

MINING (AMENDMENT) ACT, 1980, No. 81

New South Wales



ANNO VICESIMO NONO

ELIZABETHÆ II REGINÆ

Act No. 81, 1980.

An Act to amend the Mining Act, 1973, to make further provision with respect to fossicking, to establish a new opal prospecting title, to extend the provisions relating to the protection of the environment and for other purposes. [Assented to, 29th April, 1980.]

Mining (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Mining (Amendment) Act, Short title. 1980".

2. (1) Section 1 and this section shall commence on the date Commence-
of assent to this Act. ment.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. The Mining Act, 1973, is referred to in this Act as the Principal
Principal Act. Act.

4. This Act contains the following Schedules :— Schedules.

SCHEDULE 1.—AMENDMENTS TO PART I OF THE
PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO PART III OF THE
PRINCIPAL ACT.

SCHEDULE 3.—INSERTION OF PART IIIA INTO THE
PRINCIPAL ACT.

SCHEDULE 4.—AMENDMENTS TO PART IV OF THE
PRINCIPAL ACT.

SCHEDULE 5.—AMENDMENTS TO PART V OF THE
PRINCIPAL ACT.

SCHEDULE 6.—AMENDMENTS TO PART VII OF THE
PRINCIPAL ACT.

Mining (Amendment).

SCHEDULE 7.—AMENDMENTS TO PART VIII OF THE PRINCIPAL ACT.

SCHEDULE 8.—AMENDMENTS TO PART IX OF THE PRINCIPAL ACT.

SCHEDULE 9.—AMENDMENTS TO PART X OF THE PRINCIPAL ACT.

SCHEDULE 10.—AMENDMENTS TO THE FIRST SCHEDULE TO THE PRINCIPAL ACT.

SCHEDULE 11.—AMENDMENT TO THE SECOND SCHEDULE TO THE PRINCIPAL ACT.

SCHEDULE 12.—SAVINGS AND TRANSITIONAL PROVISIONS.

Amendment
of Act No.
42, 1973.

5. The Principal Act is amended in the manner set forth in Schedules 1–11.

Savings and
transitional
provisions.

6. Schedule 12 has effect.

Sec. 5.

SCHEDULE 1.

AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

(1) (a) Section 2—

From the matter relating to Part III, omit “AND FOSSICKING AREAS—ss. 23–26A.”, insert instead “, FOSSICKING AREAS AND OPAL PROSPECTING AREAS—ss. 23-25C.”.

Mining (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

(b) Section 2—

After the matter relating to Part III, insert :—

PART IIIA.—FOSSICKING AND OPAL PROSPECTING
—ss. 26B–26H.

DIVISION 1.—*Fossicking*—ss. 26B, 26C.

DIVISION 2.—*Opal Prospecting*—ss. 26D, 26E.

DIVISION 3.—*General Provisions*—ss. 26F–26H.

(c) Section 2—

From the matter relating to Part IV, omit “37”, insert instead “37A”.

(d) Section 2—

From the matter relating to Division 1 of Part V, omit “50”, insert instead “50A”.

(e) Section 2—

From the matter relating to Division 3 of Part V, omit “76A”, insert instead “76B”.

(f) Section 2—

From the matter relating to Part VIII, omit “121”, insert instead “120A”.

(2) (a) Section 6 (1), definition of “Department”—

Omit the definition, insert instead :—

“Department” means the Department of Mineral Resources;

(b) Section 6 (1), definition of “exempted area”—

From paragraph (b), omit “or” where lastly occurring.

Mining (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

(c) Section 6 (1), definition of “exempted area”—

After paragraph (c), insert :—

(d) over which a coal lease granted under the Coal Mining Act, 1973, is in force; or

(e) prescribed for the purposes of this definition;

(d) Section 6 (1), definition of “fossicking licence”—

After the definition of “fossicking area”, insert :—

“fossicking licence” means a licence issued under section 26B (3);

(e) Section 6 (1), definition of “holder”—

After the definition of “group of minerals”, insert :—

“holder” means—

(a) in relation to a fossicking licence, a person whose name is endorsed on the licence pursuant to section 26B (3); and

(b) in relation to an opal prospecting licence, the person to whom the licence has been issued under section 26D (2);

(f) Section 6 (1), definition of “irrigation area”—

After the definition of “honorary ranger”, insert :—

“irrigation area” means an irrigation area constituted under the Irrigation Act, 1912, the Wentworth Irrigation Act, the Hay Irrigation Act, 1902, or the Balranald Irrigation Act, 1902;

Mining (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

- (g) Section 6 (1), definition of “mining lease”—
Omit “lease granted under section 53 (2)”, insert instead “mining lease granted under section 53 (2) or 76B (1)”.
- (h) Section 6 (1), definition of “mining purposes lease”—
Omit “lease granted under section 55”, insert instead “mining purposes lease granted under section 55 or 76B (1)”.
- (i) Section 6 (1), definition of “occupier”—
Omit the definition, insert instead :—
“occupier” means, in relation to any lands, a person entitled to lawful occupation of those lands, being a person of a class prescribed for the purposes of this definition;
- (j) Section 6 (1), definitions of “opal prospecting area”, “opal prospecting block”, “opal prospecting licence”—
After the definition of “occupier”, insert :—
“opal prospecting area” means an area constituted under section 25A (1);
“opal prospecting block” means an opal prospecting block constituted under section 25C (1);
“opal prospecting licence” means a licence issued under section 26D (2);
- (k) Section 6 (1), definition of “pastoral lease”—
After the definition of “owner”, insert :—
“pastoral lease” means—
(a) a Crown lease for pastoral purposes;

Mining (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

(b) a special lease for pastoral purposes;
and

(c) a Western Lands lease for pastoral
purposes;

(l) Section 6 (1), definition of “registered holder”—

From paragraph (b), omit “registrar”, insert instead
“Registrar”.

(m) Section 6 (1), definition of “Registrar”—

Omit the definition of “registrar”, insert instead :—

“Registrar” means the person for the time being
holding office, or acting, as the Registrar
(Minerals), Department of Mineral
Resources;

(n) Section 6 (1), definition of “Under Secretary”—

Omit the definition, insert instead :—

“Under Secretary” means the person for the time
being holding office, or acting, as Under
Secretary, Department of Mineral Resources;

(o) Section 6 (1), definition of “warden’s court”—

Omit “128.”, insert instead “128;”.

Mining (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

- (p) Section 6 (1), definition of “Western Lands lease for pastoral purposes”—

After the definition of “warden’s court”, insert :—

“Western Lands lease for pastoral purposes” means—

- (a) a lease, under the Western Lands Act, 1901, of land, not being a lease referred to in paragraph (b), which contains a condition restricting the use of the land comprised therein to grazing or grazing and the giving of access to water; and
- (b) a lease, under the Western Lands Act, 1901, of land set apart for disposal by way of lease for grazing, whether or not the whole or any part of the land comprised in the lease may, under the lease, be used for agricultural purposes.

SCHEDULE 2.

Sec. 5.

AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

- (1) Part III, heading—

Omit “AND FOSSICKING AREAS”, insert instead “, FOSSICKING AREAS AND OPAL PROSPECTING AREAS”.

Mining (Amendment).

 SCHEDULE 2—*continued.*

 AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(2) (a) Section 24 (2) (d)—

Omit “reserve.”, insert instead “reserve;”.

(b) Section 24 (2) (e)—

After section 24 (2) (d), insert :—

(e) that no person shall fossick within the reserve.

(3) Section 25 (2) (b)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

(4) Sections 25A–25C—

After section 25, insert :—

25A. (1) On the recommendation of the Under Secretary, the Minister may, by order in the Gazette, constitute any Crown lands as an opal prospecting area.

(2) The Minister shall not, in relation to Crown lands which are occupied, constitute those lands as an opal prospecting area unless—

(a) he has caused to be served upon the occupier of those lands a notice in the prescribed form—

(i) of his proposal to constitute those lands as an opal prospecting area;

(ii) of the grounds, referred to in section 25B (1), upon which that occupier may make an objection to the constitution of those lands as an opal prospecting area; and

Opal pros-
pecting
areas.

Mining (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

- (iii) of the manner and form in which that occupier may make the objection; and
 - (b) he has taken into account the report furnished to him by a warden in respect of any inquiry conducted by the warden pursuant to section 25B (3) (b) in relation to those lands.
- (3) An order constituting any Crown lands as an opal prospecting area may be varied—
- (a) where Crown lands are to be added to the opal prospecting area—only by an order made as if it were an order constituting those lands as an opal prospecting area; or
 - (b) where land is to be excluded from the opal prospecting area—by an order made by the Minister and published in the Gazette.
- (4) Crown lands shall not be constituted as, or added to, an opal prospecting area—
- (a) where an application for an authority, an authorisation or a concession is pending in respect of those lands;
 - (b) where an exploration licence, a prospecting licence, an authorisation or a concession is in force in respect of those lands;
 - (c) within—
 - (i) a reserve;
 - (ii) an exempted area;
 - (iii) a colliery holding;
 - (iv) a fossicking area; or

*Mining (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

- (v) a national park, historic site, nature reserve, Aboriginal area, protected archaeological area, wildlife district, wildlife refuge, game reserve or Aboriginal place within the meaning of the National Parks and Wildlife Act, 1974—without the consent of the Minister administering that Act; or
 - (d) where the Director-General of Agriculture has decided, as provided by section 25B (4), that those lands are agricultural lands.
- (5) The Minister may, by the order in the Gazette referred to in subsection (1), or by a subsequent order in the Gazette, give an opal prospecting area a designation, or specify its boundaries, or do both.

Objections.

25B. (1) Where an occupier of Crown lands has been served in accordance with section 25A (2) (a) with a notice of the Minister's proposal to constitute those lands, or any part thereof, as an opal prospecting area, or to add those lands, or any part thereof, to an opal prospecting area, the occupier may, within 30 days after he has been so served, make an objection to the proposal on—

- (a) the ground that the lands the subject of the proposal are agricultural lands; or
 - (b) one or more of the prescribed grounds.
- or a combination of grounds referred to in paragraphs (a) and (b).

(2) An objection made under subsection (1) shall be—

- (a) lodged with the Under Secretary;

Mining (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

- (b) in the approved form; and
- (c) accompanied by the prescribed fee.

(3) The Minister shall, in respect of an objection which has been made under subsection (1) and which has not been withdrawn, refer—

- (a) such part of the objection, if any, as has been made on the ground referred to in subsection (1) (a)—to the Director-General of Agriculture; and
- (b) such part of the objection, if any, as has been made on one or more of the grounds referred to in subsection (1) (b)—to the warden, for inquiry and report.

(4) Where part of an objection is referred to the Director-General of Agriculture in accordance with subsection (3) (a), the Director-General shall decide, in accordance with the provisions of the First Schedule, the question whether or not the lands in respect of which the objection has been made are agricultural lands, and his decision shall be final.

25c. (1) The Minister may, by order in the Gazette, constitute any lands within an opal prospecting area as an opal prospecting block and shall, by any such order—

- (a) give the opal prospecting block a designation and fix its boundaries; and
- (b) specify any periods during which an opal prospecting licence shall not be issued in respect of the opal prospecting block.

Mining (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(2) An opal prospecting block shall not exceed such dimensions as may be prescribed.

(3) Where the Minister has constituted any lands within an opal prospecting area as an opal prospecting block in accordance with subsection (1), he shall, in respect of the opal prospecting area, as soon as is practicable—

(a) cause a map to be prepared, on which shall be depicted—

(i) the boundary of the opal prospecting area;

(ii) the boundary of each opal prospecting block within the opal prospecting area;

(iii) the designation of the opal prospecting area; and

(iv) the designation of each opal prospecting block within the opal prospecting area;
and

(b) cause a copy of the map prepared in accordance with paragraph (a) to be furnished to the mining registrar for each division within which the opal prospecting area, or any part thereof, is situated.

(4) A mining registrar to whom a copy of a map is furnished in accordance with subsection (3) (b) shall, during ordinary office hours, keep the copy of the map available, free of charge, for public inspection.

(5) Sections 26, 26A—

Omit the sections.

Mining (Amendment).

SCHEDULE 3.

Sec. 5.

INSERTION OF PART IIIA INTO THE PRINCIPAL ACT.

Part IIIA—

After Part III, insert :—

PART IIIA.

FOSSICKING AND OPAL PROSPECTING.

DIVISION 1.—*Fossicking.*

26B. (1) An application for a fossicking licence shall— Applications for fossicking licences.

(a) be lodged with a mining registrar, an honorary ranger or a person authorised under subsection (2); and

(b) specify whether the fossicking licence in respect of which the application is being made is to be endorsed for personal use or for family use.

(2) The Minister may, by order in writing, authorise any person specified in the order to issue fossicking licences.

(3) Subject to subsection (4), the person with whom an application for a fossicking licence is lodged in accordance with subsection (1) (a) shall, on payment of the prescribed fee, issue to the applicant—

(a) where the application specifies that the fossicking licence is to be endorsed for personal use—a fossicking licence with the name of that applicant endorsed thereon; or

(b) where the application specifies that the fossicking licence is to be endorsed for family use—a fossicking licence with the names of the members of the family group in respect of which the application is made endorsed thereon.

Mining (Amendment).

SCHEDULE 3—*continued.*INSERTION OF PART IIIA INTO THE PRINCIPAL ACT—*continued.*

(4) A fossicking licence shall not be issued—

(a) to a corporation; or

(b) unless, where the application for the licence specifies that the licence is to be endorsed for—

(i) personal use—the person whose name is intended to be endorsed on the licence has attained the age of 16 years; or

(ii) family use—at least one of the persons whose names are intended to be endorsed on the licence has attained the age of 16 years.

(5) A fossicking licence is in force during the period of 12 months commencing on the day on which the licence is issued.

(6) In this section, “family group” means a group of persons consisting of the applicant referred to in subsection (3) and any one or more of the following persons :—

(a) the spouse of that applicant;

(b) the children of that applicant or spouse, or of both of them, who are under the age of 16 years when the fossicking licence is issued.

(7) A reference in subsection (6) to the applicant’s spouse includes a reference to a person not legally married to the applicant but who ordinarily lives with the applicant as the applicant’s spouse on a permanent and bona fide domestic basis.

Mining (Amendment).

SCHEDULE 3—*continued.*

INSERTION OF PART IIIA INTO THE PRINCIPAL ACT—*continued.*

26C. (1) In this section—

“gemstone” means opal, sapphire, diamond, topaz, ruby, emerald and any other substance prescribed as a gemstone;

Rights of holder of fossicking licence.

“semi-precious stone” means a substance prescribed as such.

(2) A fossicking licence, while it is in force, confers on the holder of the licence, subject to—

- (a) subsection (3);
- (b) such conditions as may be prescribed; and
- (c) the conditions, if any, subject to which any consent referred to in subsection (3) has been given,

the right to enter any lands and search in them for, and remove from them, gold, gemstones, semi-precious stones and rocks.

(3) A person shall not exercise any of the rights conferred on him by a fossicking licence—

- (a) if he carries on a prescribed occupation;
- (b) upon Crown lands which are subject to the Crown Lands Acts and which are in an irrigation area—without the written consent of the Water Resources Commission and of any occupier of those lands;
- (c) upon Crown lands which are subject to the Crown Lands Acts and which are not in an irrigation area—without the written consent of any occupier of those lands;

Mining (Amendment).

SCHEDULE 3—*continued.*INSERTION OF PART IIIA INTO THE PRINCIPAL ACT—*continued.*

- (d) upon Crown lands which are not subject to the Crown Lands Acts—without the written consent of any person by whom those lands are held and of any occupier of those lands;
- (e) upon private lands—without the written consent of the owner of those lands and of any occupier of those lands;
- (f) upon land in respect of which an application for the registration of a claim, or for an authority, an authorisation or a concession, is pending;
- (g) upon land in respect of which a claim, an authority, an authorisation or a concession is in force;
- (h) upon land within a colliery holding or an exempted area, other than land comprised in a fossicking area;
- (i) upon land within an opal prospecting block in respect of which an opal prospecting licence is in force;
- (j) upon land within a reserve in respect of which a direction given pursuant to section 24 (2) (c) is in force;
- (k) upon land set apart as a site for a city, town or village in accordance with section 23 (1) of the Crown Lands Consolidation Act, 1913, other than land comprised in a fossicking area;
- (l) upon land set apart for a township settlement in accordance with section 38 of the Closer Settlement Act, 1904, other than land comprised in a fossicking area;

Mining (Amendment).

SCHEDULE 3—*continued.*

INSERTION OF PART IIIA INTO THE PRINCIPAL ACT—*continued.*

(m) upon land within a national park, historic site, nature reserve, Aboriginal area, protected archaeological area, wildlife district, wildlife refuge, game reserve or Aboriginal place within the meaning of the National Parks and Wildlife Act, 1974; or

(n) upon a public road.

(4) A consent referred to in subsection (3) is subject to such conditions (including conditions as to the payment of a charge) as may be specified in the consent.

(5) Nothing in subsection (3) prevents a person from exercising any of the rights conferred on him by a fossicking licence on land comprised in a fossicking area at the commencement of this section, not being land that has been excluded from such a fossicking area after that commencement.

DIVISION 2.—*Opal Prospecting.*

26D. (1) An application for an opal prospecting licence in respect of an opal prospecting block shall be lodged with the mining registrar for the division in which the opal prospecting block is situated.

Applications
for opal
prospecting
licences.

(2) Subject to subsections (3) and (4), the mining registrar with whom an application is lodged in accordance with subsection (1) shall, on payment of the prescribed fee, issue to the applicant, subject to such conditions as that mining registrar may think fit to impose, an opal prospecting licence in respect of the opal prospecting block to which the application relates.

Mining (Amendment).

SCHEDULE 3—*continued.*INSERTION OF PART IIIA INTO THE PRINCIPAL ACT—*continued.*

(3) A mining registrar shall not issue an opal prospecting licence in respect of an opal prospecting block—

- (a) in relation to which any other opal prospecting licence is, or at any time within the 28 days immediately preceding the day on which the application for the licence was lodged has been, in force;
- (b) to a person—
 - (i) who has not attained the age of 16 years; or
 - (ii) who is the holder of any other opal prospecting licence which is in force in relation to any other opal prospecting block in the division within which the firstmentioned opal prospecting block is situated; or
- (c) during a period specified in an order made by the Minister under section 25c (1) (b).

(4) Where more than one application has been lodged with a mining registrar in accordance with subsection (1) in respect of the same opal prospecting block, the mining registrar shall deal with the applications in the order in which they have been lodged or, if they have been lodged at the same time, in the order determined in the prescribed manner.

(5) An opal prospecting licence is in force during the period of 28 days commencing on the day on which the licence is issued.

(6) A mining registrar shall, in the manner prescribed for the purposes of this subsection, cause a record to be kept of each opal prospecting licence issued by him pursuant to subsection (2).

Mining (Amendment).

SCHEDULE 3—*continued.*

INSERTION OF PART IIIA INTO THE PRINCIPAL ACT—*continued.*

26E. (1) An opal prospecting licence, while it is in force, confers on the holder of the licence—

Rights of holder of opal prospecting licence.

- (a) subject to—
 - (i) such conditions as may be prescribed; and
 - (ii) any condition subject to which the licence has been issued,

the exclusive right to prospect for opals in; and

- (b) the exclusive right to make an application for registration of a claim in relation to any portion of,

such part of the opal prospecting block, in respect of which the licence has been issued, as is not land in respect of which—

- (c) an application for registration of a claim is pending; or
- (d) a claim has been registered and is in force.

(2) While an opal prospecting licence is in force, no person, other than the holder of the licence, shall prospect for opals in the opal prospecting block to which the licence relates.

(3) Nothing in subsection (2) prevents the registered holder of a claim from exercising, in relation to any land within an opal prospecting block, any right conferred on him by the claim pursuant to section 37.

(4) An application for registration of a claim is a nullity to the extent to which it relates to any part of an opal prospecting block in respect of which any person had, when the application was made, the exclusive rights referred to in subsection (1).

*Mining (Amendment).*SCHEDULE 3—*continued.*INSERTION OF PART IIIA INTO THE PRINCIPAL ACT—*continued.*DIVISION 3.—*General Provisions.*Evidentiary
provision.

26F. A certificate signed by a mining registrar to the effect that—

- (a) an opal prospecting licence specified in the certificate was issued on a date so specified;
- (b) a condition specified in the certificate is a condition subject to which an opal prospecting licence so specified has been issued;
- (c) a person named in the certificate is, or was on a day specified in the certificate, the holder of an opal prospecting licence so specified; or
- (d) an opal prospecting block—
 - (i) is, or was on a day specified in the certificate, the subject of an opal prospecting licence so specified; or
 - (ii) is not, or was not on a day so specified, the subject of an opal prospecting licence,

shall be received by all courts, wardens and tribunals as prima facie evidence of that fact.

Fossicking
subject to
other Acts,
etc.

26G. Nothing in this Part shall be construed as authorising the holder of a fossicking licence to disregard the provisions of this or any other Act, ordinance or regulation prohibiting, regulating or restricting, or having the effect of prohibiting, regulating or restricting, the exercise by the holder of the fossicking licence of any right conferred on him by this Act or by the fossicking licence.

Mining (Amendment).

SCHEDULE 3—*continued.*

INSERTION OF PART IIIA INTO THE PRINCIPAL ACT—*continued.*

26H. No person shall be entitled to make or prosecute any claim for damages or take any other proceedings against the Crown, the Government of New South Wales, the Minister or any person administering this Act (including a mining registrar, an honorary ranger and a person authorised under section 26B (2)) arising out of any injury or loss suffered or incurred in relation to the exercise by that person of any right conferred on that person by section 26C (2) or 26E (1). Certain claims for damages prohibited.

SCHEDULE 4.

Sec. 5.

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

- (1) (a) Section 28 (5) (d)—
Omit “or” where lastly occurring.
- (b) Section 28 (5) (e)—
Omit “concerned.”, insert instead “concerned;”.
- (c) Section 28 (5) (f), (g)—
After section 28 (5) (e), insert :—
- (f) the applicant has not attained the age of 16 years; or
 - (g) the application relates to land in respect of which a report that has been prepared by an inspector indicates that the whole, or any part, of the land is unsafe for mining.

Mining (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL
ACT—*continued.*

(2) (a) Section 29 (1) (d)—

Omit “or” where lastly occurring.

(b) Section 29 (1) (e)—

Omit “reserve.”, insert instead “reserve; or”.

(c) Section 29 (1) (f)—

After section 29 (1) (e), insert :—

(f) the subject of an opal prospecting licence which is in force, unless the application for registration of the claim—

(i) was lodged before the licence came into force; or

(ii) was made by the holder of the licence.

(d) Section 29 (3)—

Omit “the registrar” wherever occurring, insert instead “the mining registrar”.

(3) Section 33 (2A)—

After section 33 (2), insert :—

(2A) Where any claim is the subject of legal proceedings, or of an inquiry under this Act, the mining registrar for the division in which the claim is registered may refuse to approve the transfer of the claim until the legal proceedings, or the inquiry, have or has been determined.

(4) Section 35 (5)—

Omit “the registrar”. insert instead “the Registrar”.

Mining (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL
ACT—*continued.*

(5) (a) Section 36 (1A)—

After “registrar”, insert “for the division in which a claim is registered”.

(b) Section 36 (1A)—

Omit “a claim”, insert “the claim”.

(c) Section 36 (1B)—

After section 36 (1A), insert :—

(1B) Without affecting the operation of subsection (1A), the mining registrar for the division in which a claim is registered may, where the claim is the subject of legal proceedings, or of an inquiry under this Act, refuse to cancel the registration of the claim until the legal proceedings, or the inquiry, have or has been determined.

(6) (a) Section 36A (1)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

(b) Section 36A (6)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

Mining (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL
ACT—*continued.*

(7) Section 37A—

After section 37, insert :—

Evidentiary
provision.

37A. A certificate signed by a mining registrar to the effect that—

- (a) a claim specified in the certificate was registered, renewed, transferred or cancelled on a date so specified;
- (b) a condition specified in the certificate is a condition subject to which a claim so specified has been registered or renewed;
- (c) a person named in the certificate is, or was on a day specified in the certificate, the registered holder of a claim so specified; or
- (d) land described in the certificate—
 - (i) is, or was on a day specified in the certificate, affected by a claim so specified; or
 - (ii) is not, or was not on a day so specified, affected by a claim,

shall be received by all courts, wardens and tribunals as prima facie evidence of that fact.

Sec. 5.

SCHEDULE 5.

AMENDMENTS TO PART V OF THE PRINCIPAL ACT.

(1) Section 40 (1)—

After “before”, insert “, or within twenty-one days after,”.

Mining (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(2) (a) Section 41 (1)—

Omit “apply”, insert instead “apply,”.

(b) Section 41 (1)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

(c) Section 41 (2)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

(3) (a) Section 42 (1)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

(b) Section 42 (6)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

(4) Section 43 (1) (c)—

Omit the paragraph, insert instead :—

- (c) where a notice is required to be served under section 41 in respect of the area or part of the area of the land to which the application relates—be accompanied by a statutory declaration under the hand of

*Mining (Amendment).*SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

the applicant for the licence or lease, or his agent, specifying the name of each owner and occupier of the area or part; and

(5) (a) Section 46 (1)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

(b) Section 46 (2A) (b)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

(6) Section 50 (4), (5)—

Omit the subsections.

(7) Section 50A—

After section 50, insert :—

50A. (1) An application for an authority over land to which section 50 (1), (2) or (3) applies, and over no other land, is a nullity if it is made by a person not having the exclusive right to apply for the authority or not applying with the consent of the person having that exclusive right.

(2) An application for an authority over both—

(a) land to which section 50 (1), (2) or (3) applies and in respect of which the applicant neither has the exclusive right to apply for an authority nor is applying with the consent of the person having that exclusive right; and

Certain land excluded from applications.

Mining (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(b) other land, being—

(i) land to which section 50 (1), (2) or (3) applies and in respect of which the applicant either has the exclusive right to apply for an authority or is applying with the consent of the person having that exclusive right; or

(ii) land to which none of those subsections applies,

or both,

shall be deemed to have been made in respect of the land referred to in paragraph (b) only.

(3) An application for an authority over land in respect of which a mining lease is in force, and over no other land, is a nullity.

(4) An application for an authority over both—

(a) land in respect of which a mining lease is in force; and

(b) land in respect of which a mining lease is not in force,

shall be deemed to have been made in respect of the land referred to in paragraph (b) only.

(8) Section 54 (1) (a)—

Omit “four”, insert instead “eight”.

(9) (a) Section 57 (1)—

Before “mining lease”, insert “prospecting licence, a”.

Mining (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

- (b) Section 57 (1)—
After “over which the”, insert “licence or”.
- (c) Section 57 (1)—
Omit “the Governor”, insert instead “the Minister or the Governor, as the case may require”.
- (d) Section 57 (2)—
After “granting of a”, insert “prospecting licence, a”.
- (e) Section 57 (2)—
Omit “the Governor”, insert instead “the Minister or the Governor, as the case may be,”.
- (f) Section 57 (2)—
After “opinion that the”, insert “licence or”.
- (g) Section 57 (2) (a)—
After “subject to the”, insert “licence or”.
- (h) Section 57 (2) (b)—
After “under the”, insert “licence or”.
- (i) Section 57 (2) (c)—
After “condition in the”, insert “licence or”.
- (j) Section 57 (3)—
After “subject to a”, insert “prospecting licence or a”.

Mining (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(k) Section 57 (4)—

After “holder of a”, insert “prospecting licence, a”.

(l) Section 57 (5)—

After “subject to a”, insert “prospecting licence, a”.

(m) Section 57 (5)—

After “holder of the”, insert “licence or”.

(n) Section 57 (6)—

After “holder of a”, insert “prospecting licence, a”.

(o) Section 57 (6)—

After “subsection (4) the”, insert “licence or”.

(10) Section 58—

Omit “for an exploration licence, a prospecting licence or a mining lease”, insert instead “under section 39 for an exploration licence, or under section 43 for a prospecting licence or a mining lease”.

(11) Section 59 (4)—

After “1906”, insert “, or with the requirements of this Act as to the time within which any thing is required to be done”.

Mining (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(12) Section 62—

Omit the section, insert instead :—

Applicant
to sign
authority.

62. (1) The applicant for an authority, or, where there is more than one applicant for an authority, each applicant for the authority, shall, on or before such date as has been determined by the Under Secretary and notified to that applicant or those applicants, as the case may be, sign the authority which it is proposed that he, or they, be granted and lodge it with the Under Secretary.

(2) Where—

- (a) there is one applicant for an authority, and that applicant fails to comply with subsection (1)—the application for the authority may be refused; or
- (b) there is more than one applicant for an authority, and—
 - (i) all of the applicants for the authority fail to comply with subsection (1)—the application for the authority may be refused; or
 - (ii) some, but not all, of the applicants for the authority fail to comply with subsection (1)—the authority may be granted to such of the applicants as comply with that subsection.

(13) Section 63 (1)—

Omit “to grant to an applicant”, insert instead “that an applicant be granted”.

Mining (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(14) (a) Section 66 (7)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

(b) Section 66 (7) (b)—

Omit “and a statement indicating the approximate direction and approximate distance of the town nearest to that area”.

(c) Section 66 (8)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

(d) Section 66 (11)—

Omit the subsection, insert instead :—

(11) Where a notice has been served in accordance with subsection (7) in respect of the area or part of the area of the land to which an application for the renewal of an authority relates, the registered holder of the authority shall lodge a copy of the notice with the Under Secretary, within twenty-one days of the date of the notice, together with a statutory declaration under the hand of the applicant for that renewal, or his agent, specifying the name of every owner and occupier of the area or part and the date on which each such owner or occupier was so served.

(15) Section 69 (9)—

After “1906”, insert “, or with the requirements of this Act as to the time within which any thing is required to be done”.

*Mining (Amendment).*SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(16) (a) Section 70 (4)—

Omit “Section 52 (5) applies”, insert instead “The provisions of section 52 (5) and (6) apply”.

(b) Section 70 (4)—

Omit “as it applies”, insert instead “in the same way as they apply”.

(17) Section 76B—

After section 76A, insert :—

Consolidation of leases.

76B. (1) Where the registered holder of two or more mining leases, or two or more mining purposes leases, makes an application for the grant of one mining lease, or one mining purposes lease, in respect of the land to which those mining leases, or mining purposes leases, relate, the Governor may cancel those mining leases or those mining purposes leases and, subject to this Act, on such conditions as he may determine, grant to that registered holder one mining lease, or one mining purposes lease, as the case may require, in respect of the land the subject of those mining leases or mining purposes leases.

(2) An application referred to in subsection (1) shall be—

- (a) accompanied by the prescribed fee; and
- (b) lodged with the Under Secretary.

(3) A lease granted under subsection (1) is in force during the period which—

- (a) commences on the day on which the lease is **granted; and**

Mining (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(b) expires on the first day on which a lease cancelled pursuant to that subsection would, had it not been so cancelled, have expired.

(4) Division 1 does not apply to or in respect of an application referred to in subsection (1).

(18) Section 83 (3)—

After section 83 (2), insert :—

(3) An authority shall not be granted over land that is in an opal prospecting area.

(19) (a) Section 86 (2)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

(b) Section 86 (4)—

Omit “for Lands”, insert instead “administering that Act”.

(c) Section 86 (5) (a)—

Omit “within the meaning of that Act”.

(d) Section 86 (5) (b)—

Omit “such”.

(e) Section 86 (5) (b)—

Omit “the Minister for the time being administering the Irrigation Act, 1912”, insert instead “the Water Resources Commission”.

Mining (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(20) Section 87 (1)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

(21) Section 90 (2) (b)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

(22) Section 92 (6)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

(23) Section 93 (1)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

(24) Section 94 (1)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

(25) Section 94A (5) (b)—

Omit “Crown lease for pastoral purposes or a special lease for pastoral purposes”, insert instead “pastoral lease”.

Mining (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

(26) (a) Section 105 (1)—

Omit “registrar”, insert instead “Registrar”.

(b) Section 105 (2)—

Omit “registrar”, insert instead “Registrar”.

(c) Section 105 (3)—

Omit the subsection, insert instead :—

(3) The functions of the Registrar under this Part may be performed by the person for the time being holding the office of Deputy Registrar (Minerals), Department of Mineral Resources.

(27) Section 107 (5)—

Omit “registrar”, insert instead “Registrar”.

(28) Section 108—

Omit “registrar”, insert instead “Registrar”.

(29) Section 111—

Omit the section, insert instead :—

111. A certificate signed by the Registrar to the effect that—

(a) an authority specified in the certificate was granted, renewed, transferred or cancelled on a date so specified;

Evidentiary provision.

Mining (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued.*

- (b) a condition specified in the certificate is a condition of an authority so specified;
- (c) a person named in the certificate is, or was on a day specified in the certificate, the registered holder of an authority so specified;
- (d) land described in the certificate—
 - (i) is affected by an authority specified in the certificate, or an authority of a kind so specified; or
 - (ii) is not affected by an authority, or an authority of a kind so specified;
- (e) a transfer of an authority specified in the certificate—
 - (i) has been approved by the Minister; or
 - (ii) has not been approved by the Minister; or
- (f) an instrument of a kind referred to in section 107 (1) (b), specified in the certificate—
 - (i) has been approved by the Minister; or
 - (ii) has not been approved by the Minister,

shall be received by all courts, wardens and tribunals as prima facie evidence of that fact.

Mining (Amendment).

SCHEDULE 6.

Sec. 5.

AMENDMENTS TO PART VII OF THE PRINCIPAL ACT.

(1) (a) Section 118—

Omit “an authority”, insert instead “the conditions subject to which an authority is granted or renewed, or the registration or renewal of a claim is effected,”.

(b) Section 118—

After “the authority”, insert “or claim”.

(2) (a) Section 120 (1)—

After “Where an authority”, insert “, or registration of a claim,”.

(b) Section 120 (1)—

After “the authority” wherever occurring, insert “or claim”.

SCHEDULE 7.

Sec. 5.

AMENDMENTS TO PART VIII OF THE PRINCIPAL ACT.

(1) Section 120A—

Before section 121, insert :—

120A. (1) Upon the issue of an opal prospecting licence—

- (a) the occupier of any Crown lands within the opal prospecting block to which the licence relates; and

Entitlement to compensation in respect of operations in an opal prospecting block.

Mining (Amendment).

 SCHEDULE 7—*continued.*

 AMENDMENTS TO PART VIII OF THE PRINCIPAL ACT—*continued.*

- (b) the owner and occupier of any private lands, and the occupier of any other Crown lands,

are entitled to compensation from the holder of the licence for any loss referred to in section 124 (1) (b) that they suffer, or are likely to suffer, as a result of the exercise by that holder of the rights conferred by this Act on that holder.

(2) The amount of the compensation payable pursuant to subsection (1) may be determined by agreement between the holder of the opal prospecting licence and the owner or occupier or, if no agreement is made, shall be assessed by the warden on the application of that holder, that owner or that occupier.

(3) The holder of an opal prospecting licence shall, before exercising any right conferred on him by section 26E (1), serve notice of his intention to exercise the right on the occupier of the Crown lands within the opal prospecting block to which the licence relates.

- (2) (a) Section 124 (1) (c) (ii)—

Omit “minerals;”, insert instead “minerals; and”.

- (b) Section 124 (1) (d)—

Omit “thereon; and”, insert instead “thereon.”.

- (c) Section 124 (1) (e)—

Omit the paragraph.

Mining (Amendment).

SCHEDULE 7—*continued.*

AMENDMENTS TO PART VIII OF THE PRINCIPAL ACT—*continued.*

(3) Section 127—

Omit the section, insert instead :—

127. The provisions of sections 152–162 apply to and in respect of an assessment made by the warden in pursuance of this Part, and to and in respect of a person dissatisfied with such an assessment, as if the assessment were a decision of a warden's court and the person were a party to a complaint or proceeding dissatisfied with the decision.

Application of ss. 152-162 to assessments of compensation.

SCHEDULE 8.

Sec. 5.

AMENDMENTS TO PART IX OF THE PRINCIPAL ACT.

(1) (a) Section 144 (1)—

Omit “race, drain, dam, reservoir, water, machinery or easement”, insert instead “property”.

(b) Section 144 (1)—

Omit “any such land”, insert instead “the land”.

(c) Section 144 (1)—

Omit “that property or any part thereof”, insert instead “the whole, or any part, of the land or property”.

(d) Section 144 (7)—

Before “property” wherever occurring, insert “land or”.

Mining (Amendment).

SCHEDULE 8—*continued.*AMENDMENTS TO PART IX OF THE PRINCIPAL ACT—*continued.*

(e) Section 144 (9)—

After section 144 (8), insert :—

(9) In this section, “property” includes a race, a drain, a dam, a reservoir, water, machinery and an easement.

(2) Section 164 (1) (a)—

Omit “Warden’s Court”, insert instead “warden’s court”.

Sec. 5.

SCHEDULE 9.

AMENDMENTS TO PART X OF THE PRINCIPAL ACT.

(1) (a) Section 178A (1)—

Omit “The registrar”, insert instead “A mining registrar”.

(b) Section 178A (4)—

Omit “registrar”, insert instead “mining registrar”.

(2) (a) Section 184 (1) (a)—

After “fossicking area”, insert “or an opal prospecting area”.

(b) Section 184 (1) (a)—

Omit “a claim or an authority”, insert instead “an authority or a claim”.

Mining (Amendment).

SCHEDULE 9—*continued.*

AMENDMENTS TO PART X OF THE PRINCIPAL ACT—*continued.*

(c) Section 184 (1) (a)—

After “for an authority”, insert “or for registration of a claim”.

(d) Section 184 (1) (b)—

After “inspect”, insert “those lands and”.

(e) Section 184 (1) (b)—

Omit “any such”, insert instead “those”.

(3) (a) Section 189 (1)—

Omit the subsection, insert instead :—

(1) Subject to subsections (2) and (3), a person shall not—

(a) prospect for a mineral except under, and in accordance with—

- (i) an opal prospecting licence of which he is the holder;
- (ii) a claim of which he is the registered holder;
- (iii) an authority of which he is the registered holder; or
- (iv) a coal lease granted under the Coal Mining Act, 1973, which applies to that mineral by reason of a direction given by the Minister under section 72 (3) (a) of that Act; or

*Mining (Amendment).*SCHEDULE 9—*continued.*AMENDMENTS TO PART X OF THE PRINCIPAL ACT—*continued.*

- (b) mine for a mineral except under, and in accordance with—
- (i) a claim of which he is the registered holder;
 - (ii) a mining lease of which he is the registered holder; or
 - (iii) a coal lease granted under the Coal Mining Act, 1973, which applies to that mineral by reason of a direction given by the Minister under section 72 (3) (a) of that Act.

Penalty : \$2,000 for each day on which the offence continues.

(b) Section 189 (2)—

Omit the subsection, insert instead :—

(2) It is a sufficient defence to a prosecution under subsection (1) if the person carrying out prospecting or mining operations proves that he is entitled to do so—

- (a) by virtue of a legal instrument—
 - (i) approved by the Minister under section 107 (1) (b) and registered by the Registrar; or
 - (ii) approved by the Minister under section 104 (1) (b) of the Coal Mining Act, 1973, and registered by the registrar under that Act;
- (b) pursuant to a fossicking licence of which he is a holder; or
- (c) pursuant to a licence granted under section 173 (4).

Mining (Amendment).

SCHEDULE 9—*continued.*

AMENDMENTS TO PART X OF THE PRINCIPAL ACT—*continued.*

(c) Section 189 (3)—

Omit “coal”, insert instead “a mineral”.

SCHEDULE 10.

Sec. 5.

AMENDMENTS TO THE FIRST SCHEDULE TO THE PRINCIPAL ACT.

(1) Paragraph 1 (1) (e)—

Omit “and pasture legume”, insert instead “, pasture legume seed”.

(2) Paragraph 2 (1) (b)—

Omit “and”.

(3) Paragraph 2 (1) (c)—

Omit “lodged.”, insert instead “lodged; and”.

(4) Paragraph 2 (1) (d)—

After paragraph 2 (1) (c), insert :—

(d) in the case of a reference to him under section 25B (3) (a), by deciding whether or not the land was agricultural land on the date on which the notice, pursuant to which the objection referred to in section 25B (1) was made, was served in accordance with section 25A (2) (a).

Mining (Amendment).

Sec. 5.

SCHEDULE 11.

AMENDMENT TO THE SECOND SCHEDULE TO THE PRINCIPAL ACT.

Paragraph 16 (5)—

Omit “, lodged,”, insert instead “lodged”.

Sec. 6.

SCHEDULE 12.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. In this Schedule, “commencement day” means the day appointed and notified under section 2 (2).

2. (1) An order in writing made by the Minister under section 26 (6A) of the Principal Act, and in force immediately before the commencement day, shall, on and from the commencement day, be deemed to be an order in writing made by the Minister under section 26B (2) of the Principal Act, as amended by this Act.

(2) A fossicking licence issued under section 26 (6) of the Principal Act, and in force immediately before the commencement day, shall, on and from the commencement day, be deemed to be a fossicking licence issued under section 26B (3) of the Principal Act, as amended by this Act.

3. (1) A reference in a permit granted under section 36A (2) or 42 (2) of the Principal Act, and in force immediately before the commencement day, to a Crown lease for pastoral purposes or a special lease for pastoral purposes shall, on and from the commencement day, be deemed to be a reference to a pastoral lease.

(2) A reference in an instrument—

- (a) lodged before the commencement day with the Under Secretary under section 87 (2) (a) of the Principal Act;
- (b) a copy of which is served before the commencement day upon a registered holder of an exploration licence under section 87 (2) (b) of the Principal Act;
- (c) served before the commencement day upon the registered holder of a mining lease under section 90 (2) (b) of the Principal Act;

Mining (Amendment).

SCHEDULE 12—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(d) lodged before the commencement day with the Minister under section 93 (2) of the Principal Act; or

(e) granted by the Minister under section 94A (2) of the Principal Act and in force immediately before the commencement day,

to a Crown lease for pastoral purposes or a special lease for pastoral purposes shall, on and from the commencement day, be deemed to be a reference to a pastoral lease.

4. Where a written statement has been lodged before the commencement day with the Under Secretary under section 66 (11) of the Principal Act, it shall not be necessary for a statutory declaration to be lodged with the Under Secretary under section 66 (11) of the Principal Act, as amended by this Act.

5. Any proceedings under section 127 of the Principal Act commenced before the commencement day may continue, and be completed, in all respects as if that section had not been substituted by this Act.

6. Any regulation made before the commencement day for the purposes of section 26 of the Principal Act shall, on and from the commencement day, be deemed to have been made for the purposes of section 26c of the Principal Act, as amended by this Act.
