

South Australia

Opal Mining Act 1995

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

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

3—Interpretation

(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;

corporation means a body corporate;

council has the same meaning as in the *Local Government Act 1999* and includes a body corporate that is, by virtue of any Act, deemed to be, or 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;

director of a company includes a person occupying or acting in the position of a director or member of the governing body of the company, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position, and includes any person in accordance with whose directions or instructions the directors or members of the governing body are accustomed to 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;

Mintabie Township Lease Agreement and **Mintabie township lease area** have the same meaning as in the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*;

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;

opal mining register means the register kept by the Opal Mining Registrar under section 76;

opal mining registrar means a person appointed as an opal mining registrar under section 75A and includes the Opal Mining Registrar;

Opal Mining Registrar means a person appointed as the Opal Mining Registrar under section 75A and includes a person who is acting in the position of the Opal Mining Registrar;

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;

River Murray Protection Area means a River Murray Protection Area under the *River Murray Act 2003*;

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.

4—Declaration of precious stones field or reserved land

- (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).

5—Declaration of designated area or exclusion zone

- (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.
- (3a) If a declaration under this section applies to any part of a River Murray Protection Area, the Minister must first consult with the Minister to whom the administration of the *River Murray Act 2003* is committed.
- (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.

6—Exempt land

- (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 equal to or exceeding the prescribed amount, used for an industrial or commercial purpose; or
 - (B) a spring, well, reservoir or dam that has some commercial value or use,

(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—
- (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 Opal 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).

Part 2—Precious stones prospecting permits

7—Application for permit

- (1) A person may apply for a precious stones prospecting permit.
- (2) The application—
 - (a) must be made in a manner and form determined by the Director; 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) An opal 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.

8—Nature of permit

- (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.

Administrative penalty.

9—Terms and renewal of permit

- (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 manner and form determined by the Director; and
 - (d) must be accompanied by the prescribed application fee.
- (4) A renewal will be issued by an opal 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.

10—Rights of holder of permit

- (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.
- (6) It is a condition of every precious stones prospecting permit that the holder of the permit (being a holder who is a natural person) must not reside on the precious stones field other than in the Mintabie township lease area in accordance with a licence issued under section 29D of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*, or as otherwise allowed under that Act.

¹ See especially section 11.

10A—Special provisions in relation to Mintabie precious stones field

- (1) Despite any other provision of this Act, a precious stones prospecting permit does not authorise a person to prospect for precious stones on the Mintabie precious stones field unless the permit has been endorsed by an opal mining registrar as authorising such prospecting.
- (2) The holder of a precious stones prospecting permit may apply for endorsement of his or her precious stones prospecting permit to authorise prospecting for precious stones on the Mintabie precious stones field.
- (3) An application under subsection (2)—
 - (a) must be made in a form determined by the Director; and
 - (b) must be accompanied by the prescribed application fee; and
 - (c) must be accompanied by any other information that the Director may require (including, without limiting this paragraph—
 - (i) in the case of an applicant who is of or above 18 years of age, information in relation to the criminal history of the applicant; or
 - (ii) in the case of an applicant who is a body corporate, information in relation to the criminal history of the applicant, or a director, officer or employee of the applicant).
- (4) If an opal mining registrar refuses to endorse a precious stones prospecting permit under this section, the opal mining registrar must, by notice in writing, inform the applicant of that fact.
- (5) A precious stones prospecting permit that authorises prospecting for precious stones on the Mintabie precious stones field is subject to conditions specified by the opal mining registrar by notice in writing given to the holder of the permit.

- (6) A condition under subsection (5) has effect when the notice under that subsection is given to the holder of the permit.
- (7) A condition under subsection (5) is in addition to, and does not derogate from, any other condition or qualification applicable to a precious stones prospecting permit under this Act.
- (8) The holder of a precious stones prospecting permit that authorises prospecting for precious stones on the Mintabie precious stones field must not contravene or fail to comply with a condition of his or her permit.
- (9) An opal mining registrar must revoke an endorsement under this section if the holder of the relevant precious stones prospecting permit has been excluded from the Mintabie precious stones field under section 29H of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*.
- (10) An opal mining registrar may, by notice in writing, on any reasonable grounds—
 - (a) revoke an endorsement under this section; or
 - (b) vary the conditions of a precious stones prospecting permit that authorises prospecting for precious stones on the Mintabie precious stones field by the addition, substitution or deletion of 1 or more conditions.
- (11) A revocation or variation under subsection (10) has effect when the notice under that subsection is given to the holder of the permit (or on such later date as may be specified in the notice).
- (12) An endorsement under this section expires on the day on which the precious stones prospecting permit to which the endorsement relates expires or is renewed, whichever occurs first.
- (13) A holder of a precious stones prospecting permit—
 - (a) whose application for endorsement of his or her precious stones prospecting permit under this section is refused by an opal mining registrar; or
 - (b) who receives a notice under subsection (5) imposing a condition on the endorsement; or
 - (c) who receives a notice under subsection (10) revoking an endorsement, or varying the conditions, of the precious stones prospecting permit,may apply to the Warden's Court to have the relevant decision or decisions of the opal mining registrar reviewed.
- (14) An application for review must, unless the Warden's Court allows an extension of time, be made within 28 days after the relevant notice is given to the person.
- (15) At the conclusion of the review, the Warden's Court may, if satisfied that there were no reasonable grounds for a particular decision, do 1 or both of the following:
 - (a) —
 - (i) in the case of a review of a decision of an opal mining registrar to refuse to endorse a precious stones prospecting permit under this section—quash the opal mining registrar's decision; or

- (ii) in the case of a review in respect of a notice under subsection (5) or (10)—cancel the revocation or the imposition or variation of the relevant condition (as the case requires);
 - (b) remit the subject matter of the review to an opal mining registrar for reconsideration.
- (16) An opal mining registrar must not, in exercising a power or function under this section, act in a manner that is inconsistent with the Mintabie Township Lease Agreement.

11—Qualifications to permits

- (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
 - (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
- (6a) A precious stones prospecting permit does not authorise the pegging out of an area that is not either wholly within, or wholly outside, a precious stones field.

- (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 Opal 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 Opal 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 Opal Mining Registrar's decision; or
 - (b) reverse the Opal 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.

12—Area to be pegged out etc

- (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.

13—Major working areas—Coober Pedy

- (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.
- (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.

14—Notice of pegging

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.

15—Effect of pegging an area

- (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 wholly outside 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).

16—Ballot may be conducted in certain cases

- (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 Opal Mining Registrar to the land for registration of the tenement no later than 14 days after the declared day.
- (6) An opal 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
 - (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) A person must not prospect for precious stones in contravention of this section.
Maximum penalty: \$5 000.

- (9a) A person must not peg out an area for a precious stones tenement in contravention of this section.
Administrative penalty.
- (9b) A pegging purportedly made by a person in contravention of this section is of 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 Opal Mining Registrar to the land.
- (14) This section applies despite the other provisions of this Act.

17—Pegging may lapse

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).

18—Contravention of Part

- (1) A person must not—
- (a) purport to peg out an area for a precious stones tenement if not authorised to do so under a valid precious stones prospecting permit; or
 - (b) while being the holder of a precious stones prospecting permit, peg out an area in contravention of this Act or otherwise than in accordance with an authority conferred by this Act.

Administrative penalty.

- (2) A person must not, having pegged out an area, carry out operations within the area unless those operations are authorised under this Act.

Maximum penalty: \$5 000.

- (3) A pegging purportedly made by a person in contravention of this section is of no effect.

Part 3—Precious stones tenements

18A—Special conditions for tenements in relation to Mintabie precious stones field

- (1) Each precious stones tenement on the Mintabie precious stones field is subject to the conditions specified by the Director by notice in writing given to the holder of the tenement.
- (2) A condition under subsection (1) has effect when the notice under that subsection is given to the holder of the tenement.
- (3) A condition under subsection (1) is in addition to, and does not derogate from, any other condition or qualification applicable to a precious stones tenement under this Act.
- (4) The holder of a precious stones tenement on the Mintabie precious stones field must not contravene or fail to comply with a condition of his or her tenement.
- (5) The Director may, by notice in writing, on any reasonable grounds, vary the conditions of a precious stones tenement on the Mintabie precious stones field by the addition, substitution or deletion of 1 or more conditions.
- (6) A variation of a condition under subsection (5) has effect when the notice under that subsection is given to the holder of the tenement (or on such later date as may be specified in the notice).
- (7) A holder of a precious stones tenement on the Mintabie precious stones field—
 - (a) who receives a notice under subsection (1) imposing a condition on the precious stones tenement; or
 - (b) who receives a notice under subsection (5) varying the conditions of the precious stones tenement,may apply to the Warden's Court to have the relevant decision or decisions of the Director reviewed.
- (8) An application for review must, unless the Warden's Court allows an extension of time, be made within 28 days after the relevant notice is given to the person.
- (9) At the conclusion of the review, the Warden's Court may, if satisfied that there were no reasonable grounds for a particular decision, do 1 or both of the following:
 - (a) cancel the imposition or variation of the relevant condition (as the case requires);
 - (b) remit the subject matter of the review to the Director for reconsideration.
- (10) The Director must not, in exercising a power or function under this section, act in a manner that is inconsistent with the Mintabie Township Lease Agreement.

18B—Cancellation of tenements on Mintabie precious stones field

- (1) The Director must cancel the registration of a tenement or tenements of a person on the Mintabie precious stones field if the person has been excluded from the Mintabie precious stones field under section 29H of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*.

- (2) Subject to this section, the Director may cancel the registration of a tenement or tenements of a person on the Mintabie precious stones field if—
- (a) the Director is satisfied on reasonable grounds that the person has acted in a manner prejudicial to—
 - (i) the welfare of Anangu (whether individually or as a group); or
 - (ii) the welfare of those who are lawfully on the Mintabie precious stones field under the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*; or
 - (b) the person has contravened, or failed to comply with, a condition under section 18A in relation to the tenement or tenements; or
 - (c) an endorsement of a precious stones prospecting permit under section 10A held by the person has been revoked under that section.
- (3) If the registration of a tenement or tenements on the Mintabie precious stones field is cancelled under subsection (2)(a), the holder of the tenement or tenements may apply to the Warden's Court to have the relevant decision of the Director reviewed.
- (4) An application for review must, unless the Warden's Court allows an extension of time, be made within 28 days of the cancellation.
- (5) At the conclusion of the review, the Warden's Court may, if satisfied that there were no reasonable grounds for the cancellation, do 1 or both of the following:
- (a) quash the Director's decision;
 - (b) remit the subject matter of the review to the Director for reconsideration.
- (6) If—
- (a) an endorsement of a precious stones prospecting permit is revoked under section 10A; and
 - (b) the holder of the precious stones prospecting permit has applied under that section for a review of the decision to revoke the endorsement,
- the Director may not cancel the registration of a tenement of the person under subsection (2)(c) until the review has been finally determined.
- (7) This section is in addition to, and does not derogate from, any other provision of this Act.
- (8) In this section—
- Anangu* has the same meaning as in the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*.

19—Application for registration of tenement

- (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 manner and form determined by the Director or as otherwise determined by the Opal Mining Registrar; and

- (c) must be accompanied by the prescribed application fee.
- (4) If the area is wholly outside 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.

19A—Special provision related to application for and registration of tenements on Mintabie precious stones field

- (1) Without limiting section 19 or 22, an application for registration of, or renewal of the registration of, a precious stones tenement on the Mintabie precious stones field must be accompanied by any other information the Director may require (including, without limiting this subsection—
 - (a) in the case of an applicant who is of or above 18 years of age, information in relation to the criminal history of the applicant; or
 - (b) in the case of an applicant who is a body corporate, information in relation to the criminal history of the applicant, or a director, officer or employee of the applicant).
- (2) Despite any other provision of this Act, the Opal Mining Registrar must refuse to register, or refuse to renew the registration of, a precious stones tenement on the Mintabie precious stones field if the applicant has been excluded from the Mintabie precious stones field under section 29H of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*.
- (3) Despite any other provision of this Act, the Opal Mining Registrar may refuse to register, or refuse to renew the registration of, a precious stones tenement on the Mintabie precious stones field if—
 - (a) the Opal Mining Registrar is satisfied on reasonable grounds that the person has acted in a manner prejudicial to—
 - (i) the welfare of Anangu (whether individually or as a group); or
 - (ii) the welfare of those who are lawfully on the Mintabie precious stones field under the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*; or
 - (b) the person has contravened, or failed to comply with, a condition under section 18A in relation to the tenement or a similar tenement; or
 - (c) an endorsement of a kind contemplated by section 10A on a precious stones prospecting permit held by the person has been cancelled under that section.
- (4) If the Opal Mining Registrar refuses to register, or refuses to renew the registration of, a precious stones tenement on the Mintabie precious stones field under this section, the Opal Mining Registrar must, by notice in writing, inform the applicant of that fact.

- (5) A person whose application to register, or to renew the registration of, a precious stones tenement on the Mintabie precious stones is refused by the Opal Mining Registrar under subsection (3)(a) may apply to the Warden's Court to have the relevant decision of the Opal Mining Registrar reviewed.
- (6) An application for review must, unless the Warden's Court allows an extension of time, be made within 28 days after the notice under subsection (4) is given to the person.
- (7) At the conclusion of the review, the Warden's Court may, if satisfied that there were no reasonable grounds for the Opal Mining Registrar's decision, do 1 or both of the following:
 - (a) quash the Opal Mining Registrar's decision;
 - (b) remit the subject matter of the review to the Mining Registrar for reconsideration.

20—Registration of tenement

- (1) If due application is made for the registration of a precious stones claim, the Opal Mining Registrar must, subject to Part 7 and the other provisions of this Act, register the precious stones claim on the opal mining register.
- (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 made.
- (3) If due application is made for the registration of an opal development lease, the Opal 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 Opal Mining Registrar and to the applicant.
- (5) If the Director determines that it is appropriate for an opal development lease to be granted, the Opal Mining Registrar must, on receipt of the notice under subsection (4), subject to this Act, grant and register an opal development lease.
- (6) The Opal 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 Opal 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 Opal Mining Registrar cannot register a precious stones tenement if to do so would be inconsistent with a public undertaking by the Minister responsible for the administration of the Mining Act.

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.

21—Maximum number of tenements

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.

22—Term and renewal of tenement

- (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 manner and form determined by the Director or as otherwise determined by the Opal Mining Registrar; and
 - (d) must be accompanied by the prescribed application fee.
- (4) Unless otherwise determined by the Opal 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 Opal Mining Registrar to the tenement;
 - (b) in other cases—the application must be made at either of the two nearest offices of the Opal 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 Opal 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).

23—Rights conferred by tenement

- (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.
- (3) It is a condition of every registered precious stones claim and every registered opal development lease that the holder of the claim or lease (being a holder who is a natural person) must not reside on the land comprising the claim or lease other than in the Mintabie township lease area in accordance with a licence issued under section 29D of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*, or as otherwise allowed under that Act.

24—Tenement non-transferable

A precious stones tenement is not transferable.

25—Unlawful entry on tenement

- (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: \$10 000.
- (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.

26—Caveats

- (1) A person (a *caveator*) who has, or who is claiming, an interest in a matter relevant to the registration of a tenement may apply to the Opal Mining Registrar to have a caveat registered under this section.
- (2) An application for the registration of a caveat must be in a form determined by the Opal Mining Registrar.
- (3) A caveat under subsection (1) may—
 - (a) forbid the registration of any transfer, mortgage or voluntary surrender affecting a specified interest in the tenement (an *absolute caveat*); or
 - (b) forbid the registration of any transfer, mortgage or voluntary surrender affecting the tenement unless the transfer or mortgage expressly states that it is to be subject to the interest claimed by the caveator (a *claim caveat*).
- (4) However, if a caveat is being registered without the express consent of the tenement holder for the tenement to which the caveat relates—
 - (a) the caveator must be a person who has entered into an agreement with the tenement holder relating to—
 - (i) the sale or transfer (or both) of the tenement holder's interest in the relevant tenement; or
 - (ii) any other matter connected with the tenement holder's interest in the relevant tenement; and
 - (b) the agreement must provide for the registration of a caveat under this section; and
 - (c) a copy of the agreement must accompany the application under subsection (2).
- (5) A caveat may—
 - (a) set out a date of expiry (if any); or
 - (b) set out that the caveat will expire—
 - (i) on a specified transfer or mortgage of an interest in the tenement; or
 - (ii) at the end of a specified period.
- (6) In connection with the preceding subsections, an application for the registration of a caveat—
 - (a) must be accompanied by—
 - (i) the prescribed fee; and
 - (ii) such other documents or information as the Opal Mining Registrar may require; and
 - (b) if the caveat is being registered without the express consent of the tenement holder for the tenement to which the caveat relates—must include a statutory declaration as to the truthfulness and accuracy of any matter specified by the caveator in the application.

- (7) The Opal Mining Registrar does not have, on the receipt of an application to register a caveat, any duty to determine whether or not—
- (a) the caveat relates to a valid caveatable interest; or
 - (b) a caveatable interest has been sufficiently described; or
 - (c) there is sufficient evidence to support the caveat; or
 - (d) any matter specified in the application is true and accurate.
- (8) The registration of a caveat does not warrant the validity of any interest claimed in the caveat.
- (9) On the registration of a caveat under this section, a notice of the registration of the caveat must be sent by the Opal Mining Registrar to any tenement holder whose interests are affected by the caveat, other than where the tenement holder is also the caveator.
- (10) A caveat registered under this section—
- (a) does not affect or prevent the renewal of a tenement; and
 - (b) does not lapse on the renewal of a tenement (while the caveat is registered); and
 - (c) does not affect or prevent any dealing with the tenement (or any interest in the tenement) that is required by an order of a court or tribunal constituted by law.
- (11) A caveat registered under this section will lapse on—
- (a) any order of the Warden's Court providing for the lapsing of the caveat; or
 - (b) the withdrawal of the caveat by the caveator; or
 - (c) the expiry of the caveat as contemplated by subsection (5).
- (12) If—
- (a) a caveat is registered in respect of a tenement; and
 - (b) the caveat lapses,
- the caveator or any related corporation may not apply to register a second or subsequent caveat relating to the same interest in the tenement to which the original caveat related without the approval of the Warden's Court, or unless that second or subsequent caveat is being registered with the express consent of the tenement holder for the tenement to which the caveat relates.
- (13) In this section—
- related corporation***, in relation to a particular entity (being a corporation), is a corporation that is related to the entity under section 50 of the *Corporations Act 2001* of the Commonwealth.

26A—Application to Warden's Court to lapse caveat or obtain compensation

- (1) A person who—
- (a) has an interest in a tenement subject to a caveat registered under section 26; or

- (b) has an interest that is directly affected by a caveat registered under section 26, may apply to the Warden's Court under this section.
- (2) An application may be made for 1 or more of the following:
- (a) a declaration that an interest claimed by the caveator is not a valid caveatable interest;
 - (b) an order that a caveat lapse;
 - (c) an order that a transfer, mortgage or surrender relating to a tenement be registered despite the registration of a caveat under section 26;
 - (d) an order that a caveator pay compensation for any loss or damage suffered because a caveat registered under section 26 does not relate to a valid caveatable interest, or an amount for or towards any such loss or damage.
- (3) Any compensation payable under an order under subsection (2)(d) may be recovered as if it were a debt due to the person in whose favour the order is made in a court of competent jurisdiction.
- (4) This section does not limit any other jurisdiction or power of the Warden's Court in relation to caveats under section 26.

27—Power of Opal Mining Registrar to cancel tenement

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

27A—Cancellation and suspension

- (1) The Opal Mining Registrar may cancel or suspend a precious stones tenement if the tenement holder contravenes or fails to comply with—
- (a) a term or condition of the tenement; or

- (b) a provision of this Act.
- (2) The Opal Mining Registrar may suspend all or some of the operations under a tenement—
 - (a) pending compliance with an obligation or requirement under this Act by the tenement holder; or
 - (b) until the tenement holder takes some other step specified by the Minister; or
 - (c) on account of any other matter that, in the opinion of the Minister, warrants suspension of rights under the tenement.
- (3) The Opal Mining Registrar must not take action under this section unless or until the Opal Mining Registrar has—
 - (a) taken reasonable steps to notify the tenement holder of the proposed course of action (including in the notification the grounds on which the Opal Mining Registrar is intending to act); and
 - (b) provided the tenement holder with an opportunity to make written submissions in relation to the matter within a period specified by the Opal Mining Registrar.
- (4) The Opal Mining Registrar may, after complying with subsection (3), by instrument registered on the opal mining register, cancel or suspend a tenement.
- (5) The Opal Mining Registrar must ensure that a notice of the cancellation or suspension of a tenement under subsection (4) is given to the tenement holder.
- (6) A tenement holder may, within 28 days after receiving a notice under subsection (5), appeal to the ERD Court in relation to the matter.
- (7) The ERD Court may, on hearing an appeal under subsection (6), if satisfied that the ground or grounds on which the Opal Mining Registrar acted were insufficient to justify the cancellation or suspension of the tenement (as the case may be)—
 - (a) revoke the cancellation or suspension; and
 - (b) make any consequential or ancillary order that the Court considers necessary or appropriate.
- (8) If the ERD Court makes an order under subsection (7)(a), the Opal Mining Registrar may, subject to any order of the Court, reinstate the tenement to a date that coincides with the initial date of the cancellation or suspension, or such later date as the Opal Mining Registrar considers to be appropriate in the circumstances.

28—Surrender of tenement, removal of posts etc

- (1) The Opal 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.
- (3) If the land comprised in the tenement is outside a precious stones field, the Opal 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 an opal 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 the case of a tenement that is wholly outside a precious stones field—leave all posts, boundary indicators and markers in place until authorised by an opal 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 Opal Mining Registrar to exercise the powers of an authorised person under this section.

29—Removal of machinery

- (1) The owner of any machinery or goods on land that has ceased to be subject to a tenement may, at any time within the period of 3 months after the date on which the land ceased to be subject to the tenement, enter the land and remove the machinery or goods from the land.
- (2) The Minister may cause any machinery or goods that have been abandoned on land that has been subject to a tenement (whether or not a new tenement has been granted over the land) to be seized.
- (3) Any machinery or goods seized under subsection (2) are forfeited to the Crown and may be sold by the Minister.
- (4) Any proceeds from a sale under subsection (3) will be paid to the Treasurer.
- (5) The Treasurer may, on application under this subsection, pay an amount equal to the proceeds of a sale under subsection (3) to the person who abandoned the relevant machinery or goods, after deduction of an amount determined by the Treasurer to be reasonable costs associated with seizing, holding, maintaining, repairing, cleaning or selling the machinery or goods.
- (6) An application under subsection (5) must be made within 2 years from the date of sale (and after the expiration of that period no further claim may be made in relation to the machinery or goods).

30—Maintenance of posts

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.

Administrative penalty.

Part 4—Entry on land and declared equipment

Division 1—Entry on land

31—Entry on land

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).

32—Notice of entry

- (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 Opal 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: \$50 000.
- (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.

33—Duration of notice of entry

- (1) A notice of entry remains in force—
- (a) for 12 months from the date of validation (see section 32(2)); and
 - (b) for the duration of a tenement (including any renewal) that is pegged out on the land to which the notice relates within 12 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

34—Use of declared equipment

- (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: \$120 000.

- (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: \$120 000.
- (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 Opal 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: \$120 000.

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Part 4—Entry on land and declared equipment

Division 2—Declared equipment

- (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.

Part 5—Rehabilitation and compensation

35—Rehabilitation of land

- (1) An authorised person may, by notice in writing to the holder of a precious stones tenement that is 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 issued at any time (including after a 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: \$120 000.
- (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: \$120 000.
- (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.

35A—Compliance directions

- (1) The Minister may issue a direction under this section (a *compliance direction*) for the purpose of—
 - (a) securing compliance with a requirement under this Act, a tenement (including a term or condition of a tenement) or any authorisation or direction under or in relation to a tenement; or
 - (b) preventing or bringing to an end specified operations that are contrary to this Act or a tenement (including a term or condition of a tenement); or
 - (c) without limiting any other provision, requiring the rehabilitation of land on account of any operations carried out without an authority required by this Act; or
 - (d) requiring the taking of any action that, in the opinion of the Minister, is required to ensure public safety.
- (2) A compliance direction—
 - (a) must be in the form of a notice in writing given to the person to whom the direction is issued; and
 - (b) must—
 - (i) specify the person to whom it is issued (whether by name or by description sufficient to identify the person); and
 - (ii) specify the grounds on which it is issued; and
 - (c) may impose any requirement reasonably required for the purpose for which the direction is issued including 1 or more of the following:
 - (i) a requirement that the person discontinue, or not commence, specified operations indefinitely or for a specified period or until further notice from the Minister;
 - (ii) a requirement that the person not carry on specified operations except at specified times or subject to specified conditions;
 - (iii) a requirement that the person take specified action within a specified period.
- (3) The Minister may, by notice in writing given to the person to whom a compliance direction is issued, vary or revoke the direction.
- (4) A person to whom a compliance direction relates must comply with a direction under this section within the time allowed in the direction.

Maximum penalty: \$250 000.

35B—Contravention of Act

The Minister or an authorised officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in a direction under this Part a requirement for an act or omission that might otherwise constitute a contravention of this Act and, in that event, a person incurs no liability to a penalty under this Act for compliance with the requirement.

36—Bonds

- (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 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 Opal Mining Registrar.
- (9) The Opal 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 Opal Mining Registrar.
Maximum penalty: \$120 000.
- (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: \$120 000.

37—Application of bonds

- (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).
- (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 Opal Mining Registrar is satisfied that it is appropriate to do so, the Opal Mining Registrar may return the bond to the holder of the tenement.

38—Compensation

- (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

39—Interpretation

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.

40—Nature of agreement

- (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.

41—Parties to an agreement

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.

42—Content of an agreement

- (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.

43—Registration of agreement

- (1) The parties to an opal mining co-operation agreement must submit the agreement to the Opal 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 Opal 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 Opal 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 Opal 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 Opal 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 Opal 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)).
- (6) An agreement has no force or effect under this Act until it is registered.

44—Agreement may be varied or revoked

- (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 Opal Mining Registrar for registration within 21 days after the variation is made and the Opal Mining Registrar must register the variation unless the Opal 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 Opal 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 Opal Mining Registrar.

45—Appeal to Warden's Court

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

46—Persons bound by agreement

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.

47—Enforcement of agreement

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.

48—Restriction on mining operations by third parties

- (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.

Part 7—Native title land

Division 1—Prospecting

49—Qualification of rights conferred by permit

- (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 title²; or
 - (c) an indigenous land use agreement registered under the *Native Title Act 1993* of the Commonwealth provides that statutory rights to negotiate are not intended to apply in relation to the mining operations³.
- (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.

3 Cf. *Native Title Act 1993* (Cwth), section 24EB(1)(c).

Division 2—Production

50—Limits on grant of tenement

- 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 title¹; or
 - (c) an indigenous land use agreement registered under the *Native Title Act 1993* of the Commonwealth provides that statutory rights to negotiate are not intended to apply in relation to the mining operations².

- 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.
- 2 Cf. *Native Title Act 1993* (Cwth), section 24EB(1)(c).

51—Applications for tenements

- (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 Opal Mining Registrar may refuse an application for a precious stones tenement over native title land if it appears to the Opal 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

52—Application for declaration

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

53—Types of agreement authorising mining operations on native title land

- (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.

54—Negotiation of agreements

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

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).

55—Notification of parties affected

- (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*.

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

- (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 without notice to any person 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).

57—Expedited procedure where impact of operations is minimal

- (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 without notice to any person 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.

58—Negotiating procedure

- (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.

59—Agreement

- (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 Opal Mining Registrar and the Opal 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 Opal 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.

60—Effect of registered agreement

- (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.

61—Application for determination

- (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.

62—Criteria for making determination

- (1) In making its determination, the ERD Court must take into account the following:
 - (a) the effect of the proposed mining operations on—
 - (i) native title in the land; and
 - (ii) the way of life, culture and traditions of any of the native title parties; and
 - (iii) the development of the social, cultural and economic structures of any of those parties; and
 - (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.

63—Limitation on powers of Court

- (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.

64—Effect of determination

- (1) A determination under this Division—
 - (a) must be lodged with the Opal 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.

65—Ministerial power to overrule determinations

- (1) If the Minister considers it to be in the interests of the State to overrule a determination of the ERD Court under this Part, the Minister may, by notice in writing given to the ERD Court and the parties to the proceedings before the Court, overrule the determination and substitute another determination that might have been made by the Court.
- (2) However—
 - (a) the Minister cannot overrule a determination—
 - (i) if more than two months have elapsed since the date of the determination; or

- (ii) if the Minister was the proponent of the negotiations leading to the determination; and
- (b) the substituted determination cannot create a conjunctive or umbrella authorisation¹ if there was no such authorisation in the original determination nor can the substituted determination extend the scope of a conjunctive or umbrella authorisation.

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).

66—No re-opening of issues

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

67—Non-application of this Part to Pitjantjatjara and Maralinga lands

Nothing in this Part affects the operation of—

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

68—Compensation to be held on trust in certain cases

- (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.

69—Non-monetary compensation

- (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

Example—

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

70—Review of compensation

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

the ERD Court may, on application by the registered representative of the holders of native title in the land, or on the application of a person who is liable to pay compensation under the determination, review the provisions of the determination providing for the payment of compensation.
- (2) The application must be made within three months after the date of the native title declaration.
- (3) The Court may, on an application under this section—
 - (a) increase or reduce the amount of the compensation payable under the determination (as from the date of application or a later date fixed by the Court); and
 - (b) change the provisions of the determination for payment of compensation in some other way.
- (4) In deciding whether to vary a determination and, if so, how, the Court must have regard to—
 - (a) the assumptions about the existence or nature of native title on which the determination was made and the extent to which the native title declaration has confirmed or invalidated those assumptions; and
 - (b) the need to ensure that the determination provides just compensation for, and only for, persons whose native title in land is affected by the mining operations; and

- (c) the interests of mining operators and investors who have relied in good faith on the assumptions on which the determination was made.

70A—Opal Mining Native Title Register

- (1) The Opal Mining Registrar must establish a distinct part of the opal mining register (which may be referred to as the *Opal Mining Native Title Register*) for the registration of agreements and determinations under this Part.
- (2) The Opal 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 Opal Mining Registrar may also note in any other part of the opal mining register any agreement or determination registered under this Part (as the Opal 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 Opal 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 Opal 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.

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Part 7—Native title land

Division 5—Miscellaneous

- (7) A person who contravenes or fails to comply with a condition is guilty of an offence.
Maximum penalty: \$50 000.

Part 8—Special powers of Warden's Court

72—Jurisdiction relating to tenements and monetary claims

- (1) The Warden's Court has jurisdiction to determine, in the manner it thinks just, all actions 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 \$150 000 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 Opal Mining Registrar; and
 - (b) the Opal Mining Registrar must make a note of the proceedings in the opal 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.

73—Cancellation of permit

- (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.

74—Cancellation of pegging

- (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.

75—Forfeiture of tenement

- (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.
- (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 the permission 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.

Part 9—Miscellaneous

75A—Opal mining registrar

- (1) There is to be an Opal Mining Registrar and other opal mining registrars.
- (2) The Opal Mining Registrar and the opal mining registrars are to be Public Service employees.
- (3) The Opal Mining Registrar may delegate a power or function of the Opal Mining Registrar to another opal mining registrar.
- (4) If the terms of an instrument of delegation allows for subdelegation, the delegate may subdelegate the power or function in accordance with the instrument (and a reference in this section to a delegation will then extend to any such subdelegation).
- (5) A delegation under this section—
 - (a) may be absolute or conditional; and
 - (b) may be made—
 - (i) to a specified person; or
 - (ii) to a person for the time being holding or acting in a specified office or position; and
 - (iii) does not derogate from the power of the delegator to act in any matter; and
 - (iv) is revocable at will by the delegator.
- (6) An opal mining registrar may be assigned to act as the Opal Mining Registrar—
 - (a) during a vacancy in the office of Opal Mining Registrar; or
 - (b) when the Opal Mining Registrar is absent from, or unable to discharge, official duties.

76—Opal mining register

- (1) The Opal Mining Registrar will keep a register (the *opal mining register*).
- (2) The opal mining register will be 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 any other information the Opal Mining Registrar thinks fit.
- (3) The Opal Mining Registrar must note in the opal mining 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 opal mining 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.

77—Appointment of authorised persons

- (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, search, inspect and examine any premises, land or vehicle that has been or is intended to be, used for, or in connection with, any operations or activity regulated by this Act and, where necessary for the purpose, break into or open a part of, or anything in, the premises, land or vehicle;
 - (b) inspect or examine anything;
 - (c) seize and retain 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: \$10 000 or imprisonment for 6 months.

- (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
 - (e) falsely represents, by words or conduct, that he or she is an authorised person,
- is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 6 months.

- (10) It is not an excuse for a natural person to refuse to answer a question or to provide information under a preceding subsection on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (11) However, if compliance with a requirement to answer a question or to provide information might tend to incriminate the person or make the person liable to a penalty, then—
- (a) in the case of a person who is required to provide information, including by the production of a document—the fact of the provision of the information or document (as distinct from the information itself or the contents of a document); or
 - (b) in any other case—the answer given in compliance with the requirement,
- is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).
- (12) An authorised person may require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity.
- (13) A person of whom a requirement is made under subsection (12) must comply with the requirement.
- Maximum penalty: \$5 000.
- (14) An authorised person may only exercise a power under subsection (5)(a) in respect of premises on the authority of a warrant issued by a magistrate (including as a warden) or justice.

- (15) However, a warrant is not required to exercise a power under subsection (5)(a) in relation to non-residential premises if—
 - (a) the premises are used by a tenement holder for, or in connection with, operations under this Act; or
 - (b) the authorised person has reason to believe that, in the circumstances, urgent action is required.
- (16) A warrant may not be issued unless the magistrate, warden or justice (as the case may be) is satisfied that the warrant is reasonably required in the circumstances.
- (17) An application for the issue of a warrant—
 - (a) may be made personally, electronically or by telephone; and
 - (b) must be made in accordance with any procedures prescribed by the regulations.

78—Delegations

- (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.

79—Exemptions

- (1) If the Minister is satisfied that it is justifiable to do so, the Minister may—
 - (a) exempt the holder of a tenement from the obligation to comply with a term or condition of the tenement; or
 - (b) exempt the holder of a tenement 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: \$50 000.
- (6) An exemption may not be granted under this section so as to discriminate against the holders of native title in land.

80—Passing of property

- (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.

81—Acts of officers, employees and agents

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.

82—Offences

- (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: \$150 000 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: \$10 000.
- (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: \$10 000.
- (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: \$10 000.
- (6) A person who contravenes or fails to comply with a provision of this Act (other than a provision to which an administrative penalty applies) is guilty of an offence and, if no penalty is specifically provided, is liable to a fine not exceeding \$10 000.

83—Proceedings for offences

- (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.

84—Prohibition orders

- (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: \$150 000 or imprisonment for 2 years.
- (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.

85—Power of Opal Mining Registrar to require pegs be removed

If the Opal 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 Opal Mining Registrar may cause the pegs to be removed.

86—Compliance orders

- (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.

87—Evidentiary provision

- (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.
- (2) In proceedings, a certificate purporting to be given by the Opal Mining Registrar certifying—
 - (a) as to a matter relating to a permit or tenement under this Act; or
 - (b) as to a matter relating to a notice or requirement under this Act; or
 - (c) that a person named in the certificate was or was not at a specified time the holder of a tenement; or
 - (d) that a specified provision was a term or condition of a specified tenement at a specified time; or
 - (e) that a specified determination, decision, order or requirement was made or given on a specified day; or
 - (f) that at a specified time the Minister, the Director or the Opal Mining Registrar gave notice of any specified matter under or in connection with the operation of this Act; or
 - (g) that at a specified time the Minister, the Director or the Opal Mining Registrar had not received any notice, instrument or other document, or had not received any information of a specified kind; or

- (h) that at a specified time a specified person was an authorised officer under this Act; or
 - (i) that a particular delegation was in force under this Act at a specified time, 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.

88—Avoidance of double compensation

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.

89—Disposal of waste

- (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: \$10 000.
- (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: \$10 000.
- (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.

90—Persons under 18

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.

92—Land subject to more than one tenement

- (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.

93—Interaction with Mining Act

- (1) Except where express provision is otherwise made, and subject to this section, this Act does not regulate operations carried out under the authority of a mineral 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 mineral 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: \$20 000.
- (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.
- (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: \$10 000.

94—Interaction with other Acts

- (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.

95—Public roads and access routes

- (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.

96—Approval of associations

- (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).

98—Powers of attorney

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.

98A—Administrative penalties

- (1) This section applies to any provision of this Act (or the regulations) at the foot of which the words "Administrative penalty" appear.
- (2) If a person who is a holder or former holder of a tenement is alleged to have contravened a provision to which this section applies, the Director may, by notice in writing to the person, impose an administrative penalty on the person (and the Director may act under this subsection without prior consultation with the person and without the need to give a warning or any prior notice in relation to the matter).
- (3) The amount of an administrative penalty is an amount (not exceeding \$15 000) prescribed by regulation in relation to the relevant provision.

- (4) An administrative penalty may be recovered as a debt due to the Crown.
- (5) If an administrative penalty has been imposed in relation to a particular act or default, the same act or default cannot be made the subject of proceedings for an offence against this Act and if proceedings for an offence against this Act have been brought in relation to a particular act or default, an administrative penalty cannot be imposed for the same act or default.

98B—Penalties payable into Mining Rehabilitation Fund

The following are payable into the Mining Rehabilitation Fund established under the *Mining Act 1971*:

- (a) penalties payable in respect of offences against this Act;
- (b) administrative penalties paid under this Act.

99—Regulations

- (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
 - (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 \$10 000) 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 Opal Mining Registrar or a prescribed authority.
- (4) The Governor may, by regulation, make provisions of a saving or transitional nature consequent on the amendment of this Act by another Act.
- (5) A provision made by a regulation under subsection (4) may be in addition to any provision of a saving or transitional nature made by the Act that makes the amendment.
- (6) A provision made by a regulation under subsection (4) may, if the regulations so provide, take effect from the commencement of the amendment or from a later day.
- (7) To the extent to which a provision takes effect under subsection (6) from a day earlier than the day of the publication of the regulation in the Gazette, the provision does not operate to the disadvantage of a person by—
- (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.

Schedule 1—Transitional provisions

1—Precious stones fields; reserved land

- (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.

2—Existing permits, tenements etc—Precious stones

- (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.

3—Exploration licences

- (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.

4—Appointments

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.

Legislative history

Notes

- This version is comprised of the following:

Part 1	1.1.2021
Part 2	1.1.2021
Part 3	1.1.2021
Part 4	1.1.2021
Part 5	1.1.2021
Part 6	1.1.2021
Part 7	1.1.2021
Part 8	1.1.2021
Part 9	1.1.2021
Schedules	1.1.2021
- 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.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation amended by principal Act

The *Opal Mining Act 1995* amended the following:

Mining Act 1971

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1995	102	<i>Opal Mining Act 1995</i>	14.12.1995	21.4.1997 (<i>Gazette</i> 3.4.1997 p1386)
1998	23	<i>Statutes Amendment (Native Title) Act 1998</i>	2.4.1998	Pt 4 (ss 12 & 13)—21.5.1998 (<i>Gazette</i> 21.5.1998 p2199)
1999	1	<i>Statutes Amendment (Mining Administration) Act 1999</i>	25.2.1999	Pt 3 (s 10)—1.4.1999 (<i>Gazette</i> 25.3.1999 p1462)
2000	22	<i>Statutes Amendment (Extension of Native Title Sunset Clauses) Act 2000</i>	8.6.2000	Pt 3 (s 4)—8.6.2000
2001	69	<i>Statutes Amendment (Courts and Judicial Administration) Act 2001</i>	6.12.2001	Pt 10 (ss 23—25)—3.2.2002 (<i>Gazette</i> 24.1.2002 p346)
2003	12	<i>Mining (Miscellaneous) Amendment Act 2003</i>	12.6.2003	Pt 3 (s 19)—12.6.2003 (<i>Gazette</i> 12.6.2003 p2497)

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2003	35	<i>River Murray Act 2003</i>	31.7.2003	Sch (cl 16)—24.11.2003 (<i>Gazette</i> 20.11.2003 p4203)
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 57 (ss 177—181)—4.9.2006 (<i>Gazette</i> 17.8.2006 p2831)
2009	83	<i>Anangu Pitjantjatjara Yankunytjatjara Land Rights (Mintabie) Amendment Act 2009</i>	10.12.2009	Sch 1 (cll 1—3 & 14)—1.7.2012 (<i>Gazette</i> 28.6.2012 p2923)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 103 (s 250)—1.2.2010 (<i>Gazette</i> 28.1.2010 p320)
2011	36	<i>Statutes Amendment (Directors' Liability) Act 2011</i>	22.9.2011	Pt 13 (s 15)—1.1.2012 (<i>Gazette</i> 15.12.2011 p4988)
2012	43	<i>Statutes Amendment (Courts Efficiency Reforms) Act 2012</i>	22.11.2012	Pt 10 (ss 31 & 32)—1.7.2013 (<i>Gazette</i> 16.5.2013 p1541)
2019	29	<i>Statutes Amendment (Mineral Resources) Act 2019</i>	24.10.2019	Pt 4 (ss 137 to 190) & Sch 1 (cll 17 to 21)—1.1.2021 (<i>Gazette</i> 19.11.2020 p5079)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	12.6.2003
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>12.6.2003</i>
s 3		
s 3(1)		
appropriate court	amended by 69/2001 s 23	3.2.2002
<i>Chief Inspector</i>	<i>deleted by 29/2019 s 137(1)</i>	<i>1.1.2021</i>
council	substituted by 29/2019 s 137(2)	1.1.2021
director	inserted by 29/2019 s 137(3)	1.1.2021
<i>Mining Register</i>	<i>deleted by 29/2019 s 137(4)</i>	<i>1.1.2021</i>
<i>a mining registrar</i>	<i>deleted by 29/2019 s 137(4)</i>	<i>1.1.2021</i>
<i>the Mining Registrar</i>	<i>deleted by 29/2019 s 137(4)</i>	<i>1.1.2021</i>
Mintabie Township Lease Agreement and Mintabie township lease area	inserted by 29/2019 s 137(4)	1.1.2021
opal mining register	inserted by 29/2019 s 137(5)	1.1.2021
opal mining registrar	inserted by 29/2019 s 137(5)	1.1.2021

Opal Mining Registrar	inserted by 29/2019 s 137(5)	1.1.2021
River Murray Protection Area	inserted by 35/2003 Sch cl 16(a)	24.11.2003
s 5		
s 5(3a)	inserted by 35/2003 Sch cl 16(b)	24.11.2003
s 6		
s 6(1)	amended by 29/2019 s 138(1), (2)	1.1.2021
s 6(9)	amended by 29/2019 s 138(3)	1.1.2021
Pt 2		
s 7		
s 7(2)	amended by 29/2019 s 139(1) (b) deleted by 29/2019 s 139(2)	1.1.2021 1.1.2021
s 7(4)	amended by 29/2019 s 139(3)	1.1.2021
s 8		
s 8(4)	amended by 29/2019 s 140	1.1.2021
s 9		
s 9(3)	amended by 29/2019 s 141(1) (c) deleted by 29/2019 s 141(2)	1.1.2021 1.1.2021
s 9(4)	amended by 29/2019 s 141(3)	1.1.2021
s 10		
s 10(6)	inserted by 29/2019 s 142	1.1.2021
s 10A	inserted by 83/2009 Sch 1 cl 1	1.7.2012
s 10A(1)	amended by 29/2019 s 143(1)	1.1.2021
s 10A(4)	amended by 29/2019 s 143(2), (3)	1.1.2021
s 10A(5)	substituted by 29/2019 s 143(4)	1.1.2021
s 10A(6)	amended by 29/2019 s 143(5)	1.1.2021
s 10A(9)	amended by 29/2019 s 143(6)	1.1.2021
s 10A(10)	amended by 29/2019 s 143(7)	1.1.2021
s 10A(13)	amended by 29/2019 s 143(8)—(10)	1.1.2021
s 10A(15)	amended by 29/2019 s 143(11)—(14)	1.1.2021
s 10A(16)	amended by 29/2019 s 143(15)	1.1.2021
s 10A(17)	<i>deleted by 29/2019 s 143(16)</i>	<i>1.1.2021</i>
s 11		
s 11(6a)	inserted by 29/2019 s 144(1)	1.1.2021
s 11(8)	amended by 29/2019 s 144(2)	1.1.2021
s 11(9)	amended by 29/2019 s 144(3)	1.1.2021
s 15		
s 15(2)	amended by 29/2019 s 145	1.1.2021
s 16		
s 16(5)	amended by 29/2019 s 146(1)	1.1.2021
s 16(6)	amended by 29/2019 s 146(2)	1.1.2021
s 16(9)	substituted by 29/2019 s 146(3)	1.1.2021

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s 16(9a) and (9b)	inserted by 29/2019 s 146(3)	1.1.2021
s 16(13)	amended by 29/2019 s 146(4)	1.1.2021
s 18	substituted by 29/2019 s 147	1.1.2021
Pt 3		
s 18A	inserted by 83/2009 Sch 1 cl 2	1.7.2012
s 18A(1)	substituted by 29/2019 s 148(1)	1.1.2021
s 18A(2)	amended by 29/2019 s 148(2)	1.1.2021
s 18A(7)	amended by 29/2019 s 148(3)	1.1.2021
s 18A(11)	<i>deleted by 29/2019 s 148(4)</i>	<i>1.1.2021</i>
s 18B	inserted by 83/2009 Sch 1 cl 2	1.7.2012
s 19		
s 19(2)	amended by 29/2019 s 149(1) (b) deleted by 29/2019 s 149(1)	1.1.2021 1.1.2021
s 19(3)	<i>deleted by 29/2019 s 149(2)</i>	<i>1.1.2021</i>
s 19(4)	amended by 29/2019 s 149(3)	1.1.2021
s 19A	inserted by 83/2009 Sch 1 cl 3	1.7.2012
s 19A(2)	amended by 29/2019 s 150(1)	1.1.2021
s 19A(3)	amended by 29/2019 s 150(2)	1.1.2021
s 19A(4)	amended by 29/2019 s 150(3)	1.1.2021
s 19A(5)	amended by 29/2019 s 150(4)	1.1.2021
s 19A(7)	amended by 29/2019 s 150(5)	1.1.2021
s 20		
s 20(1)	amended by 29/2019 s 151(1), (2)	1.1.2021
s 20(2)	amended by 29/2019 s 151(3)	1.1.2021
s 20(3)	amended by 29/2019 s 151(4)	1.1.2021
s 20(4)	amended by 29/2019 s 151(5)	1.1.2021
s 20(5)	amended by 29/2019 s 151(6)	1.1.2021
s 20(6)	amended by 29/2019 s 151(7)	1.1.2021
s 20(7)	amended by 29/2019 s 151(8)	1.1.2021
s 20(8)	amended by 29/2019 s 151(9), (10)	1.1.2021
s 22		
s 22(3)	amended by 29/2019 s 152(1) (c) deleted by 29/2019 s 152(1)	1.1.2021 1.1.2021
s 22(4)	amended by 29/2019 s 152(2)	1.1.2021
s 22(8)	amended by 29/2019 s 152(3)	1.1.2021
s 23		
s 23(3)	inserted by 29/2019 s 153	1.1.2021
s 25		
s 25(1)	amended by 29/2019 s 154	1.1.2021
s 26 before substitution by 29/2019		
s 26(5)	<i>amended by 17/2006 s 177</i>	<i>4.9.2006</i>

s 26	substituted by 29/2019 s 155	1.1.2021
s 26A	inserted by 29/2019 s 155	1.1.2021
s 27		
s 27(1)	amended by 29/2019 s 156(1)	1.1.2021
s 27(2)	amended by 29/2019 s 156(2)	1.1.2021
s 27(4)	amended by 29/2019 s 156(3)	1.1.2021
s 27(5)	amended by 29/2019 s 156(4)	1.1.2021
s 27(6)	amended by 29/2019 s 156(5)	1.1.2021
s 27A	inserted by 29/2019 s 157	1.1.2021
s 28		
s 28(1)	amended by 29/2019 s 158(1)	1.1.2021
s 28(2)	<i>deleted by 29/2019 s 158(2)</i>	<i>1.1.2021</i>
s 28(3)	amended by 29/2019 s 158(3), (4)	1.1.2021
s 28(4)	amended by 29/2019 s 158(5)—(7)	1.1.2021
s 28(5)		
authorised person	amended by 29/2019 s 158(8)	1.1.2021
s 29	substituted by 29/2019 s 159	1.1.2021
s 30	amended by 29/2019 s 160	1.1.2021
Pt 4 Div 1		
s 32		
s 32(5)	amended by 29/2019 s 161(1)	1.1.2021
s 32(7)	amended by 29/2019 s 161(2)	1.1.2021
s 33		
s 33(1)	amended by 29/2019 s 162	1.1.2021
Pt 4 Div 2		
s 34		
s 34(1)	amended by 29/2019 s 163(1)	1.1.2021
s 34(5)	amended by 29/2019 s 163(2)	1.1.2021
s 34(9)	amended by 29/2019 s 163(3)	1.1.2021
s 34(11)	amended by 29/2019 s 163(4)	1.1.2021
Pt 5		
s 35		
s 35(1)	amended by 29/2019 s 164(1)	1.1.2021
s 35(2)	amended by 29/2019 s 164(2)	1.1.2021
s 35(3)	amended by 29/2019 s 164(3)	1.1.2021
s 35(5)	amended by 29/2019 s 164(4)	1.1.2021
ss 35A and 35B	inserted by 29/2019 s 165	1.1.2021
s 36		
s 36(1)	amended by 29/2019 s 166(1)	1.1.2021
s 36(7)	amended by 29/2019 s 166(2)	1.1.2021
s 36(8)	<i>deleted by 29/2019 s 166(3)</i>	<i>1.1.2021</i>
s 36(9)	amended by 29/2019 s 166(4)	1.1.2021

s 36(10)	amended by 29/2019 s 166(5), (6)	1.1.2021
s 36(12)	amended by 29/2019 s 166(7)	1.1.2021
s 37		
s 37(4)	amended by 29/2019 s 167	1.1.2021
Pt 6		
s 43		
s 43(1)	amended by 29/2019 s 168(1)	1.1.2021
s 43(3)	amended by 29/2019 s 168(2), (3)	1.1.2021
s 43(4)	amended by 29/2019 s 168(4)	1.1.2021
s 43(5)	amended by 29/2019 s 168(5)	1.1.2021
s 44		
s 44(2)	amended by 29/2019 s 169(1)	1.1.2021
s 44(4)	amended by 29/2019 s 169(2)	1.1.2021
s 44(5)	amended by 29/2019 s 169(3)	1.1.2021
s 45	amended by 29/2019 s 170	1.1.2021
Pt 7 Div 1		
s 49		
s 49(1)	amended by 29/2019 s 171(1)	1.1.2021
note 3	inserted by 29/2019 s 171(2)	1.1.2021
Pt 7 Div 2		
s 50	amended by 29/2019 s 172(1)	1.1.2021
note 2	inserted by 29/2019 s 172(2)	1.1.2021
s 51		
s 51(2)	amended by 29/2019 s 173	1.1.2021
Pt 7 Div 4		
s 53		
s 53(2)	amended by 23/1998 s 12	21.5.1998
s 56		
s 56(1)	amended by 17/2006 s 178	4.9.2006
s 57		
s 57(2)	amended by 17/2006 s 179	4.9.2006
s 59		
s 59(4)	amended by 29/2019 s 174(1)	1.1.2021
s 59(5)	amended by 29/2019 s 174(2)	1.1.2021
s 64		
s 64(1)	amended by 29/2019 s 175	1.1.2021
Pt 7 Div 5		
s 70A	inserted by 1/1999 s 10	1.4.1999
s 70A(1)	substituted by 29/2019 s 176(1)	1.1.2021
s 70A(2)	amended by 29/2019 s 176(2)	1.1.2021
s 70A(3)	substituted by 29/2019 s 176(3)	1.1.2021
s 70A(4)	amended by 29/2019 s 176(4)	1.1.2021
s 70A(5)	amended by 29/2019 s 176(5)	1.1.2021

s 70A(7)	amended by 29/2019 s 176(6)	1.1.2021
<i>s 71</i>	<i>amended by 23/1998 s 13</i>	<i>21.5.1998</i>
	<i>amended by 22/2000 s 4</i>	<i>8.6.2000</i>
	<i>deleted by 12/2003 s 19</i>	<i>12.6.2003</i>
Pt 8		
<i>s 72</i>		
<i>s 72(1)</i>	amended by 17/2006 s 180	4.9.2006
<i>s 72(2a)</i>	inserted by 69/2001 s 24	3.2.2002
	amended by 43/2012 s 31	1.7.2013
	amended by 29/2019 s 177(1)	1.1.2021
s 72(4)	amended by 29/2019 s 177(2), (3)	1.1.2021
<i>s 75</i>		
<i>s 75(6)</i>	amended by 17/2006 s 181	4.9.2006
Pt 9		
s 75A	inserted by 29/2019 s 178	1.1.2021
s 76		
s 76(1)	substituted by 29/2019 s 179(1)	1.1.2021
s 76(2)	amended by 29/2019 s 179(2), (3)	1.1.2021
s 76(3)	amended by 29/2019 s 179(4)	1.1.2021
s 76(4)	amended by 29/2019 s 179(5)	1.1.2021
<i>s 77</i>		
<i>s 77(5)</i>	amended by 29/2019 s 180(1), (2)	1.1.2021
<i>s 77(8)</i>	amended by 29/2019 s 180(3)	1.1.2021
<i>s 77(9)</i>	amended by 29/2019 s 180(4)	1.1.2021
<i>s 77(10)—(12)</i>	substituted by 29/2019 s 180(5)	1.1.2021
<i>s 77(13)—(17)</i>	inserted by 29/2019 s 180(5)	1.1.2021
<i>s 79</i>		
<i>s 79(1)</i>	substituted by 29/2019 s 181(1)	1.1.2021
<i>s 79(5)</i>	amended by 29/2019 s 181(2)	1.1.2021
<i>s 82</i>		
<i>s 82(1)</i>	amended by 29/2019 s 182(1)	1.1.2021
<i>s 82(3)</i>	amended by 29/2019 s 182(2)	1.1.2021
<i>s 82(4)</i>	amended by 29/2019 s 182(3)	1.1.2021
<i>s 82(5)</i>	amended by 29/2019 s 182(4)	1.1.2021
<i>s 82(6)</i>	amended by 29/2019 s 182(5), (6)	1.1.2021
<i>s 82(7)</i>	<i>deleted by 36/2011 s 15</i>	<i>1.1.2012</i>
s 84		
s 84(5)	amended by 29/2019 s 183	1.1.2021
s 85	amended by 29/2019 s 184	1.1.2021
s 87		
s 87(2)	amended by 29/2019 s 185(1), (2)	1.1.2021
s 89		
s 89(2)	amended by 29/2019 s 186(1)	1.1.2021

s 89(5)	amended by 29/2019 s 186(2)	1.1.2021
s 91	deleted by 29/2019 s 187	1.1.2021
s 93		
s 93(1)	amended by 29/2019 s 188(1), (2)	1.1.2021
s 93(2)	amended by 29/2019 s 188(3)	1.1.2021
s 93(3)	amended by 29/2019 s 188(4)	1.1.2021
s 93(6)	amended by 29/2019 s 188(5)	1.1.2021
s 97	deleted by 84/2009 s 250	1.2.2010
ss 98A and 98B	inserted by 29/2019 s 189	1.1.2021
s 99		
s 99(2)	amended by 29/2019 s 190(1)	1.1.2021
s 99(3)	amended by 29/2019 s 190(2)	1.1.2021
s 99(4)—(7)	inserted by 29/2019 s 190(3)	1.1.2021
Sch 2	omitted under Legislation Revision and Publication Act 2002	12.6.2003

Transitional etc provisions associated with Act or amendments

Statutes Amendment (Mining Administration) Act 1999

11—Transitional provisions

- (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.

Statutes Amendment (Courts and Judicial Administration) Act 2001

25—Transitional provisions

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

Anangu Pitjantjatjara Yankunytjatjara Land Rights (Mintabie) Amendment Act 2009, Sch 1

14—Transitional provision—*Opal Mining Act 1995*

A precious stones prospecting permit in force immediately before the commencement of clause 1 of this Schedule will be taken to be endorsed by a mining registrar as authorising a person to prospect for precious stones on the Mintabie precious stones field.

Statutes Amendment (Courts Efficiency Reforms) Act 2012

32—Transitional provision

The amendment made to the *Opal Mining Act 1995* by this Part—

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

Statutes Amendment (Mineral Resources) Act 2019, Sch 1 Pt 2—Transitional provisions

17—Interpretation

In this Part—

principal Act means the *Opal Mining Act 1995*.

18—Opal mining register

The distinct part of the Mining Register kept under section 76 of the principal Act by the Mining Registrar under the Mining Act, will on the commencement of this Act, be taken to form part of the opal mining register under section 76 as amended by this Act.

19—Caveats

If a caveat lodged under section 26 of the principal Act is in force immediately before the repeal of that section by this Act—

- (a) the provisions of that section will continue to apply in relation to the caveat as if the repeal had not been effected; and
- (b) section 26 of the principal Act, as enacted by this Act, will not apply in relation to the caveat.

20—Safety net

The repeal of section 91 of the principal Act does not affect the operation or validity of any agreement in force under that section immediately before the repeal.

21—Jurisdiction relating to tenements and monetary claims

The amendment of section 72(2a) by section 177—

- (a) does 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) applies 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).

Historical versions

Reprint No 1—21.5.1998

Reprint No 2—1.4.1999

Reprint No 3—8.6.2000

Reprint No 4—3.2.2002

Reprint No 5—12.6.2003

Reprint No 6—24.11.2003

4.9.2006

1.2.2010

1.1.2012

1.7.2012

1.7.2013