

OPAL MINING ACT 1995

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[New Parts 1, 8 and Appendix]

[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

OPAL MINING ACT 1995

An Act to regulate prospecting and mining for opals and other precious stones.

*This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at **12 June 2003**.*

Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.

OPAL MINING ACT 1995

being

Opal Mining Act 1995 No. 102 of 1995
[Assented to 14 December 1995]¹

as amended by

Statutes Amendment (Native Title) Act 1998 No. 23 of 1998 [Assented to 2 April 1998]²

Statutes Amendment (Mining Administration) Act 1999 No. 1 of 1999 [Assented to 25 February 1999]³

Statutes Amendment (Extension of Native Title Sunset Clauses) Act 2000 No. 22 of 2000 [Assented to 8 June 2000]

Statutes Amendment (Courts and Judicial Administration) Act 2001 No. 69 of 2001 [Assented to 6 December 2001]⁴

Mining (Miscellaneous) Amendment Act 2003 No. 12 of 2003 [Assented to 12 June 2003]⁵

¹ Came into operation 21 April 1997: *Gaz.* 3 April 1997, p. 1386.

² Part 4 (ss. 12 & 13) came into operation 21 May 1998: *Gaz.* 21 May 1998, p. 2199.

³ Part 3 (s. 10) came into operation 1 April 1999: *Gaz.* 25 March 1999, p. 1462.

⁴ Part 10 (ss. 23-25) came into operation 3 February 2002: *Gaz.* 24 January 2002, p. 346.

⁵ **Part 3 (s. 19) came into operation 12 June 2003: *Gaz.* 12 June 2003, p. 2497.**

N.B. The amendments effected to this Act by the *River Murray Act 2003* have not been brought into operation.

NOTE:

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

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

Short title

1. This Act may be cited as the *Opal Mining Act 1995*.

* * * * *

Interpretation

3. (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 \$150 000—the Warden's Court;¹

"**approved association**" means an association granted an approval under section 96;

"**authorised person**" means a person appointed as an authorised person under section 77;

"**Chief Inspector**" means the Chief Inspector of Mines;

"**corporation**" means a body corporate;

"**council**" means a council or controlling authority under the *Local Government Act 1934* and includes a body corporate that is, by virtue of an Act, taken to be vested with the powers of a council;

"**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; or
- (d) equipment of a kind prescribed by the regulations for the purposes of this definition,

but does not include surface drilling equipment;

"**designated area**" means an area within a precious stones field declared by the Minister under section 5 to be a designated area;

"**Director**" means the Director of Mines under the Mining Act;

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

"**exclusion zone**" means land declared by the Minister under section 5 to be an exclusion zone for the purposes of this Act;

"**exempt land**" means land that is exempt from mining operations under section 6;

"**exploration licence**" means an exploration licence under the Mining Act;

"**fossicking**" means the gathering of precious stones—

(a) as a recreation; or

(b) without the intention to sell the stones or to utilise them for a commercial or industrial purpose,

but does not include the gathering of precious stones through the disturbance of land by machinery or explosives;

"**holder**" of a tenement means the person who is registered as the holder of the tenement under this Act;

"**machinery**" means a device operated other than solely by muscular force exerted by the operator;

"**marine waters**" means the coastal waters of the State (*see the Coastal Waters (State Powers) Act 1980* (Cwth)) or that part of the sea that is within the limits of the State, and includes estuaries and tidal waters;

"**minerals**" has the same meaning as under the Mining Act;

"**Mining Act**" means the *Mining Act 1971*;

"**mining operations**" means operations carried out in the course of prospecting or mining for precious stones, or rehabilitation operations, but does not include fossicking;

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

"**Mining Register**" means the register kept by the Mining Registrar under the Mining Act;

"**a mining registrar**" means a mining registrar under the Mining Act;

"**the Mining Registrar**" means the Mining Registrar under the Mining Act;

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"**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 7;

"**opal development lease**" means an opal development lease registered under section 20;

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

"**precious stones claim**" means a precious stones claim registered under section 20;

"**precious stones prospecting permit**" or "**permit**" means a precious stones prospecting permit issued under section 7;

"**precious stones field**" means land declared to be a precious stones field by proclamation under section 4;

"**precious stones tenement**" or "**tenement**" means—

- (a) a precious stones claim; or
- (b) an opal development lease;

"**prescribed exempt land**" means exempt land under section 6(1)(a);

"**prescribed notice of entry**"—*see* section 32;

"**prospecting**" means operations carried out in the course of exploring for precious stones, including the pegging out of an area for a tenement, other than operations that involve disturbance of land by declared equipment or explosives, and "**to prospect**" has a corresponding meaning;

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

"**rehabilitation**" of land includes the filling in or sealing of an excavation (including an open-cut excavation), the reinstatement, levelling, contouring and revegetation of land, and the erection of signs and fences, and "**to rehabilitate**" has a corresponding meaning;

"**Warden's Court**" means the Warden's Court established under the Mining Act.

(2) The division of land under the Mining Act into strata will also have effect for the purposes of this Act and, accordingly, a reference in this Act to land, or an area, will, where appropriate, be taken to be a reference to the surface stratum or a subsurface stratum, as the case requires.

(3) In this Act, a reference to mining operations over land includes a reference to mining operations involving land covered by water and a reference to the disturbance of land includes a reference to the disturbance of water.

(4) A 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.

Declaration of precious stones field or reserved land

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

(a) declare land in the State (including land within the marine waters of the State) to be a precious stones field; or

(b) reserve from the operation of this Act, or a specified provision of this Act, land specified in the proclamation,

and the proclamation will have effect according to its terms.

(2) The Governor may, by subsequent proclamation, vary or revoke a proclamation under subsection (1).

(3) A precious stones field over mineral land under the Mining Act that has been divided into strata will consist only of the surface stratum (as defined by that Act).

Declaration of designated area or exclusion zone

5. (1) The Minister may, by notice in the *Gazette*—

(a) declare an area within a precious stones field to be a designated area for the purposes of this Act;

(b) declare land in the State to be an exclusion zone for the purposes of this Act,

and the declaration will have effect according to its terms.

(2) The Minister may, by subsequent notice in the *Gazette*, vary or revoke a declaration under subsection (1).

(3) The Minister must consult with such approved associations as the Minister thinks fit before the Minister makes a declaration under this section.

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(4) If the Minister makes a declaration under this section, the Minister must ensure that a copy of the declaration is published in a newspaper circulating generally throughout the State.

(5) If an area ceases to be part of a precious stones field, the declaration of a designated area within that area ceases to have effect.

Exempt land

6. (1) The following land is exempt from mining operations under this Act if it is outside a precious stones field:

- (a) 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);
- (b) land that constitutes a distinct allotment of less than 2 000 square metres in a city, town or township;
- (c) land that is genuinely used as a yard, garden, plantation, orchard or vineyard;
- (d) land that is under crop;
- (e) land that is genuinely used as an airfield, railway, tramway or busway;
- (f) the grounds of a church, chapel, school, hospital or institution;
- (g) parklands or recreation grounds under the control of a council;
- (h) land—
 - (i) that is dedicated or reserved by or under a prescribed Act, or by or under an Act for a prescribed purpose; or
 - (ii) that is vested in a Minister for a prescribed purpose; or
 - (iii) that is comprised within an easement in favour of a Minister;
- (i) land that is constituted as a forest reserve under the *Forestry Act 1950*.

(2) While land is exempt land—

- (a) a person is not authorised under a precious stones prospecting permit to prospect for precious stones on the land; and
- (b) a precious stones tenement must not be registered over the land (or a part of the land).

(3) However—

- (a) a person may peg out an area for a precious stones tenement on exempt land¹, other than prescribed exempt land (*see* subsection (4)); and
- (b) a precious stones tenement may be registered over exempt land (or a part of exempt land) if—
 - (i) the land was not exempt land at the time the area of the tenement was pegged out; or
 - (ii) the tenement is registered in the name of the owner of the land.

(4) In the case of prescribed exempt land, a person must not enter or peg out an area within the land except with the written permission (which may be given subject to conditions) of the person who has the benefit of the relevant exemption under this section.

(5) If—

- (a) a person who has the benefit of an exemption under this section, by agreement with a mining operator, waives the exemption on terms and conditions set out in the agreement; or
- (b) the appropriate court, on the application of a mining operator, waives the exemption on terms and conditions (which should include provision for payment of compensation to the person or persons who have the benefit of the exemption),

the land ceases to be exempt land.

(6) Land that ceases to be exempt land under subsection (5) will revert to being exempt land on completion of the mining operations for which the agreement or determination is made, or at an earlier time specified in the agreement or determination.

(7) The following persons will 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 under subsection (1)(a) by reason of its proximity to other land on which a building, structure, spring, well, reservoir or dam is situated—the owner of the other land.

(8) An agreement or determination is binding on, and enforceable by or against, the original parties to the agreement or determination and—

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- (a) successors in title to the owner of the land who originally had the benefit of the exemption; and
- (b) the holders from time to time of precious stones tenements authorised under the terms of the agreement or determination.

(9) An agreement by which an exemption is waived must comply with requirements determined by the Director and a copy of the agreement must be lodged with the Mining Registrar in accordance with the regulations.

¹ A person may peg out an area for a tenement with a view to negotiating a waiver, or to obtaining a determination of a court, under subsection (5).

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Part 2—Precious stones prospecting permits

Application for permit

7. (1) A person may apply for a precious stones prospecting permit.

(2) The application—

(a) must be made in a form determined by the Director; and

(b) must be made personally or, in the case of a corporation, by an officer of the corporation who is authorised to make the application, at an office of the Mining Registrar; and

(c) must be accompanied by the prescribed application fee.

(3) The applicant (in the case of a natural person) must be at least 16 years of age.

(4) A mining registrar may issue a precious stones prospecting permit to a person who has made due application for the permit and paid the appropriate fee.

(5) A person is not eligible to be issued, or to hold, a precious stones prospecting permit if the person is disqualified from holding a permit under this Act or the regulations.

Nature of permit

8. (1) A person must not hold more than one precious stones prospecting permit.

(2) A precious stones prospecting permit cannot be held jointly by two or more persons.

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

(4) A person must not—

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

(b) permit another person to use, or to take the benefit, of his or her precious stones prospecting permit.

Maximum penalty: \$2 500.

Terms and renewal of permit

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

(2) A person may from time to time apply for the renewal of a precious stones prospecting permit.

(3) The application—

(a) must be made any time after one month before the day on which the precious stones prospecting permit is due to expire; and

(b) must be made in a form determined by the Director; and

- (c) must be made personally or, in the case of a corporation, by an officer of the corporation who is authorised to make the application, at an office of the Mining Registrar; and
- (d) must be accompanied by the prescribed application fee.
- (4) A renewal will be issued by a mining registrar.
- (5) The period of renewal will be one year.
- (6) A precious stones prospecting permit may, subject to this Act and in accordance with the regulations, be surrendered.

Rights of holder of permit

10. (1) A precious stones prospecting permit authorises the holder to prospect for precious stones and to peg out an area for a precious stones tenement in accordance with this Act.

(2) However, the authority conferred by subsection (1) is subject to various qualifications prescribed by this Act.¹

(3) The holder of a precious stones prospecting permit (other than a corporation) must carry out any pegging of an area under the permit personally.

(4) In the case of a corporation, any pegging out under the permit must be carried out by a person who holds a specific authority from the corporation to act on its behalf.

(5) The pegging must comply with requirements prescribed by the regulations.

¹ See especially section 11.

Qualifications to permits

11. (1) A precious stones prospecting permit does not authorise a person to prospect for precious stones on exempt land.¹

(2) A precious stones prospecting permit does not authorise the conduct of operations that involve the disturbance of land by declared equipment or explosives, other than where explosives are used to assist in sinking a prospecting shaft.

(3) A precious stones prospecting permit does not authorise the pegging out of an area for a precious stones tenement 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.

(4) If the holder of a precious stones prospecting permit is a corporation, the precious stones prospecting permit does not authorise the pegging out of an area for a precious stones tenement—

- (a) on land that is within a precious stones field unless—
 - (i) the land is within a designated area; or
 - (ii) the land is not within 500 metres of a registered tenement at the time of pegging;² or

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(iii) the corporation was lawfully prospecting on land within the precious stones field at the time the precious stones field was declared and the pegging occurs during the course of that prospecting, or within three months of a cessation of that prospecting; or

(b) on land that is within an exclusion zone.

(5) A precious stones prospecting permit does not authorise the pegging out of an area for an opal development lease on land that is within a precious stones field unless—

(a) the land is within a designated area; or

(b) the land is not within 500 metres of a registered tenement at the time of pegging and is not over ground that has been previously disturbed by mining operations.

(6) A precious stones prospecting permit does not authorise the pegging out of an area for a precious stones tenement on land that is within an opal development area under the Mining Act.³

(7) A precious stones prospecting permit does not authorise the pegging out of an area for a precious stones tenement on land—

(a) that is within an area that has been pegged out by another person (that pegging out not having lapsed or been cancelled); or

(b) that is within an existing precious stones tenement.⁴

(8) If a precious stones tenement lapses or is cancelled under this Act—

(a) if the tenement is an opal development lease—

(i) the holder of the lease must not peg an area for another opal development lease on land that was within the previous lease; and

(ii) no other person may peg an area for another opal development lease on land within the previous lease unless at least 30 days have elapsed since the previous lease came to an end; and

(b) if the tenement is a precious stones claim—the holder of the claim must not, without the written approval of the Mining Registrar, peg an area for another tenement on land within the previous tenement unless at least 12 months have elapsed since the previous tenement came to an end.

(9) A person may appeal against a decision of the Mining Registrar not to grant an approval under subsection (8)(b) to the Warden's Court and the court may, on appeal—

(a) confirm the Mining Registrar's decision; or

(b) reverse the Mining Registrar's decision.

(10) A person must not have pegged out at the same time—

(a) more than one area for an opal development lease;

(b) more than one area for a precious stones claim in a part of a precious stones field that is not within a designated area, subject to the qualification that a person may peg out two areas for precious stones claims in such a case if one or both of the claims are within the area (or former area) of an opal development lease⁵;

(c) more than two areas for precious stones claims.

(11) A person must not peg out an area if to do so would be contrary to the regulations.

¹ Detailed provisions about exempt land appear in section 6.

² There is one exception to this provision, namely, the holder of an opal development lease can peg out an area for a precious stones claim within the area of the lease.

³ See section 8A of the Mining Act.

⁴ There is one exception to this provision, namely, the holder of an opal development lease can peg out an area for a precious stones claim within the area of the lease.

⁵ Section 23(2)(b) provides that a person can only peg out one area for a precious stones claim within the area of an opal development lease during the term of registration. However, once the registration of the lease has come to an end, a person could peg out and register another opal development lease and, subsequently, another precious stones claim.

Area to be pegged out etc

12. (1) The size, shape and dimensions of an area pegged out under a precious stones prospecting permit must conform with the regulations.

(2) The person who pegs out an area must ensure that all posts, boundary indicators and notices are maintained in accordance with requirements prescribed by the regulations.

Major working areas—Coober Pedy

13. (1) The regulations must, after the Minister has consulted with such approved associations as the Minister thinks fit, identify an area or areas within the Coober Pedy Precious Stones Field as a major working area or major working areas for the purposes of this section.

(2) A major working area identified under subsection (1) must include a buffer zone around all extensively worked areas within the major working area (as determined according to circumstances in existence at the time that the regulation establishing the major working area is made).

(3) The buffer zone under subsection (2) must (at the time that the buffer zone is established) be at least 500 metres wide at any particular point.

(4) The following provisions apply with respect to a major working area identified under subsection (1), and to a person who has pegged out an area for a tenement within such an area, despite the other provisions of this Act:

(a) a person may only peg out an area for a precious stones claim within a major working area, and a corporation cannot peg out any area within a major working area; and

(b) the maximum permissible area that can be pegged out for a precious stones claim within a major working area is 5 000 square metres; and

(c) a person who has pegged out an area for a precious stones claim within a major working area cannot simultaneously have another area pegged out within the precious stones field and, if or when the tenement is registered, the person cannot simultaneously hold more than one tenement within the precious stones field.

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(5) The regulations under subsection (1) may, by subsequent regulation, after the Minister has consulted with such approved associations as the Minister thinks fit, be varied from time to time.

Notice of pegging

14. If an area (or part of an area) pegged out under a precious stones prospecting permit is within a precious stones field, notice of the pegging must be given in accordance with the regulations.

Effect of pegging an area

15. (1) The holder of a precious stones prospecting permit who pegs out an area for a precious stones claim that is wholly within a precious stones field has, subject to this Act—

- (a) an exclusive right to conduct mining operations, other than by the use of declared equipment, for the recovery of precious stones from the area, and to sell, use, or dispose of precious stones recovered in the course of those operations, from the day of the pegging; and
- (b) an exclusive right to apply for the registration of a precious stones claim within 14 days after the day on which the area is pegged out.

(2) The holder of a precious stones prospecting permit who pegs out—

- (a) an area for a precious stones claim that is not wholly within a precious stones field; or
- (b) an area for an opal development lease,

has an exclusive right to apply for the registration of the relevant tenement within 14 days after the day on which the area is pegged out (but does not have a right to conduct mining operations on the land until a tenement is registered).

Ballot may be conducted in certain cases

16. (1) If—

- (a) it is proposed that the Governor, by proclamation, declare land to be 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 areas for precious stones tenements 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 an area on the land to which the declaration relates until a day specified by the Minister in the notice in the *Gazette* ("**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 areas 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 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 dimensions determined by the Minister, 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 another 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 under subsection (1).

(5) A person who is allocated a block by virtue of 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 for a precious stones tenement 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 tenement no later than 14 days after the declared day.

(6) A mining registrar must not, for 14 days immediately following the declared day, register a precious stones tenement in respect of a part of the land unless the application 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 an area for a precious stones tenement 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 an area for a precious stones tenement on the block within the time set by subsection (5)(a); or

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

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(iii) fails to apply for registration of a tenement within the time set 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 another person in accordance with the provisions of this Act (other than this section).

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

(a) the person is guilty of an offence and liable to a penalty not exceeding \$5 000; and

(b) a pegging purportedly made by the person has no effect.

(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 participation in the ballot.

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

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

(a) published 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 despite the other provisions of this Act.

Pegging may lapse

17. If—

(a) an application for registration of a tenement is not made in accordance with Part 3 within 14 days after the day on which an area is pegged out; or

(b) an application for registration of a tenement is refused under Part 3,

the pegging ceases to have effect (and the entitlements that arise from the pegging lapse).

Offence to contravene this Part

18. If a person—

(a) purports to peg out an area for a precious stones tenement while not being authorised to do so under a valid precious stones prospecting permit; or

(b) while being the holder of a precious stones prospecting permit, pegs out an area in contravention of this Act or otherwise than in accordance with an authority conferred by this Act; or

(c) having pegged out an area, carries out unauthorised mining operations within the area,

then—

(d) the person is guilty of an offence and liable to a penalty not exceeding \$5 000; and

(e) a pegging purportedly made by the person has no effect.

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Part 3—Precious stones tenements

Application for registration of tenement

19. (1) The holder of a precious stones prospecting permit who has pegged out an area for a precious stones tenement may apply for registration of the tenement within 14 days after the day on which the area is pegged out.

(2) The application—

- (a) must be made in a form determined by the Director; and
- (b) must be made personally by the holder of the permit or, in the case of a corporation, by a person who holds an authority from the corporation to make the application; and
- (c) must be accompanied by the prescribed application fee.

(3) Unless otherwise determined by the Mining Registrar—

- (a) if the area is within (or partly within) a precious stones field—the application must be made at the nearest office of the Mining Registrar to the field;
- (b) in other cases—the application must be made at either of the two nearest offices of the Mining Registrar to the area that has been pegged out.

(4) If the area is not wholly within a precious stones field, the applicant must serve on the owner of the land notice of the application within 14 days after making the application.

(5) A notice under subsection (4) must be in a form determined by the Director and, if relevant, must include information about declared equipment that the mining operator proposes to use on the land.

(6) A notice need not be given under subsection (4) if it is not required under an agreement under this Act.

Registration of tenement

20. (1) If due application is made for the registration of a precious stones claim, the Mining Registrar must, subject to Part 7 and the other provisions of this Act, register the precious stones claim.

(2) If the precious stones claim is wholly within a precious stones field, a registration under subsection (1) will be taken to have occurred at the time that the application was lodged at the appropriate office of the Mining Registrar.

(3) If due application is made for the registration of an opal development lease, the Mining Registrar must refer the application to the Director for an inspection of the area and the preparation of a report on the suitability of the area for an opal development lease.

(4) The Director must, on receipt of the report, determine whether an opal development lease should be granted or refused and then give notice of his or her decision to the Mining Registrar and to the applicant.

(5) If the Director determines that it is appropriate for an opal development lease to be granted, the Mining Registrar must, on receipt of the notice under subsection (4), subject to this Act, grant and register an opal development lease.

(6) The Mining Registrar may refuse to register a precious stones tenement if it appears that the applicant has contravened, or failed to comply with, a provision or requirement of this Act.¹

(7) The Mining Registrar may refuse to register a precious stones tenement if satisfied that—

- (a) before the area for the tenement was pegged out, an application had been lodged under the Mining Act for an exploration licence to carry out exploratory operations for precious stones (or various minerals including precious stones) in an area comprising the area that has been pegged out, or a portion of that area; and
- (b) the application has not been refused.

(8) The Mining Registrar cannot register a precious stones tenement if to do so would be inconsistent with a public undertaking by the Minister to the mining industry.

Note—

Except as provided by subsection (2), the registration of a tenement takes effect from the time of registration.

¹ For example, if the applicant did not, as the holder of a precious stones prospecting permit, give a valid notice of entry under section 32 for land outside a precious stones field.

Maximum number of tenements

21. A person must not hold at the same time—

- (a) more than one opal development lease;
- (b) more than one precious stones claim that is in a precious stones field, subject to the qualification that a person may hold two precious stones claims in such a case if one or both of the claims arise from an opal development lease¹;
- (c) more than two precious stones claims.

¹ Section 23(2)(b) provides that a person can only peg out one area for a precious stones claim within the area of an opal development lease during the term of registration. However, once the registration of the lease has come to an end, a person could peg out and register another opal development lease and, subsequently, another precious stones claim.

Term and renewal of tenement

22. (1) The period of registration of a precious stones tenement will be three months.

(2) A person may from time to time apply for the renewal of the registration of a precious stones claim.

(3) The application—

- (a) must be made within the period prescribed by the regulations; and
- (b) must be made in a form determined by the Director; and

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- (c) must be made personally by the holder of the tenement or, in the case of a corporation, by a person who holds an authority from the corporation to make the application; and
 - (d) must be accompanied by the prescribed application fee.
- (4) Unless otherwise determined by the Mining Registrar—
- (a) if the tenement is within (or partly within) a precious stones field—the application must be made at the nearest office of the Mining Registrar to the tenement;
 - (b) in other cases—the application must be made at either of the two nearest offices of the Mining Registrar to the tenement.
- (5) The period of renewal for the registration of a precious stones claim is 12 months.
- (6) If the registration of a precious stones claim is not renewed as required by or under this section, the claim lapses.
- (7) 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.
- (8) The Mining Registrar may refuse to renew a registration if the applicant has failed to comply with a requirement under this Act.
- (9) The registration of an opal development lease is not renewable (and the lease lapses at the end of the period of registration).

Rights conferred by a tenement

23. (1) The holder of a registered precious stones claim has, subject to this Act, an exclusive right to conduct mining operations for the recovery of precious stones from the land comprised in the claim during the term of registration, and to sell, use or dispose of precious stones recovered in the course of those operations.

- (2) The holder of a registered opal development lease has, subject to this Act—
- (a) an exclusive right to conduct mining operations for the recovery of precious stones from the land comprised in the lease during the term of registration, and to sell, use or dispose of precious stones recovered in the course of those operations; and
 - (b) an exclusive right to peg out an area (and only one area) for a precious stones claim within the area of the lease during the term of registration.

Tenement non-transferable

24. A precious stones tenement is not transferable.

Unlawful entry on tenement

25. (1) A person must not, without lawful authority or excuse, enter or remain on land comprised in a registered precious stones tenement without first obtaining the permission of the holder of the tenement.

Maximum penalty: \$2 500.

(2) However, this section—

(a) does not apply—

(i) to a police officer acting in the course of official duties; or

(ii) to a person appointed under an Act acting in the course of official duties; and

(b) does not affect any civil liability.

Caveats

26. (1) A person claiming an interest in a matter relevant to the registration of a tenement, or in a registered tenement, may lodge at an office of the Mining Registrar a caveat forbidding the registration of the tenement or an instrument affecting the tenement or interest.

(2) A caveat lodged under this section must—

(a) be in a form determined by the Director and accompanied by the prescribed fee; and

(b) state the full name and address of the caveator; and

(c) state in detail the interest claimed by the caveator; and

(d) be signed by the caveator or an agent of the caveator; and

(e) give an address within the State for service of notices and proceedings relating to the caveat.

(3) A mining registrar may reject a caveat—

(a) if the caveator fails to comply with a requirement of subsection (2); or

(b) if the mining registrar considers that an interest claimed by the caveator is not valid.

(4) Unless the caveat is rejected, a mining registrar must, on the lodging of a caveat—

(a) enter a memorial or copy of the caveat in the Mining Register; and

(b) send notice of the lodging of the caveat to the holder of the relevant tenement and to any other person who, in the opinion of the mining registrar, should have notice of the caveat.

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

(6) A caveat will lapse if—

(a) the Warden's Court orders its removal; or

(b) the caveat is withdrawn by the caveator; or

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(c) a person who has an interest in the matter challenges the caveat in the manner prescribed by the regulations and the caveator does not obtain an order of the Warden's Court confirming the caveat within 14 days after notice of the challenge is served on the caveator.

(7) The withdrawal of a caveat must be undertaken in a manner determined by the Director.

(8) A mining registrar must enter a memorial of the withdrawal of a caveat in the Mining Register.

(9) An instrument that would operate in derogation of rights protected by a caveat must not be registered by a mining registrar, and the operation of such an instrument will be suspended, while the caveat remains in force, unless the Warden's Court, or some other court that is competent to adjudicate on the rights protected by the caveat, otherwise orders.

(10) A person who has an interest in the matter may apply to the Warden's Court for an order under this section.

Power of Mining Registrar to cancel tenement

27. (1) If the Mining Registrar discovers or determines, after a tenement is registered, that the tenement should not have been registered under this Act on account of a contravention of, or failure to comply with, a provision or requirement of this Act on the part of the holder of the tenement, the Mining Registrar may, by notice in writing to the holder of the tenement, give notice of his or her intention to cancel the registration of the tenement on a day specified in the notice (which must be at least 21 days after the date of the notice).

(2) A person who receives a notice under subsection (1) may apply to the Warden's Court to have the decision of the Mining Registrar reviewed.

(3) An application for review must be made within 14 days of service of the notice (unless the Warden's Court allows an extension of time).

(4) Pending the determination of an application for review, the Mining Registrar must not cancel the registration of the tenement.

(5) At the conclusion of the review, the Warden's Court may—

(a) confirm the decision of the Mining Registrar; or

(b) cancel the notice.

(6) Subject to a decision of the Warden's Court under this section, the Mining Registrar may, after the day specified in a notice under this section, cancel the registration of the relevant tenement.

Surrender of tenement, removal of posts etc

28. (1) The Mining Registrar may, on receipt of an application in a manner and form determined by the Director from the holder of the tenement, cancel the registration of a precious stones tenement.

(2) An application under subsection (1)—

- (a) must be made in a form determined by the Director; and
- (b) must be made personally by the holder of the tenement or, in the case of a corporation, by an officer of the corporation who is authorised to make the application.

(3) If the land comprised in the tenement is outside (or partly outside) a precious stones field, the Mining Registrar must not cancel the registration of the tenement unless or until advised by an authorised person that the land has been rehabilitated in accordance with the requirements of this Act.

(4) If the registration of a tenement lapses or is cancelled under this Act, the holder of the tenement must—

- (a) in the case of a tenement that is wholly within a precious stones field—immediately remove all posts, boundary indicators and markers unless exempted from the requirement to do so by a mining registrar or authorised person on the basis that it is unreasonable (for reasons of safety or otherwise) to require the posts, indicators or markers to be removed;
- (b) in any other case—leave all posts, boundary indicators and markers in place until authorised by a mining registrar or authorised person to remove them and then, on receiving that authorisation, subject to any direction to the contrary, immediately remove them.

(5) In this section—

"authorised person" includes a person who is authorised by the Mining Registrar to exercise the powers of an authorised person under this section.

Removal of machinery

29. (1) If the registration of a precious stones tenement lapses or is cancelled under this Act, the owner of machinery or goods on land comprised in the tenement (not being the owner of the land) must ensure that the machinery or goods are removed from the land within 28 days after the day in which the registration lapses or is cancelled.

Maximum penalty: \$5 000.

(2) A person may, at any reasonable time within the period of 28 days referred to in subsection (1), enter and remain on land for the purposes of removing machinery or goods from the land under subsection (1).

(3) If machinery or goods remain on the land after the expiration of the 28 days referred to in subsection (1), the Chief Inspector may take possession of the machinery or goods.

(4) The Chief Inspector must, within seven days after taking possession of machinery or goods under this section—

- (a) give notice of his or her actions to any person who has, to the knowledge of the Chief Inspector, an interest in the machinery or goods and whose address is known to the Chief Inspector; and

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(b) publish notice of the taking of possession of the machinery or goods in a newspaper circulating within the local area.

(5) A notice must be in a form approved by the Director for the purposes of this section.

(6) A person who is entitled to possession of the machinery or goods may reclaim them by paying to the Chief Inspector the reasonable costs associated with the Chief Inspector taking possession of the machinery or goods and storing them.

(7) If the machinery or goods are not reclaimed under subsection (6) within 28 days after publication of the notice under subsection (4)(b), the Chief Inspector may sell or dispose of them as the Chief Inspector thinks fit.

(8) If the machinery or goods are sold, the Chief Inspector—

(a) may retain out of the proceeds of sale an amount equal to, and to be applied in relation to, the reasonable costs associated with taking possession, storing and selling the machinery or goods; and

(b) must pay the balance to the Treasurer.

(9) The purchaser of the machinery or goods acquires a good title to the machinery or goods in defeasance of—

(a) the previous owner's interest in the machinery or goods; and

(b) the interests of others unless the purchaser has actual notice of the interest before purchasing the machinery or goods.

(10) The previous owner of machinery or goods that have been sold under this section may, within three months after the day of sale, on application to the Chief Inspector, claim some or all of the balance paid to the Treasurer under subsection (8)(b).

(11) If the Chief Inspector is satisfied, on application under subsection (10), that it is fair and reasonable that the amount of the claim be satisfied, the Chief Inspector will request payment from the Treasurer (who must then release the appropriate amount).

(12) If—

(a) a claim is not made under subsection (10) within the time specified by that subsection; or

(b) a claim is made but rejected,

the amount held by the Treasurer is forfeited to the Crown.

Maintenance of posts

30. The holder of a registered precious stones tenement must ensure that all posts, boundary indicators and notices are maintained in accordance with requirements prescribed by the regulations.

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Part 4—Entry on land and declared equipment**Division 1—Entry on land****Entry on land**

31. Subject to this Act, a person authorised under this Act to conduct prospecting or other mining operations on land may enter land for the purposes of those operations—

- (a) if the person has an agreement¹ with the owner of the land authorising the person to enter the land to carry out mining operations on the land; or
- (b) if the person 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 person has given the prescribed notice of entry; and
 - (ii) the operations will not affect native title in the land; and
 - (iii) the person 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 operations will not affect native title in the land; or
- (e) if the person enters the land to continue operations that had been lawfully commenced on the land before the commencement of this Act.

¹ If the land is native title, the agreement is to be negotiated under Part 7. In any other case, see Part 6.

² See section 32(6).

Notice of entry

32. (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—

- (a) must be in a form determined by the Director; and
- (b) must contain a statement of the owner's right of objection and compensation under this Act; and
- (c) must have been validated by an authorised person.

(3) 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.

(4) 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, the owner may, within three months after service of the notice, lodge a notice of objection with the appropriate court objecting—

(a) to entry on the land by the mining operator; or

(b) to the use, or the unconditional use, of the land, or a portion of the land, for mining operations.

(5) The court must send a copy of a notice of objection to the mining operator and to the Mining Registrar.

(6) 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.

(7) A mining operator who—

(a) contravenes or fails to comply with a requirement under subsections (1)—(4); or

(b) contravenes or fails to comply with a determination under subsection (6),

is guilty of an offence.

Maximum penalty: \$5 000.

(8) 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 or under an agreement with the owner of the land and, under that agreement, notice is not required; 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 Act.

Duration of notice of entry

33. (1) A notice of entry remains in force—

(a) for six months from the date of validation (*see* section 32(2)); and

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- (b) for the duration of a tenement (including any renewal) that is pegged out on the land to which the notice relates within six months from the date of validation.

(2) A mining operator who desires to enter land after a notice of entry has lapsed must serve a new, validated notice of entry, subject to the qualification that if the new notice is served within 28 days after the previous notice lapsed, the mining operator does not need to give at least 21 days notice before re-entering the land.

Division 2—Declared equipment

Use of declared equipment

34. (1) A mining operator must not use declared equipment in the course of mining operations under this Act except—

- (a) on land comprised in a registered tenement within a precious stones field; or
- (b) with the written authorisation of the Director (for land outside a precious stones field).

Maximum penalty:

- (a) In the case of a breach of paragraph (a)—\$5 000;
- (b) In the case of a breach of paragraph (b)—\$10 000.

(2) An application for an authorisation of the Director to use declared equipment outside a precious stones field must be made in a manner and form determined by the Director and accompanied by the prescribed application fee.

(3) An authorisation may be given subject to conditions.

(4) The Director may, by notice in writing to the mining operator, add, substitute or delete one or more conditions to an authorisation.

(5) A mining operator must not contravene or fail to comply with a condition.

Maximum penalty: \$5 000.

(6) A mining operator must, at least 21 days before first using declared equipment on land, serve on the owner of the land notice of the intention to use the declared equipment in the course of mining operations carried out on the land.

(7) The notice must be in a form determined by the Director.

(8) The owner may, within three months after service of a notice, lodge a notice of objection with the Warden's Court objecting to the use, or the unconditional use, of declared equipment on the land.

(9) The court must send a copy of a notice of objection to the mining operator and to the Mining Registrar.

(10) If the court is satisfied on the hearing of an objection that the use of declared equipment on the land would be likely to result in severe or unjustifiable hardship or substantial damage to the land, the court may—

- (a) determine that declared equipment should not be used in the course of mining operations on the land or a part of the land; or
- (b) determine the conditions under which declared equipment may be used on the land with least detriment to the interests of the owner and least damage to the land.

(11) A mining operator who—

- (a) uses declared equipment on land without prior service of a notice under subsection (6); or
- (b) fails to comply with a determination or condition under subsection (10),

is guilty of an offence.

Maximum penalty: \$10 000.

(12) Subsections (6)—(11) do not apply to the use of declared equipment on land if—

- (a) the land is within a precious stones field; or
- (b) 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.

(13) This section does not apply to the use of declared equipment on land if there is an agreement with the owner of the land about the use of declared equipment and the mining operator complies with the terms of the agreement.

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Part 5—Rehabilitation and compensation

Rehabilitation of land

35. (1) An authorised person may, by notice in writing to the holder of a precious stones tenement that is outside (or partly outside) a precious stones field, direct the holder of the tenement to rehabilitate land within the tenement that has been disturbed by mining operations to a condition that is, in the opinion of an authorised person, satisfactory.

(2) A notice under subsection (1)—

- (a) may specify the action to be taken by the person, and specify the period within which it must be taken; and
- (b) may relate or extend to mining operations carried out on the land before the tenement was pegged out or registered; and
- (c) may relate or extend to mining operations carried out by another person on the land; and
- (d) may be given before or after the tenement has come to an end.

(3) A person to whom a notice is issued under this section must comply with the notice.

Maximum penalty: \$5 000.

(4) The Minister may order that no other area may be pegged out for a tenement by a person named in a notice until the person has complied with the notice.

(5) A person must not contravene an order under subsection (4).

Maximum penalty: \$5 000.

(6) If the requirements of a notice are not carried out, an authorised person may cause the requirements to be carried out.

(7) The Director may recover the costs and expenses reasonably incurred in taking action under subsection (6) from the person who failed to comply with the notice, as a debt.

(8) A person may, at any reasonable time, enter and remain on land for the purposes of rehabilitating the land under this section, and may take appropriate action on the land in order to comply with an order under this section.

(9) An authorised person may, with the approval of the Director, vary a notice previously given under this section.

(10) An obligation on the holder of a tenement to rehabilitate land is not affected by the tenement lapsing or being cancelled.

(11) In this section—

"holder" of a mining tenement includes a former holder of a tenement;

"**precious stones tenement**" includes a tenement the registration of which has lapsed or been cancelled.

Bonds

36. (1) The Minister may, by notice in writing to an applicant for the registration of, or the holder of, a precious stones tenement that is outside (or partly outside) a precious stones field, require the person to enter into a bond under this section.

(2) The Minister may determine the amount, form and terms of the bond taking into account—

- (a) liabilities that the relevant person may incur in the course of mining operations; and
- (b) the present or future obligations that the relevant person may incur for the rehabilitation of land.

(3) The Minister may require security for the satisfaction of the bond in accordance with a determination of the Minister.

(4) The Minister may, by notice in writing to the holder of a tenement, require that the amount, form or terms of a bond, or the security for a bond, be varied.

(5) A variation under subsection (4) may include the addition or substitution of terms.

(6) A person to whom a notice is issued under this section must comply with the notice within 30 days after service of the notice.

(7) A bond must be lodged with the Mining Registrar.

(8) The prescribed fee is payable when the bond is lodged.

(9) The Mining Registrar may delay the registration of a tenement until a bond is lodged.

(10) A person who has been required to enter into a bond must not carry out mining operations on the relevant land, or must cease mining operations on the relevant land, until the bond is lodged with the Mining Registrar.

Maximum penalty: \$5 000.

(11) The Minister or an authorised person may prohibit mining operations on land until a person complies with a requirement under this section.

(12) A person must not contravene a prohibition under subsection (11).

Maximum penalty: \$5 000.

Application of bonds

37. (1) If a person fails to fulfil an obligation under a tenement, fails to rehabilitate land within a tenement (or former tenement), or acts (or omits to act) so as to breach a term of a bond, the Minister may determine that an amount under a bond entered into by the person is forfeited under this section.

(2) The amount is forfeited to the Crown (to be held by the Minister).

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(3) The forfeited amount may, at the discretion of the Minister, be applied—

- (a) towards the rehabilitation of land in the relevant tenement;
- (b) in respect of liabilities incurred on account of mining operations on the land.

(4) If—

- (a) a tenement in respect of which a bond has been lodged lapses or is cancelled; and
- (b) the Mining Registrar is satisfied that it is appropriate to do so,

the Mining Registrar may return the bond to the holder of the tenement.

Compensation

38. (1) The owner of land on which mining operations are carried out is entitled to receive compensation for economic loss, hardship or inconvenience suffered on account of the mining operations.

(2) The compensation will be payable by—

- (a) if the land is subject to a tenement at the time of the mining operations—the holder of the tenement (even if the holder of the tenement did not carry out the mining operations); and
- (b) in all cases—the person who carries out the mining operations.

(3) The holder of a tenement who is required to pay compensation on account of mining operations carried out by another person is entitled, subject to an agreement between the parties, to recover from the other person an amount equal to the amount of the compensation.

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

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

(5) The amount of the compensation will be an amount determined by agreement between the owner and the person by whom the compensation is payable or, in default of agreement, an amount determined, on application by an interested party, by the appropriate court.

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

(7) On the hearing of an application for compensation under this section, the appropriate court may order a mining operator to carry out specified work to rehabilitate the land.

Part 6—Opal mining co-operation agreements

Interpretation

39. In this Part—

"**mining operator**" includes a person who seeks to carry out mining operations on land;

"**registered agreement**" means an opal mining co-operation agreement registered under this Part.

Nature of agreement

40. (1) An opal mining co-operation agreement may be made about mining operations carried out under this Act on land.

(2) However, an opal mining co-operation agreement cannot relate to—

- (a) native title land; or
- (b) land within a precious stones field.

Parties to an agreement

41. An opal mining co-operation agreement may be made between—

- (a) the owner of land; and
- (b) —
 - (i) a mining operator; or
 - (ii) an approved association.

Content of an agreement

42. (1) An opal mining co-operation agreement may—

- (a) provide that land that would otherwise be exempt land will not be taken to be exempt land under this Act for the purposes of mining operations authorised by the agreement;
- (b) prohibit or restrict the pegging out of an area for a precious stones tenement by a person bound by the agreement;
- (c) provide—
 - (i) that the owner of the land will not object to a notice of entry to the land; or
 - (ii) that a notice of entry to the land does not need to be given (or does not need to be given in specified circumstances, or only needs to be given in specified circumstances);
- (d) restrict or regulate the circumstances or conditions under which a person covered by the agreement may enter, or remain on, the land;

- (e) permit, prohibit, restrict or regulate the use of declared equipment on the land, or provide that notice of the use of declared equipment need not be given;
- (f) provide for any other permission that the owner of the land may give under this Act;
- (g) provide for the care, management or rehabilitation of land;
- (h) provide for the payment of compensation to the owner of the land on account of mining operations on the land;
- (i) make other provisions about carrying out of mining operations on the land;
- (j) identify camp sites or temporary residences on the land;
- (k) provide for other matters agreed between the parties to the agreement.

(2) An agreement may provide for payments to the owner of the land that are based on profits or income derived from mining operations on the land or the quantity of precious stones produced.

(3) An agreement must comply with requirements prescribed by the regulations.

Registration of agreement

43. (1) The parties to an opal mining co-operation agreement must submit the agreement to the Mining Registrar for registration within 21 days after the agreement is signed by or on behalf of the parties to the agreement.

(2) The prescribed fee is payable when the agreement is submitted for registration.

(3) The Mining Registrar must register the agreement unless—

- (a) the agreement relates to land that is within a precious stones field or is native title land;
or
- (b) the Mining Registrar believes—
 - (i) that the agreement has not been negotiated in good faith; or
 - (ii) that the agreement is inconsistent with the objects of this Act or is not in the best interests of opal mining in the State; or
 - (iii) that there is some other good reason why the agreement should not be registered.

(4) The Mining Registrar must make a decision on the registration of an agreement within one month after the agreement is submitted for registration.

(5) However, despite subsections (2) and (3), the Mining Registrar must not register an agreement over pastoral land within the meaning of the *Pastoral Land Management and Conservation Act 1989* unless or until the Mining Registrar has consulted with the Pastoral Board about proposals for the rehabilitation of land under the agreement (and the Minister may, on the basis of the time that is required to complete that consultation process, grant an extension of time under subsection (4)).

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(6) An agreement has no force or effect under this Act until it is registered.

Agreement may be varied or revoked

44. (1) The parties to a registered opal mining co-operation agreement may, by agreement, vary or revoke the agreement.

(2) A variation to a registered agreement must be submitted by the parties to the agreement to the Mining Registrar for registration within 21 days after the variation is made and the Mining Registrar must register the variation unless the Mining Registrar believes—

- (a) that the variation is inconsistent with the objects of this Act or is not in the best interests of opal mining in the State; or
- (b) that there is some other good reason why the variation should not be registered.

(3) A party to a registered agreement may, by notice in writing to the other parties to the agreement, withdraw from the agreement.

(4) However, a notice under subsection (3)—

- (a) cannot be given without the approval of the Mining Registrar; and
- (b) must be given at least 60 days before the withdrawal is to take effect.

(5) If an approved association is withdrawing from an agreement, the association must give notice of the withdrawal to each member who is covered by the agreement in accordance with any requirements specified by the Mining Registrar.

Appeal to Warden's Court

45. A party to an opal mining co-operation agreement may appeal to the Warden's Court against a decision of the Mining Registrar under this Part and the court may, on appeal, confirm or reverse the Mining Registrar's decision.

Persons bound by agreement

46. A registered agreement is binding on, and enforceable by or against, the original parties to the agreement and—

- (a) the successors in title to the owner of the land; and
- (b) a person who carries out mining operations on the land on behalf of a party to the agreement; and
- (c) if an approved association is a party to the agreement—the members of the association who are covered by the agreement; and
- (d) the holders from time to time of mining tenements covered by the agreement.

Enforcement of agreement

47. A person who is entitled to enforce a registered agreement who believes that another person bound by the agreement has contravened, or failed to comply with, a term of the agreement may apply to the appropriate court and the court may, if satisfied that the other person is in default—

- (a) order the other person to take specified action to comply with the agreement or to rectify a situation caused by the other person;
- (b) order the other person to pay compensation for loss or damage caused by a breach or a failure to comply with the agreement;
- (c) vary or revoke a term of the agreement;
- (d) revoke the agreement;
- (e) make other orders that the court considers to be appropriate in the circumstances.

Restriction on mining operations by third parties

48. (1) If an approved association is a party to a registered agreement, a person who is not a member of that association must not conduct mining operations on land that is subject to the agreement unless—

- (a) the person is a party to another agreement with the owner of the land registered before the agreement with the association; or
- (b) the person has entered into a separate opal mining co-operation agreement with the owner of the land and an agreement of that kind is not specifically excluded under the terms of the agreement with the association; or
- (c) the person pegged out an area for a tenement before the agreement with the association was entered into and the mining operations are carried out in that area in accordance with this Act; or
- (d) the person is acting under the authority of a mining tenement under the Mining Act; or
- (e) the person is acting under an authority granted by the Warden's Court.

(2) For the purposes of subsection (1)(e), a person who desires to carry out mining operations on land that is subject to a registered agreement with an approved association (and who is not authorised to carry out mining operations under the agreement) may apply to the Warden's Court for an authority to conduct mining operations on the land (including to peg out an area for a tenement) despite the agreement and the court may, on the application—

- (a) if it considers that it would be reasonable to allow the person to carry out mining operations on the land and that to do so would not unfairly disadvantage the parties to the registered agreement—grant the application, on conditions (if any) determined by the court; or
- (b) reject the application.

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Part 7—Native title land**Division 1—Prospecting****Qualification of rights conferred by permit**

49. (1) A precious stones prospecting permit 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 a precious stones prospecting permit that would, if land were not native title land, authorise various operations on the land may acquire the right to carry out those 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 precious stones prospecting permit.

(4) However, a mining operator's right to carry on mining operations under this Act that affect native title is contingent on the existence of a permit 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.

Division 2—Production**Limits on grant of tenement**

50. A precious stones tenement may not be 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 tenements

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

(2) The Mining Registrar may refuse an application for a precious stones tenement over native title land if it appears to the Mining Registrar that the applicant is not proceeding with reasonable diligence to obtain the agreement or determination necessary to the 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

52. A person who seeks to carry out mining operations under this Act 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

53. (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.

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 permit or tenement but may extend also to future permits or tenements. If the authorisation does extend to future permits or 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, and is not an applicant for, a 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 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.

(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

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

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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 55, 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 note to section 53(1).

Notification of parties affected

55. (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

56. (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 note to section 53(1).

Expedited procedure where impact of operations is minimal

57. (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

58. (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.

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

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Agreement

59. (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 precious stones 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 the 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

60. (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 permit or 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 two 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

61. (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 precious stones 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

62. (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

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- (iii) the development of the social, cultural and economic structures of any of those parties; and
 - (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

63. (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 a permit and a 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 note to section 53(1).

² See note to section 54(1).

³ Section 53(2) is of similar effect in relation to native title mining agreements.

⁴ Section 53(3) and (4) are of similar effect in relation to native title mining agreements.

Effect of determination

64. (1) A determination under this Division—

- (a) must be lodged with the 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 permit or 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 two 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 65.

Ministerial power to overrule determinations

65. (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

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- (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.

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 note to section 53(1).

No re-opening of issues

66. 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**

67. 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

68. (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

69. (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

70. (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—

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- (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.

Opal Mining Native Title Register

70A. (1) The Mining Registrar must establish a distinct part of that part of the Mining Register established under section 76 (which may be referred to as the *Opal Mining Native Title Register*) for the registration of agreements and determinations under this Part.

(2) The Mining Registrar must, in respect of each agreement or determination registered under this Part, include in the *Opal Mining Native Title Register* details concerning—

- (a) the land to which the agreement or determination relates; and
- (b) if relevant—the permit or tenement to which the agreement or determination relates; and
- (c) the parties who are bound by the agreement or determination; and
- (d) other information prescribed by the regulations.

(3) The Mining Registrar may also note in any other part of the Mining Register any agreement or determination registered under this Part (as the Mining Registrar thinks fit).

(4) An agreement or determination registered under this Part is not available for inspection under this Act if—

- (a) in the case of an agreement, the parties to the agreement specify in the agreement, or in some other manner determined by the Mining Registrar, that the contents of the agreement should be kept confidential under this section;
- (b) in the case of a determination, the ERD Court specifies in the determination that the contents of the determination should be kept confidential under this section.

(5) However, subsection (4) does not prevent the inspection of an agreement or determination registered under this Part by—

- (a) a person engaged in the administration of this Act acting in the course of official duties; or
- (b) the Minister, or a person appointed to the Public Service acting in the course of official duties on behalf of, or with the authority of, the Minister; or
- (c) a person who is bound by the agreement or determination; or

- (d) a person who is acting under the joint authority of all persons who are bound by the agreement or determination (and such an authority must be given in a manner and form approved by the Mining Registrar); or
 - (e) a person who is acting under the authority of an order or determination of the ERD Court or the Supreme Court (for the purposes of this or another Act or law).
- (6) An authority under subsection (5) may be given on conditions.
- (7) A person who contravenes or fails to comply with a condition is guilty of an offence.

Maximum penalty: \$10 000.

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Part 8—Special powers of Warden’s Court

Jurisdiction relating to tenements and monetary claims

72. (1) The Warden’s Court has jurisdiction to determine, in the manner it thinks just, all suits concerning a right claimed in, under, or in relation to, a tenement, or a purported tenement, or a precious stones prospecting permit, or otherwise arising under this Act.

(2) The Warden’s Court may make a declaration as to the validity (or invalidity) of a permit or tenement under this Act.

(2a) The Warden’s Court will have jurisdiction to determine a monetary claim for not more than \$40 000 arising in relation to any contract, partnership or joint venture arrangement related to, or otherwise associated with—

- (a) the acquisition or holding of any tenement, or purported tenement, or a precious stones prospecting permit; or
- (b) the performance of any mining operations under this Act; or
- (c) the recovery of any precious stones under this Act.

(3) The Warden’s Court will also have jurisdiction in any matter in which it is vested with jurisdiction by regulation.

(4) If proceedings relating to a matter under this Act are commenced in the Warden’s Court—

- (a) the Warden’s Court must give written notice of the proceedings to the Mining Registrar; and
- (b) the Mining Registrar must make a note of the proceedings in the Mining Register.

(5) The Director is entitled to appear in any proceedings before the Warden’s Court under this Act.

(6) Sections 65 to 66A of the Mining Act apply to the jurisdiction and proceedings of the Warden’s Court under this Act.

Cancellation of permit

73. (1) The Warden’s Court may, on the application of the Director, make one or both of the following orders:

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

(2) An order must 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, a provision of this or another Act or regulations regulating mining operations (including mining operations that do not involve precious stones), and that the matter is of sufficient gravity to justify the making of the order.

Cancellation of pegging

74. (1) The Warden's Court may, on the application of an interested person, make an order cancelling a pegging under Part 2.

(2) An order must not be made under subsection (1) unless the Warden's Court is satisfied that a requirement of this Act has not been complied with in a material respect, and that the matter is of sufficient gravity to justify the cancellation of the pegging.

(3) If an order for cancellation is made (otherwise than on the application of the Director), the person on whose application the order was made has, for a period of 14 days immediately following the date of the order, an exclusive right to peg out an area for a precious stones tenement of the same kind on the land.

(4) After an application has been made under this section, the pegging to which the application relates cannot be altered, nor will it lapse, until the application is determined.

(5) In this section—

"interested person" means—

- (a) the Director; or
- (b) the holder of a precious stones prospecting permit; or
- (c) the owner of the land on which the pegging has occurred.

Forfeiture of tenement

75. (1) The Warden's Court may, on the application of an interested person, make an order for the forfeiture of a tenement registered under Part 3.

(2) An order must not be made under subsection (1) unless the Warden's Court is satisfied that a requirement of this Act has not been complied with in a material respect, and that the matter is of sufficient gravity to justify the cancellation of the tenement.

(3) If an order for the forfeiture of a tenement is made under this section, the registration of the tenement is, by force of the order, cancelled.

(4) If an order is made under this section, a person must not peg out an area for a precious stones tenement on a part of the land comprised in the tenement that has been forfeited—

- (a) until the time within which a person may appeal against the decision of the Warden's Court has lapsed; and
- (b) if an appeal is commenced—
 - (i) until the appeal is dismissed, struck out or withdrawn; or
 - (ii) until the questions raised by the appeal have been finally determined.

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(5) If the forfeiture remains in force at the conclusion of the period referred to in subsection (4), the person on whose application the order for forfeiture was made (not being the Director) has, for a period of 14 days immediately following the conclusion of the period referred to in subsection (4), an exclusive right to peg out an area for a precious stones tenement of the same kind on the land.

(6) After an application has been made under this section—

(a) the tenement to which the application relates cannot be surrendered, nor will it lapse; and

(b) a person must not, without leave of the Warden's Court—

(i) otherwise deal with the tenement, or an interest in, or associated with, the tenement; or

(ii) take action to enforce a right claimed in, under or in relation to the tenement,

until the matter is finally determined.

(7) However, if the tenement would have lapsed except for the operation of subsection (6), the holder of the tenement must not carry out mining operations on the land after the day on which the tenement would otherwise have lapsed until the matter is finally determined.

(8) In this section—

"interested person" means—

(a) the Director; or

(b) the holder of a precious stones prospecting permit; or

(c) the owner of land comprised in the tenement.

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Part 9—Miscellaneous

The Mining Register

76. (1) The Mining Registrar must establish a distinct part of the Mining Register for the purposes of this Act.

(2) The Mining Registrar must, in that part of the Mining Register, keep a register of—

- (a) precious stones prospecting permits issued under this Act; and
- (b) tenements registered under this Act; and
- (c) agreements registered under this Act; and
- (d) proceedings in the Warden's Court that relate to tenements under this Act; and
- (e) other instruments or determinations that require registration under this Act or the regulations,

and may include in the register any other information he or she thinks fit.

(3) The Mining Registrar must note in the relevant part of the register any agreement or instrument registered under the Mining Act that is relevant to the operation of this Act.

(4) A person may, on payment of the prescribed fee, inspect the register during normal office hours.

(5) An instrument that requires registration under this Act has no force or effect until it is registered.

(6) However, subsection (5) does not apply to—

- (a) an order or determination of a court; or
- (b) an order or approval of the Minister, or of an officer acting under this Act; or
- (c) an instrument of a prescribed class.

Appointment of authorised persons

77. (1) The Director may appoint suitable persons to be authorised persons for the purposes of this Act.

(2) An appointment may be subject to conditions or limitations specified by the Director.

(3) A person appointed under this section must be issued with an identity card—

- (a) containing a photograph of the person; and
- (b) stating any limitations on the authorised person's authority.

(4) An authorised person must, at the request of a person in relation to whom the authorised person intends to exercise a power under this Act, produce for the inspection of the person his or her identity card.

(5) An authorised person may, as may reasonably be required in connection with the administration, operation or enforcement of this Act—

- (a) enter and inspect any place;
- (b) carry out, or cause to be carried out, any investigation, examination, test or survey;
- (c) take, and remove from land, specimens or samples;
- (d) require a person to produce documents (which may include a written record reproducing in an understandable form information stored by computer, microfilm or other process);
- (e) examine, copy or take extracts from a document or information so produced or require a person to provide a copy of the document or information;
- (f) require a person to answer questions;
- (g) give directions.

(6) In the exercise of powers under this section an authorised person may be assisted by such persons as may be necessary or desirable in the circumstances.

(7) 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.

(8) Subject to the requirements of subsection (7), the owner or occupier of land must give an authorised person or a person assisting an authorised person such assistance as is reasonably required for the effective exercise of a power conferred by this section.

Maximum penalty: \$2 500.

- (9) A person who—
- (a) without reasonable excuse, hinders or obstructs an authorised person, or a person assisting an authorised person, in the exercise of powers under this Act; or
 - (b) uses abusive, threatening or insulting language to an authorised person, or a person assisting an authorised person; or
 - (c) without reasonable excuse, fails to obey a requirement or direction of an authorised person under this Act; or
 - (d) without reasonable excuse, fails to answer, to the best of the person's knowledge, information and belief, a question put by an authorised person; or

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(e) falsely represents, by words or conduct, that he or she is an authorised person,

is guilty of an offence.

Maximum penalty: \$2 500.

(10) However, a person, not being a corporation, is not obliged to answer a question or to produce, or provide a copy of, a document or information as required under this section that to do so might tend to incriminate the person or make the person liable to a penalty.

(11) An authorised person, or a person assisting an authorised person, who, in the course of exercising powers under this Act—

(a) addresses offensive language to another person; or

(b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to another person,

is guilty of an offence.

Maximum penalty: \$2 500.

(12) An inspector under the Mining Act will be taken to be an authorised person under this Act.

Delegations

78. (1) The Director may delegate a power or function under this Act—

(a) to a specified person or body; or

(b) to a person occupying a specified office or position.

(2) A delegation—

(a) may be made subject to conditions and limitations specified in the instrument of delegation; and

(b) if the instrument of delegation so provides, may be further delegated by the delegate; and

(c) is revocable at will and does not prevent the Director from acting personally in a matter.

Exemptions

79. (1) If the Minister is satisfied that it is justifiable to do so, the Minister may exempt a person from the obligation to comply with a provision of this Act (except Part 7).

(2) An exemption may be granted on conditions determined by the Minister.

(3) An exemption will remain in force for a period specified by the Minister or, if no period is specified, until revoked by the Minister.

(4) The Minister may, at any time, vary, revoke or impose a condition of an exemption.

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

Maximum penalty: \$5 000.

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

Passing of property

80. (1) The property in precious stones is vested in the Crown.

(2) However, subject to this Act, the Mining Act, and other laws, the property in precious stones will pass to the person by whom the precious stones are lawfully mined on recovery of the precious stones.

Acts of officers, employees and agents

81. For the purposes of this Act, an act or default of an officer, employee or agent of a person who is the holder of a permit or tenement under this Act, or who is otherwise engaged in mining operations, will be taken to be an act or default of the person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

Offences

82. (1) A person who—

(a) mines for precious stones; or

(b) sells, uses or disposes of precious stones recovered in the course of mining operations,

without being duly authorised by or under this Act or the Mining Act is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(2) A person who is on land comprised in a tenement for the purpose of mining in contravention of subsection (1) is guilty of an offence and liable to the same penalty as prescribed by that subsection.

(3) A person must not, without lawful excuse, obstruct or hinder the holder of a permit or tenement under this Act in the reasonable exercise of a right conferred by this Act.

Maximum penalty: \$1 250.

(4) A person who—

(a) by a false statement or information, obtains or attempts to obtain a permit or tenement under this Act; or

(b) forges or fraudulently alters or uses a permit or tenement under this Act,

is guilty of an offence.

Maximum penalty: \$2 500.

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(5) A person who, in furnishing information for the purposes of this Act, makes a statement that is false or misleading in a material particular is guilty of an offence.

Maximum penalty: \$2 500.

(6) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence and, if no penalty is specifically provided, is liable to a fine not exceeding \$2 500.

(7) If a corporation is guilty of an offence against this Act, each director and manager of the corporation is guilty of an offence and liable to the same penalty as may be imposed for the principal offence unless it is proved that the principal offence did not result from failure on his or her part to take reasonable and practicable measures to prevent the commission of the offence.

Proceedings for offences

83. (1) Offences constituted by this Act lie within the jurisdiction of the Warden's Court.

(2) A prosecution for an offence against this Act that is commenced in the Warden's Court will be heard and determined summarily.

(3) The Warden's Court will, for the purposes of proceedings for an offence against this Act, have the powers and authorities of a court of summary jurisdiction, and such other powers and authorities as may be conferred by regulation.

(4) A prosecution for an offence against this Act may be commenced at any time within two years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at a later time within three years after the date of the alleged commission of the offence.

(5) An apparently genuine document purporting to be signed by the Attorney-General and to authorise the commencement of proceedings for an offence against this Act will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

(6) The conferral of jurisdiction on the Warden's Court in respect of offences does not limit the jurisdiction of any other court.

Prohibition orders

84. (1) The Director may apply to the Warden's Court for an order prohibiting a person from entering or remaining on a precious stones field.

(2) The Warden's Court may make an order against a person under this section if satisfied that the order is necessary to restore, or to safeguard, good order on a precious stones field.

(3) An order may be made in the absence of the person if the Warden's Court is satisfied that a copy of the application was served on the person and the person was given reasonable notice of the hearing of the matter.

(4) An order under this section must be served on the person personally and is not binding until it has been so served.

(5) A person bound by an order who enters, or remains on, a precious stones field in contravention of the order is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 1 year.

(6) The Warden's Court may revoke an order under this section on application—

(a) by the Director; or

(b) by the person bound by the order.

Power of Mining Registrar to require pegs to be removed

85. If the Mining Registrar is satisfied on reasonable grounds that an area has been pegged out in contravention of this Act or otherwise than in accordance with an authority conferred by this Act, the Mining Registrar may cause the pegs to be removed.

Compliance orders

86. (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 the 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 restore the land to its former condition.

(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.

Maximum penalty: \$100 000.

Evidentiary provision

87. (1) In proceedings for an offence against this Act, an allegation in a complaint that land referred to in the complaint—

(a) comprises, or is within, a precious stones field; or

(b) is reserved from the operation of this Act; or

(c) is a designated area; or

(d) is an exclusion zone; or

(e) is exempt land; or

(f) is prescribed exempt land,

will be taken to be proved in the absence of proof to the contrary.

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(2) In proceedings, a certificate purporting to be given by the Mining Registrar as to a matter relating to—

- (a) a permit or tenement under this Act; or
- (b) a notice or requirement under this Act,

constitutes proof, in the absence of proof to the contrary, of the matters so certified.

(3) In proceedings a document purporting to be a precious stones prospecting permit or a certificate of registration of a precious stones tenement will be accepted as such in the absence of proof to the contrary.

Avoidance of double compensation

88. 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.

Disposal of waste

89. (1) In this section—

"**relevant area**" means—

- (a) an area pegged out for a precious stones claim; or
- (b) an area within a registered tenement (and, for the purposes of this paragraph, if a registered precious stones claim is within a registered opal development lease, the relevant area for the claim will be taken to include the area of the lease while the lease is in force).

(2) A person must not deposit, or allow to be deposited, soil, overburden or other material from a relevant area, or extend an open cut, beyond the boundaries of a relevant area, without the written authority of an authorised person.

Maximum penalty: \$2 500.

(3) If the relevant area is outside a precious stones field, an authorised person must not give an authority under subsection (2) without the written permission of the owner of the land.

(4) An authority may be given subject to conditions specified by the authorised person.

(5) A person must not contravene or fail to comply with a condition.

Maximum penalty: \$2 500.

(6) If a person acts in contravention of subsection (2), or of a condition under subsection (4), an authorised person may, by notice in writing, require the person to take specified action (immediately or within a period specified in the notice) to remedy the situation.

(7) A person to whom a notice is addressed under subsection (6) must not, without reasonable excuse, fail to comply with the notice.

(8) If the requirements of a notice are not complied with, an authorised person may cause the requirements to be carried out.

(9) The Director may recover the costs and expenses reasonably incurred in taking action under subsection (8) from the person who failed to comply with the notice, as a debt.

Persons under 18

90. The obligations imposed by or under this Act are binding on a minor of or above the age of 16 who holds a permit or tenement as if the person were an adult.

Safety net

91. (1) The Minister may enter into an agreement with the holder of a 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 tenement for an agreement under this section.

Land subject to more than one tenement

92. (1) Land must not be simultaneously subject to more than one tenement under this Act.

(2) However, subsection (1) does not apply to a precious stones claim within an area of an opal development lease where the holder of the lease is the holder of the claim.

Interaction with Mining Act

93. (1) Except where express provision is otherwise made, and subject to this section, this Act does not regulate mining operations carried out under the authority of a mining tenement issued under the Mining Act.

(2) Subject to this Act and the Mining Act, land may be simultaneously subject to a registered precious stones tenement under this Act and a mining tenement under the Mining Act—

- (a) if the holder of the tenement that is first registered (whether under this Act or the Mining Act) gives written approval to the registration of the second tenement; or
- (b) if the Warden's Court approves the registration of the second tenement (whether under this Act or the Mining Act).

(3) In a situation referred to in subsection (2), the holders of the respective tenements must, subject to maintaining reasonable efficiencies in the conduct of their own operations, and any order of the Warden's Court, take all steps that are reasonably practicable to minimise interference with each others' operations.

Maximum penalty: \$5 000.

(4) The holders of the respective tenements may agree to the modification of their rights under this Act or the Mining Act (or both) and, subject to an order of the Warden's Court (made on the application of any interested person), that agreement will have effect according to its terms.

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(5) The Warden's Court may, on the application of the holder of a tenement (whether under this Act or the Mining Act), make an order to regulate, restrict or prohibit mining operations where two or more tenements include the same land.

(6) The holder of a tenement (whether under this Act or the Mining Act) must not contravene or fail to comply with an order of the Warden's Court under this section.

Maximum penalty: \$5 000.

Interaction with other Acts

94. (1) This Act does not derogate from the following Acts (as they relate to the conduct of mining operations):

- (a) the *Local Government Act 1934*;
- (b) the *Pastoral Land Management and Conservation Act 1989*.

(2) A person must, in carrying out mining operations under this Act, give proper consideration to the protection of any Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988* that may be affected by those operations.

Public roads and access routes

95. (1) The rights conferred by this Act may only be exercised with respect to a public road, street or highway, or a public access route under section 45 of the *Pastoral Land Management and Conservation Act 1989*, with the written approval of the authority that has control of that road, street, highway or route.

(2) However, an approval is not required to peg out an area for a precious stones tenement.

Approval of associations

96. (1) The Director may, on the application of an association that represents the interests of mining operators, grant an approval to the association to act as an approved association for the purposes of this Act.

(2) The Director may, at any time, by written notice to the association, revoke the approval of an association under this section.

(3) If the Director—

- (a) refuses to grant an approval to an association under subsection (1); or
- (b) revokes the approval of an association under subsection (2),

the association may apply to the Minister for a review of that decision.

(4) The Minister may determine the application as the Minister thinks fit and, if the Minister finds in favour of the applicant, grant or preserve the approval (as appropriate).

Immunity from liability

97. 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.

Powers of attorney

98. A person cannot do the following for or on behalf of another (other than a corporation) under a power of attorney:

- (a) apply for a precious stones prospecting permit; or
- (b) prospect, or peg out an area for a tenement; or
- (c) give notice of a pegging; or
- (d) apply for the registration or renewal of a tenement.

Regulations

99. (1) The Governor may make regulations that are contemplated by, or are necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) regulate and control the issue of permits, certificates of registration and other instruments under this Act; and
- (b) prescribe categories of persons who are disqualified from holding a permit or tenement under this Act; and
- (c) provide for the maintenance and inspection of registers; and
- (d) regulate, restrict or prohibit specified kinds of operations on land, or land within a specified area, or land of a specified class; and
- (e) provide that an activity must not be carried out under this Act, or a permit, tenement or other instrument issued under this Act, unless or until a prescribed authority has been consulted and, if the regulations so provide, approved the activity or concurred in the issuing of the permit, tenement or instrument; and
- (f) require that mining operations be worked with proper diligence, in conformity with the requirements of the regulations, as to the number of personnel, and the nature of machinery, to be employed in carrying out operations and such other matters as may be required in the regulations; and
- (g) provide for the amalgamation of two or more tenements, or conditions affecting two or more tenements, so that the tenements may be worked as if they constituted a single tenement; and
- (h) provide for the protection, management, rehabilitation and restoration of land; and

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- (i) restrict or prohibit operations that may cause nuisance or inconvenience to persons in the vicinity of mining operations; and
 - (j) restrict or prohibit operations that may result in pollution or harm to any watercourse, water supply or natural amenity; and
 - (k) prescribe the action that must be taken if a permit, pegging or tenement lapses or is cancelled under this Act, or otherwise ceases to have effect; and
 - (l) provide for the form and service of notices and other documents under this Act; and
 - (m) prescribe fees and charges to be paid in respect of a matter under this Act and provide for the recovery of those fees; and
 - (n) authorise the release or publication of information of a specified kind obtained in the administration of this Act; and
 - (o) prescribed fines (not exceeding \$2 500) for contravention of a regulation.
- (3) The regulations may—
- (a) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and
 - (b) be of general or limited application; and
 - (c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
 - (d) provide that a specified provision of this Act does not apply, or applies with prescribed variations, in any circumstance or situation (or circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and
 - (e) provide that a matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Director, the Mining Registrar or a prescribed authority.

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Schedule 1—Transitional provisions

Precious stones fields; reserved land

1. (1) A precious stones field under the Mining Act immediately before the commencement of this clause will be taken to have been declared as a precious stones field under this Act.

(2) Land reserved from the operation of the Mining Act immediately before the commencement of this clause will be taken to have been reserved from the operation of this Act.

Existing permits, tenements etc—Precious stones

2. (1) A precious stones prospecting permit in force under the Mining Act immediately before the commencement of this clause will be taken to be a precious stones prospecting permit issued under this Act (and, subject to this Act, will continue in force for the balance of its term).

(2) A precious stones claim registered under the Mining Act immediately before the commencement of this clause will be taken to be a precious stones claim registered under this Act (and, subject to this Act, the registration will continue for the balance of the term of the claim).

(3) A valid pegging for precious stones under the Mining Act in existence immediately before the commencement of this clause will continue to have effect under this Act.

(4) An application made under the Mining Act that had not been determined before the commencement of this clause may, if so determined by the Mining Registrar, be dealt with under this Act.

Exploration licences

3. (1) An exploration licence in force under the Mining Act immediately before the commencement of this clause will not be taken to include an authority to carry out exploratory operations for precious stones.

(2) However, the Minister may, on the application of the holder of an exploration licence made after the commencement of this clause and subject to the Mining Act (as amended by this Act), if the Minister in his or her absolute discretion thinks fit, vary the terms of an exploration licence to authorise exploratory operations for precious stones under the licence.

Appointments

4. A mining registrar holding office immediately before the commencement of this clause will be taken to have been appointed to that office by the Minister under section 13 of the Mining Act (as amended by this Act), and will continue to hold that office until the appointment is revoked by the Minister.

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APPENDIX

LEGISLATIVE HISTORY

Amendments

The *Opal Mining Act 1995* amended the following:

Mining Act 1971

Transitional Provisions

(Transitional provision from Statutes Amendment (Mining Administration) Act 1999, s. 11)

(2) An agreement registered under Part 7 of the *Opal Mining Act 1995* before the commencement of this Act will be taken to be an agreement that is to be kept confidential under section 70A of that Act (as enacted by this Act) unless or until all parties to the agreement notify the Mining Registrar otherwise.

(Transitional provision from Statutes Amendment (Courts and Judicial Administration) Act 2001, s. 25)

25. (1) The amendments made to the principal Act by section 23—

- (a) do not apply in respect of proceedings commenced before the commencement of that section (and those proceedings may continue as if this Act had not been enacted); and
- (b) apply in respect of proceedings commenced after the commencement of that section (including proceedings in respect of a claim arising before the commencement of that section).

(2) The amendments made to the principal Act by section 24 apply in respect of proceedings commenced after the commencement of that section (including proceedings in respect of a claim arising before the commencement of that section).

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Long title:	amended under <i>Legislation Revision and Publication Act 2002</i> 12.6.03
Section 2:	omitted under <i>Legislation Revision and Publication Act 2002</i> 12.6.03
Section 3(1):	definition of "appropriate court" amended by 69, 2001, s. 23
Section 53(2):	amended by 23, 1998, s. 12
Section 70A:	inserted by 1, 1999, s. 10
Section 71:	amended by 23, 1998, s. 13; 22, 2000, s. 4; repealed by 12, 2003, s. 19
Section 72(2a):	inserted by 69, 2001, s. 24