the Minister by way of rental under the lease must, after deduction of 5%,¹ be dealt with in accordance with the following principles—

- (a) the proportionate entitlement of each holder of a relevant interest in the land must be worked out by determining what proportion of the total area of the land subject to the lease is represented by land in which the holder holds a relevant interest; and
- (b) a proportion of the net amount available for distribution, equivalent to the holder's proportionate entitlement, must be paid to each holder of a relevant interest in land subject to the lease; and
- (c) if a balance remains after distribution under paragraph (b), the balance is to be retained by the Minister.

(3) If no-one is registered under the law of the State or the Commonwealth as the holder of native title in native title land over which a mining lease has been granted, the Minister must establish a trust fund and pay the amount to which the holder of native title is entitled under subsection (2) into the trust fund until a determination is made of who is entitled to the payment.

(4) If no valid claim has been made on the trust fund within five years after its establishment, the Minister may dissolve the fund and pay the amount standing to its credit into the Consolidated Account but, if the fund is dissolved, any claim that might have been made against the fund assuming that it had continued in existence may be made instead against the State.

¹ The net amount remaining after the 5% deduction is referred to subsequently as the net amount available for distribution.

Suspension or cancellation of lease

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

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

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

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**PART 6A
RETENTION LEASES**

Grant of retention lease

41A. (1) The Minister may, subject to this section and Part 9B, grant to the holder of a registered mineral claim a retention lease of the whole or part of the land comprised in the claim.

(1a) Where the registered mineral claim relates to a particular stratum, the lease shall, if granted, relate to the same stratum.

(2) A retention lease may, subject to subsection (3), be granted in any of the following cases:

- (a) where for economic or other reasons the applicant is, in the opinion of the Minister, justified in not proceeding immediately to mine the land in pursuance of a mining lease; or
- (b) where in the opinion of the Minister sufficient investigation has not yet been carried out to enable him to determine the terms and conditions upon which a mining lease should be granted; or
- (c) where the applicant seeks an authorisation to carry out mining operations for the recovery of a radioactive mineral and the Minister thinks it desirable to defer the granting of a mining lease endorsed with such an authorisation.

(3) The Minister shall not grant a retention lease unless he is satisfied that there is a reasonable prospect that the land in respect of which the lease is sought could be effectively and efficiently mined.

(4) A retention lease shall be subject to—

- (a) such terms and conditions as may be prescribed; and
- (b) such additional terms and conditions (if any) as the Minister thinks fit and specifies in the lease.

(5) The Minister shall, in determining terms and conditions subject to which a lease is to be granted under this Part, give proper consideration to the protection of—

- (a) the natural beauty of any locality or place that may be affected by the conduct of operations in pursuance of the lease;
- (b) flora and fauna that may be endangered or disturbed by those operations;
- (c) buildings of architectural or historical interest, and objects and features of scientific or historical interest, that may be affected by those operations;
- (d) any Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988* that may be affected by those operations,

and may take into consideration such other factors as he considers appropriate in the particular case.

Application for retention lease

41B. (1) An application for a retention lease must be in the prescribed form and accompanied by the prescribed fee.

(2) The Minister may require the applicant to furnish him with such information and surveys as the Minister thinks fit.

Nature of lease

41C. (1) A retention lease must describe or delineate the land in respect of which it is granted with as much particularity as is reasonably practicable.

(2) A retention lease is not required to be registered under the *Real Property Act 1886*.

Term and renewal of retention lease

41D. (1) A retention lease shall be granted for a term, not exceeding 5 years, specified in the lease.

(2) The holder of a retention lease may, not later than 3 months before the expiration of the term of the lease, apply, in the prescribed manner and form, to the Minister for the renewal of the lease.

(3) If the applicant has complied with this Act and with the terms and conditions to which the lease is subject, the Minister may renew the lease for a further term, not exceeding 5 years, on such terms and conditions as he thinks fit.

(4) If an application for the renewal of a retention lease is not decided before the date of expiry, the lease continues in operation until the application is decided and, if the lease is renewed, the renewal dates from the date on which the lease would, but for this subsection, have expired.

Rental

41E. (1) A retention lease shall provide for the payment, by way of rental, of such sum as may be prescribed.

(2) If a retention lease is granted over land consisting of, or including, land subject to a relevant interest (*ie* an estate of fee simple or native title conferring a right to exclusive possession of the land), the amount paid to the Minister by way of rental under the lease must, after deduction of 5%,¹ be dealt with in accordance with the following principles—

- (a) the proportionate entitlement of each holder of a relevant interest in the land must be worked out by determining what proportion of the total area of the land subject to the lease is represented by land in which the holder holds a relevant interest; and
- (b) a proportion of the net amount available for distribution, equivalent to the holder's proportionate entitlement, must be paid to each holder of a relevant interest in land subject to the lease; and
- (c) if a balance remains after distribution under paragraph (b), the balance is to be retained by the Minister.

(3) If no-one is registered under the law of the State or the Commonwealth as the holder of native title in native title land over which a retention lease has been granted, the Minister must establish a trust fund and pay the amount to which the holder of native title is entitled under subsection (2) into the trust fund until a determination is made of who is entitled to the payment.

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(4) If no valid claim has been made on the trust fund within five years after its establishment, the Minister may dissolve the fund and pay the amount standing to its credit into the Consolidated Account but, if the fund is dissolved, any claim that might have been made against the fund assuming that it had continued in existence may be made instead against the State.

¹ The net amount remaining after the 5% deduction is referred to subsequently as the net amount available for distribution.

Rights conferred by lease

41F. A retention lease shall—

- (a) confer an exclusive right upon the holder of the lease to prospect for minerals in the land comprised in the lease; and
- (b) confer on the holder of the lease such other rights to conduct mining operations in respect of the land comprised in the lease as may be stipulated in the lease; and
- (c) confer on the holder of the lease an exclusive right to apply for a mining lease in respect of the land comprised in the lease.

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**PART 7
PROSPECTING AND MINING FOR PRECIOUS STONES**

Issue of precious stones prospecting permit

42. (1) A mining registrar may, upon receipt of an application in the prescribed form containing the prescribed particulars, issue to any person (not being a body corporate) a precious stones prospecting permit.

(2) An application for a precious stones prospecting permit must be accompanied by the prescribed fee.

(3) A person shall not hold more than 1 precious stones prospecting permit.

(4) A precious stones prospecting permit is not transferable.

(5) A person shall not—

(a) lend a precious stones prospecting permit to any other person; or

(b) permit any other person to make use, or take the benefit, of his precious stones prospecting permit.

Penalty: \$1 000.

(6) A precious stones prospecting permit may, subject to this Act and in accordance with the regulations, be surrendered.

Term and renewal of permit

43. (1) A precious stones prospecting permit shall, subject to this Act, remain in operation for a term of 1 year from the date of issue.

(2) Subject to subsection (3), a mining registrar may, upon receipt of an application in the prescribed form lodged with him within 1 month before the date on which a precious stones prospecting permit is due to expire and accompanied by the prescribed fee, renew the precious stones prospecting permit for a further period of 1 year.

* * * * *

Rights of holder of permit

44. (1) A precious stones prospecting permit shall, subject to this Act, authorise the holder to prospect for precious stones and to peg out a precious stones claim in accordance with the regulations.

(2) A precious stones prospecting permit does not authorise the conduct of mining operations that involve disturbance of any land by machinery or explosives.

(2a) Notice of the pegging of a precious stones claim must be given in accordance with the regulations and, if such notice is not given, the claim shall lapse.

(3) A person is not entitled to be the holder simultaneously of more than one precious stones claim.

* * * * *

(6) A person who purports to peg out a precious stones claim and who is not entitled to peg out or to be the holder of, that claim, shall be guilty of an offence and liable to a penalty not exceeding \$500.

(7) A precious stones claim is not transferable.

Area of claim

45. (1) The area of a precious stones claim shall not exceed the maximum permissible area.

(2) The maximum permissible area of a precious stones claim shall be as prescribed.

Registration of claims

46. (1) Application for registration of a precious stones claim must be lodged at the office of the Mining Registrar within 14 days after the day on which the claim is pegged out.

(2) The office at which an application under subsection (1) is to be lodged shall be determined in accordance with the regulations.

(3) A mining registrar shall, subject to Part 9B and the other provisions of this Act and any order of the Warden's Court, register a precious stones claim upon receipt of due application for the registration of the claim in the prescribed form and accompanied by the prescribed particulars.

(3a) A mining registrar cannot register a precious stones claim if to do so would be inconsistent with a public undertaking by the Minister to the mining industry.

(4) If application for registration of a precious stones claim is not made as required by this section or if the mining registrar lawfully refuses registration of the claim, the claim shall lapse.

(5) Where due application is made for the registration of a valid precious stones claim, the claim shall be deemed to have been registered as from the time of lodgment of the application at the office of the Mining Registrar.

(6) The registration of a precious stones claim must be renewed as from—

(a) the date falling three months after it was first registered; and

(b) each anniversary of that date.

(7) A mining registrar shall renew the registration of a precious stones claim upon receipt of due application for renewal in the prescribed form.

(8) If the registration of a precious stones claim is not renewed as required by this section, the claim shall lapse.

(8a) However, if an application for renewal of the registration of a precious stones claim is not decided before the date on which the registration is due to expire, the registration continues until the application is decided.

(9) Where a precious stones claim lapses or is forfeited, no claim covering any of the area of that previous claim shall, without the authority of the Warden's Court, be pegged out by or on behalf of the person who held the previous claim.

(10) A precious stones claim may, subject to this Act, be surrendered in accordance with the regulations.

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Rights conferred by claim

47. A precious stones claim confers an exclusive right upon the owner of the claim—

- (a) to conduct mining operations, subject to the provisions of this Act, for the recovery of precious stones from the land comprised in the claim; and
- (b) to sell, or dispose of, precious stones recovered in the course of such operations or to utilise any such precious stones for any commercial or industrial purpose.

* * * * *

Disposal of waste

49. Where a claim has been pegged out upon a precious stones field, a person shall not deposit, or allow to be deposited, soil, overburden or other material from his claim outside the boundaries of his claim, or extend an open cut beyond the boundaries of his claim, without the permission, in writing, of an inspector or an authorised person.

Penalty: \$200.

Consent required for claims on freehold or native title land

50. A precious stones claim cannot be validly pegged out on land that has been granted in fee simple, or is subject to native title conferring an exclusive right to possession of the land, except with the written consent of the owner of the land.

Lease or licence not to be granted in respect of precious stones field

51. (1) No lease or licence shall be granted under this Act in respect of land comprising, or comprised in, a precious stones field.

* * * * *

Unlawful entry on precious stones claim

51A. (1) Subject to subsection (2), a person must not, without lawful authority or excuse, enter or remain on land comprising, or comprised in, a precious stones claim, without first obtaining the permission of the owner of the claim.

Penalty: \$1 000.

(2) This section does not apply to—

- (a) a police officer acting in the course of carrying out official duties; or
- (b) any other officer appointed pursuant to statute acting in the course of carrying out official duties.

(3) This section does not affect any civil liability.

Special provisions relating to ballots in certain cases

51B. (1) Where—

- (a) it is proposed that the Governor, by proclamation under section 8—
 - (i) declare any mineral land to be a precious stones field; or
 - (ii) vary or revoke a proclamation so that land reserved from the operation of this Act will form, or become part of, a precious stones field; and

- (b) the Minister considers that it is appropriate that this section apply in order to facilitate orderly prospecting and pegging of claims on the land,

the Minister may, by notice published in the *Gazette* at the time that the Governor makes the proclamation, declare that this section applies in relation to the land.

- (2) If the Minister makes a declaration under subsection (1)—

- (a) the holder of a precious stones prospecting permit cannot prospect for precious stones or peg out a precious stones claim on the land to which the declaration relates until a day specified by the Minister in the notice in the *Gazette* (referred to in this section as "the declared day"); and

- (b) a person appointed by the Minister for the purpose will carry out a ballot on the declared day in accordance with the Minister's directions to determine who may have the first opportunity to prospect for precious stones and peg out precious stones claims on the land.

- (3) For the purposes of subsection (2), the Minister must—

- (a) in the notice in the *Gazette*—

- (i) set out the conditions that are to apply in relation to the ballot; and

- (ii) invite interested persons (being the holders of precious stones prospecting permits) to register for inclusion in the ballot before a specified day in a manner and form determined by the Minister; and

- (b) cause the land to be divided into blocks, of such dimensions as the Minister thinks fit, and ensure that each block is allocated an identifying number for the purposes of the ballot; and

- (c) cause a plan of the land that clearly delineates those blocks with their identifying numbers to be made available for public inspection at the principal office of the Director, or at some other appropriate place specified by the Minister by notice in the *Gazette*, at least seven days before the declared day.

(4) The holder of a precious stones prospecting permit who is registered for inclusion in the ballot in accordance with subsection (3) may participate in the ballot by attending in person on the declared day at a place and time specified by the Minister in the notice given under subsection (1).

- (5) A person who is allocated a block by virtue of his or her participation in the ballot—

- (a) may, no later than 5 p.m. on the day immediately following the day of allocation, peg out the block as a precious stones claim in accordance with directions issued by the Minister at the time of the allocation of the block; and

- (b) must, if the person has pegged out the block under paragraph (a), give notice of the pegging in accordance with the regulations; and

- (c) may apply to the nearest office of the Mining Registrar to the land for registration of the claim no later than 14 days after the declared day.

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(6) A mining registrar must not, for 14 days immediately following the declared day, register a precious stones claim in respect of any part of the land unless the claim is made by a person under subsection (5).

(7) A person must not, for 14 days immediately following the declared day, prospect for precious stones or peg out a claim on land to which this section applies except on a block allocated to the person by virtue of his or her participation in the ballot.

(8) If—

(a) a person who has been allocated a block—

(i) fails to peg out a precious stones claim in relation to the block within the time prescribed by subsection (5)(a); or

(ii) fails to give notice of a pegging in accordance with the regulations; or

(iii) fails to apply for registration of a claim within the time prescribed by subsection (5)(c); or

(b) a block is not taken up through the ballot,

the land comprised in the block may, at any time after 14 days from the declared day, be pegged out by any other person in accordance with the provisions of this Act (other than this section).

(9) If a person prospects for precious stones or pegs out a precious stones claim in contravention of this section—

(a) the person is guilty of an offence and liable to a penalty not exceeding a division 5 fine or division 5 imprisonment; and

(b) any claim purportedly made by the person is void.

(10) The Minister may, by notice in the *Gazette*, fix a fee for participation in the ballot, and a person who pays the fee but is not successful in the ballot will, on application in a manner and form determined by the Minister, be refunded the fee.

(11) A person is not entitled to obtain more than one block through his or her participation in the ballot.

(12) A right to peg out a block awarded to a person through his or her participation in the ballot is not transferable.

(13) The Minister must ensure that a copy of any notice published in the *Gazette* for the purposes of this section is also—

(a) published, as soon as is reasonably practicable after publication in the *Gazette*, in a newspaper circulating generally throughout the State; and

(b) displayed, for a reasonable period of time, in the nearest office of the Mining Registrar to the land.

(14) This section applies notwithstanding any other provision of this Act.

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**PART 8
MISCELLANEOUS PURPOSES LICENCE**

Grant of licence

52. (1) The Minister may grant to any person a miscellaneous purposes licence under this Part in respect of mineral land.

* * * * *

(3) A licence may be granted for any of the following purposes:

- (a) for the carrying on of any business that may conduce to the effective conduct of mining operations or provide amenities for persons engaged in the conduct of mining operations; or
- (b) for establishing and operating plant for the treatment of ore recovered in the course of mining operations; or
- (c) for drainage from a mine; or
- (d) for the disposal of overburden or any waste produced by mining operations; or
- (e) any other purpose ancillary to the conduct of mining operations,

and may be granted upon such terms and conditions as may be determined by the Minister and specified in the licence.

(4) The Minister shall, in determining the terms and conditions subject to which a licence is to be granted under this Part, give proper consideration to the protection of—

- (a) the natural beauty of any locality or place that may be affected by the conduct of operations in pursuance of the licence;
- (b) flora and fauna that may be endangered or disturbed by those operations;
- (c) buildings of architectural or historical interest, and objects and features of scientific or historical interest, that may be affected by those operations;
- (d) any Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988* that may be affected by those operations,

and may take into consideration such other factors as he considers appropriate in the particular case.

(5) A miscellaneous purposes licence cannot be granted over an area of land exceeding the maximum permissible area prescribed by the regulations.

(6) A miscellaneous purposes licence must provide for the payment, by way of rental, of such sums as may be prescribed.

(7) If a miscellaneous purposes licence is granted over land consisting of, or including, land subject to a relevant interest (*ie* an estate of fee simple or native title conferring a right to exclusive possession of the land), the amount paid to the Minister by way of rental under the licence must, after deduction of 5%,¹ be dealt with in accordance with the following principles—

- (a) the proportionate entitlement of each holder of a relevant interest in the land must be worked out by determining what proportion of the total area of the land subject to the licence is represented by land in which the holder holds a relevant interest; and
- (b) a proportion of the net amount available for distribution, equivalent to the holder's proportionate entitlement, must be paid to each holder of a relevant interest in land subject to the licence; and
- (c) if a balance remains after distribution under paragraph (b), the balance is to be retained by the Minister.

(8) If no-one is registered under the law of the State or the Commonwealth as the holder of native title in native title land over which a miscellaneous purposes licence has been granted, the Minister must establish a trust fund and pay the amount to which the holder of native title is entitled under subsection (7) into the trust fund until a determination is made of who is entitled to the payment.

(9) If no valid claim has been made on the trust fund within five years after its establishment, the Minister may dissolve the fund and pay the amount standing to its credit into the Consolidated Account but, if the fund is dissolved, any claim that might have been made against the fund assuming that it had continued in existence may be made instead against the State.

¹ The net amount remaining after the 5% deduction is referred to subsequently as the net amount available for distribution.

Application for licence

53. (1) An application for a miscellaneous purposes licence must be in the prescribed form and—

- (a) must include a statement of—
 - (i) the nature and extent of the operations or activity to be carried on in pursuance of the licence; and
 - (ii) the measures (if any) that the applicant proposes to take to remedy damage to land that may result from the proposed operations or activity; and
 - (iii) such information as is prescribed; and
- (b) must be accompanied by the prescribed fee.

(2) The Minister must not grant a miscellaneous purposes licence unless he or she has caused to be published in a newspaper circulating generally throughout the State a notice—

- (a) describing the area in respect of which the licence is sought; and
- (b) specifying the purpose for which the licence is sought; and
- (c) inviting members of the public to make written submissions in relation to the matter to the Minister within a period specified in the notice (which must be at least 14 days from the date of publication of the notice).

(3) The Minister may require the applicant to furnish further information and surveys.

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(4) The Minister must within 14 days after receiving an application for a miscellaneous purposes licence send a copy of the application—

(a) to the owner of the land over which the licence is sought; and

* * * * *

(b) if the land is within the area of a council—to the council,

together with an invitation to submit written representations on the application within a specified time.

(5) In determining whether to grant or refuse an application for a miscellaneous purposes licence and, if so, the terms and conditions on which it should be granted, the Minister must have regard to any representations made in response to an invitation under this section.

(6) Where the Minister approves an application for a miscellaneous purposes licence, the licence will, subject to any contrary provision in the licence, take effect from the date on which the applicant is notified of the Minister's approval.

Compensation

54. The owner of any land in respect of which a miscellaneous purposes licence is granted shall be entitled to such compensation as may be mutually agreed upon by the owner and the licensee or as may, in the event of a dispute, be determined, upon the application of any interested person, by the appropriate court.

Term of licence

55. (1) A miscellaneous purposes licence may be granted for such term, not exceeding 21 years, as may be determined by the Minister and specified in the licence.

(2) The holder of a miscellaneous purposes licence shall, if he has complied with the provisions of this Act and the terms and conditions of the licence during the term for which the licence was granted or last renewed, be entitled, at the expiration of that term, to the renewal of the licence for a further term.

(3) Where a person who is entitled to the renewal of a miscellaneous purposes licence under this section makes due application for the renewal of the licence not more than 6 months and not less than 3 months before the date of its expiry, the Minister shall renew the licence for a term, not exceeding 21 years, determined by the Minister.

(4) If an application for the renewal of a miscellaneous purposes licence is not decided before the date of expiry, the licence continues in operation until the application is decided and, if the licence is renewed, the renewal dates from the date on which the licence would, but for this subsection, have expired.

Suspension and cancellation of licence

56. (1) The Minister may suspend or cancel a miscellaneous purposes licence if the licensee contravenes, or fails to comply with, any term or condition of the licence or any provision of this Act.

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

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

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**PART 8A
SPECIAL MINING ENTERPRISES**

Object of this Part

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

Special mining enterprises

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

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

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

- (a) a sufficient delineation of the land to which the proposal relates; and
- (b) a statement of the nature, extent and proposed scheduling of the mining operations and related or ancillary operations or works that the applicant carries out or proposes to carry out under the enterprise; and
- (c) an economic analysis of the enterprise, including financial projections and details of the financial resources available to the applicant for the purposes of the enterprise; and
- (d) an assessment of the benefits to the State derived or expected to be derived from the enterprise; and
- (e) an assessment of the expected social and environmental effects of the enterprise; and
- (f) a statement of the measures that the applicant considers appropriate to protect the environment, and to remedy environmental damage that may result on account of operations or activities carried out for the purposes of the enterprise; and
- (g) a statement of the measures that the applicant considers appropriate for the protection of any Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988* that may be affected by the enterprise; and
- (h) any other information required by the regulations.

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

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

(5) An application under this section—

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

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

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

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

Power to exempt from or modify Act

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

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

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

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

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

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

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

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

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

Penalty: \$50 000.

Existing tenements

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

- (a) the lease or licence is, by force of this subsection, subsumed into the new mining tenement; and
- (b) subject to a determination of the Minister or a court—
 - (i) an interest (whether legal or equitable) in, or affecting, the lease or licence so subsumed (being an interest in force immediately before the granting of the mining tenement) continues to have the same effect in respect of the mining tenement as it had before the tenement was granted; and
 - (ii) a liability of the holder of the mining tenement in existence immediately before the granting of the tenement is not affected by the granting of the tenement; and
 - (iii) an approval, consent, licence or exemption granted under another Act or law with respect to the carrying out of an operation or activity under the lease or licence will be taken to have been granted with respect to the carrying out of the same operation or activity under the new mining tenement if the extent of the operation or activity, and the area of land over which it is to be carried out, are not to be substantially increased.

(2) If—

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

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

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PART 9
ENTRY UPON LAND, COMPENSATION AND RESTORATION**Entry on land**

57. Subject to this Part, a person authorised to prospect, explore or mine for minerals under this Act—

- (a) may enter any mineral land (except exempt land) for the purpose of prospecting, exploring or mining for minerals in accordance with the authorisation; and
- (b) may enter exempt land for the purpose of pegging out a claim.

How entry on land may be authorised

58. A mining operator may enter land to carry out mining operations on the land—

- (a) if the mining operator has an agreement¹ with the owner of the land authorising the mining operator to enter the land to carry out mining operations on the land; or
- (b) if the mining operator is authorised by a native title mining determination to enter the land to carry out mining operations on the land; or
- (c) if—
 - (i) the mining operator has given the prescribed notice of entry; and
 - (ii) the mining operations will not affect native title in the land; and
 - (iii) the mining operator complies with any determination made on objection to entry on the land, or the use or unconditional use of the land, or portion of the land, for mining operations;² or
- (d) if the land to be entered is in a precious stones field and the mining operations will not affect native title in the land; or
- (e) if the mining operator enters the land to continue mining operations that had been lawfully commenced on the land before the commencement of this section.

Explanatory note—

A mining operator's right to enter land to carry out mining operations on the land is contingent on the operator holding the relevant mining tenement.

¹ If the land is native title land, the agreement is to be negotiated under Part 9B.

² See section 58A(5).

Notice of entry

58A. (1) A mining operator must, at least 21 days before first entering land to carry out mining operations, serve on the owner of the land notice of intention to enter the land (the "**prescribed notice of entry**") describing the nature of the operations to be carried out on the land.

(2) The notice must be served—

- (a) in the case of native title land—as prescribed by the *Native Title (South Australia) Act 1994*; or
- (b) in other cases—personally or by post.

(3) If the land is held under a form of title (other than a pastoral lease) that confers a right to exclusive possession of the land—

- (a) the notice must contain a statement of the owner's rights of objection and compensation under this Act; and
- (b) the owner may, within three months after service of the notice, lodge a notice of objection with the appropriate court objecting—
 - (i) to entry on the land by the mining operator; or
 - (ii) to the use, or the unconditional use, of the land, or a portion of the land, for mining operations.

(4) The court must send a copy of a notice of objection received under subsection (3) to the mining operator.

(5) If the court is satisfied on the hearing of an objection that the conduct of the mining operations on the land would be likely to result in substantial hardship or substantial damage to the land, the court may—

- (a) determine that the land, or a particular part of the land, should not be used by the mining operator for the purpose of mining operations; or
- (b) determine conditions on which operations may be carried out on the land by the mining operator with least detriment to the interests of the owner and least damage to the land.

(6) A mining operator who contravenes or fails to comply with a determination under this section is guilty of an offence.

Penalty: \$1 000.

(7) The prescribed notice of entry is not required if—

- (a) the land to be entered is in a precious stones field; or
- (b) the mining operator is authorised to enter the land by agreement with the owner of the land; or
- (c) the mining operator is authorised to enter the land under a native title mining determination; or
- (d) the mining operator enters the land to continue mining operations that had been lawfully commenced on the land before the commencement of this section.

Use of declared equipment

59. (1) Subject to this section, a mining operator shall not use declared equipment in the course of mining operations except—

- (a) upon land subject to a lease or licence granted under this Act; or
- (b) upon land comprised in a registered precious stones claim or registered access claim within a precious stones field; or

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(c) in pursuance of an authorisation granted by the Director of Mines under subsection (1a).

Penalty: \$1 000.

(1a) The Director of Mines may, upon the application of the holder of a claim, authorise him, subject to the provisions of this section and the conditions (if any) specified in the authorisation, to use declared equipment upon land comprised in the claim.

(1b) A mining operator shall not use declared equipment in the course of mining operations upon land comprised in a registered precious stones claim or registered access claim within a precious stones field unless he has first served on the Director of Mines—

(a) notice, in the prescribed form, of his intention to use that equipment; and

(b) prescribed particulars of the equipment and where it will be used.

Penalty: \$1 000.

(2) A mining operator shall, at least 21 days before he uses declared equipment upon land (not being land comprised in a mining lease), serve personally or by post on the owner of the land, written notice, in the prescribed form, of his intention to use declared equipment in the course of mining operations on the land.

(3) The owner may, at any time within 3 months after the service of a notice under subsection (2), by notice in writing lodged with the Warden's Court, object to the use, or the unconditional use, of declared equipment upon his land.

(4) A copy of a notice of objection under subsection (3) must, within 7 days after lodgment with the Warden's Court, be served on the mining operator.

(5) Subject to subsection (6), the Warden's Court may, upon the hearing of an objection under this section—

(a) determine that declared equipment should not be used in the course of mining operations upon the land to which the objection relates or any part of that land; or

(b) determine upon what conditions declared equipment may be used upon the land with least detriment to the interests of the owner and least injury to the land.

(6) In any proceedings under this section, the objector must establish that the use of declared equipment upon the land would be likely to result in severe or unjustified hardship or substantial damage to the land.

(7) If a mining operator—

(a) uses declared equipment upon land without prior service of a notice as required by subsection (2); or

(b) fails to comply with a determination, or any condition contained in a determination, under this section,

he shall be guilty of an offence and liable to a penalty not exceeding \$1 000.

(8) Subsections (2) to (7) do not apply to the use of declared equipment on land if—

- (a) the land is a precious stones field; or
- (b) there is an agreement between the mining operator and the owner of the land about the use of declared equipment on the land and the mining operator complies with the terms of the agreement; or
- (c) the Warden's Court or the ERD Court has determined conditions on which declared equipment may be used on the land and the mining operator complies with the terms of the determination.

Restoration of land

60. (1) Subject to the terms and conditions of any relevant lease, licence, authorisation, agreement or determination under this Act, where a mining operator uses declared equipment in the course of mining operations, an inspector or authorised person may direct the operator, in writing, to restore the ground disturbed by the operations to a condition that is, in the opinion of the inspector or authorised person, satisfactory.

(2) A mining operator shall comply with a direction under subsection (1).

Penalty: \$500.

(3) The Warden's Court may order that no further claim shall be pegged out by a person named in the order until he has complied with a direction under subsection (1).

(4) Where an order has been made under subsection (3), the person named in the order shall not be entitled to peg out any claim until he has complied with the direction or the order has been revoked.

* * * * *

Compensation

61. (1) The owner of any land upon which mining operations are carried out in pursuance of this Act shall be entitled to receive compensation for any economic loss, hardship and inconvenience suffered by him in consequence of mining operations.

(2) In determining the compensation payable under this section, the following matters shall be considered:

- (a) any damage caused to the land by the mining operator; and
- (b) any loss of productivity or profits as a result of the mining operations; and
- (c) any other relevant matters.

(3) The amount of the compensation shall be an amount determined by agreement between the owner and the mining operator or, in default of agreement, an amount determined, upon application by an interested party, by the appropriate court.

(4) The appropriate court, in determining compensation under this section, shall take into consideration any work that the mining operator has carried out, or undertakes to carry out, to rehabilitate the land.

(5) Upon the hearing of an application for compensation under this section, the appropriate court may order a mining operator to carry out such work to rehabilitate the land as the Court thinks fit.

Bond and security

62. (1) The Minister may, by notice in writing served on an applicant for, or the holder of, a mining tenement, require him to enter into a bond in such sum and subject to such terms and conditions as ensure, in the opinion of the Minister, that—

- (a) any civil or statutory liability likely to be incurred by that person in the course of carrying out mining operations; and
- (b) the present and future obligations of that person in relation to the rehabilitation of land disturbed by mining operations,

will be satisfied.

(2) The Minister may require such security for the satisfaction of the bond as the Minister thinks fit.

(3) If the holder of a mining tenement fails to comply with a requirement under this section—

- (a) the Minister may, if the requirement has not been complied with at the expiration of one month from the end of the time allowed for compliance, prohibit mining operations in the area of the tenement; and
- (b) the Minister may, if the requirement has not been complied with at the expiration of three months from the end of the time allowed for compliance, cancel the tenement.

(4) If a person conducts mining operations in contravention of a prohibition under subsection (3), he shall be guilty of an offence and liable to a penalty not exceeding \$1 000.

(5) Where the Minister holds, or is entitled to, any money under a bond entered into by a mining operator, the Minister may, in his discretion, expend any portion of that money in compensating any person who has suffered, or is likely to suffer, financial loss as a result of mining operations carried out by that mining operator or in rehabilitating any land disturbed by any such operations.

(6) No action shall lie against the Minister in respect of the expenditure of money under this section.

Extractive Areas Rehabilitation Fund

63. (1) The Minister shall establish a fund entitled the "Extractive Areas Rehabilitation Fund".

(2) The Minister shall pay into the fund 50 per cent of all amounts received or recovered by him by way of royalty upon extractive minerals.

(3) The Minister may expend any portion of the fund for any of the following purposes:

- (a) the rehabilitation of land disturbed by mining operations for the recovery of extractive minerals; and

- (b) the implementation of measures designed to prevent, or limit, damage to or impairment of, any aspect of the environment by mining operations for the recovery of extractive minerals; and
- (c) the promotion of research into methods of mining engineering and practice by which environmental damage or impairment resulting from mining operations for the recovery of extractive minerals may be reduced.

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**PART 9A
ACCESS TO SUBSURFACE STRATA**

Pegging out of access claim

63A. (1) A person who holds a mining tenement in respect of a subsurface stratum may peg out an access claim, in accordance with the regulations, on land above the land comprised in the tenement.

(2) The dimensions of an access claim must conform with the requirements of the regulations.

(3) No more than 4 access claims may be held at the same time in respect of the same mining tenement.

Access claim may be pegged by agreement, or by authority of the Warden's Court, over land comprised in mining tenement

63B. (1) Subject to subsection (2), a person is not entitled to peg out an access claim on or above land held under a mining tenement by some other person unless that other person has consented to the pegging out of the access claim or the Warden's Court has, in pursuance of subsection (2), authorised the pegging out of the claim.

(2) Where a person desiring to peg out an access claim satisfies the Warden's Court that there is proper cause for the Court to authorise the pegging out of the claim, notwithstanding absence of the consent of the holder of a mining tenement, the Court may, on such conditions as it thinks just, authorise the pegging out of the access claim.

Registration of access claim

63C. (1) Application for registration of an access claim—

(a) must be in the prescribed form; and

(b) must be lodged at the office of the Mining Registrar within 14 days after the day on which the claim is pegged out; and

(c) must be accompanied by the prescribed particulars.

(2) A Mining Registrar shall, upon receipt of due application for registration of an access claim that has been lawfully pegged out, register the claim.

(3) If application for registration of an access claim is not made as required by this section, or if the Mining Registrar lawfully refuses to register the claim, the claim shall lapse.

Rights conferred by access claim

63D. (1) An access claim confers on the owner of the claim an exclusive right, subject to the provisions of this Act, to conduct mining operations of the kind authorised by the mining tenement to which the claim relates on the land comprised in the claim.

(2) The rights conferred by an access claim are exclusive of the rights of any other person to conduct mining operations on, or in respect of, the land comprised in the claim.

Term, etc., of access claim

63E. (1) An access claim has a renewable term of 12 months.

(1a) If an application is made in accordance with the regulations for renewal of an access claim, the owner of the claim is entitled to renewal of the claim for a further term of 12 months.

(2) An access claim shall lapse if, for any reason, the mining tenement to which it relates ceases to be in force.

(3) The holder of an access claim may, subject to this Act, surrender the claim at any time.

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**PART 9B
NATIVE TITLE LAND**

DIVISION 1—EXPLORATION

Qualification of rights conferred by exploration authority

63F. (1) An exploration authority confers no right to carry out mining operations on native title land unless—

- (a) the mining operations do not affect native title (*ie* they are not wholly or partly inconsistent with the continued existence, enjoyment or exercise of rights deriving from native title¹); or
- (b) a declaration is made under the law of the State or the Commonwealth to the effect that the land is not subject to native title.²

(2) However, a person who holds an exploration authority that would, if land were not native title land, authorise mining operations on the land may acquire the right to carry out mining operations on the land (that affect native title) from an agreement or determination authorising the operations under this Part.

(3) An agreement or determination under this Part need not be related to a particular exploration authority.

(4) However, a mining operator's right to carry on mining operations that affect native title is contingent on the existence of an exploration authority that would, if the land were not native title land, authorise the mining operator to carry out the mining operations on the land.

¹ Cf. *Native Title Act 1993* (Cwth), s. 227.

² A declaration to this effect may be made under Part 4 of the *Native Title (South Australia) Act 1994* or the *Native Title Act 1993* (Cwth). The effect of such a declaration is that the land ceases to be native title land.

Exploration rights to be held in escrow in certain circumstances

63G. (1) If an exploration authority is granted in respect of native title land, and the holder of the authority has no right or no substantial right to explore for minerals on the land because of the absence of an agreement or determination authorising mining operations on the land, the exploration authority does nevertheless, while it remains in force, prevent the grant of registration of another exploration authority for exploring for minerals of the same class within the area to which the authority relates.

(2) The Minister may revoke an exploration authority that is granted entirely or substantially in respect of native title land if it appears to the Minister that the holder of the authority is not proceeding with reasonable diligence to obtain the agreement or determination necessary to authorise the effective conduct of mining operations on the land to which the authority relates.

DIVISION 2—PRODUCTION

Limits on grant of production tenement

63H. A production tenement may not be granted or registered over native title land unless—

- (a) the mining operations to be carried out under the tenement are authorised by a pre-existing agreement or determination registered under this Part; or

- (b) a declaration is made under the law of the State or the Commonwealth to the effect that the land is not subject to native title.¹

¹ A declaration to this effect may be made under Part 4 of the *Native Title (South Australia) Act 1994* or the *Native Title Act 1993* (Cwth). The effect of the declaration is that the land ceases to be native title land.

Applications for production tenements

63I. (1) The Minister may agree with an applicant for a production tenement over native title land that the tenement will be granted or registered contingent on the registration of an agreement or determination under this Part.

(2) The Minister may refuse an application for a production tenement over native title land if it appears to the Minister that the applicant is not proceeding with reasonable diligence to obtain the agreement or determination necessary to the grant or registration of the tenement to which the application relates (and if the application is refused, the applicant's claim lapses).

DIVISION 3—APPLICATION FOR DECLARATION

Application for declaration

63J. A person who seeks to carry out mining operations on native title land may apply to the ERD Court for a declaration that the land is not subject to native title.¹

¹ The application is to be made under the *Native Title (South Australia) Act 1994*.

DIVISION 4—NEGOTIATING PROCEDURE

Types of agreement authorising mining operations on native title land

63K. (1) An agreement authorising mining operations on native title land (a "**native title mining agreement**") may—

- (a) authorise mining operations by a particular mining operator; or
- (b) authorise mining operations of a specified class within a defined area by mining operators of a specified class who comply with the terms of the agreement.

Explanatory note—

If the authorisation relates to a particular mining operator it is referred to as an **individual authorisation**. Such an authorisation is not necessarily limited to mining operations under a particular exploration authority or production tenement but may extend also to future exploration authorities or production tenements. If the authorisation does extend to future exploration authorities or production tenements it is referred to as a **conjunctive authorisation**. An authorisation that extends to a specified class of mining operators is referred to as an **umbrella authorisation**.

(2) If a native title mining agreement is negotiated between a mining operator who does not hold a production tenement for the relevant land, and native title parties who are claimants to (rather than registered holders of) native title land, the agreement cannot extend to mining operations conducted on the land under a future production tenement.

(3) An umbrella authorisation can only relate to prospecting or mining for precious stones over an area of 200 square kilometres or less.

(4) If the native title parties with whom a native title mining agreement conferring an umbrella authorisation is negotiated are claimants to (rather than registered holders of) native title land, the term of the agreement cannot exceed 10 years.

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(5) The existence of an umbrella authorisation does not preclude a native title mining agreement between a mining operator and the relevant native title parties relating to the same land, and if an individual agreement is negotiated, the agreement regulates mining operations by a mining operator who is bound by the agreement to the exclusion of the umbrella authorisation.

Negotiation of agreements

63L. (1) A person (the "**proponent**") who seeks a native title mining agreement may negotiate the agreement with the native title parties.

Explanatory note—

The **native title parties** are the persons who are, at the end of the period of two months from when notice is given under section 63M, registered under the law of the State or the Commonwealth as holders of, or claimants to, native title in the land. A person who negotiates with the registered representative of those persons will be taken to have negotiated with the native title parties. Negotiations with other persons are not precluded but any agreement reached must be signed by the registered representative on behalf of the native title parties.

(2) The proponent must be—

- (a) if an agreement conferring an individual authorisation¹ is sought—the mining operator who seeks the authorisation;
- (b) if an agreement conferring an umbrella authorisation¹ is sought—the Minister or an association representing the interests of mining operators approved by regulation for the purposes of this section.

¹ See the explanatory note to section 63K(1).

Notification of parties affected

63M. (1) The proponent initiates negotiations by giving notice under this section.

(2) The notice must—

- (a) identify the land on which the proposed mining operations are to be carried out; and
- (b) describe the general nature of the proposed mining operations that are to be carried out on the land.

(3) The notice must be given to—

- (a) the relevant native title parties; and
- (b) the ERD Court; and
- (c) the Minister.

(4) Notice is given to the relevant native title parties as follows:

- (a) if a native title declaration establishes who are the holders of native title in the land—the notice must be given to the registered representative of the native title holders and the relevant representative Aboriginal body for the land;
- (b) if there is no native title declaration establishing who are the holders of native title in the land—the notice must be given to all who hold or may hold native title in the land in accordance with the method prescribed by Part 5 of the *Native Title (South Australia) Act 1994*.

What happens when there are no registered native title parties with whom to negotiate

63N. (1) If, two months after the notice is given to all who hold or may hold native title in the land, there are no native title parties in relation to the land to which the notice relates, the proponent may apply *ex parte* to the ERD Court for a summary determination.

(2) On an application under subsection (1), the ERD Court must make a determination authorising entry to the land for the purpose of carrying out mining operations on the land, and the conduct of mining operations on the land.

(3) The determination may be made on conditions the Court considers appropriate and specifies in the determination.

(4) The determination cannot confer a conjunctive or umbrella authorisation.¹

¹ See the explanatory note to section 63K(1).

Expedited procedure where impact of operations is minimal

63O. (1) This section applies to mining operations that—

- (a) will not directly interfere with the community life of the holders of native title in the land on which the operations are to be carried out; and
- (b) will not interfere with areas or sites of particular significance, in accordance with their traditions, to the holders of native title in the land on which the operations are to be carried out; and
- (c) will not involve major disturbance to the land on which the operations are to be carried out.

(2) If the proponent states in the notice given under this Division that the mining operations to which the notice relates are operations to which this section applies and that the proponent proposes to rely on this section, the proponent may apply *ex parte* to the ERD Court for a summary determination authorising mining operations in accordance with the proposals made in the notice.

(3) On an application under subsection (2), the ERD Court may make a summary determination authorising mining operations in accordance with the proposals contained in the notice.

(4) However, if within two months after notice is given, a written objection to the proponent's reliance on this section is given by the Minister, or a person who holds, or claims to hold, native title in the land, the Court must not make a summary determination under this section unless the Court is satisfied after giving the objectors an opportunity to be heard that the operations are in fact operations to which this section applies.

Negotiating procedure

63P. (1) The proponent and native title parties must negotiate in good faith and accordingly explore the possibility of reaching an agreement.

(2) However, the obligation to negotiate does not arise if the case is one where a summary determination may be made.

(3) If any of the negotiating parties requests the ERD Court to do so, the Court must mediate among the parties to assist in obtaining their agreement.

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(4) The Minister may (personally or by representative) intervene in negotiations under this Division.

Agreement

63Q. (1) An agreement negotiated under this Division may provide for payment to the native title parties based on profits or income derived from mining operations on the land or the quantity of minerals produced.

(2) The basis of the payment may be fixed in the agreement or left to be decided by the ERD Court or some other nominated arbitrator.

(3) An agreement must deal with—

- (a) notices to be given or other conditions to be met before the land is entered for the purposes of carrying out mining operations; and
- (b) principles governing the rehabilitation of the land on completion of the mining operations.

(4) If agreement is reached between the proponent and the native title parties authorising mining operations on the native title land, the proponent must lodge a copy of the agreement with a mining registrar and the mining registrar will, subject to this section, register the agreement.

(5) If the Minister is of the opinion that there is reason to believe that the agreement may not have been negotiated in good faith, the Minister may, within two months after the copy of the agreement is lodged for registration with the mining registrar, make an order prohibiting registration of the agreement.

(6) A party to an agreement may appeal against an order under subsection (5) to the ERD Court and the Court may, on appeal—

- (a) confirm or revoke the Minister's order; and
- (b) if the Court considers it appropriate, make a determination authorising entry on the land to carry out mining operations, and the conduct of mining operations on the land, on conditions determined by the Court.

Effect of registered agreement

63R. (1) A registered agreement negotiated under this Division is (subject to its terms) binding on, and enforceable by or against the original parties to the agreement and—

- (a) the holders from time to time of native title in the land to which the agreement relates; and
- (b) the holders from time to time of any exploration authority or production tenement under which mining operations to which the agreement relates are carried out.

(2) If a native title declaration establishes that the native title parties with whom an agreement was negotiated are not the holders of native title in the land or are not the only holders of native title in the land, the agreement continues in operation (subject to its terms) until a fresh agreement is negotiated under this Part with the holders of native title in the land, or for 2 years after the date of the declaration (whichever is the lesser).

(3) Either the holders of native title in the land or the mining operator may initiate negotiations for a fresh agreement by giving notice to the other.

(4) A registered agreement that authorises mining operations to be conducted under a future mining tenement is contingent on the tenement being granted or registered.

Application for determination

63S. (1) If agreement between the proponent and the native title parties is not reached within the relevant period, any party to the negotiations or the Minister may apply to the ERD Court for a determination.

[In this subsection the "**relevant period**" is—

- (a) if the mining operations to which the negotiations relate are merely of an exploratory nature—four months from when the negotiations were initiated; or
- (b) in any other case—six months from when the negotiations were initiated.]

(2) On an application under this section, the ERD Court may determine—

- (a) that mining operations may not be conducted on the native title land; or
- (b) that mining operations may be conducted on the native title land subject to conditions determined by the Court.

(3) If the ERD Court determines that mining operations may be conducted on native title land, the determination—

- (a) must deal with the notices to be given or other conditions to be met before the land is entered for the purposes of mining operations; but
- (b) cannot provide for payment to the native title parties based on profits or income derived from mining operations on the land or the quantity of minerals produced.

(4) The ERD Court must make its determination on an application under this section within the relevant period unless there are special reasons why it cannot do so.

[In this subsection, the "**relevant period**" is—

- (a) if a determination is sought only for exploring—four months from when the application is made; or
- (b) in any other case—six months from when the application is made.]

(5) The representative Aboriginal body for the area in which the land is situated is entitled to be heard in proceedings under this section.

Criteria for making determination

63T. (1) In making its determination, the ERD Court must take into account the following:

- (a) the effect of the proposed mining operations on—
 - (i) native title in the land; and
 - (ii) the way of life, culture and traditions of any of the native title parties; and
 - (iii) the development of the social, cultural and economic structures of any of those parties; and

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- (iv) the freedom of access by any of those parties to the land concerned and their freedom to carry out rites, ceremonies or other activities of cultural significance on the land in accordance with their traditions; and
 - (v) any area or site, on the land concerned, of particular significance to the native title parties in accordance with their traditions; and
 - (vi) the natural environment of the land concerned;
- (b) any assessment of the effect of the proposed mining operations on the natural environment of the land concerned—
- (i) made by a court or tribunal; or
 - (ii) made, or commissioned, by the Crown in any capacity or by a statutory authority;
- (c) the interests, proposals, opinions or wishes of the native title parties in relation to the management, use or control of the land concerned;
- (d) the economic or other significance of the proposed mining operations to Australia and to the State;
- (e) any public interest in the mining operations proceeding;
- (f) any other matter the ERD Court considers relevant.

(2) This section does not affect the operation of another law of the State or the Commonwealth for the preservation or protection of areas or sites of particular significance to Aboriginal people.

Limitation on powers of Court

63U. (1) The ERD Court cannot make a determination conferring a conjunctive or umbrella authorisation¹ unless the native title parties² are represented in the proceedings and agree to the authorisation.

(2) A conjunctive authorisation¹ conferred by determination cannot authorise mining operations under both an exploration authority and a production tenement unless the native title parties¹ are the registered holders of (rather than claimants to) native title land.³

(3) An umbrella authorisation¹ conferred by determination—

- (a) can only relate to prospecting or mining for precious stones over an area of 200 square kilometres or less; and
- (b) cannot authorise mining operations for a period exceeding 10 years unless the native title parties² are registered holders of (rather than claimants to) native title land.⁴

¹ See explanatory note to section 63K(1).

² See explanatory note to section 63L(1).

³ Section 63K(2) is of similar effect in relation to native title mining agreements.

⁴ Section 63K(3) and (4) are of similar effect in relation to native title mining agreements.

Effect of determination

63V. (1) A determination under this Division—

- (a) must be lodged with a mining registrar; and
- (b) must be registered two months after it was lodged for registration unless it has in the meantime been overruled by the Minister;¹ and
- (c) takes effect on registration.

(2) A determination registered under this Division has effect as if it were a contract between the proponent and the native title parties.

(3) A registered determination is (subject to its terms) binding on, and enforceable by or against the original parties to the proceedings in which the determination was made and—

- (a) the holders from time to time of native title in the land to which the determination relates; and
- (b) the holders from time to time of any exploration authority or production tenement under which mining operations to which the determination relates are carried out.

(4) If a native title declaration establishes that the native title parties to whom the determination relates are not the holders of native title in the land or are not the only holders of native title in the land, the determination continues in operation (subject to its terms) until a fresh determination is made, or for 2 years after the date of the declaration (whichever is the lesser).

(5) A determination under this Part that authorises mining operations to be conducted under a future mining tenement is contingent on the tenement being granted or registered.

¹ See section 63W.

Ministerial power to overrule determinations

63W. (1) If the Minister considers it to be in the interests of the State to overrule a determination of the ERD Court under this Part, the Minister may, by notice in writing given to the ERD Court and the parties to the proceedings before the Court, overrule the determination and substitute another determination that might have been made by the Court.

(2) However—

- (a) the Minister cannot overrule a determination—
 - (i) if more than two months have elapsed since the date of the determination; or
 - (ii) if the Minister was the proponent of the negotiations leading to the determination; and
- (b) the substituted determination cannot create a conjunctive or umbrella authorisation¹ if there was no such authorisation in the original determination nor can the substituted determination extend the scope of a conjunctive or umbrella authorisation.

Explanatory note—

The scope of an authorisation is extended if the period of its operation is lengthened, the area to which it applies is increased, or the class of mining operations to which it applies is expanded in any way.

¹ See the explanatory note to section 63K(1).

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No re-opening of issues

63X. If an issue is decided by determination under this Part, the parties to the proceedings in which the determination was made cannot make an agreement that is inconsistent with the terms of the determination unless the ERD Court authorises the agreement.

DIVISION 5—MISCELLANEOUS

Non-application of this Part to Pitjantjatjara and Maralinga lands

63Y. Nothing in this Part affects the operation of—

- (a) the *Pitjantjatjara Land Rights Act 1981*; or
- (b) the *Maralinga Tjarutja Land Rights Act 1984*.

Compensation to be held on trust in certain cases

63Z. (1) If a determination under this Part authorises mining operations on conditions requiring payment of compensation—

- (a) the ERD Court must decide the amount of the compensation; and
- (b) the compensation must be paid into the ERD Court to be held on trust and applied as required by this section.

(2) Compensation paid into the ERD Court under this section—

- (a) must, on application by the registered representative of the native title holders, be paid out to the registered representative; or
- (b) if the Court, on application by an interested person, is satisfied that it is just and equitable to pay the compensation in some other way—must be paid out as directed by the Court.

(3) However, if compensation is held on trust by the ERD Court under this section and—

- (a) a native title declaration is made to the effect that no part of the land is subject to native title; or
- (b) the proponent abandons the proposal to carry out mining operations on the land before exercising the right to do so and, by notice to the Minister, relinquishes the right to do so,

the compensation must be repaid to the person who paid it.

Non-monetary compensation

63ZA. (1) Compensation under this Part is to be given in the form of monetary compensation.

(2) However—

- (a) if, during negotiations under this Part, a person who may be entitled to compensation requests that the whole or part of the compensation be in a form other than money,¹ the other person who may be liable to pay compensation—
 - (i) must consider the request; and
 - (ii) must negotiate in good faith on the subject; and

- (b) the ERD Court may, at the request of a person entitled to compensation, order non-monetary compensation.¹

¹ *Example*—The non-monetary compensation might take the form of a transfer of property or the provision of goods or services.

Review of compensation

63ZB. (1) If—

- (a) mining operations are authorised by determination under this Part on conditions requiring the payment of compensation; and
- (b) a native title declaration is later made establishing who are the holders of native title in the land,

the ERD Court may, on application by the registered representative of the holders of native title in the land, or on the application of a person who is liable to pay compensation under the determination, review the provisions of the determination providing for the payment of compensation.

(2) The application must be made within three months after the date of the native title declaration.

(3) The Court may, on an application under this section—

- (a) increase or reduce the amount of the compensation payable under the determination (as from the date of application or a later date fixed by the Court); and
- (b) change the provisions of the determination for payment of compensation in some other way.

(4) In deciding whether to vary a determination and, if so, how, the Court must have regard to—

- (a) the assumptions about the existence or nature of native title on which the determination was made and the extent to which the native title declaration has confirmed or invalidated those assumptions; and
- (b) the need to ensure that the determination provides just compensation for, and only for, persons whose native title in land is affected by the mining operations; and
- (c) the interests of mining operators and investors who have relied in good faith on the assumptions on which the determination was made.

Saving of pre-1994 mining tenements

63ZC. This Part does not apply in relation to—

- (a) a claim registered before 1 January 1994; or
- (b) a lease or licence granted under this Act before 1 January 1994; or
- (c) a renewal of a lease or licence granted under this Act before 1 January 1994 in pursuance of a legally enforceable right created before that date.

Expiry of this Part

63ZD. This Part expires two years after the date of its commencement.

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**PART 10
WARDEN'S COURT AND FORFEITURE OF MINING TENEMENTS**

Establishment of Warden's Court

64. (1) There shall be a court entitled the "Warden's Court".

(2) The jurisdiction of the Warden's Court shall be exercisable by any warden.

(3) The Warden's Court may sit at such times and places as may be determined by a warden exercising the jurisdiction of the court and the jurisdiction of the Warden's Court may be exercised by a warden notwithstanding that another warden is simultaneously exercising the jurisdiction of the court in some other matter.

Powers, etc., of Warden's Court

65. (1) For the purposes of any proceedings before the Warden's Court, the Warden's Court may—

- (a) by summons signed by a warden, require the attendance before the Court of any person whom the warden thinks fit to call before the Court; or
- (b) by summons signed by a warden, require the production of any books, papers or documents; or
- (c) inspect any books, papers or documents produced before the Court and retain them for such reasonable period as the Court thinks fit and make copies of any of them or of any of their contents; or
- (d) require any person to make an oath or affirmation that he will truly answer all questions put to him before the Court (which oath or affirmation may be administered by a warden or any other person); or
- (e) require any person appearing before the Court (whether he has been summoned to appear or not) to answer any question put to him by the Court or any person appearing before the Court.

(1a) Subject to subsection (1b), if any person—

- (a) who has been served with a summons to attend before the Court neglects or fails to appear in obedience to the summons; or
- (b) who has been served with a summons to produce any books, papers or documents neglects or fails to comply with the summons; or
- (c) misbehaves himself before the Court, wilfully insults the Court or a warden or interrupts the proceedings of the Court; or
- (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Court,

he shall be guilty of a contempt of the Warden's Court.

(1b) A person shall not be obliged to answer a question if the answer to that question would tend to incriminate him, or to produce any books, papers or documents if their contents would tend to incriminate him.

(1c) In addition to the powers and authorities conferred on the Warden's Court by this Act, the Court shall have such of the powers and authorities of a justice, or a court of summary jurisdiction, under the *Justices Act 1921* as may be conferred on the Court by regulation.

(2) The Warden's Court shall have power to issue injunctions.

(3) An appeal shall lie against a judgment or order of the Warden's Court to the ERD Court.

(3a) The Director or the Mining Registrar may appeal against a judgment or order of the Warden's Court, whether or not he was a party to the proceedings in which the judgment or order was given or made.

(3b) An appeal against a judgment or order of the Warden's Court must be instituted within 1 month after publication of the judgment or order, but the ERD Court may, for proper cause, extend the period for instituting an appeal.

(4) Subject to any rules of the Supreme Court, the practice and procedure relating to an appeal from a judgment or order of the Warden's Court shall conform as nearly as practicable to the practice and procedure applicable to an appeal under the *Justices Act 1921*.

Rules of Warden's Court

66. (1) The Governor may make rules respecting the practice and procedure of the Warden's Court.

(1a) The rules may prescribe, and provide for, the payment of fees in respect of the lodging of documents in the Court or the issuing of documents by the Court.

(2) The rules may provide for the enforcement of judgments and orders, and the punishment of contempt of the Warden's Court and, in particular, may provide that appropriate provisions of the *Justices Act 1921* and of the *Local and District Criminal Courts Act 1926* shall apply, with such modifications as may be necessary or desirable and specified in the rules, in respect of judgments and orders of the Warden's Court.

Removal of cases to ERD Court

66A. (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.

Jurisdiction to hear disputes relating to mining tenements

67. (1) The Warden's Court shall have jurisdiction to determine, in such manner as may be just, all suits concerning any right claimed in, under, or in relation to, any mining tenement, or purported mining tenement, or any miner's right or precious stones prospecting permit.

(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.

Cancellation of miner's right or precious stones prospecting permit

68. (1) The Warden's Court may, upon the application of the Director of Mines, make either or both of the following orders:

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- (a) an order cancelling a miner's right or a precious stones prospecting permit;
- (b) an order prohibiting a person from holding or obtaining a miner's right or a precious stones prospecting permit for a period specified in the order or until further order of the Warden's Court.

(2) An order shall not be made under subsection (1) unless the Warden's Court is satisfied that the person against whom the order is made has contravened, or failed to comply with, the provisions of this Act or of any other Act or regulations regulating mining operations, and the matter is of sufficient gravity to justify the making of the order.

Forfeiture of claim

69. (1) The Warden's Court may, upon application by any interested person, make an order for the forfeiture of any mineral claim or precious stones claim.

(2) An order shall not be made under subsection (1) unless the Court is satisfied that the requirements of this Act in relation to the claim have not been complied with in a material respect and that the matter is of sufficient gravity to justify the forfeiture of the claim.

(3) Where an order for the forfeiture of a claim is made (otherwise than upon the application of the Director) under this section, the person upon whose application the order was made shall have, for a period of 14 days after the date of the order, a preferential right to peg out a claim of the same class as the forfeited claim upon the land comprised in the forfeited claim.

(3a) After an application has been made under this section, the mineral claim or precious stones claim to which the application relates cannot be surrendered, nor will it lapse, until the application has been determined.

(4) For the purposes of this section—

"**interested person**" means—

- (a) the Director of Mines; or
- (b) where the forfeiture of a mineral claim is sought, the holder of a miner's right or, where the forfeiture of a precious stones claim is sought, the holder of a precious stones prospecting permit.

Forfeiture and transfer of leases

70. (1) The Warden's Court may, upon application by any interested person, adjudge that a lease under this Act is liable to forfeiture, and recommend to the Minister that the lease be forfeited.

(2) A recommendation shall not be made under subsection (1) unless the Court is satisfied that the requirements of this Act in relation to the lease have not been complied with in a material particular and that the matter is of sufficient gravity to justify the forfeiture of the lease.

(3) Where the Warden's Court has recommended the forfeiture of a lease—

- (a) the Minister may, by notice in the *Gazette*, forfeit the lease to the Crown; and
- (b) the person on whose application the Court recommended forfeiture is then entitled to a transfer of the lease from the Crown for the balance of its term.

(4) A transfer of a lease under subsection (3)(b) takes effect on publication of a notice of transfer in the *Gazette*.

(4a) After an application has been made under this section, the lease to which the application relates shall not be transferred or surrendered until the application has been determined.

(5) For the purposes of this section—

"interested person" means the holder of a miner's right.

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**PART 11
ASSISTANCE TO MINING**

Minister may assist in conduct of mining operations

71. (1) The Minister may assist in the conduct of mining operations by the loan of mining equipment or of money to be expended in advancing mining operations.

(2) Assistance may be provided upon such terms and conditions as may be determined by the Minister, but any money advanced under subsection (1) shall become a debt due to the Crown, to be repaid in such manner as the Minister may direct.

Research and investigation

72. The Minister may—

- (a) conduct research and investigation into—
 - (i) the existence of native title on mineral land; and
 - (ii) problems affecting the conduct of mining operations or the treatment of ores; and
- (b) stipulate and recover charges for any such research or investigation conducted at the request of any person; and
- (c) pay the cost of any such research or investigation out of money provided by Parliament for the purpose.

Acquisition of mining equipment

73. The Minister may, out of money provided by Parliament, acquire mining equipment for the purposes of this Part.

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**PART 11A
CAVEATS**

Lodging of caveats

73A. (1) A person claiming an interest in a mining tenement may lodge with a mining registrar a caveat forbidding the registration of any transfer or other instrument affecting the mining tenement or interest.

(2) A caveat lodged under this section—

- (a) shall be in the prescribed form and shall be accompanied by the prescribed fee; and
- (b) shall state the full name and address of the caveator; and
- (c) shall be signed by the caveator or his agent; and
- (d) shall give an address within the State for the service of notices and proceedings in relation to the caveat.

(3) Upon the lodging of the caveat—

- (a) a memorial or copy of the caveat shall be entered in the register; and
- (b) notice of the lodging of the caveat shall be sent, by registered post or certified mail, to the holder of the mining tenement affected by the caveat.

(4) Successive caveats shall not be lodged in respect of the same subject matter except by leave of the Warden's Court.

Duration and effect of caveat

73B. (1) Except as provided in this section, a caveat shall lapse upon—

- (a) the order of the Warden's Court for the removal of the caveat;
- (b) the withdrawal of the caveat by the caveator;
- (c) the expiration of 14 days after notification that application has been made for the registration of a transfer or other instrument affecting the subject matter of the caveat has been sent by, or on behalf of, a mining registrar, by registered post or certified mail, to the caveator at the address for service given in the caveat, unless, within that period, the Warden's Court otherwise orders.

(2) When a caveat lapses, a memorial of that fact shall be entered in the register.

(3) Where the holder of a mining tenement has entered into an agreement with any person relating to the sale of an interest in the tenement, then, if the agreement so provides, either party to the agreement may lodge a caveat in accordance with this Part, together with a copy of the agreement, and the caveat shall remain in force for such period as may be specified in the agreement, unless sooner withdrawn by consent of the parties to the agreement or removed by order of the Warden's Court or some other court that is competent to adjudicate upon the rights protected by the caveat.

(4) A transfer or other instrument that would operate in derogation of rights protected by a caveat shall not be registered by a mining registrar, and its operation shall be suspended, while the caveat remains in force, unless the Warden's Court, or some other court that is competent to adjudicate upon the rights protected by the caveat, otherwise orders.

(5) Any person interested in the subject matter of a caveat may apply to the Warden's Court for an order under this section.

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**PART 12
MISCELLANEOUS**

Penalty for illegal mining

74. (1) A person who—

- (a) mines; or
- (b) sells, or disposes of, minerals recovered by him in the course of mining operations, or utilises any such minerals for a commercial or industrial purpose,

without being duly authorised by or under this Act shall be guilty of an offence and liable to a penalty not exceeding \$2 000 or imprisonment for 2 years.

(1a) A person who encourages, or procures the commission of an offence under subsection (1) shall be guilty of an offence and liable to a penalty not exceeding \$2 000 or imprisonment for 2 years.

(2) Where a person is upon a precious stones claim for the purpose of mining in contravention of subsection (1), he shall be guilty of an offence and liable to a penalty not exceeding \$2 000 or imprisonment for 2 years.

(3) The Minister may, by order in writing served personally upon any person, prohibit that person from entering or remaining upon any precious stones field.

(4) The Minister may, at any time, revoke an order made under this section and a person against whom such an order has been made may, at any time after the expiration of 1 year from the date of service of the order upon him, apply to the Minister for its revocation.

(5) An order shall not be made against any person under subsection (3) unless that person has been convicted or has been found guilty by a court—

- (a) of an offence against this section; or
- (b) of an offence involving larceny of minerals or attempted or intended larceny of minerals; or
- (c) of an offence, committed on a precious stones field, involving an assault; or
- (d) of an offence, committed on a precious stones field, against section 15(1)(a), 18 or 18A of the *Summary Offences Act 1953*; or
- (e) of an offence against section 103 or 104 of the *Criminal Law Consolidation Act 1935*,

and the order is, in the opinion of the Minister, necessary to restore, or safeguard, good order on a precious stones field.

(6) A person in respect of whom an order is in force under subsection (3) who enters, or remains upon, a precious stones field in contravention of the order shall be guilty of an offence and liable to a penalty not exceeding \$2 000 or imprisonment for 2 years.

(7) Proceedings for an offence against this section shall be instituted and disposed of in accordance with the procedure prescribed for minor indictable offences under the *Justices Act 1921*.

Compliance orders

74A. (1) If a person carries out mining operations without the authority required by this Act, the ERD Court may, on application by the Director or the owner of land on which the operations are carried out, make an order (a **compliance order**) requiring the person (the **respondent**)—

- (a) to stop the operations; and
- (b) if the operations have resulted in damage to land—to take specified action to rehabilitate the land.

(2) Before the Court makes a compliance order it must allow the respondent a reasonable opportunity to be heard on the application.

(3) A person against whom a compliance order is made must comply with the order.

Penalty: \$100 000.

Provision relating to certain minerals

75. (1) No claim or lease may be pegged out or granted in respect of extractive minerals on land granted in fee simple or land in respect of which native title conferring a right to exclusive possession of land exists except with the written consent of the owner of the land.

(2) The owner of land does not require a mining tenement under this Act for the recovery of extractive minerals from that land for his own personal use.

Avoidance of double compensation

75A. In determining compensation to be paid to a body or person under this Act, compensation that has been paid to the body or person, or to which the body or person is entitled under other laws, must be taken into account.

Returns

76. (1) The holder of a mining tenement must furnish the Director of Mines, in the months of January and July in each year, with a return in the prescribed form containing the prescribed information in relation to the conduct of mining operations and the minerals recovered in the course of those operations during the period of 6 months last preceding the commencement of the month in which the return must be furnished.

(2) A person who fails to comply with this section or who furnishes a return that is false or misleading in any material particular shall be guilty of an offence and liable to a penalty not exceeding \$500.

(3) The Director of Mines, upon application by the holder of a mining tenement or of his own motion, may extend the time within which a return must be furnished under this section.

(3a) This section extends to the operator of a private mine as if the operator were the holder of a mining tenement.

- (4) This section does not apply to—
- (a) the holder of a precious stones claim; or
 - (b) the holder of an exploration licence; or
 - (c) the holder of a miscellaneous purposes licence; or

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- (d) the holder of an access claim; or
- (e) the holder of a retention lease.

Records and samples

77. (1) The holder of a mining tenement (except a precious stones claim or a miscellaneous purposes licence) shall keep such records and geological samples as may be prescribed or as the Director of Mines may, by notice served upon him, require.

Penalty: \$500.

(2) A person required to keep records and geological samples under subsection (1) shall, at the request of the Director of Mines or any person acting under his written authority, produce those records or geological samples for inspection.

Penalty: \$500.

(3) The holder of a mining tenement shall, at the request of the Director of Mines or any person acting under his written authority, permit a person nominated in the request to make tests, and take samples of minerals, from the land comprised in the mining tenement.

Penalty: \$500.

(4) The Director of Mines may, with the consent of the Minister, publish the results of—

- (a) any tests made in pursuance of this section; or
- (b) the analysis of any samples taken in pursuance of this section.

Provisions as to persons under 16 years of age

78. (1) No person under the age of 16 years is competent to hold a miner's right, precious stones prospecting permit or mining tenement.

(2) The obligations imposed by or under this Act are binding on a minor of or above the age of 16 years who holds a miner's right, precious stones prospecting permit or mining tenement.

Minister may grant exemption from certain obligations

79. (1) Where the Minister is satisfied that circumstances exist that justify him in so doing, he may—

- (a) exempt the holder of a lease or licence under this Act from the obligation to comply with a condition of the lease or licence; or
- (b) exempt the holder of a mining tenement from the obligation to comply with a provision of this Act (except Part 9B).

(2) An exemption under this section—

- (a) may be granted absolutely or on conditions; and
- (b) shall remain in force for a period determined by the Minister.

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

Conditions under which land may be simultaneously subject to more than one tenement

80. (1) Subject to this section, land shall not be simultaneously subject to more than one mining tenement under this Act.

(1a) Land may be simultaneously subject to an access claim and a mining tenement of some other kind but, in such a case, the rights conferred by the claim are, while the claim remains in force, exclusive of the rights conferred by the other mining tenement in respect of lands comprised in the claim.

(2) Where land is subject to a mining tenement, a further claim, lease or miscellaneous purposes licence may, with the consent of the holder of that mining tenement or the approval of the Warden's Court, be pegged out, or granted, in respect of any portion of the land comprised in the prior tenement, and the rights conferred by the respective tenements shall then be modified according to the agreement of the parties or the order of the Warden's Court, as the case may require.

(3) The Warden's Court shall not approve the pegging of a claim or the granting of a lease or miscellaneous purposes licence under subsection (2) unless it is satisfied that the rights of the holder of the prior tenement would not be materially diminished by the granting of such an approval.

This Act not to affect Pastoral Act or Local Government Act

81. This Act does not derogate from any provision of the *Pastoral Act 1936* or the *Local Government Act 1934* relating to the conduct of mining operations.

Surrender of lease or licence

82. The Minister may, upon receipt of an application in the prescribed form by the holder of a lease or licence under this Act, consent to the surrender of the lease or licence.

Dealing with licences

83. (1) Subject to subsection (2), a lease or licence, or an interest in a lease or licence, under this Act shall not be assigned, transferred, sublet, or made the subject of any trust or other dealing, whether directly or indirectly, without the consent in writing of the Minister, and any such transaction entered into without that consent shall be void.

(2) A lease or licence, or an interest in a lease or licence, may be charged without the consent of the Minister, but any assignment or transfer of the licence or interest for the purpose of enforcing the charge shall not be made except with the consent of the Minister and, if made without that consent, shall be void.

(3) The Minister may, before consenting to a transaction subject to the provisions of this section, require the parties to furnish him with such information in relation to the transaction as he may require.

(4) An application for the consent of the Minister under this section shall be accompanied by the prescribed fee.

Duplicate copy of lease or licence

84. Where the Minister is satisfied, upon application by the holder of a lease or licence under this Act, that the copy of the lease or licence to the possession of which that person is entitled has been lost or destroyed, he may issue, at the expense of the applicant, a duplicate copy of the lease or licence.

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Safety net

84A. (1) The Minister may enter into an agreement with the holder of a mining tenement—

- (a) that, if the tenement should at some future time be found to be wholly or partially invalid due to circumstances beyond the control of the holder of the tenement, the holder of the tenement will have a preferential right to the grant of a new tenement; and
- (b) dealing with the terms and conditions on which the new tenement will be provided.

(2) The Minister must consider any proposal by the holder of a mining tenement for an agreement under this section.

Non-payment of money due to Crown

85. A lease or licence shall be liable to forfeiture if any sum payable to the Minister by the holder of the lease or licence is not paid within 3 months after the day on which it fell due.

Removal of machinery, etc.

86. (1) The owner of any machinery or other goods upon the area of a mining tenement that has been transferred, surrendered or forfeited, or has lapsed, may, at any time within the period of 3 months after the date of the transfer, surrender, forfeiture or lapse, enter and remove the machinery or other goods from that area.

(2) The Chief Inspector may cause any machinery or other goods that have been abandoned in the area of a mining tenement that has been forfeited, surrendered or abandoned, or has lapsed, to be sold.

(3) The proceeds from a sale under subsection (2) shall be paid to the Treasurer who shall, upon the receipt of due application by the person by whom the machinery or other goods were abandoned, pay those proceeds to that person.

(4) If money derived from the sale of machinery or other goods under this section is not claimed within 2 years of the date of the sale, it shall be forfeited to the Crown.

Obligations in respect of takeover of corporations

87. (1) A corporation shall not, without the consent of the Minister, enter into any contract or agreement by virtue of which any other corporation that holds a lease or licence under this Act becomes a subsidiary of that corporation.

(2) A corporation that holds a lease or licence under this Act shall not, without the consent of the Minister, enter into any contract or agreement by virtue of which it becomes a subsidiary of another corporation.

(3) Any such contract or agreement entered into without the consent of the Minister is void.

(4) A corporation that is a subsidiary of another corporation shall, in applying for a lease or licence under this Act, lodge with its application a written notice of the fact addressed to the Director of Mines, and shall supply him with such information in relation to the corporation of which it is a subsidiary as the Director may require.

Penalty: \$200.

(5) A corporation is a subsidiary of another for the purposes of this section if it is a subsidiary of that other corporation for the purposes of the *Companies (South Australia) Code*.

Powers of inspection

87A. An inspector or an authorised person may, at any time, enter and remain upon land comprised in a mining tenement for the purpose of ascertaining whether the provisions of this Act have been, or are being, complied with.

Obstruction, etc., of officers exercising powers under this Act

88. A person shall not wilfully obstruct or impede any officer appointed under this Act in the execution of his duty.

Penalty: \$500 or imprisonment for 6 months.

Obstruction, etc., of person authorised to mine under this Act

89. A person shall not, without lawful excuse, obstruct or hinder the holder of a miner's right, a precious stones prospecting permit or a mining tenement in the reasonable exercise of rights conferred on him under this Act.

Penalty: \$200.

Immunity from liability

89A. No liability attaches to an officer or employee of the Crown or other person to whom powers or functions have been delegated under this Act for an act done, or omission made, in good faith in the course of carrying out functions related to the administration or enforcement, or purported administration or enforcement, of this Act.

Evidentiary provision

90. (1) In any proceedings for an offence against this Act, an allegation in the complaint that any land referred to in the complaint is mineral land, or land exempt from operations in pursuance of this Act, shall be deemed to be proved in the absence of evidence to the contrary.

(2) In any proceedings, a document purporting to be a miner's right, precious stones prospecting permit, lease or licence under this Act shall be accepted as such in the absence of evidence to the contrary.

Proceedings

91. Proceedings in respect of offences under this Act shall, subject to any provision of this Act to the contrary, be disposed of summarily.

Regulations

92. The Governor may make such regulations as are contemplated by this Act, or as he thinks necessary or expedient for the purposes of this Act and, without limiting the generality of the foregoing, those regulations may—

- (a) regulate and control the issue of miner's rights, precious stones prospecting permits, certificates of registration in respect of claims, leases and licences under this Act; and
- (b) provide for the maintenance and inspection of registers; and
- (c) regulate, restrict or prohibit operations of any kind upon mining tenements or mining tenements relating to land within an area specified in the regulations; and
- (d) declare equipment of any kind to be declared equipment for the purposes of this Act; and

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- (e) prescribe any matters in relation to the nature or size of any kind of mining tenement, and the incidents attaching to, and the obligations entailed in, ownership of a mining tenement; and
- (f) require that a mining tenement be worked with proper diligence, in conformity with the requirements of the regulations, as to the number of men, and the nature of the machinery, to be employed in working the mining tenement and such other matters as may be required in the regulations; and
- (g) provide for the amalgamation, in accordance with the regulations, of 2 or more mining tenements, or the conditions affecting 2 or more mining tenements so that the mining tenements may be worked as if they together constituted a single mining tenement; and

* * * * *

- (i) provide for the protection of land upon which mining operations are conducted and require the restoration, to the satisfaction of an inspector, of land disturbed by mining operations; and

* * * * *

- (k) restrict or prohibit mining operations that may cause nuisance or inconvenience to persons in the vicinity of the mining operations; and
- (l) restrict or prohibit mining operations that may result in the pollution of any watercourse or water supply or any natural amenities; and
- (m) regulate the expenditure of money from the Extractive Areas Rehabilitation Fund; and
- (n) prescribe, and regulate the performance of, the duties of inspectors, mining registrars and other officers appointed under this Act; and
- (o) prescribe, and provide for the payment of, any fee for the purposes of this Act; and
- (p) prescribe any form for the purposes of this Act; and
- (q) prescribe a penalty, recoverable summarily, not exceeding \$1 000 for breach of, or non-compliance with, any regulation.

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SCHEDULE OF TRANSITIONAL PROVISIONS

1. Any land declared to be mineral land under the repealed Act shall, subject to this Act, be and continue to be mineral land under this Act and any land reserved from the operation of the repealed Act shall, subject to this Act, be and continue to be land reserved from the operation of this Act.

2. A gold lease, mineral lease, coal lease, or miscellaneous lease granted under the repealed Act and in force immediately before the commencement of this Act shall be deemed to be a mining lease granted under this Act and shall, subject to this Act, remain in force for the remainder of the period for which it was granted or last renewed.

3. Where a person lawfully entered upon land before the commencement of this Act for the purposes of conducting mining operations, he may, subject to this Act, continue those operations upon the land in all respects as if he had lawfully entered upon the land in pursuance of this Act.

4. A business licence or an occupation licence granted under the repealed Act and in force immediately before the commencement of this Act shall be deemed to be a miscellaneous purposes licence under this Act, and shall, subject to this Act, remain in force for the remainder of the period for which it was granted or last renewed.

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APPENDIX

LEGISLATIVE HISTORY

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 7 of The Public General Acts of South Australia 1837-1975 at page 326.
- Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 31 July 1986. A schedule of these alterations was laid before Parliament on 5 August 1986.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

Section 3:	repealed by 14, 1986, s. 3(1) (Sched. 5)
Section 4:	amended by 51, 1978, s. 3; 71, 1981, s. 3; repealed by 14, 1986, s. 3(1) (Sched. 5)
Section 5(1), (2), (6) and (8):	being transitional provisions have been transferred to the Schedule of Transitional Provisions
Section 5(3)-(5), (7), (9)-(11):	repealed by 14, 1986, s. 3(1) (Sched. 5)
Section 6:	redesignated as s. 6(1) by 71, 1981, s. 4(i) definition of "the appropriate court" inserted by 86, 1988, s. 3(a); repealed and definition of "appropriate court" inserted in its place by 43, 1995, s. 3(a) definition of "authorised person" inserted by 105, 1976, s. 3(a) definition of "declared equipment" substituted by 43, 1995, s. 3(b) definition of "the Director of Mines" or "the Director" substituted by 51, 1978, s. 4(e) definition of "ERD Court" inserted by 43, 1995, s. 3(c) definition of "exempt land" inserted by 71, 1981, s. 4(a) definition of "exploration authority" inserted by 43, 1995, s. 3(d) definition of "exploring" inserted by 71, 1981, s. 4(a) definition of "extractive minerals" substituted by 51, 1978, s. 4(a) definition of "fossicking" inserted by 51, 1978, s. 4(a); substituted by 71, 1981, s. 4(b) definition of "machinery" inserted by 71, 1981, s. 4(c) definition of "minerals" amended by 105, 1976, s. 3(b), (c); 71, 1981, s. 4(d) definition of "mining" or "mining operations" amended by 51, 1978, s. 4(b); 71, 1981, s. 4(e) definition of "a mining registrar" inserted by 14, 1986, s. 3(1) (Sched. 5) definition of "the Mining Registrar" inserted by 14, 1986, s. 3(1) (Sched. 5) definition of "mining tenement" amended by 105, 1976, s. 3(d) definition of "native title", "native title holder" and "native title land" inserted by 43, 1995, s. 3(e) definition of "native title mining determination" inserted by 43, 1995, s. 3(e) definition of "owner" substituted by 86, 1988, s. 3(b); 43, 1995, s. 3(f) definition of "precious stones field" amended by 105, 1976, s. 3(e); 51, 1978, s. 4(c); substituted by 71, 1981, s. 4(f) definition of "prescribed notice of entry" inserted by 43, 1995, s. 3(g)

	definition of "production tenement" inserted by 43, 1995, s. 3(g)
	definition of "prospecting" or "to prospect" repealed and definition of "prospecting" inserted in its place by 71, 1981, s. 4(g)
	definition of "radioactive material" inserted by 51, 1978, s. 4(d)
	definition of "registered representative" inserted by 43, 1995, s. 3(h)
	definition of "registrar" or "mining registrar" repealed by 14, 1986, s. 3(1) (Sched. 5)
	definition of "subsurface stratum" inserted by 71, 1981, s. 4(h)
	definition of "surface stratum" inserted by 71, 1981, s. 4(h)
	definition of "warden" amended by 105, 1976, s. 3(f); substituted by 50, 1983, s. 2
Section 6(2):	inserted by 71, 1981, s. 4(i)
Section 6(3):	inserted by 43, 1995, s. 3(i)
Section 7:	redesignated as s. 7(1) by 71, 1981, s. 5
Section 7(2):	inserted by 71, 1981, s. 5; substituted by 86, 1988, s. 4
Section 8(1):	amended by 51, 1978, s. 5; 71, 1981, s. 6(a)
Section 8(3):	inserted by 71, 1981, s. 6(b)
Section 9(1):	amended by 105, 1976, s. 4; 51, 1978, s. 6; 86, 1988, s. 5(a); 43, 1995, s. 4(a)
Section 9(3):	substituted by 71, 1981, s. 7; amended by 97, 1982, s. 3(a); 86, 1988, s. 5(b)
Section 9(3a):	inserted by 71, 1981, s. 7; amended by 86, 1988, s. 5(c)
Section 9(3b):	inserted by 97, 1982, s. 3(b); amended by 43, 1995, s. 4(b)
Section 9(3c):	inserted by 97, 1982, s. 3(b)
Section 9(5):	inserted by 86, 1988, s. 5(d)
Section 10A:	inserted by 51, 1978, s. 7
Section 10A(1):	amended by 71, 1981, s. 8
Section 11:	substituted by 14, 1986, s. 3(1) (Sched. 5)
Section 12:	substituted by 3, 1993, s. 2
Section 13:	substituted by 50, 1983, s. 3; 14, 1986, s. 3(1) (Sched. 5)
Section 15(2):	substituted by 43, 1995, s. 5
Section 15A:	inserted by 105, 1976, s. 5
Section 17(2):	amended by 60, 1994, s. 3
Section 17(4):	amended by 71, 1981, s. 9(a)
Section 17(6) and (7):	amended by 43, 1995, s. 6
Section 17(11):	inserted by 71, 1981, s. 9(b)
Section 19(1):	amended by 86, 1988, s. 6
Section 19(5), (6), (10), (13), (19), (20):	amended by 43, 1995, s. 7
Section 19(21):	amended by 14, 1986, s. 3(1) (Sched. 5)
Section 19(26):	amended by 43, 1995, s. 7
Section 20(4) and (5):	inserted by 105, 1976, s. 6
Section 20(6):	inserted by 71, 1981, s. 10
Section 21:	amended and redesignated as s. 21(1) by 105, 1976, s. 7; amended by 51, 1978, s. 8(a)
Section 21(2):	inserted by 105, 1976, s. 7(b); amended by 51, 1978, s. 8(b)
Section 22(1a) and (1b):	inserted by 71, 1981, s. 11(a)
Section 22(3):	substituted by 71, 1981, s. 11(b)
Section 24(1):	amended by 14, 1986, s. 3(1) (Sched. 5)
Section 24(2):	repealed by 105, 1976, s. 8
Section 24(4):	amended by 71, 1981, s. 12(a); substituted by 43, 1995, s. 8
Section 24(4a):	inserted by 71, 1981, s. 12(b); substituted by 43, 1995, s. 8
Section 25(1):	substituted by 71, 1981, s. 13
Section 25(2):	substituted by 105, 1976, s. 9
Section 26(2):	amended by 71, 1981, s. 14(a)
Section 26(3):	inserted by 51, 1978, s. 9; amended by 71, 1981, s. 14(b)
Section 26(4):	inserted by 71, 1981, s. 14(c)
Section 27:	amended by 105, 1976, s. 10; substituted by 51, 1978, s. 10; amended by 71, 1981, s. 15

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Section 28(1) - (4):	substituted by 71, 1981, s. 16
Section 28(5):	repealed by 105, 1976, s. 11; inserted by 71, 1981, s. 16; substituted by 43, 1995, s. 9
Section 29(2):	amended by 71, 1981, s. 17
Section 30(1):	amended by 71, 1981, s. 18(a), (b)
Section 30(1)(c):	repealed by 71, 1981, s. 18(b)
Section 30(2):	amended by 105, 1976, s. 12; 71, 1981, s. 18(c); 12, 1988, Sched. 2
Section 30(3):	amended by 71, 1981, s. 18(d)
Section 30A:	inserted by 71, 1981, s. 19; substituted by 43, 1995, s. 10
Section 33(2):	amended by 43, 1995, s. 11
Section 33(3):	repealed by 71, 1981, s. 20(a)
Section 33(4):	amended by 14, 1986, s. 3(1) (Sched. 5)
Section 33(5):	amended by 43, 1995, s. 11
Section 33(7):	amended by 14, 1986, s. 3(1) (Sched. 5)
Section 33(8):	repealed by 71, 1981, s. 20(b)
Section 34(1):	amended by 71, 1981, s. 21(a); 43, 1995, s. 12
Section 34(1a) and (1b):	inserted by 71, 1981, s. 21(b)
Section 34(2):	substituted by 71, 1981, s. 21(c); repealed by 54, 1993, s. 10(a)
Section 34(5):	substituted by 71, 1981, s. 21(d)
Section 34(6):	amended by 105, 1976, s. 13; 71, 1981, s. 21(e); 12, 1988, Sched. 2
Section 35(1):	substituted by 71, 1981, s. 22(a)
Section 35(3):	inserted by 71, 1981, s. 22(b)
Section 35A:	inserted by 71, 1981, s. 23
Section 35A(1):	substituted by 54, 1993, s. 10(b)
Section 35A(1a):	inserted by 54, 1993, s. 10(b); substituted by 43, 1995, s. 13
Section 37(2):	amended by 43, 1995, s. 14
Section 37(3) and (4):	repealed by 105, 1976, s. 14
Section 38(2):	amended by 105, 1976, s. 15(a); 71, 1981, s. 24
Section 38(3):	amended by 105, 1976, s. 15(b)
Section 38(4):	inserted by 43, 1995, s. 15
Section 39:	amended by 71, 1981, s. 25
Section 40(2):	substituted by 43, 1995, s. 16
Section 40(3) and (4):	inserted by 43, 1995, s. 16
Section 41:	repealed by 71, 1981, s. 26; inserted by 41, 1995, s. 3
	Part 6A comprising ss. 41A - 41F and heading inserted by 51, 1978, s. 11
Section 41A(1):	amended by 71, 1981, s. 27(a); 43, 1995, s. 17
Section 41A(1a):	inserted by 71, 1981, s. 27(b)
Section 41A(5):	amended by 71, 1981, s. 27(c); 12, 1988, Sched. 2
Section 41C(2):	amended by 43, 1995, s. 18
Section 41D:	substituted by 71, 1981, s. 28
Section 41D(4):	inserted by 43, 1994, s. 19
Section 41E(2):	substituted by 43, 1995, s. 20
Section 41E(3) and (4):	inserted by 43, 1995, s. 20
Section 41F:	substituted by 71, 1981, s. 29
Section 42(1):	amended by 71, 1981, s. 30(a)
Section 42(4) and (5):	inserted by 105, 1976, s. 16
Section 42(6):	inserted by 71, 1981, s. 30(b)
Section 43:	amended and redesignated as s. 43(1) by 105, 1976, s. 17
Section 43(2):	inserted by 105, 1976, s. 17(b); amended by 71, 1981, s. 31(a), (b)
Section 43(3):	inserted by 71, 1981, s. 31(c); repealed by 14, 1986, s. 3(1) (Sched. 5)
Section 44(1):	amended by 51, 1978, s. 12
Section 44(2a):	inserted by 71, 1981, s. 32(a)
Section 44(3):	substituted by 86, 1988, s. 7
Section 44(4) and (5):	repealed by 86, 1988, s. 7

Section 44(6):	inserted by 105, 1976, s. 18
Section 44(7):	inserted by 71, 1981, s. 32(b)
Section 46(1):	amended by 71, 1981, s. 33(a); 14, 1986, s. 3(1) (Sched. 5)
Section 46(2):	repealed by 105, 1976, s. 19(a); inserted by 71, 1981, s. 33(b)
Section 46(3):	amended by 43, 1995, s. 21(a)
Section 46(3a):	inserted by 43, 1995, s. 21(b)
Section 46(6):	substituted by 86, 1988, s. 8(a)
Section 46(8a):	inserted by 43, 1995, s. 21(c)
Section 46(9):	amended by 105, 1976, s. 19(b); substituted by 51, 1978, s. 13
Section 46(10):	inserted by 86, 1988, s. 8(b)
Section 47:	amended by 71, 1981, s. 34
Section 48:	repealed by 71, 1981, s. 35
Section 49:	amended by 105, 1976, s. 20
Section 50:	substituted by 43, 1995, s. 22
Section 51:	redesignated as s. 51(1) by 105, 1976, s. 21
Section 51(2) and (3):	inserted by 105, 1976, s. 21; repealed by 71, 1981, s. 36
Section 51A:	inserted by 86, 1988, s. 9
Section 51B:	inserted by 3, 1993, s. 3
Section 52(2):	substituted by 51, 1978, s. 14; repealed by 86, 1988, s. 10(a)
Section 52(3):	substituted by 51, 1978, s. 14
Section 52(4):	amended by 105, 1976, s. 22; 71, 1981, s. 37; 12, 1988, Sched. 2
Section 52(5) and (6):	inserted by 86, 1988, s. 10(b)
Section 52(7):	inserted by 86, 1988, s. 10(b); substituted by 43, 1995, s. 23
Section 52(8) and (9):	inserted by 43, 1995, s. 23
Section 53:	substituted by 86, 1988, s. 11
Section 53(2):	substituted by 54, 1993, s. 10(c)
Section 53(4):	amended by 54, 1993, s. 10(d)
Section 53(4)(ab):	repealed by 43, 1995, s. 24
Section 53(5):	amended by 54, 1993, s. 10(e)
Section 54:	amended by 43, 1995, s. 25
Section 55(2):	amended by 105, 1976, s. 23(a)
Section 55(3):	amended by 105, 1976, s. 23(b)
Section 55(4):	inserted by 43, 1995, s. 26
Section 56:	redesignated as s. 56(1) by 41, 1995, s. 4
Section 56(2) and (3):	inserted by 41, 1995, s. 4
	Part 8A comprising ss. 56A - 56D and heading inserted by 41, 1995, s. 5
Section 57:	amended by 71, 1981, s. 38; substituted by 86, 1988, s. 12
Section 58:	amended by 105, 1976, s. 24; 71, 1981, s. 39; substituted by 43, 1995, s. 27
Section 58A:	inserted by 71, 1981, s. 40; substituted by 43, 1995, s. 27
Section 59(1):	substituted by 51, 1978, s. 15(a); amended by 71, 1981, s. 41(a), (b)
Section 59(1a):	inserted by 51, 1978, s. 15(a)
Section 59(1b):	inserted by 71, 1981, s. 41(c)
Section 59(2):	amended by 71, 1981, s. 41(d)
Section 59(6):	amended by 43, 1995, s. 28(a)
Section 59(8):	amended by 51, 1978, s. 15(b); 71, 1981, s. 41(e); substituted by 43, 1995, s. 28(b)
Section 60(1):	amended by 105, 1976, s. 25; 71, 1981, s. 42(a); substituted by 43, 1995, s. 29
Section 60(5):	repealed by 71, 1981, s. 42(b)
Section 61(1):	amended by 43, 1995, s. 30
Section 61(3) - (5):	amended by 86, 1988, s. 13
Section 62(1):	amended by 71, 1981, s. 43(a); 86, 1988, s. 14(a)
Section 62(2):	amended by 86, 1988, s. 14(b)
Section 62(3):	substituted by 71, 1981, s. 43(b); 86, 1988, s. 14(c)
Section 63(2):	amended by 60, 1994, s. 4

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	Part 9A comprising ss. 63A - 63E and heading inserted by 71, 1981, s. 44
Section 63C(1) and (2):	amended by 14, 1986, s. 3(1) (Sched. 5)
Section 63E(1):	substituted by 43, 1995, s. 31
Section 63E(1a):	inserted by 43, 1995, s. 31
	Part 9B comprising ss. 63F - 63ZD and headings inserted by 43, 1995, s. 32
Section 65(1a):	amended by 105, 1976, s. 26
Section 65(3):	amended by 43, 1995, s. 33
Section 65(3a):	inserted by 71, 1981, s. 45
Section 65(3b):	inserted by 71, 1981, s. 45; amended by 43, 1995, s. 33
Section 66(1a):	inserted by 71, 1981, s. 46
Section 66(2):	amended by 105, 1976, s. 27
Section 66A:	inserted by 86, 1988, s. 15; amended by 43, 1995, s. 34
Section 67(1):	amended by 105, 1976, s. 28(a)
Section 67(3):	inserted by 105, 1976, s. 28(b)
Section 68(1):	substituted by 51, 1978, s. 16(a); amended by 71, 1981, s. 47
Section 68(2):	amended by 105, 1976, s. 29; 51, 1978, s. 16(b)
Section 69(3):	amended by 105, 1976, s. 30(a)
Section 69(3a):	inserted by 71, 1981, s. 48; substituted by 86, 1988, s. 16
Section 69(4):	substituted by 105, 1976, s. 30(b)
Section 70(3) and (4):	substituted by 86, 1988, s. 17
Section 70(4a):	inserted by 71, 1981, s. 49
Heading preceding section 71:	substituted by 71, 1981, s. 50
	Part 11A comprising ss. 73A and 73B and heading inserted by 71, 1981, s. 51
Section 72:	amended by 43, 1995, s. 35
Section 73B(1):	amended by 14, 1986, s. 3(1) (Sched. 5)
Section 74(1):	amended by 105, 1976, s. 31(a), (b); 51, 1978, s. 17
Section 74(1a):	inserted by 71, 1981, s. 52(a)
Section 74(4):	substituted by 105, 1976, s. 31(c); amended by 71, 1981, s. 52(b)
Section 74(5):	amended by 71, 1981, s. 52(c), (d); 14, 1986, s. 3(1) (Sched. 5)
Section 74A:	inserted by 43, 1995, s. 36
Section 75(1):	amended by 14, 1986, s. 3(1) (Sched. 5); substituted by 43, 1995, s. 37
Section 75(2):	substituted by 105, 1976, s. 32
Section 75A:	inserted by 43, 1995, s. 38
Section 76(1):	amended by 51, 1978, s. 18(a)
Section 76(3a):	inserted by 86, 1988, s. 18
Section 76(4):	inserted by 51, 1978, s. 18(b); amended by 71, 1981, s. 53
Section 77(1):	substituted by 51, 1978, s. 19; amended by 71, 1981, s. 54
Section 77(2):	substituted by 51, 1978, s. 19
Section 77(3) and (4):	inserted by 105, 1976, s. 33
Section 79:	redesignated as s. 79(1) by 51, 1978, s. 20; substituted by 71, 1981, s. 55; amended by 14, 1986, s. 3(1) (Sched. 5); 43, 1995, s. 39(a)
Section 79(2):	inserted by 51, 1978, s. 20
Section 79(3):	inserted by 43, 1995, s. 39(b)
Section 80(1):	amended by 71, 1981, s. 56(a)
Section 80(1a):	inserted by 71, 1981, s. 56(b)
Section 80(2):	amended by 86, 1988, s. 19(a)
Section 80(3):	amended by 86, 1988, s. 19(b)
Section 83(1):	amended by 14, 1986, s. 3(1) (Sched. 5)
Section 84A:	inserted by 43, 1995, s. 40
Section 86(1):	amended by 105, 1976, s. 34(a), (b); 71, 1981, s. 57

Section 86(2):	amended by 105, 1967, s. 34(c)
Section 87(1) - (4):	amended by 14, 1986, s. 3(1) (Sched. 5)
Section 87(5):	inserted by 14, 1986, s. 3(1) (Sched. 5)
Section 87A:	inserted by 105, 1976, s. 35
Section 88:	amended by 71, 1981, s. 58
Section 89:	amended by 14, 1986, s. 3(1) (Sched. 5)
Section 89A:	inserted by 43, 1995, s. 41
Section 92:	amended by 105, 1976, s. 36; 51, 1978, s. 21
Section 92(h):	repealed by 71, 1981, s. 59
Section 92(j):	repealed by 71, 1981, s. 59
Schedule:	repealed by 14, 1986, s. 3(1) (Sched. 5)
Schedule of Transitional Provisions	transferred from s. 5 where it was designated as s. 5(1), (2), (6) and (8), respectively