

MINERAL RESOURCES ACT

No. 110 of 1989

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FIRST SCHEDULE

SECOND SCHEDULE

Queensland



ANNO TRICESIMO OCTAVO

ELIZABETHAE SECUNDAE REGINAE



No. 110 of 1989

An Act to provide for the assessment, development and utilization of mineral resources to the maximum extent practicable consistent with sound economic and land use management

[ASSENTED TO 25TH OCTOBER, 1989]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART 1—PRELIMINARY

1.1 Short title. This Act may be cited as the *Mineral Resources Act 1989*.

1.2 Commencement. (1) Section 1.1 and this section shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), this Act or the provisions thereof specified in the Proclamation shall commence on the day or days appointed by Proclamation for the commencement of this Act or, as the case may be, those provisions.

1.3 Objectives of Act. The principal objectives of this Act are to—

- (a) encourage and facilitate prospecting and exploring for and mining of minerals;
- (b) enhance knowledge of the mineral resources of the State;
- (c) minimise land use conflict with respect to prospecting, exploring and mining;
- (d) encourage environmental responsibility in prospecting, exploring and mining;
- (e) ensure an appropriate financial return to the State from mining;
- (f) provide an administrative framework to expedite and regulate prospecting and exploring for and mining of minerals.

1.4 Application of Act to Commonwealth land and territorial sea of Australia. (1) To the extent that the Parliament of the Commonwealth shall have from time to time vested in the Crown in right of Queensland jurisdiction to make such laws with respect thereto, this Act applies in respect of the sea bed and subsoil beneath the internal waters of Australia and beneath the territorial sea of Australia and to waters above that sea bed as if that sea bed and subsoil were land within Queensland.

(2) This Act applies in respect of land of or vested in the Commonwealth to the extent that from time to time the Parliament of the Commonwealth shall determine.

(3) Subsections (1) and (2) shall not be construed to authorize prospecting, exploration or mining of the sea bed and subsoil that—

- (a) comprises a National Park within the meaning of the *National Parks and Wildlife Act 1975-1989*;

or

- (b) by a law of the Commonwealth is excluded from the application of this Act (whether by reference to this Act or

to the subject matter of this Act) to the extent of that exclusion.

1.5 Repeals. The Acts specified in the First Schedule are repealed as and to the extent indicated therein.

1.6 Amendment of Oaths Act 1867-1988. (1) Section 3 of the *Oaths Act 1867-1988* is amended by inserting in the second paragraph after the word "1981" the words "and Wardens appointed under the *Mineral Resources Act 1989*".

(2) The *Oaths Act 1867-1988* as amended by subsection (1) may be cited as the *Oaths Act 1867-1989*.

1.7 Savings, transitional and validation. The savings, transitional and validation provisions as set out in the Second Schedule shall have effect as therein provided.

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

"Act relating to mining" does not include the *Miners' Homestead Leases Act 1913-1986* or the *Mining Titles Freeholding Act 1980-1989*;

"Area" in relation to a Local Authority, has the meaning it has under the *Local Government Act 1936-1988*;

"block" means a block as described in section 5.1;

"company" means—

- (a) a company;
- (b) a recognized company;
- (c) a recognized foreign company;
- (d) a registered foreign company,

within the meaning of the *Companies (Queensland) Code*;

"Director-General" means the Director-General, Department of Mines or the chief executive for the time being of the Department of the Government for the time being administering this Act;

"eligible person" means—

- (a) a natural person who has attained the age of 18 years;
- or
- (b) a company;

"explore" means take action to determine the existence, quality and quantity of minerals on, in or under land or in the waters or sea above land by—

- (a) prospecting;
- (b) using instruments, equipment and techniques appropriate to determine the existence of any mineral;
- (c) extracting and removing from land for sampling and testing an amount of material, mineral or other substance

in each case reasonably necessary to determine its mineral bearing capacity or its properties as an indication of mineralisation;

- (d) carrying on any other operation that the Minister in writing in the particular case approves;

“hand mining” means mining using only picks, shovels, hammers, gads, sieves, windlasses and other like tools which are used manually: the term does not include the use of explosives;

“holder” in relation to a prospecting permit means the person in whose name the permit is issued; in relation to an exploration permit, mining claim, mineral development licence or mining lease means the person in whose name the permit, claim, licence, or lease is recorded at the relevant time and includes the executor and administrator of the holder;

“land” includes—

- (a) land within the beds and banks of all streams, watercourses and inundated land;

(b) land beneath the internal waters of Queensland;

(c) the sea bed and subsoil to which this Act applies; and

(d) waters in, upon and above land;

The term except in sections 1.9, 1.10 and 2.1 does not include—

(e) a National Park within the meaning of the *National Parks and Wildlife Act 1975-1989*;

(f) Crown land reserved and set apart under the *Land Act 1962-1988* as environmental park;

“Local Authority”, in relation to any land, means a Local Authority or a Joint Local Authority constituted under the *Local Government Act 1936-1988* for the Area in which the land is situated and includes—

(a) a person who at the material time is deemed to be a Local Authority pursuant to that Act; and

(b) Brisbane City Council constituted under the *City of Brisbane Act 1924-1987*;

“member of the family” in relation to a family prospecting permit, means any of the following:—

(a) the natural person in whose name the permit is issued;

(b) the spouse of the person referred to in provision (a);

(c) a natural person who is living with the person referred to in provision (a) as the spouse of that person;

(d) a natural person under the age of 18 years who for the time being resides with the person referred to in provision (a) as a member of that person’s household;

(e) a natural person under the age of 18 years who for the time being is in the lawful custody of a person referred to in provision (a);

“mine” means to carry on any operation with a view to or for the purpose of—

- (a) winning mineral from a place where it occurs;
- (b) extracting mineral from its natural state;
- (c) disposing of any mineral in connexion with or waste substances resulting from such winning or extraction;

“mineral” means a substance which normally occurs naturally as part of the earth’s crust or is dissolved or suspended in water within or upon the earth’s crust and includes a substance which may be extracted from such a substance: The term includes—

- (a) clay when used for its ceramic properties, kaolin and bentonite;
- (b) foundry sand;
- (c) hydrocarbons and other substances or matter occurring in association with shale or coal and necessarily mined, extracted, produced or released by or in connexion with mining for shale or coal or for the purpose of enhancing the safety of current or future mining operations for coal or the extraction or production of mineral oil therefrom;
- (d) limestone when used for its chemical properties;
- (e) marble;
- (f) mineral oil or gas extracted or produced from shale or coal by *in situ* processes;
- (g) peat;
- (h) salt including brine;
- (i) shale from which mineral oil may be extracted or produced;
- (j) silica, including silica sand, when used for its chemical properties;
- (k) rock mined in block or slab form for building purposes;

The term does not include—

- (l) living matter;
- (m) petroleum within the meaning of the *Petroleum Act 1923-1988*;
- (n) soil, sand, gravel or rock (other than rock mined in block or slab form for building purposes) to be used or to be supplied for use as such, whether intact or in broken form;
- (o) water;

“mining registrar” in relation to a mining district means a mining registrar assigned to that district for the purposes of this Act;

“Minister” includes a Minister of the Crown for the time being acting for or on behalf of the Minister;

“mortgage” includes a charge on any mining claim, mineral development licence or mining lease for securing money or money’s worth;

“occupied land” means land (including a reserve) of which there is an owner other than land the subject of a permission to occupy issued pursuant to the *Land Act 1962-1988*;

“officer” in relation to a company has the same meaning as it has in the *Companies (Queensland) Code*;

“owner” in relation to land, means—

(a) where land is a reserve—

(i) that is vested in a trustee, that trustee;

(ii) that is a road, the person, authority, body or corporation in which it is vested or that is responsible for the maintenance of that road;

(iii) that is not vested in a trustee and is not a road, the person in whom the land is vested or if the land is not vested in any person, the Minister of the Crown for the time being charged with the administration of the Act under which the land is a reserve;

(b) where the land has been alienated by the Crown in fee simple, the registered proprietor of that land;

(c) where in respect of that land a right to a grant by the Crown in fee simple—

(i) has accrued to a person;

or

(ii) will accrue to a person upon the performance by him of a developmental or improvement condition,

that person;

(d) where an estate in fee simple in the land is being purchased from the Crown, the purchaser;

(e) where the land is a State Forest or Timber Reserve under the *Forestry Act 1959-1987*, the Conservator of Forests;

(f) in any other case where a person has a lease or occupancy from the Crown of the land pursuant to any Act (other than an Act relating to mining or to petroleum), other than a permission to occupy under the *Land Act 1962-1988*, that person,

and, where land is a Forest Entitlement Area under the *Forestry Act 1959-1987*, the Conservator of Forests shall, in addition to any other owner, be deemed to be an owner of that land;

“prospect” means take action, not being that of hand mining, to determine the existence, quality and quantity of minerals

on, in or under land by either or both of the following methods—

- (a) using metal detectors or other like hand held instruments;
- (b) sampling using only hand held implements;

“repealed Acts” means the Acts repealed by this Act;

“reserve” means—

- (a) land which is—

- (i) a road dedicated or notified or declared under any Act to be a road for public use;
- (ii) a road comprised of land taken and vested in the Crown or an authority, body or corporation representing the Crown or a Local Authority, pursuant to any Act for the purpose of a road for public use;
- (iii) a State Forest or a Timber Reserve within the meaning of the *Forestry Act 1959-1987*;

- (iv) vested in—

- (A) the Minister for Education of Queensland;
- (B) the Commissioner for Railways;
- (C) the Commissioner for Housing;
- (D) the Commissioner of Main Roads;

or

- (E) the Minister for Works or the Secretary for Public Construction;

- (v) granted in trust, reserved or set apart for any public purpose under the *Land Act 1962-1988* or any other Act;

or

- (b) land which has been granted in trust under the *Land Act 1962-1988* for the benefit of Aboriginal or Islander inhabitants;

but does not include land (other than land referred to in paragraph (a) or (b)) set apart as town land or suburban land under the *Land Act 1962-1988*, or reserved as a town site under section 6 (2) of the *Miners' Homestead Leases Act 1913-1986*;

“road” includes—

- (a) an avenue, boulevard, crescent, drive, esplanade, expressway, footway, freeway, highway, lane, motorway, parade, pathway, promenade, reserve for esplanade, stock route, street, thoroughfare or toll road;

and

- (b) a part of a road or a bridge, causeway, culvert or other works in, on, over or under a road or a part of a road within the meaning of this definition;

“sub-block” means a sub-block as described in section 5.1;

“town planning scheme” means a town planning scheme within the meaning of section 33 of the *Local Government Act 1936-1988* or the Town Plan for the City of Brisbane in force for the time being pursuant to the *City of Brisbane Town Planning Act 1964-1988*;

“warden” in relation to a mining district, means a warden appointed for the purposes of this Act and assigned to that district or, in relation to a specific function of a warden, the warden to whom that function has been assigned.

(2) In this Act, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

(3) In this Act, every word of the masculine gender shall be construed to include the neuter gender where the case requires it.

1.9 Crown’s property in minerals. (1) Gold on or below the surface of land is the property of the Crown.

(2) Coal—

(a) on or below the surface of land that was acquired by the Crown as provided in *The Agricultural Lands Special Purchase Act of 1901* and subsequently alienated in fee simple by the Crown is the property of the Crown;

(b) on or below the surface of land (other than land referred to in paragraph (a)) is the property of the Crown except where that land was alienated in fee simple by the Crown before 1 March 1910 and the grant of that land did not contain a reservation to the Crown of the property in that coal.

(3) All minerals (other than coal and gold but including minerals dissolved or suspended in water within or upon the earth’s crust) on or below the surface of land in Queensland other than land alienated in fee simple by the Crown pursuant to—

(a) section 22 of *The Crown Lands Alienation Act of 1860*;

(b) section 32 of *The Crown Lands Alienation Act of 1868*;

or

(c) section 21 of *The Mineral Lands Act of 1872*,

are the property of the Crown.

(4) Every Crown grant or lease under any Act relating to Crown land (other than this Act) shall contain—

(a) a reservation of all minerals on and below the surface of the land comprised therein;

and

(b) a reservation of the right of access for the purpose of prospecting, exploring or mining in any part of the land.

(5) (a) Mineral on or below the surface of land that is or becomes road is (to the extent that the mineral, but for this paragraph would not be the property of the Crown) on and from the date the land becomes or became road, the property of the Crown.

(b) Where land to a specified depth only is or becomes road, paragraph (a) applies in respect only of mineral in or below the surface of that land to the specified depth.

(c) Nothing in this subsection shall be construed as abrogating any right that the owner of land whose land is compulsorily acquired after the commencement of this Act for the purpose of being used as a road may have under any other Act or law to compensation in respect of that acquisition.

1.10 Exclusive right of Crown to grant mining leases etc., irrespective of ownership of mineral. (1) A person is not competent to grant a lease or to enter into an agreement or arrangement, whether for valuable consideration or otherwise (other than an agreement referred to in section 9.1 (2) (a) or (b)) authorizing the prospecting or exploring for mineral or the mining of any mineral therefrom notwithstanding that the mineral is not the property of the Crown.

For the purposes of this subsection a compensation agreement entered into pursuant to this Act does not authorize prospecting, exploring or mining.

(2) Subject to this Act, a prospecting permit, mining claim, exploration permit, mineral development licence and mining lease may be granted in respect of land notwithstanding that—

(a) an instrument alienating that land in fee simple from the Crown may or may not contain a reservation to the Crown of the relevant mineral on or below the surface of that land;

or

(b) the relevant mineral is or is not the property of the Crown.

(3) Notwithstanding the other provisions of this Act, a person who undertakes any airborne activity to determine the existence of minerals shall notify the Minister after the completion of that activity and shall furnish the Minister such data as the Minister may determine in the particular case.

1.11 Act does not create estates in land. The grant of a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease under this Act does not create an estate or interest in land.

PART 2—MINING DISTRICTS

2.1 Mining districts. The Governor in Council may from time to time by Order in Council—

- (a) constitute any land a mining district and assign to that district a name;
- (b) abolish a mining district;
- (c) vary the boundaries of a mining district;
- (d) alter the name by which a mining district is for the time being called.

2.2 Identification of mining districts. (1) Mining districts may be identified by such means as the Governor in Council considers appropriate including by reference to any Local Authority Area for the time being under the *Local Government Act 1936-1988*.

(2) Where, under the *Local Government Act 1936-1988* a boundary of a Local Authority Area is varied, any mining district identified by reference to that Area shall, by virtue of that variation, be varied accordingly.

PART 3—PROSPECTING PERMITS

3.1 Categories of prospecting permit. A prospecting permit granted under this Act shall be—

- (a) a prospecting permit issued in the name of one eligible person;
- or
- (b) a family prospecting permit issued in the name of one natural eligible person in respect of members of his family.

3.2 Entitlements under prospecting permit. (1) The holder of a prospecting permit and where the prospecting permit is granted to a company, a person who is an officer, employee, contractor or agent of the company and has actual possession of the prospecting permit or an authorization from the holder in a form acceptable to the mining registrar may during the term of the prospecting permit using reasonable means of transportation enter and be upon any land specified in the prospecting permit for the purpose of doing all acts necessary to comply with the requirements of this Act relating to the application for a mining claim or mining lease in respect of the whole or part of that land.

(2) The holder of a prospecting permit and—

- (a) where the prospecting permit is granted to a company, a person who is an officer, employee, contractor or agent of the company and has actual possession of the prospecting permit or an authorization from the holder in a form acceptable to the mining registrar;
- or
- (b) where the prospecting permit is a family prospecting permit, a natural person who is a member of the family of the

holder and has actual possession, or is in the presence of a natural person who has actual possession, of the prospecting permit,

may during the term of the prospecting permit—

- (c) for the purpose of prospecting for minerals, using reasonable means of transportation enter and be upon—
 - (i) any land specified in the prospecting permit that is not the surface of a reserve;
 - and
 - (ii) with the prior consent in writing of the owner of land specified in the prospecting permit that is the surface of a reserve, that land;
- (d) for hand mining purposes (other than hand mining for coal), using reasonable means of transportation enter and be upon—
 - (i) any land specified in the prospecting permit that is not occupied land;
 - and
 - (ii) with the prior consent in writing of the owner of any occupied land specified in the prospecting permit, that land.

(3) A prospecting permit does not authorize a person to enter or be upon the surface of land of an owner which is—

- (a) within 100 metres laterally of—
 - (i) a dwelling-house, or other building of the owner (not of a temporary nature) on that land principally used for accommodation of persons or used for the conduct of business;
 - or
 - (ii) a building (not of a temporary nature) on that land currently being used for community, sporting or recreational purposes or as a place of worship;
 - or
- (b) within 50 metres laterally of—
 - (i) a principal stockyard or a dam, bore or artesian well of that owner or other artificial water storage of that owner connected to a supply of water;
 - or
 - (ii) a cemetery or burial place,

except with the written consent of the owner of that land lodged with the mining registrar.

For the purposes of this section, a dwelling-house or building means a fixed structure that is wholly or partly enclosed by walls and is roofed.

Consent referred to in this subsection can only be withdrawn by the giving of a notice in writing to the holder of the prospecting permit and the mining registrar.

(4) For the purposes of subsections (2) (c) (ii) and (2) (d) (ii), the holder of a prospecting permit has the consent of an owner of land if that consent in writing has been previously lodged with the mining registrar and has not been withdrawn as provided for in subsection (5).

(5) Consent referred to in subsections (2) (c) (ii) and (2) (d) (ii) can only be withdrawn by the owner of the relevant land giving notice in writing to the holder of the prospecting permit and the mining registrar.

(6) The holder of a prospecting permit, and each person who enters or is upon land under the authority of that prospecting permit, shall comply with the terms and conditions upon which the consent in respect thereof was given by the owner of that land.

(7) For the purposes of subsections (2) (c) (ii) and (2) (d) (ii), where the owner of a parcel of land is more than one person, the consent of one such person, in the absence of evidence to the contrary, shall be deemed to be consent of the owner.

(8) The holder of a prospecting permit and each person who enters or is upon land under the authority of a prospecting permit is entitled to ingress into and egress from the land specified in the prospecting permit over land specified as access in the permit.

3.3 Land subject to prospecting permit. (1) A prospecting permit authorizes entry to contiguous land specified therein within a mining district.

(2) A prospecting permit may be granted in respect of such area of land as the mining registrar, in his discretion, approves but shall not be granted in respect of land exceeding an area of 300 hectares unless—

- (a) no part of the land is occupied land;
- (b) one person (whether with or without others) is the owner of all of that part of the land that is occupied land;
- or
- (c) in the special circumstances of the particular case, the mining registrar approves.

A mining registrar who grants a prospecting permit in respect of land exceeding an area of 300 hectares pursuant to paragraph (c) shall record on the prospecting permit the special circumstances for the grant.

(3) At the discretion of a mining registrar more than one prospecting permit may be granted authorizing entry to the same land.

(4) For the purposes of subsection (1), land that would be contiguous if it was not separated by a reserve for road purposes shall be deemed to be contiguous.

(5) A mining registrar may require that a prospecting permit shall be granted in respect of whole parcels of land.

3.4 Exclusion of land from prospecting permit if subject to mining claim, mining lease, mineral development licence or application therefor. For so long as land is, becomes or remains the subject of—

- (a) a mining claim;
- (b) a mining lease;
- (c) a mineral development licence,

or an application therefor, that land and the surface of that land shall be taken to be excluded from the land specified in a prospecting permit over that land except—

- (d) in the case where any such application is made by the holder of the prospecting permit and no other application for a mining claim, mining lease or mineral development licence has been made by any other person;
or
- (e) where the holder of the mining lease or mineral development licence or the applicant consents in writing, to the extent specified in that consent.

3.5 Application for prospecting permit. An application for a prospecting permit shall—

- (a) be in or to the effect of the prescribed form and lodged in the prescribed manner with the mining registrar for the mining district in which is situated the land in respect of which a prospecting permit is sought;
- (b) specify the name and address of the applicant for service of any notice;
- (c) specify by a sketch and description or other means acceptable to the mining registrar land in respect of which a prospecting permit is sought and any land proposed to be used as access;
- (d) specify in respect of any occupied land included in the application and any land proposed to be used as access each owner and his address;
and
- (e) be accompanied by—
 - (i) proof to the satisfaction of the mining registrar of the identity of the applicant;
and
 - (ii) the prescribed application fee.

3.6 Reason for rejection of application to be given. A mining registrar who rejects an application for the grant of a prospecting permit shall give written notice to the applicant stating the reasons for rejection.

3.7 Refund upon rejection of application. If a mining registrar rejects an application for the grant of a prospecting permit the application fee and any other moneys that accompanied the application for the permit shall be refunded to the applicant.

3.8 Grant of prospecting permit. (1) A mining registrar who is satisfied that—

- (a) the requirements of section 3.5 have been complied with;
- (b) the applicant is an eligible person;
- and
- (c) the application is made bona fide for the purposes of this Act,

may, subject to compliance with section 3.10, grant and issue to the applicant a prospecting permit authorizing entry to all the land included in the application or such part or parts of it as the mining registrar specifies in the permit.

(2) A prospecting permit shall be in the prescribed form and shall specify—

- (a) the identification number of the permit;
- (b) the name of the holder;
- (c) the address for service of notices on the holder;
- (d) the description of land in respect of which the permit is granted;
- (e) the term and date of commencement of the permit;
- and
- (f) the conditions (other than conditions prescribed by this Act) to which the permit is subject.

(3) A mining registrar, who is of the opinion that an applicant for a prospecting permit had previously contravened or failed to comply with any provision of this Act, the repealed Acts, the *Mining (Fossicking) Act 1985* or any other Act relating to mining, may, whether or not that person had been charged or convicted of an offence in respect of that contravention or failure to comply, reject the application.

(4) For the purposes of subsection (3) an applicant is deemed to have contravened or failed to comply with a provision of an Act if—

- (a) in the case of an application for a prospecting permit by a company, a person who is an officer or employee of the company or who, in the opinion of the mining registrar, is in a position to control or influence substantially the affairs of the company;
- (b) in the case of an application for a family prospecting permit, a member of the family of the applicant,

has contravened or failed to comply with that provision.

(5) A prospecting permit shall be in the form prescribed for that category of permit.

3.9 Conditions of prospecting permit. (1) A prospecting permit shall be subject to any prescribed conditions and such other conditions as a mining registrar shall from time to time impose.

(2) In imposing conditions upon the grant of a prospecting permit a mining registrar shall take into consideration the possible effect upon the owner of the land of the grant of the permit having regard to the holder's entitlements under that permit and any other subsisting permits.

(3) A mining registrar may from time to time, by notice in writing to the holder of a prospecting permit vary any condition imposed by the mining registrar.

(4) The holder of a prospecting permit and all persons acting under the authority of the permit shall comply with the conditions for the time being of the permit of which notice has been served on the holder.

3.10 Provision of security. (1) A prospecting permit shall not be granted until the applicant for the permit deposits the security (if any) determined by the mining registrar for compliance with the conditions of the prospecting permit and the provisions of this Act and to rectify any actual damage that may be caused by any person whilst purporting to act under the authority of the permit to any land or any improvements situated on or off that land.

(2) The owner of any land may apply in writing to the mining registrar to rectify the damage referred to in subsection (1) that has been caused by any activity allegedly authorized under a prospecting permit in respect of that land.

(3) If the mining registrar is satisfied (whether or not upon an application referred to in subsection (2)) that damage referred to in subsection (1) has been caused by any person purporting to act under the authority of a prospecting permit he shall require that person to take all action necessary to rectify that damage.

(4) The mining registrar at any time (whether during or after the expiration of the term of a prospecting permit and whether or not he cancels the prospecting permit) may utilize the whole or part of the amount of the security deposited in respect of that prospecting permit—

(a) to rectify any damage referred to in subsection (3);

or

(b) towards payment of any moneys (including penalties) owing to the Crown under this Act or for a breach of any of the conditions of the prospecting permit or of the provisions of this Act and unpaid.

(5) If, at any time (whether during or within 28 days after the expiration of the term of a prospecting permit) the amount or any part of the amount deposited under this section is utilized as provided by subsection (4) or a mining registrar considers that, in view of the damage caused or likely to be caused by any person purporting to act under the authority of the prospecting permit or for any other reason, a further amount of security should be deposited in respect of that prospecting permit, he shall require the holder or former holder of the prospecting permit, within the time specified by the mining registrar, to deposit the further security.

(6) A mining registrar may accept a bond or a guarantee or indemnity by, or other financial arrangement with, a bank, insurance company or other financial institution approved by the mining registrar or other form of security acceptable to the mining registrar as the whole or part of the security to be deposited under this section.

(7) It shall be a condition of a prospecting permit that the holder shall deposit security or further security from time to time in accordance with a requirement made as provided by this section.

(8) Except as provided in subsection (4), where a prospecting permit has expired or been terminated, the mining registrar shall, subject to subsection (10), refund to the holder of the permit (or as the holder in writing directs) any security deposited and not utilized as provided by subsection (4) less any amount determined by the mining registrar to be so utilized after—

- (a) the receipt by the mining registrar of written agreement by the owner or, as the case may be, owners of all occupied land so specified;
- or
- (b) the expiration of 28 days from the date of expiration or termination of the prospecting permit,

whichever shall first occur.

For the purposes of paragraph (a), where more than one person is the owner of a parcel of land, the agreement of one such person in the absence of evidence to the contrary shall be deemed to be the agreement of the owner.

(9) Where an application for a mining claim or for a mining lease by a holder of a prospecting permit has not been determined at the time of the expiration or termination of the prospecting permit, any moneys payable under subsection (8) shall be paid after the expiration of 28 days from the date of determination of the application.

(10) Where security under this section in respect of a prospecting permit is accepted by way of a bond or a guarantee or indemnity by, or other financial arrangement with, a bank, insurance company or other financial institution, any money payable to the holder under subsection (8) or (9) shall be refunded to that bank, insurance company or, as the case may be, financial institution and not to the holder of the prospecting permit.

3.11 Utilization of security deposit towards subsequent prospecting permit. If the holder of a prospecting permit or an expired prospecting permit makes application for a further prospecting permit, the mining registrar may, instead of refunding the whole or part of the security deposited in respect of the existing or expired permit, retain that security or part thereof (together with any further security fixed by the mining registrar) as the security (in which case it shall be taken to be or to be part of the security) deposited by the applicant in respect of the application for the further prospecting permit.

3.12 Compensation. Notwithstanding section 3.10 the Crown, or an owner is entitled to recover from time to time, in the Wardens Court the cost of rectification of actual damage caused to land by reason of a person acting or purporting to act under the authority of a prospecting permit but any moneys paid under that section in respect of rectification of damage the subject of the proceeding shall be taken into account in assessing any compensation.

The holder of a prospecting permit is not liable under this section in respect of damage caused by another person who is not a holder and is not a person authorized by the holder to be upon the land the subject of the prospecting permit.

3.13 Term of prospecting permit. A prospecting permit shall, unless sooner surrendered or cancelled, be in force for a period of 3 months from the date specified in the permit (being a date not earlier than the date of grant of the permit).

3.14 Rights and obligations extended upon application for mining claim etc. (1) The holder of a prospecting permit who, during the term of the prospecting permit, makes application for the grant of—

(a) a mining claim;

or

(b) a mining lease,

in respect of any land to which the prospecting permit applies, shall, during the period from the expiration of the prospecting permit until the determination of the application, for so long as the provisions of this Act and the terms and conditions that would apply if the permit were current are complied with, have all the responsibilities, powers, authorities and duties that he would have had in respect of the land the subject of the application if the prospecting permit was current.

(2) The entitlements of the holder of a prospecting permit are not reduced or limited by reason only of his application for the grant of a mining claim or a mining lease in respect of any land to which the prospecting permit applies.

3.15 Mining registrar to notify owners of occupied land of grant of prospecting permit. Upon granting a prospecting permit, a mining registrar shall advise forthwith the owner of any occupied land specified in the permit including occupied land (other than a reserve for public road) specified as access.

Where advice is not in writing, the advice shall be confirmed in writing as soon as practicable.

3.16 Holder of prospecting permit to give prior notice of entry. The holder of a prospecting permit shall not initially enter occupied land (other than a reserve for public road) under the authority of a prospecting permit before the holder of the permit has notified the owner of his intention to enter.

3.17 Prospecting permit not transferable. A prospecting permit is not transferable.

3.18 Report to mining registrar by owner of land. (1) Where a person purports to enter or be upon land under the authority of a prospecting permit, the owner of that land who considers that that person is not authorized to enter or be upon that land or is not complying with any condition of the prospecting permit or of any provision of this Act may report accordingly to the mining registrar of the mining district in which is situated the land.

(2) The mining registrar shall have the report investigated and shall advise the owner of land who reports under subsection (1) of any action taken upon the report.

3.19 Penalty for breach of conditions. If the mining registrar considers on reasonable grounds that there has been a breach of any condition of a prospecting permit or of this Act by the holder of the permit or any person purporting to act under the authority of the prospecting permit, the mining registrar may determine that an amount (not exceeding 5 penalty units) fixed by him shall be due and owing to the Crown by the holder by way of penalty for that breach.

3.20 Cancellation of prospecting permit. (1) A mining registrar may at any time, by notice in writing in or to the effect of the prescribed form served on the holder of a prospecting permit or other person apparently acting under the authority of the permit, cancel the permit.

(2) A notice cancelling a prospecting permit served pursuant to subsection (1) shall state the reasons for the cancellation.

3.21 Surrender of prospecting permit. The holder of a prospecting permit may, at any time before the expiration of its term, by notice in writing to the mining registrar surrender the permit.

3.22 Review of mining registrar's determination. (1) Where a mining registrar—

- (a) refuses to grant a prospecting permit;
 - (b) imposes conditions (other than prescribed conditions) to which a prospecting permit is to be subject;
 - (c) requires an applicant for or holder of a prospecting permit to deposit a security as provided for in section 3.10;
 - (d) determines that an amount is due and owing to the Crown by the holder of a prospecting permit by way of penalty for a breach as provided for in section 3.19;
 - (e) cancels a prospecting permit;
- or
- (f) pursuant to section 3.10, utilizes or determines to utilize an amount of a security deposited by the holder of a prospecting

permit towards rectification of any damage caused by non-compliance with any of the conditions of the prospecting permit,

the applicant for or, as the case may be, the holder of the prospecting permit, within 21 days of notice of the determination, may apply in writing to the Director-General for a review by the Minister of that determination setting out the grounds for review.

(2) The person applying for a review under subsection (1) shall forthwith send a copy of the application to the mining registrar.

(3) The Minister shall review the determination the subject of an application for a review made pursuant to subsection (1) and may make such inquiries as he thinks proper with respect to the determination and shall notify the applicant of his decision thereon.

(4) In his decision upon an application for a review under this section, the Minister shall determine that—

- (a) the applicant shall or shall not be granted a prospecting permit;
- (b) any conditions that a mining registrar may impose or revoke in respect of a prospecting permit shall be imposed or revoked;
- (c) the applicant for or holder of the prospecting permit shall deposit a specified amount for the purposes of section 3.10 or need not deposit any such amount;
- (d) an amount shall or shall not be due and owing to the Crown by the holder of a prospecting permit by way of penalty for a breach as prescribed for in section 3.19;
- (e) the cancellation of a prospecting permit shall or shall not be revoked;
- (f) an amount of a security deposited by the holder of a prospecting permit shall or shall not be utilized pursuant to section 3.10 towards rectification of any damage caused by non-compliance with any condition of the prospecting permit,

as the case may be and shall in writing instruct the mining registrar accordingly who shall give effect to that determination.

(5) The giving effect to the Minister's determination under subsection (4) shall, save for the purposes of subsection (1), be the decision of the mining registrar.

(6) Where the Minister determines that the cancellation of a prospecting permit be revoked, the Minister may extend the term of the permit by a period no longer than the length of the period from when the cancellation of the permit took effect to the date of the revocation and shall notify the applicant for the review accordingly.

(7) The Minister's determination upon an application for review under this section shall be final.

(8) An application for a review of a mining registrar's determination under this section does not operate to stay the effect of that determination.

3.23 Minerals taken become property of holder of prospecting permit. All minerals mined as a result of hand mining activities lawfully carried on under the authority of a prospecting permit cease to be the property of the Crown or the person who had property therein and become the property of the holder of the prospecting permit subject however to the rights to royalty payments under this Act of the Crown or any other person.

3.24 Royalties in respect of minerals taken under prospecting permit. The holder of a prospecting permit shall pay in respect of all minerals mined or purported to be mined under the authority of that prospecting permit, the royalty prescribed pursuant to Part 9.

3.25 Holder of prospecting permit to rehabilitate land. (1) The holder of a prospecting permit shall ensure that all excavations are filled in at the conclusion of any activity purported to be carried out on any land under the authority of the prospecting permit.

(2) The holder of a prospecting permit, or other person under the authority of a prospecting permit, who applies for a mining claim or a mining lease in respect of land included in the prospecting permit is not obliged to comply with subsection (1) in respect of land the subject of the application unless and until the application is refused.

3.26 Production of prospecting permit. (1) A person purporting to be upon land under the authority of a prospecting permit shall upon demand made by the owner of that land, an agent of the owner or a person authorized in that behalf by the Minister for proof of his authority for being on the land, produce or cause to be produced to the person making the demand the prospecting permit or a written authorization in a form acceptable to the mining registrar from the holder of the prospecting permit authorizing him to enter or be upon that land for prospecting purposes.

(2) For so long as a person fails to comply with a demand lawfully made of him under subsection (1) he does not have any of the entitlements under this Act.

3.27 Staying on occupied land. (1) A person purporting to act under the authority of a prospecting permit shall only stay at night on any occupied land with the consent in writing of the owner of that land and in compliance with any conditions imposed by the owner of the land or if the mining registrar has endorsed on the permit that staying at night on specified land is permitted and that person complies with the terms and conditions (if any) imposed in that regard by the mining registrar.

(2) A person who stays on land under or purportedly under the authority of a prospecting permit shall dispose of any refuse (including human waste) and rubbish in a safe and sanitary manner.

PART 4—MINING CLAIMS

4.1 Land subject to mining claim. (1) A mining claim may be granted over land comprised in a prospecting permit or prospecting permits to the holder thereof or to the holder thereof and other eligible persons.

(2) A mining claim shall include the whole of the surface of the land within the boundaries of the mining claim.

4.2 Only eligible persons to hold mining claims. A mining claim shall not be held by a person who is not an eligible person.

4.3 Entitlements under mining claim. (1) During the currency of a mining claim the holder of the mining claim and any person who actually works the mining claim as agent or employee of the holder—

- (a) may, in, on or under the land comprised in the mining claim—
 - (i) prospect for any mineral to which the mining claim applies;
and
 - (ii) hand mine in accordance with the conditions of the mining claim any mineral to which the mining claim applies;
- (b) for the purpose of prospecting or hand mining as provided in paragraph (a) may—
 - (i) enter and be upon that land;
 - (ii) use such machinery, mechanical devices or other equipment as are authorized under this Act to be used for that purpose;
 - (iii) erect and maintain a structure (including, where authorized so to do by the mining claim, a temporary residence for a person who is bona fide using the land the subject of the mining claim for a purpose for which it was granted) not being of a permanent nature on that land;
- (c) for the purpose of hand mining as provided in paragraph (a) (ii), may, subject to compliance with the conditions of the mining claim and any other Act or law, make moderate use of explosives where the mining claim specifically authorizes that use.

(2) A person who resides on land under or purportedly under the authority of a mining claim shall dispose of any refuse (including human waste) and rubbish in a safe and sanitary manner.

(3) During the currency of a mining claim, a person who delivers goods or substances or provides services to the holder may enter and be upon that land for that purpose.

(4) Where any Act provides that water may be diverted or appropriated only under authority granted under that Act, the holder of a mining claim shall not divert or appropriate water unless he holds that authority.

4.4 Land over which mining claim not to be granted. (1) A mining claim shall not be granted over land—

- (a) that is the subject of—
 - (i) a mining claim;
 - (ii) a mining lease;
 - (iii) a mineral development licence;or
 - (iv) a prior application for the grant of a mining claim, mining lease or mineral development licence whilst that application remains current;
- or
- (b) that is the subject of an exploration permit or prior application for an exploration permit (not being an exploration permit in respect of coal) without the consent in writing of the holder of the exploration permit or applicant therefor, which consent has been lodged with the mining registrar on or before the date on or before which objections to the application for the grant of the mining claim may be lodged.

For the purposes of this subsection, where land is the subject of a mining lease, the surface of the land shall be taken to be included in that lease.

(2) A mining claim shall not be granted over the surface of land of an owner that, at the time the application for the grant of the mining claim is lodged with the mining registrar, is—

- (a) within 100 metres laterally of—
 - (i) a dwelling-house, or other building of the owner (not of a temporary nature) on that land principally used for accommodation of persons or used for the conduct of business;or
 - (ii) a building (not of a temporary nature) on that land currently being used for community, sporting or recreational purposes or as a place of worship;
- or
- (b) within 50 metres laterally of—
 - (i) a principal stockyard or a dam, bore or artesian well of the owner of that land or other artificial water storage of that owner connected to a supply of water;or
 - (ii) a cemetery or burial place,

except with the written consent of the owner of that land lodged with the mining registrar on or before the date on or before which objections to the application for the grant of the mining claim may be lodged.

For the purposes of this section, a dwelling-house or building means a fixed structure that is wholly or partly enclosed by walls and is roofed.

Consent referred to in this subsection, once given to the mining registrar, cannot be withdrawn.

4.5 No mining claim in respect of coal. A mining claim may be granted in respect of any specified minerals other than coal.

4.6 Area and shape of mining claim land. (1) The land over which a mining claim may be granted—

(a) unless the mining registrar in the particular case at the time the lodgment of the application for the mining claim is accepted by the mining registrar otherwise approves, shall be rectangular in shape;

and

(b) shall be more or less the prescribed area.

(2) The prescribed area of the land over which a mining claim may be granted is—

(a) 1 hectare;

or

(b) where the land is within a mining district or part of a mining district in respect of which, for the purposes of this section, an area is prescribed by Order in Council, that area,

whichever is the smaller.

(3) (a) Where it is found that the land the subject of a mining claim exceeds the prescribed area the mining claim is not thereby invalidated but the following provisions of this subsection shall be complied with.

(b) The mining registrar for the mining district in which the land the subject of the mining claim is situated shall notify the holder that the land exceeds the prescribed area.

(c) If at the expiration of 28 days after the giving of a notice pursuant to paragraph (b)—

(i) the mining claim has not been varied, by agreement between the mining registrar and the holder, to reduce the area of land to or to less than the prescribed area;

or

(ii) the holder has not made application to the Wardens Court to determine whether the subject area exceeds the prescribed area or to determine the variation thereof to reduce the area to the prescribed area,

the mining registrar shall without further notice cancel the mining claim.

4.7 Mining claim over reserve only with consent. A mining claim shall not be granted over land that is a reserve except with—

- (a) the consent of the owner of that land;
- or
- (b) the consent of the Governor in Council.

4.8 Restriction upon number of mining claims. (1) A person shall not at any time be the holder of or have an interest, direct or indirect, in more than two mining claims.

(2) The Minister may call upon a person to show cause why any mining claim or interest held by that person in contravention of subsection (1) should not be cancelled.

If the Minister is not satisfied that there is good reason why he should not do so, he may direct that any such mining claim or interest shall be cancelled and the mining registrar shall without further authority cancel that mining claim or interest.

(3) Where, pursuant to subsection (2) an interest only in a mining claim is cancelled, each holder of any other interest in the mining claim shall hold an interest in the mining claim in the same proportion that his original interest bears to the aggregate of the remaining interests.

4.9 Marking out land before application for grant of mining claim.

(1) The holder of a prospecting permit who wishes to apply for the grant of a mining claim shall mark out, in the prescribed manner the boundary of the land proposed to be the subject of the application.

(2) The fact that the land marked out pursuant to subsection (1) is not a rectangular shape does not constitute a failure to comply with this section.

4.10 Manner of marking out land proposed to be subject of mining claim. (1) Before making an application for the grant of a mining claim, the intending applicant or some person authorized on his behalf shall mark out the land by inserting firmly in the ground at each and every corner of the land applied for a round post which shall be not less than 10 centimetres in diameter or a square post each side of which shall be not less than 10 centimetres in width standing at least 1 metre above the surface and sunk not less than 50 centimetres in the ground. That part of each post above the surface shall be painted white.

Where posts are of timber construction they shall be barked and dried of sap before use.

One of the posts shall be selected to be the datum post for the purpose of the commencement of the description and from which a surveyor shall commence any survey of the land.

(2) (a) There shall be engraved or in some way durably marked on each post the applicant's initials and surname (or of one applicant should there be more than one) and the numerals indicating the date

on which the subject land was marked in accordance with this section and the engraving or marking shall be so maintained until action is taken in accordance with section 4.17 (3) (a) and (b). Where the applicant is a company the initials of that company (or of any one company should there be more than one) shall be engraved and marked as prescribed herein on the posts.

(b) If a post cannot be inserted in the manner prescribed there shall be erected a cairn of stones at least 50 centimetres high in the place where the post should have been inserted.

If cairns of stones are erected there shall be engraved or in some way durably marked thereon the particulars which would have been required had a post been inserted.

(c) Where it is not practicable to insert a post or erect a cairn of stones in the manner prescribed at every corner of the land applied for, there may be inserted a datum post only and compass bearings shall be taken and distances measured, as required by section 4.15.

(3) Where it is impossible to insert a datum post or erect a cairn of stones in the manner prescribed by subsection (1) the land shall be marked by measuring a distance on a given bearing from a reference post to a point which shall be the nominal position of the starting point and from which any survey of the land shall commence and the reference post shall in all respects comply with the provisions of this Act relating to a datum post, except the provisions relating to position.

4.11 Consent of mining registrar required to certain marking out of land. Where the land the subject of a mining claim is marked out in accordance with section 4.10 (2) (c) or 4.10 (3) the consent of the mining registrar is required and his consent may be given at any time prior to the issue of the certificate of application. Where consent is so given the mining registrar shall note the register accordingly.

4.12 Time for application for grant of mining claim. The holder of a prospecting permit who marks out the boundary of land in accordance with this Part, may, during the currency of his permit but within 7 days of so marking out, apply in the prescribed manner for the grant of a mining claim over that land.

4.13 If application for mining claim not made, is rejected or abandoned, posts etc. to be removed. (1) A person who marks out the boundary of land for the purpose of making an application for the grant of a mining claim shall remove or cause to be removed forthwith all posts, cairns and other things used by him to mark out the boundary (not being a survey mark or other thing required by any other Act not to be removed)—

- (a) where he has not made the application within 7 days of the marking out, upon the expiration of those 7 days;
or
- (b) where he has made the application as prescribed, upon the rejection or abandonment of the application.

(2) For the purpose of removing posts, cairns and other things in compliance with subsection (1) a person may enter and be upon the relevant land.

4.14 Application for grant of mining claim. (1) An application for the grant of a mining claim shall—

- (a) be in or to the effect of the prescribed form;
- (b) specify the name of each applicant;
- (c) specify the name and address for service of one person upon whom any notice may be served on behalf of the applicant or the applicants;
- (d) describe all parcels of land the whole or part of which are the subject of the application and specify the names and addresses of the owner or owners of the land and of land which is to be used as access thereto;
- (e) identify in the prescribed manner the boundaries of the land applied for;
- (f) describe and identify in the prescribed manner the land proposed to be used as access from a point outside the boundary of the mining claim acceptable to the mining registrar to the land over which the mining claim is sought;
- (g) be accompanied by a sketch, map or other graphic representation acceptable to the mining registrar setting out the boundaries of the land referred to in paragraphs (e) and (f);
- (h) identify the mineral or minerals in respect of which the mining claim is sought;
- (i) be lodged by the applicant personally at the office of the mining registrar for the mining district in which is situated the land in respect of which the mining claim is sought or, if that land is situated in more than one such district, at the office of the mining registrar for the district in which the major portion of the land is situated during the hours prescribed for the conduct of business at that office;
- (j) be accompanied by—
 - (i) proof to the satisfaction of the mining registrar of the identity of the applicant;
 - (ii) such additional copies of the application and other documents lodged therewith as the mining registrar requires;
 - (iii) the prescribed application fee;and
 - (iv) an outline to the satisfaction of the mining registrar of the mining programme proposed and an indication when operations are expected to commence and a brief description of the measures proposed to be taken to minimise adverse environmental impact.

The mining registrar shall not be satisfied with a mining programme referred to in paragraph (j) (iv) which is inconsistent with the provisions of this Act.

(2) For the purposes of subsection (1) (i) an application is lodged personally if it is lodged by a natural person who is—

- (a) the applicant;
- or
- (b) a person authorized in writing in that behalf by the applicant.

(3) A person who lodges an application for the grant of a mining claim shall provide the mining registrar with such information and particulars relating to the requirements set out in subsection (1) as the mining registrar requires and on failure to provide that information the mining registrar may reject the application.

(4) A mining registrar may reject an application for a mining claim in respect of land the whole or part of which appears, on the evidence available to the mining registrar, to be the subject of a mining claim, mineral development licence or mining lease or of an application for the grant of a mining claim, mineral development licence or mining lease.

(5) For the purposes of subsection (4) where a mining claim, mineral development licence or mining lease is terminated or an application for a mining claim, mineral development licence or mining lease is abandoned or rejected, the relevant land shall be deemed to continue to be subject to the mining claim, mineral development licence, mining lease or application until the day next following that termination, abandonment or rejection.

4.15 Description of mining claim. In an application for the grant of a mining claim—

- (a) the datum post shall be accurately related by measured distances and compass bearings (or other method acceptable to the mining registrar) to a survey mark or other fixed and well defined point acceptable to the mining registrar;
- (b) the boundaries of the mining claim shall be described by accurately measured distances and compass bearings on the ground or other method acceptable to the mining registrar; and
- (c) the surface access from a point acceptable to the mining registrar to the land over which the mining claim is sought shall be described by measured distances and compass bearings along the centre line of that access together with the width of that access or by some other method acceptable to the mining registrar.

4.16 Priority of applications for grant of mining claims. (1) Applications for the grant of mining claims duly made in respect of or including the same land shall take priority for the purpose of consideration

and determination of applications according to the order of the time on which they are lodged as prescribed.

(2) If the mining registrar is or, where applications are lodged with different mining registrars, those registrars are of the opinion that the circumstances of the lodgement of some applications for the grant of mining claims made in respect of or including the same land are such that the applications should be treated as having been lodged simultaneously the mining registrar or registrars may treat the applications as having been lodged simultaneously and shall determine their respective priorities by ballot.

The mining registrar shall advise all applicants when and where the ballot is to be held.

4.17 Certificate of application etc. (1) (a) Upon being satisfied that the applicant for the grant of a mining claim is eligible to apply for the mining claim and that the applicant has complied with the requirements of this Act with respect to that application, the mining registrar shall prepare a certificate of application for a mining claim in or to the effect of the prescribed form.

(b) The mining registrar shall endorse on the certificate of application, the number of the proposed mining claim, the date and time of lodgment of the application and a date fixed by the mining registrar on or before which objections to the application may be lodged such date being not less than 21 days therefrom and the person who lodges the application shall thereupon sign the certificate.

(c) Upon the signing of a certificate of application for a mining claim as prescribed in paragraph (b), the particulars set forth in the certificate, to the extent of any conflict with particulars set forth in the application for the grant of the mining claim, shall be deemed to be the particulars set forth in the application in place of the conflicting provisions in the application.

(2) The mining registrar shall forthwith post at his office and shall therein keep posted until the last date fixed for the receipt of objections a copy of the certificate of application duly endorsed pursuant to subsection (1).

(3) Within a period of 7 days after the endorsement of the certificate of application pursuant to subsection (1) (or such longer period as the mining registrar in the particular case at any time determines) the applicant shall—

- (a) cause a true copy of the endorsed certificate of application to be posted on the datum post of the land the subject of the application and shall keep a copy thereon posted until the last date fixed for the receipt of objections in respect of the application;
- (b) engrave or in some way durably mark on the datum post of the land the subject of the application the number of the proposed mining claim;

and

- (c) cause a true copy of the endorsed certificate of application to be served on—
 - (i) each owner of land to which the proposed mining claim and access thereto relates;
and
 - (ii) the relevant Local Authority.

(4) An applicant for a mining claim shall, within 7 days or such other period as the mining registrar in the particular case, at any time, allows after the date fixed pursuant to subsection (1) as the last date for the receipt of objections to his application, lodge with the mining registrar a declaration made under the provisions of the *Oaths Act 1867-1988* as to his compliance with the provisions of subsection (3).

(5) Until the applicant for the grant of a mining claim lodges the declaration prescribed by subsection (4) with the mining registrar—

- (a) the mining registrar shall not grant the mining claim;
- (b) the Wardens Court shall not make any final determination (other than an instruction to the mining registrar to reject the application);
- (c) the Wardens Court may at any time refuse to hear further any matter in respect of the application.

4.18 Owner of land may request conference. (1) Within 7 days (or such longer period as the mining registrar in a particular case approves) of receipt by him of a copy of a certificate of application for a mining claim duly endorsed pursuant to section 4.17 (1), an owner of land to which the application relates may apply to the mining registrar for a conference to be convened with the applicant.

The owner shall indicate any particular matters he wishes to discuss at the conference.

(2) Upon receipt of an application for a conference by an owner of land, the mining registrar as soon as is practicable shall convene and chair a conference with the applicant and the owner which shall be held not later than on the last date for the receipt of objections fixed in respect of the application for the mining claim at a time and place determined by the mining registrar.

(3) The owner of land and the applicant for the grant of the mining claim shall attend the conference which, at the request of the owner or the applicant, the mining registrar may with the agreement of the parties adjourn from time to time and place to place.

(4) The mining registrar shall not adjourn a conference if he considers the adjournment will not facilitate the resolution of any conflict between the owner of land and the applicant.

(5) The mining registrar may at his discretion determine that one conference shall be convened in respect of all owners of land the subject of an application for a mining claim who request a conference.

(6) Any agreement reached between parties at a conference convened under this section shall be reduced to writing and executed by or on behalf of the parties so agreeing and lodged with the mining registrar prior to the date set for the hearing of the application for the mining claim.

(7) Any submission made or evidence adduced by a party at a conference convened under this section shall be confidential between the mining registrar and each of the parties and, except where it is included in an agreement made pursuant to subsection (6), shall not be published or admitted as evidence in any hearing or proceeding without that party's consent.

(8) With the approval of the mining registrar a party may be assisted at a conference by another person.

(9) For the purposes of this section, the mining registrar who convenes a conference is not a party to the conference.

(10) Upon application by a party to a conference, the warden may award such costs as he considers appropriate to that party against a party who fails to appear at the conference.

4.19 Objection to application for grant of mining claim. (1) An eligible person, Local Authority or owner of land may, on or before the last date fixed for the receipt of objections lodge with the mining registrar an objection in writing in the prescribed form.

(2) An owner of land who attends a conference with the applicant for the grant of a mining claim may lodge an objection on or before the expiration of 7 days after the conclusion of that conference or if the applicant for the grant of the mining claim fails to attend the conference after the day upon which the conference was convened, notwithstanding that the period for objection prescribed by subsection (1) has expired.

(3) An objection referred to in subsection (1) or (2) shall state the grounds of objection and the facts and circumstances relied on by the objector in support of those grounds.

(4) Each objector to an application for the grant of a mining claim shall serve upon the applicant on or before the last date that he may lodge an objection to that application a copy of the objection lodged by him.

4.20 Mining registrar to fix hearing date. (1) If an objection to an application for the grant of a mining claim is duly lodged, the mining registrar shall, immediately after the last date that objections may, pursuant to section 4.19 (1) and (2), be lodged, fix a date, being not sooner than 7 days after—

(a) the last date for the receipt of objections;

or

(b) the conclusion of any conference convened pursuant to section 4.18,

whichever is the later, for the hearing in the Wardens Court of the application and all objections to that application duly lodged.

The mining registrar shall notify the applicant and all objectors accordingly.

4.21 Rejection of application for grant of mining claim for non-compliance. An application for the grant of a mining claim may be rejected by the mining registrar if the applicant fails to comply with any of the applicable provisions of this Part.

4.22 Grant of mining claim where no objection to application and necessary consents obtained. If—

- (a) after the last date for the receipt of objections to an application duly made for a mining claim;
and
- (b) after the expiration of 7 days after the conclusion of the conference (if any) required to be held between the applicant and an owner of land,

the mining registrar is satisfied that—

- (c) the provisions of this Part have been complied with;
- (d) no objection to the grant of the mining claim has been duly lodged;
- (e) where the application is for the grant of a mining claim over land that is a reserve, the owner of that land consents to the grant of the mining claim;
and
- (f) where the application is in respect of land over which, pursuant to section 4.4 (2), a mining claim shall not be granted without the consent of the owner, the owner consents to the grant,

the mining registrar may grant and issue the mining claim.

4.23 Mining registrar may refer application for grant of mining claim to Wardens Court. (1) Notwithstanding the provisions of section 4.22, the mining registrar may refer an application for the grant of a mining claim to the Wardens Court for determination and shall set a date therefor being not less than 7 days after that reference.

(2) The mining registrar shall notify forthwith the applicant for the grant of a mining claim of action taken by him pursuant to subsection (1).

4.24 Reference to Wardens Court where owner of reserve does not consent to grant of mining claim. (1) Where in respect of an application for the grant of a mining claim in respect of land that is a reserve, the mining registrar is not satisfied that the owner of that land consents to

the grant, the mining registrar shall fix a date, being not less than 7 days after—

- (a) the date that objections to the application may be lodged;
or
- (b) the conclusion of the conference (if any) required to be held between the applicant and an owner of land,

whichever is the later, for consideration of the matter of that consent by the Wardens Court.

(2) The mining registrar shall notify forthwith the applicant for the grant of the mining claim and the owner of the reserve of the date fixed pursuant to subsection (1).

4.25 One hearing by Wardens Court. (1) On the date fixed for the hearing of the application for the grant of a mining claim and objections thereto, the Wardens Court shall hear the application and objections thereto and all other matters that pursuant to this Part are to be heard, considered or determined by the Wardens Court in respect of that application at the one hearing of the Wardens Court.

The hearing shall be open to the public.

(2) (a) At a hearing pursuant to subsection (1) the Wardens Court shall take such evidence, shall hear such persons and inform itself in such manner as it considers appropriate in order to determine the relative merits of the application, objections and other matters (if any) and shall not be bound by any rule or practice as to evidence.

(b) The Wardens Court shall not entertain an objection to an application or any ground thereof or any evidence in relation to any ground if the objection or ground is not contained in an objection that has been duly lodged in respect of the application.

(3) The Wardens Court may direct an inspection or view of the land the subject of the hearing.

(4) Nothing in subsection (1) shall prevent the adjournment from time to time of a hearing.

(5) Nothing in subsection (1) shall prevent the question of compensation being determined by the Wardens Court pursuant to section 4.33.

(6) The Minister may require at any time the warden to advise the reasons why a hearing under this section has not been finalized.

4.26 Wardens Court's determination on hearing. (1) Upon the hearing by the Wardens Court under this Part of all matters in respect of an application for the grant of a mining claim the Wardens Court may—

- (a) instruct the mining registrar to reject the application;
- (b) instruct the mining registrar to grant the mining claim—
 - (i) upon compliance with any terms and conditions imposed

by him on the applicant with respect to the application or the grant;

and

- (ii) in the case where the application relates to land that is a reserve and the consent of the owner of the reserve to the grant has been obtained;
- (c) in the case where the application relates to land that is a reserve and the owner of the reserve does not consent to the grant of the mining claim—
 - (i) make an instruction referred to in paragraph (a);
 - or
 - (ii) recommend to the Minister that the Governor in Council should consent to the grant of the mining claim and, the terms and conditions (if any) to which the mining claim should be subject.

(2) The Wardens Court shall not—

- (a) give an instruction to the mining registrar directed towards the grant of a mining claim;
- (b) make a recommendation to the Minister directed towards the giving of consent by the Governor in Council to the grant of a mining claim,

if it is satisfied that—

- (c) the provisions of this Part have not been complied with;
- (d) the public right and interest would be adversely affected by the grant of the mining claim;
- or
- (e) there is good reason to refuse to grant the mining claim.

(3) A Wardens Court may give an instruction or make a recommendation referred to in subsection (2) notwithstanding that the question of compensation has not been determined as provided in section 4.33.

(4) A Wardens Court may award costs against an objector who does not pursue his objection to the grant of a mining claim at a hearing under this Part or against an applicant who does not pursue his application at a hearing.

4.27 Consent to grant of mining claim over reserve by Governor in Council. (1) After considering a recommendation made pursuant to section 4.26 (1) (c) (ii) by the Wardens Court in respect of the application for the grant of a mining claim, the Minister shall either instruct the mining registrar to reject the application or recommend to the Governor in Council that he consent to the grant.

(2) The Governor in Council, upon the recommendation of the Minister may consent (subject to such terms and conditions as the

Governor in Council determines) to the grant of a mining claim over land that is reserve.

4.28 Grant of mining claim at instruction of Wardens Court or with consent of Governor in Council. Upon the instruction of the Wardens Court so to do or the consent to the grant by the Governor in Council, the mining registrar shall grant and issue the relevant mining claim if he is satisfied that—

- (a) all necessary consents to the grant have been obtained;
and
- (b) the question of compensation as provided in section 4.33 has been determined.

4.29 Conditions of mining claim. (1) Each mining claim shall be subject to—

- (a) a condition that the holder shall use the land comprised in the mining claim bona fide for the purpose for which the mining claim was granted and in accordance with this Act and the conditions of the mining claim and for no other purpose;
- (b) a condition that the holder shall not assign or mortgage the mining claim or any part thereof without the consent in writing of the mining registrar;
- (c) a condition that the holder shall furnish at such times and in such manner as required by the mining registrar reports, returns, documents and statements and other materials whatever;
- (d) a condition that the holder shall maintain the surface of the land comprised in the mining claim in a tidy state during the term of the mining claim;
- (e) a condition that the holder shall to the satisfaction of the mining registrar provide for the control of the impact on the environment of the operations carried out under the authority of the mining claim;
- (f) a condition that the holder shall undertake rehabilitation of the surface of the land comprised in the mining claim to the satisfaction of the mining registrar;
- (g) a condition that prospecting and mining shall be conducted on the land comprising the mining claim by such method or in such manner as is provided for in or applies in respect of the mining claim;
- (h) a condition that the holder—
 - (i) shall not erect any permanent building or other structure whatever;
and
 - (ii) prior to the termination of the mining claim, for whatever cause, shall remove any building or structure erected by the holder and all mining equipment and plant,

- on or in the land comprised in the mining claim;
- (i) a condition that without the prior approval of the mining registrar the holder shall not obstruct or interfere with any right of access had by any person in respect of land the subject of the mining claim;
 - (j) where the mining claim is in respect of land that is a reserve, a condition that the holder shall comply with the terms and conditions upon which the consent of the owner or of the Governor in Council to the grant of the mining claim was given;
 - (k) a condition that the holder shall make all payments of compensation and comply with all terms of any agreement or determination relating to compensation at the time or times as agreed or determined pursuant to section 4.33 or 4.34;
 - (l) a condition that the holder—
 - (i) shall pay the rental as prescribed;
 - (ii) shall pay the royalty as prescribed;
 - (iii) shall pay all local authority rates and charges lawfully chargeable against the holder in respect of the land comprised in the mining claim;and
 - (iv) shall deposit as required by the mining registrar any security from time to time under this Act;
 - (m) a condition that the holder shall maintain the marking out of the land the subject of the mining claim including any survey pegs during the term of the claim but that boundary posts or cairns need not be maintained after the land has been surveyed;
 - (n) a condition that the holder shall comply with the provisions of this Act;
 - (o) such other conditions as are prescribed;
 - (p) such other conditions as the mining registrar may impose (including such conditions as the Wardens Court may determine pursuant to this Part).

(2) If in any case there is conflict between a condition determined by the Wardens Court and a condition determined by the Governor in Council, then to the extent of the conflict the determination of the Governor in Council shall prevail.

(3) A mining claim shall contain a condition as to the work commitment required of the holder.

(4) Notwithstanding subsection (1), if the applicant for a mining claim satisfies—

- (a) the mining registrar;
- (b) the Wardens Court when giving an instruction under this Part;

or

- (c) the Governor in Council when giving consent to the grant of a mining claim under this Part,

that any of the conditions prescribed in subsection (1) (f), (h) (ii) and (m) should not be imposed the mining claim may be granted without the imposition of that condition or those conditions.

(5) Conditions may be imposed that relate to standards and methods to be applied to minimize the effect on the environment (including land degradation and air and water pollution), on or outside the land specified in the mining claim of mining or other activities carried on under the authority of the mining claim.

4.30 Variation of conditions of mining claim. (1) The conditions to which a mining claim is for the time being subject, may be varied by the mining registrar in terms not inconsistent with this Act upon the agreement in writing of the holder of the mining claim.

(2) A mining claim that is duly varied pursuant to subsection (1) shall thereafter until again varied, be subject to its conditions as so varied.

(3) Particulars of every variation of a mining claim shall be endorsed on the certificate of grant of that mining claim.

4.31 Provision of security. (1) Before a mining claim is granted or renewed, the mining registrar taking into consideration the matters outlined in section 4.14 (1) (j) (iv) shall determine the amount of the security to be deposited by the holder of that mining claim as reasonable security for—

- (a) compliance with the conditions of the mining claim;
 - (b) compliance with the provisions of this Act;
 - (c) rectification of any actual damage that may be caused by any person whilst purporting to act under the authority of the mining claim to any land or any improvements situated on or off that land;
- and
- (d) payment of any moneys (including royalties and penalties) payable under this Act to the Crown and unpaid by the holder.

(2) (a) The Governor in Council, when giving consent to the grant of a mining claim pursuant to section 4.27, may determine the amount of the security to be deposited by the holder of the mining claim.

(b) The Wardens Court, when instructing the mining registrar to grant an application for the grant of a mining claim, may determine the amount of the security to be deposited by the holder of the mining claim.

(c) Where, in respect of an application for the grant of a mining claim, an amount of security is determined by the Governor in Council pursuant to paragraph (a) or by the Wardens Court pursuant to paragraph

(b), that amount shall be determined by the mining registrar as the security pursuant to subsection (1) in respect of that mining claim.

(d) In respect of an application for the grant of a mining claim, an amount determined by the Governor in Council shall prevail over an amount determined by the Wardens Court.

(3) A mining claim shall not be granted or renewed until the applicant for the grant or renewal of the mining claim deposits the security as determined under this section.

(4) A mining registrar for the district in which a mining claim is granted who is satisfied that any condition of the mining claim or any provision of this Act has not been complied with or that damage referred to in subsection (1) (c) has been caused by any person purporting to act under the authority of the mining claim or who enters land upon the instruction of the holder may require that person to take all action necessary to rectify that non-compliance or damage and, save where the person was not the holder and was not upon the land with the holder's approval at the time the damage was caused, may utilize for that purpose the whole or part of the amount of the security deposited in respect of that mining claim.

(5) Where pursuant to section 4.54 the mining registrar imposes a penalty on the holder of a mining claim and that penalty has not been paid in the specified time, the mining registrar may utilize the whole or part of the amount of the security deposited in respect of that mining claim towards payment of that penalty.

(6) (a) If, at any time (whether during, or within 28 days after the expiration of the term of a mining claim) the amount or any part of the amount deposited under this section is utilized as provided by subsection (4) or (5) or the mining registrar considers that, in view of the damage caused or likely to be caused by any person purporting to act under the authority of the mining claim or upon the instruction of the holder or for any other reason, a further amount of security should be deposited in respect of that mining claim, he shall require the holder or former holder of the mining claim, within the time specified by the mining registrar to deposit the further security.

(b) A mining registrar may make a requirement referred to in paragraph (a) notwithstanding that the amount of the security deposited was originally determined by the Governor in Council or the Wardens Court.

(7) The mining registrar may accept a bond or a guarantee or indemnity by, or other financial arrangement with, a bank, insurance company or other financial institution approved by the mining registrar or other form of security acceptable to the mining registrar as the whole or part of the security to be deposited under this section.

(8) It shall be a condition of a mining claim that the holder shall deposit security or further security from time to time in accordance with a requirement made as provided by this section.

(9) Where a mining claim has expired or been terminated, the mining registrar, not earlier than 28 days after the expiration or the termination, shall, subject to subsection (10), refund to the holder of the mining claim (or as the holder in writing directs) any security deposited and not utilized as provided by subsections (4) and (5) less any amounts determined by the mining registrar to be retained towards—

(a) rectification of any matters caused by the non-compliance with any of the conditions of the mining claim or with any order or direction made or given by the mining registrar under this Act and directed to the holder;

and

(b) any moneys (including penalties) owing to the Crown (whether arising before or after the termination of the mining claim) by the holder pursuant to this Act or the terms and conditions of the mining claim and unpaid.

(10) Where security under this section in respect of a mining claim is accepted by way of a bond or a guarantee or indemnity by, or other financial arrangement with, a bank, insurance company or other financial institution, any money payable to the holder under subsection (4) shall be refunded to that bank, insurance company or, as the case may be, financial institution and not to the holder of the mining claim.

4.32 Utilization of security deposit towards subsequent mining claim.

If the holder of a mining claim or an expired mining claim makes application for a further mining claim, the mining registrar may, instead of refunding the whole or part of the security deposited in respect of the existing or expired mining claim, retain that security or part thereof (together with any further security fixed by the mining registrar) as the security (in which case it shall be taken to be or to be part of the security) deposited by the applicant in respect of the further mining claim.

4.33 Compensation to be settled before granting of mining claim.

(1) A mining claim shall not be granted or renewed unless—

(a) compensation has been determined (whether by agreement or by determination of the Wardens Court) between the applicant and each person who is the owner of land the subject of the application and of any surface access to that land;

or

(b) there is no person (other than the applicant) who is the owner of any of the land referred to in paragraph (a),

and the conditions of the agreement or determination have been or are being complied with by the applicant.

For the purposes of paragraph (a), where the Wardens Court makes a determination of an amount of compensation, that compensation is not determined until—

(a) where no appeal against that determination is lodged within the period prescribed therefor, upon the expiration of that period;

or

- (b) where an appeal is duly lodged against that determination, upon the determination of that appeal.
- (2) An agreement made pursuant to subsection (1) (a) shall not be effective unless and until—
- (a) it is in writing signed by or on behalf of the parties;
and
 - (b) it is filed in the office of the mining registrar.

If an agreement referred to in this subsection is required by any law of Queensland to be stamped, it shall not be filed until it is stamped according to law.

(3) At any time before an agreement is made pursuant to this section, a person who could be a party to such agreement may apply in writing to the mining registrar to have the Wardens Court determine the amount of compensation and the terms, conditions and times of payment thereof.

(4) The Wardens Court is hereby authorized to hear and determine matters referred to in subsection (3).

(5) Upon an application made under subsection (3), a Wardens Court shall settle the amount of compensation an owner of land is entitled to as compensation for—

- (a) deprivation of possession of the surface of land of the owner;
 - (b) diminution of the value of the land of the owner or any improvements thereon;
 - (c) diminution of the use made or which may be made of the land of the owner or any improvements thereon;
 - (d) severance of any part of the land from other parts thereof or from other land of the owner;
 - (e) any surface rights of access;
 - (f) all loss or expense that arises,
- as a consequence of the grant or renewal of the mining claim.

(6) In assessing the amount of compensation payable under subsection (5)—

- (a) where it is necessary for the owner of land to obtain replacement land of a similar productivity, nature and area or resettle himself or relocate his livestock and other chattels on other parts of his land or on the replacement land, all reasonable costs incurred or likely to be incurred by the owner in obtaining replacement land, his resettlement and the relocation of his livestock or other chattels as at the date of the assessment shall be considered;
- (b) no allowance shall be made for any minerals that are or may be on or under the surface of the land concerned;
- (c) if the owner of land proves that the status and use currently being made (prior to the application for the grant of the

mining claim) of certain land is such that a premium should be applied, an appropriate amount of compensation may be determined;

- (d) loss that arises may include loss of profits to the owner calculated by comparison of the usage being made of land prior to the lodgement of the relevant application for the grant of a mining claim and the usage that could be made of that land after the grant;
- (e) an additional amount shall be determined to reflect the compulsory nature of action taken under this Part which amount, together with any amount determined pursuant to paragraph (c), shall be not less than 10 per centum of the aggregate amount determined under subsection (5).

(7) In any case the Wardens Court may determine the amounts and the terms, conditions and times when payments aggregating the total compensation payable shall be payable.

(8) The Wardens Courts determination of any matter under this section shall be deemed to be an agreement between the parties and shall be given effect accordingly.

(9) The Wardens Court shall give written notice of its determination to all parties and may make such order as to costs between the parties to the determination as it thinks fit.

(10) If compensation has not been agreed upon or the question of the amount of compensation earlier referred to the Wardens Court for determination pursuant to the preceding provisions of this section in respect of an application for the grant of a mining claim—

- (a) in the case where no objection to the application is duly lodged, upon the expiration of 3 months from the last date for the receipt of objection to the application;
 - (b) in the case where the Wardens Court instructs the mining registrar to grant the mining claim, upon the expiration of 3 months from the date of giving the instructions;
- or
- (c) in the case where the Governor in Council consents to the grant of the mining claim, upon the expiration of 3 months from the date of the giving of that consent,

the mining registrar shall refer the question of the amount of compensation payable to the Wardens Court which shall make a determination in accordance with this section.

4.34 Appeal against Wardens Court's determination upon compensation. (1) A party aggrieved by a determination of a Wardens Court made under section 4.33 may, within 28 days of the date of that determination or within such further period as the Land Court, on the application of that party in that behalf prior to the lodgement of the appeal, considers appropriate in any particular circumstances, appeal against the determination to the Land Court.

(2) The appeal shall be instituted by, within the time and in the manner prescribed—

- (a) lodging in the Land Court registry, written notice of appeal which shall include the grounds of appeal;
- (b) serving copies of the notice of appeal on the mining registrar and each other party;
and
- (c) giving security (approved by the registrar of that court) for the costs of the appeal.

(3) As soon as practicable after being served with a notice of appeal the mining registrar shall transmit to the registrar of the Land Court the evidence, notes, reasons and proceedings taken in the Wardens Court.

(4) The Land Court shall have jurisdiction to hear and determine an appeal under this section.

(5) Upon hearing an appeal under subsection (1) the Land Court may—

- (a) vary the determination of the Wardens Court in such a way as it thinks just;
or
- (b) disallow the appeal and confirm the determination of the Wardens Court,

and may make such order as to costs of the appeal as it thinks fit.

(6) A Land Court shall not admit further evidence upon an appeal from a determination of a Wardens Court under subsection (1) unless—

- (a) it is satisfied that admission of the evidence is necessary to avoid grave injustice and there is sufficient reason that the evidence was not previously adduced;
or
- (b) the appellant and respondent agree to its admission.

(7) The determination of the Land Court on appeal shall be final and conclusive.

4.35 Public Trustee may act in certain circumstances. (1) If there is doubt as to the identity of the owner of land or the owner of land cannot be found, the Wardens Court may determine that the Public Trustee shall represent the owner for the purpose of any negotiation or proceeding under section 4.33 or 4.34.

Any action taken or thing done or omitted to be done by the Public Trustee as representative of the owner of land pursuant to this subsection shall be taken for all purposes to be taken, done or omitted by that owner.

(2) Where, pursuant to subsection (1) the Public Trustee represents an owner of land, for the purposes of this Part any moneys paid to the

Public Trustee under any agreement or determination made under section 4.33 or 4.34 shall be deemed to have been paid to the owner.

4.36 Issue of certificate of grant of mining claim. A mining registrar who grants a mining claim shall issue to the applicant for the grant a certificate of grant in the prescribed form which shall bear the number endorsed on the certificate of application for the mining claim.

4.37 Reasons for rejection of application for grant of mining claim. A mining registrar who rejects an application for the grant of a mining claim shall give written notice to the applicant stating the reasons for rejection.

4.38 Duty of holder of mining claim to mark boundary posts. Unless the land the subject of a mining claim has been surveyed, the holder of a mining claim shall, within 7 days of the date of grant of the mining claim, engrave or in some way durably mark on every boundary post of the land the subject of the mining claim or cairn erected as prescribed in lieu thereof, the number of that claim appearing on the certificate of grant of the mining claim and, until the land is surveyed, shall maintain those posts or cairns duly engraved or marked while the mining claim subsists and the land is not surveyed.

4.39 Initial term of mining claim. (1) The initial term of a mining claim shall, unless the mining claim is sooner terminated, be for a period specified in the grant (not exceeding 5 years) commencing on the first day of the month which next follows the day on which the mining claim is granted but shall not be for a term longer than the period in respect of which compensation has been agreed or determined pursuant to section 4.33 or 4.34.

(2) From the grant of a mining claim to the commencement of the initial term thereof the holder shall have all the entitlements, powers, duties and functions he has during the term of the mining claim except section 4.43 shall not apply.

4.40 Mining claim may be specified it is not renewable. (1) If it is considered that the land the subject of the application for the grant or renewal of a mining claim is or will be required for some purpose other than mining, the mining claim may be granted or renewed subject to a condition that the holder is not entitled to have the mining claim renewed.

(2) Where a mining claim is granted or renewed subject to a condition referred to in subsection (1), the applicant shall be advised the reasons therefor.

4.41 Renewal of mining claim. (1) The holder of a mining claim, including a mining claim that is subject to a condition referred to in section 4.40, may, at least 6 months (or such shorter period as the mining registrar in the particular case allows) prior to and not more than 12 months before the expiration of the current term of the mining claim, make application for renewal of the mining claim.

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- (2) An application for renewal of a mining claim shall—
- (a) be made in writing in the prescribed manner and form to the mining registrar for the mining district in which is situated the land the subject of the mining claim;
 - (b) be accompanied by the prescribed application for renewal fee.
- (3) If, in respect of an application for renewal of a mining claim, the mining registrar is satisfied that—
- (a) in a case where the mining claim is subject to a condition that the holder is not entitled to have the mining claim renewed, the mining claim should be renewed and, where the condition was imposed by the Governor in Council or the Wardens Court, the Governor in Council or Wardens Court consents to the renewal;
 - (b) the holder has observed and performed all the conditions applicable to that mining claim and on his part to be observed and performed;
 - (c) the holder has complied with all the provisions of this Act applicable to him in respect of that mining claim;
and
 - (d) the land, the subject of the mining claim still contains workable quantities of mineral or mineral bearing ore,
- then the mining registrar shall grant a renewal of that mining claim in the name of the holder for such further term, not exceeding 5 years, as he thinks fit subject to the prescribed conditions and such further conditions as the mining registrar determines but the further term shall not include a period that is not covered by an agreement as to or a determination of compensation pursuant to section 4.33 or 4.34.
- (4) The mining registrar shall not reject an application for renewal of a mining claim until he has, by notice in writing in or to the effect of the prescribed form served on the holder of the mining claim, called upon the holder to show cause within the time specified therein why the application should not be rejected and such cause has not been shown to the satisfaction of the mining registrar.
- (5) Where an application for renewal of a mining claim is duly made by the holder but the application has not been granted or rejected by the mining registrar before the date on which the term of the mining claim then current would, but for this subsection have expired, then, subject to payment of the rental prescribed in section 4.43, royalties and other moneys required by this Act to be paid and compliance with this Act and the conditions of the mining claim, the mining claim shall continue in force until the application is granted unless it is sooner withdrawn, or rejected.
- (6) The term of a mining claim that is renewed (whether the renewal is granted before or after the date the mining claim expires or would, but for the operation of subsection (5), have expired) shall commence

or be deemed to have commenced on the day following that expiry date but the conditions of the renewed mining claim that differ from conditions of the expired mining claim shall apply from—

- (a) the commencement of that term;
- or
- (b) the date the renewal is granted,

whichever is the later.

4.42 Reasons for rejection of application for renewal of mining claim. A mining registrar who rejects an application for the renewal of a mining claim shall give written notice to the applicant stating the reasons for rejection.

4.43 Rental payable on mining claim. (1) (a) Upon the grant of a mining claim rental shall first be payable thereon with respect to the period from the commencement of the term of the mining claim to 31 December of that year (in this section called the “first rental period”) and shall be paid within 28 days (or such longer period as the mining registrar in the particular case approves) of the grant of the mining claim.

(b) The amount of the rental payable in respect of the first rental period shall be an amount that bears to the yearly rental prescribed pursuant to subsection (3) for the year in which the first rental period falls the same proportion that the number of whole calendar months of the first rental period bears to 12.

(2) In respect of each year or part thereof of the term of a mining claim (other than the first rental period) a full year’s rental shall be payable in advance not later than 31 December of the previous year.

(3) If the full year’s rental is paid in advance as prescribed by subsection (2), the amount of the rental shall be the amount prescribed in respect of the year in which the rental period falls.

(4) If rental is not paid in advance as prescribed by subsection (2)—

- (a) the mining registrar shall, prior to 31 January of that year, notify the holder of and any person holding a recorded interest in the mining claim that the rental has not been paid as prescribed by subsection (2) and of the amount of rental payable as prescribed by paragraph (b);

and

- (b) the amount of the full year’s rental shall be payable before 31 March of that year and shall be an amount equal to the amount prescribed in respect of the year in which the rental period falls plus an amount equal to 25 per centum of that prescribed amount.

(5) Upon the renewal of a mining claim, no further rental shall be payable in respect of the period that, if the renewal was a grant of a

mining claim, would be the first rental period except where that period commences on 1 January.

(6) Except as provided in subsection (7), where in any year a mining claim is surrendered or terminated through effluxion of time and is not renewed, there shall be refundable to the last holder of the mining claim an amount that bears to the amount of the rental that was paid in respect of that year the same proportion that the number of whole calendar months from—

(a) the date of surrender or termination;

or

(b) the date of rejection of the application for renewal,
whichever is the later, to 31 December of that year bears to 12.

(7) No amount shall be refunded pursuant to subsection (6) where a mining claim is surrendered within its first rental period after its original grant.

4.44 Assignment, etc. of mining claim. (1) With the approval of the mining registrar a mining claim or an interest therein may be assigned or mortgaged in the prescribed manner and upon payment of the prescribed fee.

(2) The holder of a mining claim desirous of assigning or mortgaging his interest in the mining claim shall apply in writing to the mining registrar for the mining registrar's approval to that exercise and shall furnish to the mining registrar such information with respect thereof as the mining registrar requires.

An application under this subsection in respect of an assignment shall be accompanied by the consent in writing of an existing mortgagee.

(3) Upon an application made pursuant to subsection (2) the mining registrar shall cause the applicant to be given notice—

(a) that, subject to compliance with this Act in respect thereof and with any conditions specified in the notice within three months from the date of the notice or such other period as is specified in the notice, the mining registrar will approve the exercise;

or

(b) that the mining registrar does not approve the exercise.

(4) (a) If the mining registrar indicates that he will approve the exercise, then upon receipt within the prescribed time of the appropriate document that gives effect to an assignment or mortgage referred to in the indication, compliance with this Act and all conditions specified in the notice given pursuant to subsection (3) (a) in respect thereof and payment of the prescribed fee, the assignment or mortgage shall be approved and such particulars thereof as are necessary to give effect to or evidence that assignment or mortgage shall be recorded in the appropriate register and endorsed on the certificate of grant of the mining claim.

(b) Notwithstanding that subsections (2) and (3) have not been complied with in a particular case, the mining registrar may approve and record particulars of an assignment or mortgage as provided in paragraph (a) if he is satisfied that, if subsection (2) had been complied with he would have approved the assignment or mortgage and any conditions he would have specified under subsection (3) have been complied with.

(5) An assignment or mortgage of a mining claim shall not be in respect of part only of the land the subject of the mining claim.

(6) The mining registrar shall not approve the assignment of a mining claim unless it is accompanied by the approval in writing of any existing mortgagee and a duly completed royalty return prescribed by Part 9 together with royalty payable to the Crown or evidence of payment to the person entitled thereto as prescribed in Part 9.

(7) A purported assignment or mortgage of a mining claim or of an interest therein shall not be effective unless it is made and approved in accordance with this section and shall take effect on the day next following its approval by the mining registrar under subsection (4).

(8) Within 28 days of the mining registrar granting his approval of an assignment under this section, the assignee shall notify the owners of the relevant land of that approval.

4.45 Lodgment of caveat. (1) (a) Subject to paragraph (b), a person who claims a right or interest in or in respect of a mining claim may by a caveat in the prescribed form forbid the recording of any assignment or mortgage in respect of the mining claim (save any assignment or mortgage the recording of which is excepted in the caveat) either absolutely or until after notice of intention to record such an assignment or mortgage is served on the caveator.

(b) A caveat duly lodged pursuant to this section does not apply in respect of—

(i) an assignment or mortgage duly lodged with the mining registrar before the lodgment of the caveat;

or

(ii) an assignment or mortgage the application for approval of which was lodged with the mining registrar before the lodgment of the caveat.

(2) A caveat referred to in subsection (1) shall—

(a) be in or to the effect of the prescribed form;

(b) specify the name and address for service of one person upon

whom any notice may be served on behalf of the caveator or caveators;

- (c) identify the mining claim concerned;
 - (d) specify the nature of the right or interest claimed by the caveator;
 - (e) specify the period during which it is to continue in force;
 - (f) be signed by the caveator, his solicitor or other person authorized in writing by the caveator;
 - (g) if any person consents to the lodging of the caveat, be endorsed with that person's consent;
 - (h) be lodged at the office of the mining registrar for the mining district in which is situated the land the subject of the mining claim concerned;
- and
- (i) be accompanied by the prescribed lodgment fee.

4.46 Mining registrar's functions upon receipt of caveat. Upon receipt of a duly lodged caveat referred to in section 4.45, a mining registrar shall—

- (a) notify the holder or holders of the affected mining claim;
 - (b) notify all other persons who have an interest in the mining claim recorded in the register including any subsisting prior caveator;
- and
- (c) record the existence of the caveat in the register.

4.47 Effect of caveat. (1) For so long as a caveat remains in force, a mining registrar shall not record any assignment or mortgage in respect of the mining claim identified in the caveat unless—

- (a) the assignment or mortgage is specifically excepted in the caveat;
- or
- (b) the written consent of the caveator in the prescribed form to the recording of the assignment or mortgage is lodged with the mining registrar.

(2) For the purposes of subsection (1), unless and until a caveat is removed or withdrawn as prescribed, a caveat continues in force—

- (a) in a case where the consent of each holder of the mining claim concerned has been lodged with the caveat, for the term specified in the caveat or, if no term is specified, indefinitely;
- (b) in a case where the caveat (not being a caveat referred to in paragraph (a)) specifies a period of not more than three

months during which it is to continue in force, until the expiration of that period;

- (c) in a case where the Wardens Court or another court of competent jurisdiction so orders for so long as that order remains in force;

or

- (d) in any other case, until the expiration of 3 months from the date of lodgment of the caveat.

4.48 Second caveat not available to same person. When a caveat has lapsed or has been removed or withdrawn as prescribed, it shall not be competent to the caveator to lodge in respect of the same mining claim another caveat whereby he claims the same or substantially the same right or interest unless—

- (a) the consent of each holder of the mining claim has been lodged with the lastmentioned caveat;

or

- (b) the Wardens Court or another court of competent jurisdiction so orders.

4.49 Removal or withdrawal of caveat. (1) A caveat lodged pursuant to section 4.45 that has lapsed shall be removed by the mining registrar and the register noted accordingly.

(2) Upon the plaint of a person who has a right or interest (present or prospective) in a mining claim affected by a caveat or whose right (present or prospective) to deal with a mining claim is affected by a caveat lodged in respect of the mining claim, the caveator may be summonsed to attend the Wardens Court or another court of competent jurisdiction to show cause why the caveat should not be removed.

(3) The Wardens Court or another court of competent jurisdiction may, upon the return of a summons referred to in subsection (2) or at any later time to which the hearing may be adjourned, make such order either ex parte or otherwise as the court deems just.

(4) If the Wardens Court or another court of competent jurisdiction orders that a caveat be removed, the mining registrar shall give effect to the order.

(5) A caveator may withdraw his caveat at any time by notifying the mining registrar in writing.

(6) The removal or withdrawal of a caveat shall be effected by the mining registrar recording the removal or withdrawal in the register.

4.50 Compensation for lodging caveat without reasonable cause. A person who lodges a caveat in respect of a mining claim without reasonable cause is liable to pay such damages as may be recovered at law by any person aggrieved.

4.51 Correction of certificate of grant of mining claim. (1) If, at any time, the mining registrar is of the opinion that a certificate of grant of a mining claim should be corrected by reason that—

- (a) the boundaries and area of the land comprised in the mining claim have been more accurately ascertained;
 - (b) facts have appeared or been established since the grant of the mining claim that warrant a correction of the certificate;
- or

(c) the certificate is defective owing to error in its preparation, the mining registrar may correct the certificate and shall record details thereof in the register of mining claims kept by him and endorse the certificate accordingly.

(2) Where a certificate of grant of a mining claim is corrected under this section the certificate shall be construed and operate as if it had originally been issued as corrected.

4.52 Replacement of certificate of grant of mining claim. (1) Where the mining registrar is satisfied that a certificate of grant of a mining claim should be cancelled and a replacement certificate issued in its place, he shall cancel the certificate in question and cause a replacement certificate to be issued in its place.

(2) A replacement certificate of grant of a mining claim issued under this section—

- (a) shall be the certificate of grant issued in respect of the mining claim concerned in place of the certificate previously issued in respect thereof and cancelled under this section which lastmentioned certificate shall, upon the issue of the fresh certificate, cease to be of any force or effect;
 - (b) may bear a form of endorsement which briefly traces the devolution of the title from the original holder of the mining claim to the person appearing as holder thereof at the time the replacement certificate is issued;
 - (c) shall bear endorsement of all apparently subsisting mortgages affecting the mining claim and endorsed on the certificate so cancelled;
- and
- (d) shall be delivered to the person who appears to the mining registrar to be lawfully entitled to possession thereof.

The mining registrar shall cause the certificate so cancelled to be suitably endorsed and a suitable recording made in the register that a replacement certificate has been issued in its place.

The cancelled certificate shall be retained by the mining registrar.

4.53 Mining other minerals. (1) The holder of a mining claim may lodge an application in writing with the mining registrar for approval

to mine specified minerals, being minerals not specified in the mining claim, in respect of the land the subject of the mining claim.

The application shall be accompanied by the prescribed fee.

(2) An application referred to in subsection (1) and any other application for the grant of a mining lease in respect of the same minerals shall take priority according to the order of the time and date the applications are lodged as prescribed.

(3) Upon the mining registrar approving an application under this section and compliance by the applicant with any conditions imposed by the mining registrar, the relevant mining claim shall be deemed to include the specified minerals and shall be subject to such additional conditions as are prescribed in respect of such mining claim or as the mining registrar considers appropriate.

(4) The mining registrar shall not approve an application under this section that could adversely affect any conditions imposed in respect of the mining claim by the Wardens Court or the Governor in Council.

4.54 Contravention by holder of mining claim. (1) A mining registrar who considers that the holder of a mining claim—

- (a) has carried out activities that are not bona fide for the purposes for which the mining claim was granted;
- (b) has failed to pay the royalty or any other moneys payable thereunder (other than rental) or in respect thereof by the due date for payment;
- or
- (c) has failed to comply with any condition that is to be observed and performed by the holder under or in respect of the mining claim, other than a condition with respect to matters referred to in subsection 2 (a) or (b),

may—

- (d) cancel the mining claim;
- or
- (e) impose on the holder a penalty not exceeding 100 penalty units.

(2) A mining registrar who considers that the holder of a mining claim—

- (a) in any year has failed after notice given to him in accordance with section 4.43 (4) to pay by 31 March of that year the amount of the rental payable under that section by that date in respect of that mining claim;
- or
- (b) has failed to pay a penalty imposed on him pursuant to subsection (1) (e) within the time allowed for the payment by the mining registrar,

may cancel the mining claim.

(3) A mining registrar shall not act pursuant to subsection (1) until he has, by notice in writing in or to the effect of the prescribed form served on the holder of the mining claim, called upon the holder to show cause within the time specified therein why the mining claim should not be cancelled or a penalty imposed and served a copy of the notice on every person who currently holds a recorded interest in respect of the mining claim at his address last recorded by the mining registrar and such cause has not been shown to the satisfaction of the mining registrar.

(4) A mining registrar who pursuant to this section cancels a mining claim shall notify the holder accordingly stating the reason for the cancellation.

(5) A mining registrar who, pursuant to subsection (2) (b), cancels a mining claim may utilize the security or part thereof deposited in respect of that mining claim under section 4.31 towards payment of the unpaid penalty.

(6) The cancellation of a mining claim under this section shall take effect on the day next following the mining registrar's determination to cancel the mining claim.

4.55 Surrender of mining claim. (1) The holder of a mining claim may surrender the mining claim by lodging with the mining registrar—

- (a) a notice of surrender in the prescribed form;
- (b) a duly completed royalty return prescribed by Part 9 together with the royalty payable to the Crown as prescribed by Part 9 or evidence of payment to the person entitled thereto; and
- (c) the prescribed fee.

(2) (a) Upon a surrender of a mining claim, all adjustments between the holder and the Crown in respect of the payment of rental, fees and other moneys shall be at the discretion of the mining registrar.

(b) Where any moneys are specified pursuant to paragraph (a) as a debt due to the Crown, the mining registrar may utilize the security deposited in accordance with section 4.31 for payment thereof.

(3) (a) Nothing in this section shall prevent the Crown from recovering moneys from a person specified in subsection (2) as liable to pay and unpaid (whether directly or through utilization of the security deposit) by action in the Wardens Court.

(b) In an action under paragraph (a) for the recovery of a debt due to the Crown, the production to the Wardens Court of a certificate by the mining registrar certifying the amount of that debt shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the debt and the amount thereof.

(4) Where, at the time when the holder of a mining claim purports to surrender the mining claim, the holder duly makes application for a

new mining claim or a mining lease in respect of the whole or part of the land comprised in the current mining claim, the purported surrender shall not take effect unless and until the new mining claim or the mining lease is granted.

(5) Nothing in section 4.1 or 7.1 shall prevent the holder of a mining claim, at the time he surrenders the mining claim, from applying for the grant of a mining claim or mining lease over the whole or part of the land comprised in the surrendered mining claim and the grant of the mining claim or mining lease applied for.

(6) A surrender of a mining claim (other than a surrender referred to in subsection (4)) shall take effect on the day next following its acceptance by the mining registrar.

4.56 Abandonment of application for mining claim. (1) The applicant for the grant of a mining claim may, at any time before the grant of the mining claim, by notice in writing to the mining registrar abandon his application in respect of the whole of the land to which the application relates.

(2) The applicant for the grant of a mining claim who gives a notice referred to in subsection (1) to the mining registrar shall forthwith serve a copy of that notice on all other persons upon whom he was required under this Act to give a copy of the certificate of application for the mining claim.

(3) The abandonment of an application for the grant of a mining claim shall take effect on the day next following its receipt by the mining registrar.

4.57 Use of machinery on mining claim land. (1) The Governor in Council may, from time to time as he thinks fit, by Order in Council declare with respect to a particular mining claim, all mining claims, all mining claims situated in a specified area of the State, all mining claims in respect of a specified mineral or all mining claims in respect of a specified mineral in a specified area of the State—

- (a) the types of machinery, mechanical devices or other equipment (if any) that may or may not be used for prospecting or hand mining;
- (b) the methods by which prospecting or operations for mining may or may not be carried on.

(2) A person purporting to act under the authority of a mining claim whether granted before or after the Order in Council shall comply with any Order in Council made pursuant to subsection (1) that has effect in respect of that mining claim.

(3) The Crown shall not be civilly liable on account of the effect of any Order in Council made pursuant to this section or section 4.58.

4.58 Declaration of prohibited machinery on mining claim land. The Governor in Council may, from time to time as he thinks fit, by

Order in Council, with respect to any part of the State, declare that certain types of machinery, mechanical devices or other equipment may not be used in, on or under land the subject of any mining claim within that area.

4.59 Mining registrar may authorize use of prohibited machinery for purposes other than mining etc. Notwithstanding any Order in Council made pursuant to section 4.58, the mining registrar may authorize the use on land the subject of a mining claim of specified machinery, mechanical devices or other equipment on or under land referred to in such an Order in Council for purposes other than prospecting, exploring or mining.

4.60 Prohibited machinery etc. not to be used on mining claim land. A person shall not, without the written prior authority of a mining registrar given pursuant to section 4.59, have or use any machinery, mechanical device or other equipment the use of which has been prohibited in an Order in Council made pursuant to section 4.58 in, on or under the land the subject of a mining claim within an area specified in the Order in Council.

Penalty: for a first offence, 200 penalty units;
for a second offence, 400 penalty units;
for a third or subsequent offence, 1 000 penalty units.

4.61 Minerals taken become property of holder of mining claim. All minerals lawfully mined under the authority of a mining claim cease to be the property of the Crown or person who had property therein and become the property of the holder of the mining claim subject however to the rights to royalty payments under this Act of the Crown or any other person.

4.62 Royalties in respect of minerals taken under mining claim. The holder of a mining claim shall pay in respect of all minerals mined or purported to be mined under the authority of the mining claim, the royalty prescribed pursuant to Part 9.

4.63 Appeal against mining registrar's determination. (1) An applicant for the grant or renewal of a mining claim or the holder of a mining claim who is dissatisfied with a determination of the mining registrar—

- (a) to reject the application;
- (b) to grant the application subject to conditions;
- (c) to require a deposit or further deposit of security pursuant to section 4.31 in respect thereof,

may appeal against that determination to the Wardens Court by lodging a written notice of appeal with the registrar of the Wardens Court within 28 days of the making of the determination.

(2) An appeal does not lie against a determination of the mining registrar made in conformity with a consent given by the Governor in Council or with a determination of the Wardens Court.

(3) The Wardens Court may make any determination on an appeal that the mining registrar could have made when making the determination appealed against.

(4) The Wardens Court shall hear and determine the appeal and its determination thereon shall be final.

(5) At a hearing pursuant to this section the Wardens Court shall take such evidence, shall hear such persons and inform itself in such manner as it considers appropriate in order to determine the appeal and shall not be bound by any rule or practice as to evidence.

(6) The mining registrar shall do all things necessary to implement the determination of the Wardens Court upon an appeal under this section.

4.64 Effect of termination of mining claim. (1) Notwithstanding section 4.61, upon the termination of a mining claim, for whatever cause (other than for the purpose of granting a mining claim or mining lease to the holder of the terminated mining claim), all mineral, ore, tailings or other material stacked on the land that comprised that mining claim together with any structures, machinery and equipment therein or thereon under the authority of the mining claim shall divest from the person who was the holder of the claim and become the property of the Crown.

(2) Upon an application in writing to the mining registrar by a person who was the holder of the mining claim immediately prior to its termination or any other person who appears to the mining registrar to have a sufficient interest therein made within 28 days (or such longer period not exceeding 3 months as the mining registrar in a particular case approves) after the date of termination, the mining registrar shall give permission for that person, within the period specified by the mining registrar, to enter upon the land in question and, subject to compliance with any condition imposed by the mining registrar, remove mineral, ore, tailings and other material stacked on the land, machinery, plant and other removable improvements therein or thereon at the date of the termination other than any cover, fencing, casing, lining, timbering or other things securing the safety of the land to the extent he was lawfully entitled so to do immediately prior to that date.

(b) Any thing duly removed from land pursuant to permission given under paragraph (a) shall thereupon be divested from the Crown and become the property of the person entitled thereto according to law immediately prior to the termination of the mining claim.

(3) The entitlement of a person who was the holder of a mining claim that has terminated or any other person to act pursuant to subsection (2) shall not be derogated by a subsequent application for or grant of a mining claim, exploration permit, mineral development licence or mining lease.

(4) Where pursuant to subsection (1), any mineral, ore, tailings or other material has become the property of the Crown, any such mineral, ore, tailings or other material that has not been removed by—

(a) in a case where an application for permission has been made as prescribed or permitted by subsection (2) and that permission has been given specifying a time by which the mineral, ore, tailings and other material are to be removed, the expiration of that time;

or

(b) the expiration of 3 months after the termination of the relevant mining claim,

whichever is the later, shall divest from the Crown and form part of the land.

(5) Any structure, machinery or equipment vested in the Crown pursuant to this section may be sold upon the direction of the mining registrar which sale shall be at public auction unless the Minister otherwise directs.

The proceeds of such a sale shall be applied as follows—

- (a) firstly, in payment of the expenses of the sale;
- (b) secondly, in payment of moneys due and payable by the former holder to the Crown in right of the State on any account whatever;
- (c) thirdly, in payment of costs of rectification of actual damage in respect of which the relevant security deposit could have been utilized, to the extent that the security deposit was not so utilized or was deficient;
- (d) fourthly, in payment of moneys due and payable to a Local Authority by the former holder for rates levied in respect of the land in question, proportioned to the date of termination of the mining claim;
- (e) lastly, but subject to the provisions of the next following paragraph, in payment to the former holder of the balance then remaining.

If, at the date of termination of a mining claim, the land in question was subject to a mortgage recorded under this Act and, at the date the balance of the proceeds of sale is to be applied any sum secured thereby remains unpaid, the mining registrar may cause the balance or any part thereof to be applied in satisfaction of the unpaid sum and the balance otherwise payable to the former holder to be reduced accordingly.

(6) Where the mining registrar is unaware of the identity or the whereabouts of a person to whom any part of the proceeds of a sale should be paid pursuant to subsection (5) (e), that part shall be paid to the Public Trustee of Queensland as unclaimed moneys and the provisions of the *Public Trustee Act 1978-1989* with respect to unclaimed moneys shall apply thereto.

(7) Upon the termination of a mining claim (for whatever reason) the person who was the holder thereof immediately prior to the termination shall forthwith remove every post or other thing used to mark the land pursuant to this Part not being a survey mark or other thing required by any other Act not to be removed.

4.65 Approval for prospecting on reserve subject of mining claim application. (1) The holder of a prospecting permit who makes application for the grant of a mining claim in respect of land that is a reserve and who is unable to obtain the consent of the owner to prospect on that land for the purposes of obtaining information necessary to further his application may apply to the mining registrar for permission to so prospect upon that land.

(2) The mining registrar may reject the application or may recommend to the Minister that, subject to the views of the owner being obtained and taken into account, permission be given to the holder to prospect accordingly.

(3) Where the Minister gives the holder of a prospecting permit permission pursuant to subsection (2), the holder, for as long as he complies with any conditions imposed by the Minister, shall be deemed to have the consent of the owner of the relevant land to be on that land for prospecting purposes until the application for the grant of the mining claim is determined or the Minister otherwise determines.

PART 5—EXPLORATION PERMITS

5.1 Blocks and sub-blocks of land. (1) For the purposes of this Act the surface of the Earth shall be deemed to be divided into blocks and sub-blocks.

(2) A block shall be the land contained within two meridians five minutes of longitude apart each meridian being a multiple of five minutes of longitude from the meridian of Greenwich and within two parallels of latitude five minutes apart each parallel of latitude being a multiple of five minutes of latitude from the equator.

(3) A block shall be divided into 25 sub-blocks each sub-block being bounded by two meridians one even minute of longitude apart and two parallels of latitude one even minute of latitude apart.

(4) Each block and sub-block shall be identified by a means approved for the time being by the Director-General.

5.2 Land subject to exploration permit. (1) An exploration permit authorizes entry to sub-blocks of land specified therein.

(2) Subject to subsection (3), an exploration permit shall be granted in respect of specified sub-blocks of land each sub-block to have at least one side in common with another sub-block within the subject land.

(3) If the Minister in a particular case is satisfied that the programme of work proposed in the application for an exploration permit can be

undertaken in accordance with competent and efficient mineral exploration practice, an exploration permit may be granted in respect of sub-blocks of land notwithstanding that those sub-blocks do not have a common boundary.

(4) Unless otherwise approved by the Minister either generally or in a particular case, the area of land in respect of which an exploration permit may be granted shall not exceed the area prescribed in respect of the mineral or minerals concerned.

5.3 Only eligible persons to hold exploration permits. An exploration permit shall not be held by a person who is not an eligible person.

5.4 Entitlements under exploration permit. (1) During the term of an exploration permit—

(a) the holder of the exploration permit and any person who acts for the purpose of carrying out any activity authorized by the exploration permit, with or by such vehicles, vessels, machinery and equipment as may be necessary or expedient for the purpose of exploring for any mineral to which the exploration permit applies, may, subject to compliance with section 5.35, enter and be upon—

(i) any part of the land comprised in the exploration permit that is not the surface area of a reserve;

and

(ii) with the consent of the owner, or the consent of the Governor in Council, any part of the land comprised in the exploration permit that is the surface area of a reserve, for the purposes of facilitating that exploration;

(b) in respect of any land (or part thereof) to which the exploration permit applies the holder of the exploration permit, subject to compliance with this Act, may have considered for grant, in priority to all other persons, any number of mineral development licences and mining leases relating to any minerals specified in the exploration permit or mining leases for other purposes for which mining leases may be granted and may enter and be upon that land for the purpose of doing all acts necessary to comply with this Act relating to an application therefor.

(2) An exploration permit does not authorize a person to enter or be upon the surface of land of an owner which is—

(a) within 100 metres laterally of—

(i) a dwelling-house, or other building of the owner (not of a temporary nature) on that land principally used for accommodation of persons or used for the conduct of business;

or

- (ii) a building (not of a temporary nature) on that land currently being used for community, sporting or recreational purposes or as a place of worship;

or

- (b) within 50 metres laterally of—

- (i) a principal stockyard or a dam, bore or artesian well of that owner or other artificial water storage of the owner connected to a supply of water;

or

- (ii) a cemetery or burial place,

except with the written consent of the owner of that land lodged with the Director-General.

Consent given pursuant to this subsection shall specify the period of the consent and any conditions applicable to the consent and once given that consent cannot be withdrawn.

For the purposes of the subsection, a dwelling-house or building means a fixed structure that is wholly or partly enclosed by walls and is roofed.

(3) For the purposes of subsection (1) (a) (ii), the holder of an exploration permit has the consent of an owner of land if that consent in writing has been previously lodged with the Director-General and has not been withdrawn as provided for in subsection (4).

(4) Consent referred to in subsection (1) (a) (ii) can only be withdrawn by the owner of the relevant land giving notice in writing to the Director-General and shall only be effective when the Minister accepts the withdrawal or, if not accepted, after the holder of the exploration permit has been given the opportunity by the Minister to apply for the consent of the Governor in Council in lieu of the owner's consent—

- (a) if, within the time allowed by the Minister for the holder to do so, the holder does not apply for that consent, that time expires;

or

- (b) if, within the time allowed by the Minister for the holder to do so, the holder applies for that consent, the Governor in Council gives or refuses to give that consent.

(5) The holder of an exploration permit, and each person who enters or is upon land under the authority of that exploration permit, shall comply with the terms and conditions upon which any consent required to be given under this Act in respect thereof was given by the owner of that land.

(6) If an owner of land that is a reserve refuses or fails within a reasonable time to give a consent required by subsection (1) (a) (ii) or imposes terms and conditions thereon that the holder of the relevant

exploration permit considers to be so harsh as to be unreasonable, the holder of the exploration permit may apply in writing to the Minister who may refuse the application or may recommend to the Governor in Council that consent be given.

(7) Upon receipt of an application under subsection (4) or (6), the Minister shall seek the views of the owner of the relevant land on the application.

(8) If the Minister is satisfied that it is unreasonable for an owner of land that is a reserve to refuse to give to the holder of an exploration permit the consent required by subsection (1) (a) (ii), to withdraw consent previously given or to have imposed the terms and conditions upon which that consent was given, the Governor in Council may, upon the recommendation of the Minister—

- (a) subject to such terms and conditions as he thinks appropriate, give that consent in lieu of the consent of the owner;
- or
- (b) set aside or vary as he thinks fit the terms and conditions upon which the consent is subject,

whereupon the owner of the land shall, subject to compliance by the holder of the exploration permit with any terms and conditions set by the Governor in Council, be deemed to have given the consent or, as the case may be, have set aside or varied the terms and conditions in accordance with the Governor in Council's determination.

(9) The Governor in Council may make a determination under subsection (8) whether or not an owner of land makes any submission to the Minister pursuant to subsection (7).

(10) The Director-General shall notify the holder of an exploration permit and the owner of land that is a reserve of particulars of any relevant determination made by the Governor in Council pursuant to subsection (8) before any entry of that land is made under the authority of the exploration permit except where the entry is in accordance with any consent given by the owner.

(11) Consent given as required by subsection (1) (a) (ii) may be restricted as to time or to a part only of the land in question.

(12) The terms and conditions upon which consent required by subsections (1) (a) (ii) and (2) is given shall be deemed to be part of the terms and conditions of the relevant exploration permit.

(13) (a) For the purpose of exercising his entitlements under this Part a person who enters or is upon land under the authority of an exploration permit may stay at night thereon and for that purpose may set up temporary accommodation thereon.

(b) A person who stays on land under or purportedly under the authority of an exploration permit shall dispose of any refuse (including human waste) and rubbish in a safe and sanitary manner.

5.5 Exploration permit to specify minerals sought. (1) Except where subsection (2) is applied, an exploration permit shall be granted in respect of—

- (a) all minerals other than coal;
- or
- (b) coal.

(2) If, in the exceptional circumstances of a particular case, the Minister considers good reason exists therefor, an exploration permit may be granted in respect of the mineral or minerals specified therein.

Minerals may be specified by indicating other minerals to which the exploration permit does not apply.

5.6 Restriction on grant of exploration permits over same sub-block.

(1) An exploration permit shall not be granted in respect of a sub-block over which a current exploration permit authorizes the exploration for a mineral in respect of which the exploration permit is sought.

(2) The lodgment of an application for an exploration permit that includes a sub-block over which, pursuant to subsection (1), the exploration permit shall not be granted may be accepted but, except where the application is made by the holder of the current exploration permit, that sub-block shall be excised from the application.

(3) Applications for exploration permits in respect of the same mineral duly made in respect of or including the same land and lodged as prescribed by section 5.8 (f) on the same day shall take such priority as the Minister (after considering the relative merits of each application) determines.

(4) For the purpose of subsection (3) an application for an exploration permit lodged in the prescribed office by mail, courier service or similar means shall be taken to be lodged on the day the application is received at that office.

5.7 Exclusion of land from exploration permit if subject to other authority under Act. (1) Where, at the time the lodgment of an application for the grant of an exploration permit is accepted, land is the subject of—

- (a) a mining claim, mineral development licence or mining lease;
- or
- (b) an application for a mining claim, mineral development licence or mining lease,

that land and the surface of that land shall be taken to be excluded from the land specified in the exploration permit—

- (c) in the case of a mining claim, mineral development licence or mining lease referred to in paragraph (a), for so long as the land remains subject thereto;

and

- (d) in the case of an application referred to in paragraph (b)—
 - (i) for so long as the application is not rejected or abandoned; and
 - (ii) if a mining claim, mineral development licence or mining lease is granted, for so long as the land remains subject thereto,

except where the Minister, in exceptional circumstances in his absolute discretion otherwise determines.

(2) Upon—

- (a) the termination of a mining claim or mining lease granted; or
- (b) the rejection or abandonment of an application for
 - a mining claim;
 - a mineral development licence;
 - or
 - a mining lease,

in respect of land within the external boundaries of an exploration permit that land shall become part of the land in respect of which the exploration permit is granted except—

- (c) to the extent that the land is the subject of a current mining claim, mineral development licence or mining lease or application for a mining claim, mineral development licence or mining lease;
- (d) in the case of a rejection or abandonment of an application for a mineral development licence where the applicant is not the holder of the exploration permit; or
- (e) where the exploration permit provides otherwise.

5.8 Application for exploration permit. An application for an exploration permit may be made by an eligible person and shall—

- (a) be in or to the effect of the prescribed form;
- (b) specify the name of each applicant;
- (c) specify the name and address for service of one person upon whom any notice may be served on behalf of the applicant or the applicants;
- (d) identify in the prescribed manner the land in respect of which an exploration permit is sought;
- (e) specify the mineral or minerals in respect of which the exploration permit is sought;
- (f) be lodged at an office prescribed for the time being for the receipt of applications for exploration permits in respect of the land the subject of the application;
- (g) be accompanied by a statement acceptable to the Minister—
 - (i) specifying a description of the programme of work proposed

- to be carried out under the authority of the exploration permit, if granted;
- (ii) specifying the estimated human, technical and financial resources proposed to be committed to exploration work during each year of the exploration permit, if granted;
 - (iii) detailing exploration data captured by the applicant prior to the application in relation to that land;
and
 - (iv) detailing the financial and technical resources of the applicant;
and
- (h) be accompanied by—
- (i) proof of the identity of the applicant;
and
 - (ii) the prescribed application fee.

5.9 Application to be numbered. An application for an exploration permit shall be numbered as prescribed which number, if the exploration permit is granted, shall become the number of that permit.

5.10 No application for exploration permit within two months of land ceasing to be subject to exploration permit. (1) Upon land, for whatever reason, ceasing to be the subject of an exploration permit, a person is not competent to apply for an exploration permit in respect of any mineral specified in the firstmentioned exploration permit in respect of any of that land until the expiration of two calendar months following the end of the month in which that cessation occurs.

(2) Subsection (1) does not apply to a person applying for a new exploration permit in respect of land over which he held an exploration permit which he had surrendered for the purpose of his being granted a further exploration permit in respect of the whole or part of that land.

(3) Subsection (1) does not apply to applications for an exploration permit in respect of coal or in respect of land that was the subject of an exploration permit in respect of a specified mineral or specified minerals pursuant to section 5.5 (2).

5.11 Upon rejection of application, application fee or part may be retained. If the Minister rejects an application for the grant of an exploration permit he may determine, at his discretion whether all or part of the application fee that accompanied the application shall be retained.

5.12 Grant of exploration permit. (1) If the Minister is satisfied that—

- (a) the requirements of section 5.8 have been complied with;
- (b) the applicant is an eligible person;
and
- (c) the application is made bona fide for the purposes of this Act,

he may, subject to compliance by the applicant with the provisions of section 5.16, grant and issue to the applicant an exploration permit in respect of all the land included in the application or such part or parts of it as the Minister specifies in the permit.

(2) An exploration permit shall be in the prescribed form and shall specify—

- (a) the identification number of the permit;
- (b) the name of the holder;
- (c) the address for service of notices on the holder;
- (d) the description of land in respect of which the permit is granted;
- (e) the term and date of commencement of the permit;
- (f) the conditions (other than conditions prescribed by this Act) to which the permit is subject;
and
- (g) the minerals the subject of the permit.

(3) If the Minister is of the opinion on reasonable grounds that an applicant for an exploration permit had previously contravened or failed to comply with any provision of this Act, the repealed Acts, the *Mining (Fossicking) Act 1985* or any other Act relating to mining, he may, whether or not that person had been charged or convicted of an offence in respect of that contravention or failure to comply, refuse to grant the exploration permit.

(4) For the purposes of subsection (3) an applicant which is a company is deemed to have contravened or failed to comply with a provision of an Act if a person who is an officer or employee of the company or who, in the opinion of the Minister, is in a position to control or influence substantially the affairs of the company has contravened or failed to comply with the provision.

5.13 Rental payable under exploration permit. Each year during the currency of an exploration permit the holder shall pay the rental calculated by multiplying the number of sub-blocks in respect of which the permit applies by the amount prescribed for that year for that purpose.

5.14 Periodic reduction in land subject to exploration permit. (1) Unless the Minister otherwise determines (which he may do prior to the grant or at any time during the term of an exploration permit), the area for the time being of land in respect of which the exploration permit applies shall be reduced—

- (a) at the expiration of 24 months from the grant of the permit, by at least 50 per centum;
- (b) at the expiration of each period of 12 months thereafter, by at least 50 per centum,

and in each case the remaining area shall consist of whole sub-blocks.

(2) If the Minister so directs on reasonable grounds, the reduction of the area of land in respect of which a particular exploration permit applies may be more or less than that prescribed by subsection (1).

(3) At least 28 days (or such shorter period as the Minister in the particular case allows) prior to the date when, pursuant to subsection (1), the area of land is to be reduced in respect of an exploration permit, the holder of the permit shall make a submission to the Director-General identifying the sub-blocks of land to which the holder desires the exploration permit to apply after that reduction.

(4) If a submission made in accordance with subsection (3) proposes a reduction of the area of land in respect of which the exploration permit applies which reduction complies with subsection (1), then on and from the date when the area of land is to be reduced, the exploration permit shall apply only in respect of the land specified in the submission.

(5) If a submission that is made for the purposes of subsection (3) is not made in accordance with subsection (3) or does not comply with subsection (1), then the Minister may determine as he considers reasonable that an exploration permit shall apply on and from the date of his determination or the date when pursuant to subsection (1) the reduction should take effect, whichever is the later in respect of land specified in his determination, and on and from that date the exploration permit shall apply only in respect of that land.

(6) If the holder of an exploration permit fails to make a submission in accordance with subsection (3) the Minister may proceed as provided in subsection (5) or may cancel the exploration permit.

5.15 Conditions of exploration permit. (1) Each exploration permit shall be subject to—

- (a) a condition that the holder shall carry out such programmes of work and such studies for the purposes for which the exploration permit was granted and in accordance with this Act and the conditions of the exploration permit and for no other purpose;
- (b) a condition that the holder shall, to the satisfaction of the Minister, provide for the control of the impact on the environment of any activities carried out under the authority of the exploration permit;
- (c) a condition that the holder shall, to the satisfaction of the Minister, undertake rehabilitation of the surface of land disturbed as a result of any such activities;
- (d) a condition that the holder prior to the termination for whatever cause of the exploration permit shall remove all equipment and plant on or in the land comprised in the exploration permit unless otherwise authorized by the Minister;
- (e) a condition that without the prior approval in writing of the Minister the holder shall not obstruct or interfere with

any right of access had at any time during the term of the exploration permit by any person in respect of land the subject of the exploration permit for so long as that right of access is exercised;

- (f) a condition that the holder shall not assign the exploration permit without the consent in writing of the Minister;
- (g) a condition that the holder shall furnish at such times and in such manner as required by the Minister progress, relinquishment and final reports accompanied by relevant maps, sections, charts and other data giving full particulars and results of the exploration programme and investigations carried out on the specified area including detailed information of expenditure incurred during specified periods within the term of the exploration permit;
- (h) a condition that the holder—
 - (i) shall pay the rental as prescribed;
and
 - (ii) shall deposit as required by the Minister any security from time to time under this Act;
- (i) a condition that the holder shall comply with the provisions of this Act;
- (j) such other conditions as are prescribed;
and
- (k) such other conditions as are determined by the Minister.

(2) The Minister may from time to time, with the agreement of the holder of an exploration permit vary any condition imposed by the Minister.

(3) The holder of an exploration permit and all persons acting under the authority of the permit shall comply with the conditions for the time being of the permit.

(4) Conditions may be imposed in respect of an exploration permit that relate to action to be taken to minimize the effect of exploring on the environment, including land degradation and air and water pollution.

5.16 Provision of security. (1) Before an exploration permit is granted or renewed, the Minister, taking into consideration the matters outlined in section 5.8 (g) (i), shall determine the amount of the security to be deposited by the holder of that permit as reasonable security for—

- (a) compliance with the conditions of the exploration permit;
- (b) compliance with the provisions of this Act;
- (c) rectification of any actual damage that may be caused by any person whilst purporting to act under the authority of the exploration permit to any land or any improvements situated on or off that land;
and
- (d) payment of any moneys (including penalties) payable under this Act to the Crown and unpaid by the holder.

(2) An exploration permit shall not be granted or renewed until the applicant for the grant or renewal of the exploration permit deposits the security as determined under this section.

(3) The Minister, if he is satisfied that any condition of the exploration permit or any provision of this Act has not been complied with or that damage referred to in subsection (1) (c) has been caused by any person purporting to act under the authority of the exploration permit or who enters land upon the instruction of the holder, he may require that person to take all action necessary to rectify that non-compliance or damage and, save where the person was not the holder and was not upon the land with the holder's approval at the time the damage was caused, may utilize for that purpose the whole or part of the amount of the security deposited in respect of that exploration permit.

(4) Where pursuant to section 5.32 the Minister imposes a penalty on the holder of an exploration permit and that penalty has not been paid in the specified time, the Minister may utilize the whole or part of the amount of the security deposited in respect of that exploration permit towards payment of that penalty.

(5) If, at any time (whether during or within 28 days after the expiration of the term of an exploration permit) the amount or any part of the amount deposited under this section is utilized as provided by subsection (3) or (4) or the Minister considers that, in view of the damage caused or likely to be caused by any person purporting to act under the authority of the exploration permit or upon the instruction of the holder or for any other reason, a further amount of security should be deposited in respect of that exploration permit, he shall require the holder or former holder of the exploration permit, within the time specified by the Minister, to deposit the further specified security.

(6) The Minister may accept a bond or a guarantee or indemnity by, or other financial arrangement with, a bank, insurance company or other financial institution approved by the Minister or other form of security acceptable to the Minister as the whole or part of the security to be deposited under this section.

(7) It shall be a condition of an exploration permit that the holder shall deposit security or further security from time to time in accordance with a requirement made as provided by this section.

(8) Where an exploration permit has expired or been terminated, the Minister, not earlier than 6 months after the expiration or the termination, shall, subject to subsection (9), refund to the holder of the permit (or as the holder in writing directs) any security deposited and not utilized as provided by subsections (3) and (4) less any amount determined by the Minister to be retained towards—

- (a) rectification of any matters caused by the non-compliance with any of the conditions of the exploration permit or with any order or direction made or given by the Minister under this Act and directed to the holder;

and

- (b) any moneys (including penalties) owing to the Crown (whether arising before or after the termination of the exploration permit) by the holder pursuant to this Act or the terms and conditions of the exploration permit and unpaid.

(9) Where security under this section in respect of an exploration permit is accepted by way of a bond or a guarantee or indemnity by, or other financial arrangement with, a bank, insurance company or other financial institution, any money payable to the holder under subsection (8) shall be refunded to that bank, insurance company or, as the case may be, financial institution and not to the holder of the exploration permit.

5.17 Compensation. Notwithstanding section 5.16, the Crown, or an owner is entitled to recover from time to time, in the Wardens Court the cost of rectification of actual damage caused to land by reason of a person acting or purporting to act under the authority of an exploration permit but any moneys paid under that section in respect of rectification of damage the subject of the proceeding shall be taken into account in assessing any compensation.

The holder of an exploration permit is not liable under this section in respect of damage caused by another person who is not a holder and is not a person authorized by the holder to be upon the land the subject of the exploration permit.

5.18 Initial term of exploration permit. Unless the Minister in the particular case otherwise determines the initial term of an exploration permit shall, unless the permit is sooner surrendered or cancelled, be for a period not exceeding 5 years commencing on the date specified in the permit (being a date not earlier than the date of grant of the permit).

5.19 Renewal of exploration permit. (1) Upon application in writing by the holder of an exploration permit in the prescribed manner and form to the Director-General made at least 28 days (or such shorter period as the Minister in the particular case allows) and not more than 3 months prior to the expiration of the current term of the permit accompanied by the prescribed application fee, the Minister may from time to time renew the exploration permit for a term such that the sum of the term of the original grant and all subsequent terms does not exceed 5 years unless the Minister in a particular case otherwise determines and upon such security deposit and conditions as he may determine.

(2) Where an application for renewal of an exploration permit is duly made by the holder but the application has not been disposed of by the Minister before the date on which the term of the permit then current would, but for this subsection, have expired, the exploration permit shall continue and shall be taken not to have expired in respect of the area specified in the renewal application until the application is disposed of by the Minister.

(3) The term of an exploration permit that is renewed (whether the renewal is granted before or after the date the exploration permit expires or would, but for the operation of subsection (2), have expired) shall commence or be deemed to have commenced on the day following that expiry date but the conditions of the renewed exploration permit shall apply from—

(a) the commencement of that term;

or

(b) the date the renewal is granted,

whichever is the later.

5.20 Rights and obligations upon application for mining lease or mineral development licence. (1) The holder of an exploration permit who, during the term of the exploration permit, makes application for the grant of—

(a) a mining lease;

or

(b) a mineral development licence,

in respect of any land to which the exploration permit applies, shall, during the period from the expiration of the exploration permit until the determination of the application, for so long as the provisions of this Act and the terms and conditions that would apply if the permit were current are complied with, have all the responsibilities, powers, authorities and duties that he would have had in respect of the land the subject of the application if the exploration permit was current but during that period no rental shall be payable under this Part in respect of any whole sub-blocks of land the subject of the application.

(2) The entitlements of the holder of an exploration permit are not reduced or limited by reason only of his application for the grant of a mineral development licence or a mining lease in respect of any land to which the exploration permit applies.

5.21 Correction of instrument of exploration permit. If, at any time, the Minister is of the opinion that the instrument of an exploration permit should be corrected by reason that—

(a) facts have appeared or been established since the grant of the exploration permit that warrant a correction of the instrument;

or

(b) the instrument is defective owing to error in its preparation, the Minister may correct the instrument and shall record details thereof in the register of exploration permits kept by the Director-General and endorse the instrument which shall take effect accordingly.

5.22 Replacement of instrument of exploration permit. (1) Where the Minister is satisfied that the instrument of an exploration permit should be cancelled and a replacement instrument issued in its place,

he shall cancel the instrument and cause a replacement instrument to be issued in its place.

(2) A replacement instrument of an exploration permit issued under this section—

- (a) shall be the instrument in place of the instrument previously issued and cancelled under this section which last mentioned instrument shall, upon the issue of the fresh instrument, cease to be of any force or effect;
- (b) may bear a form of endorsement which briefly traces the devolution of the permit from the original holder of the exploration permit to the person appearing as holder thereof at the time the replacement instrument is issued;
and
- (c) shall be delivered to the person who appears to the Minister to be lawfully entitled to possession thereof.

The Director-General shall cause the instrument so cancelled to be suitably endorsed and a suitable recording made in the register kept by the Director-General that a replacement instrument has been issued in its place.

The cancelled instrument shall be retained by the Director-General.

5.23 Assignment of exploration permit. (1) The holder of an exploration permit desirous of assigning his interest in the exploration permit shall apply to the Director-General for the Minister's approval to that exercise and shall furnish to the Director-General such information with respect thereof as the Minister requires.

Where there are 2 or more holders of an exploration permit, an application under this subsection shall be made by all the holders.

(2) An application made pursuant to subsection (1) shall not be made or approved within 12 months of the grant of the relevant exploration permit.

(3) Upon an application made pursuant to subsection (1) the Minister may cause the applicant to be given notice—

- (a) that, subject to compliance with this Act in respect thereof and with any conditions specified in the notice, within 3 months from the date of the notice or such other period as is specified in the notice the Minister will approve the exercise;
or
- (b) that the Minister does not approve the exercise.

(4) Upon receipt within the prescribed time of the prescribed document of assignment that gives effect to an assignment referred to in subsection (1) and upon compliance with this Act and all conditions specified in the notice given pursuant to subsection (3) (a) in respect of that assignment and payment of the prescribed fee, the assignment

shall be approved and such particulars as are necessary to give effect to or evidence that assignment shall be recorded in the appropriate register and endorsed on the exploration permit.

(5) An assignment of an exploration permit shall not be in respect of part only of the land the subject of the exploration permit.

(6) A purported assignment of an exploration permit or of an interest shall not be effective unless it is made in accordance with this section and approved as provided in subsection (4) and shall take effect on the day next following its approval by the Minister under subsection (4).

5.24 Lodgment of caveat. (1) (a) A person who claims a right or interest in or in respect of an exploration permit may by a caveat in the prescribed form forbid the recording of any assignment in respect of the exploration permit (save any assignment the recording of which is excepted in the caveat) either absolutely or until after notice of intention to record such an assignment is served on the caveator.

(b) A caveat duly lodged pursuant to this section does not apply in respect of an assignment the application for approval of which was lodged with the Minister before the lodgment of the caveat.

(2) A caveat referred to in subsection (1) shall—

- (a) be in or to the effect of the prescribed form;
- (b) specify the name and address for service of one person upon whom any notice may be served on behalf of the caveator or caveators;
- (c) identify the exploration permit concerned;
- (d) specify the nature of the right or interest claimed by the caveator;
- (e) specify the period during which it is to continue in force;
- (f) be signed by the caveator, his solicitor or other person authorized in writing by the caveator;
- (g) if any person consents to the lodging of the caveat, be endorsed with that person's consent;
- (h) be lodged with the Director-General;
and
- (i) be accompanied by the prescribed lodgment fee.

5.25 Director-General's functions upon receipt of caveat. Upon receipt of a duly lodged caveat referred to in section 5.24, the Director-General shall—

- (a) notify the holder or holders of the affected exploration permit;
- (b) notify all other persons who have an interest (other than an interest recorded pursuant to section 5.30) in the exploration permit recorded in the register including any subsisting prior caveator;

and

- (c) record the existence of the caveat in the register.

5.26 Effect of caveat. (1) For so long as a caveat remains in force, the Director-General shall not record any assignment of the exploration permit identified in the caveat unless—

- (a) the assignment is specifically excepted in the caveat;
or
(b) the written consent of the caveator in the prescribed form to the recording of the assignment is lodged with the Director-General.

(2) For the purposes of subsection (1), unless and until a caveat is removed or withdrawn as prescribed, a caveat continues in force—

- (a) in a case where the consent of each holder of the exploration permit concerned has been lodged with the caveat, for the term specified in the caveat or, if no term is specified, indefinitely;
(b) in a case where the caveat (not being a caveat referred to in paragraph (a)) specifies a period of not more than 3 months during which it is to continue in force, until the expiration of that period;
(c) in a case where the Wardens Court or another court of competent jurisdiction so orders for so long as that order remains in force;
or
(d) in any other case, until the expiration of 3 months from the date of lodgment of the caveat.

5.27 Second caveat not available to same person. When a caveat has lapsed or has been removed or withdrawn as prescribed, it shall not be competent to the caveator to lodge in respect of the same exploration permit another caveat whereby he claims the same or substantially the same right or interest unless—

- (a) the consent of each holder of the exploration permit has been lodged with the lastmentioned caveat;
or
(b) the Wardens Court or another court of competent jurisdiction so orders.

5.28 Removal or withdrawal of caveat. (1) A caveat lodged pursuant to section 5.24 that has lapsed shall be removed by the Director-General and the register noted accordingly.

(2) Upon the plaint of a person who has a right or interest (present or prospective) in an exploration permit affected by a caveat or whose right (present or prospective) to deal with an exploration permit is affected by a caveat lodged in respect of the exploration permit, the caveator may be summonsed to attend the Wardens Court or another

court of competent jurisdiction to show cause why the caveat should not be removed.

(3) The Wardens Court or another court of competent jurisdiction may, upon the return of a summons referred to in subsection (2) or at any later time to which the hearing may be adjourned, make such order either ex parte or otherwise as the court deems just.

(4) If the Wardens Court or another court of competent jurisdiction orders that a caveat be removed, the Director-General shall give effect to the order.

(5) A caveator may withdraw his caveat at any time by notifying the Director-General in writing.

(6) The removal or withdrawal of a caveat shall be effected by the Director-General recording the removal or withdrawal in the register.

5.29 Compensation for lodging caveat without reasonable cause. A person who lodges a caveat in respect of an exploration permit without reasonable cause is liable to pay such damages as may be recovered at law by any person aggrieved.

5.30 Recording of agreements, arrangements, dealings, or interests.

(1) Upon application made in the prescribed form, payment of the prescribed fee, and production of a document purporting to evidence an agreement, arrangement or other dealing or interest (legal or equitable) in or in relation to an exploration permit (other than an assignment of the exploration permit) to the Director-General, the Director-General shall—

- (a) record in the register maintained by him, the relevant particulars set out in the application form;
- and
- (b) retain the document or a copy thereof.

(2) The Director-General shall make the recordings prescribed by subsection (1) in the order of time in which applications are lodged with the Director-General.

(3) The Director-General is not required to examine any document produced under this section or to determine the validity of any agreement, arrangement, dealing or interest alleged in an application made under subsection (1).

(4) An agreement, arrangement, dealing or interest, particulars of which are recorded under this section shall, subject to being otherwise legally enforceable, take priority over any other agreement, arrangement, dealing or interest—

- (a) particulars of which have not been recorded under this section;

or

- (b) particulars of which have been recorded under this section after particulars of the firstmentioned agreement, arrangement, dealing or interest had been recorded.
- (5) Subsection (4) does not apply in respect of—
- (a) an interest that is a registrable charge to and in relation to which the provisions of Division 9 of Part VI of the *Companies (Queensland) Code* mentioned in section 200 (1) of that Code apply;
- or
- (b) an estate or interest in land (whether freehold or leasehold) or a dealing therein which is registered or registrable by the Registrar of Titles, the Registrar of Dealings or other like registering authority.

5.31 Abandonment of application for exploration permit. (1) The applicant for an exploration permit may, at any time before the grant of the exploration permit, by notice in writing to the Director-General abandon his application.

(2) The abandonment of an application for the grant of an exploration permit shall take effect on the day next following its receipt by the Director-General.

(3) Upon the abandonment of an application for an exploration permit, the Minister, at his discretion, may retain the whole or part of the application fee.

5.32 Contravention by holder of exploration permit. (1) If the Minister considers that the holder of an exploration permit—

- (a) has carried out activities that are not bona fide for the purposes for which the exploration permit was granted;
 - (b) has failed to pay any moneys (other than rental) payable thereunder or in respect thereof by the due date for payment;
 - (c) has failed to comply with any condition that is to be observed and performed by the holder under or in respect of the exploration permit, other than a condition with respect to matters referred to in subsection (2) (a) or (b);
- or
- (d) has failed to report to the Minister upon the discovery of any mineral as required by section 5.40,

the Minister may—

- (e) cancel the exploration permit;
- or
- (f) impose on the holder a penalty not exceeding 500 penalty units.

(2) If the Minister considers that the holder of an exploration permit—

- (a) has failed to pay the rental payable thereunder by the date due for payment;
- or
- (b) has failed to pay a penalty imposed on him pursuant to subsection (1) (f) within the time allowed for the payment by the Minister,

the Minister may cancel the exploration permit and shall notify the holder of the exploration permit and every person who currently holds a recorded interest in respect of the exploration permit accordingly.

(3) The Minister shall not act pursuant to subsection (1) until he has, by notice in writing in or to the effect of the prescribed form served on the holder of the exploration permit, called upon the holder to show cause within the time specified therein why the exploration permit should not be cancelled or a penalty imposed and served a copy of the notice on every person who currently holds a recorded interest in the exploration permit and such cause has not been shown to the satisfaction of the Minister.

(4) When the Minister pursuant to this section cancels an exploration permit he shall notify the holder and every person who holds a recorded interest in the exploration permit accordingly.

(5) For the purposes of this section a recorded interest in an exploration permit does not include an interest recorded pursuant to section 5.30.

(6) The Minister upon cancellation of an exploration permit pursuant to subsection (2) (b) may utilize the security or part thereof deposited in respect of that exploration permit under section 5.16 towards payment of the unpaid penalty.

5.33 Surrender of exploration permit. (1) The holder of an exploration permit may, by notice in writing to the Director-General surrender the permit.

(2) A surrender of an exploration permit shall take effect on the day next following its acceptance by the Minister except in respect of sub-blocks the subject of an application for a new exploration permit made under subsection (3).

(3) Where, at the time when the holder of an exploration permit purports to surrender the permit, the holder duly makes application for a new exploration permit in respect of the whole or part of the land to which the firstmentioned exploration permit applies, the purported surrender shall take effect immediately prior to the grant of the new exploration permit.

5.34 Adjustment of rental etc. upon surrender etc. of exploration permit. (1) Upon a surrender of an exploration permit or the reduction in the area to which the permit applies such adjustments as the Minister

approves shall be made with respect to the rental payable under the exploration permit and security deposited and to the terms and conditions of the permit.

(2) Any moneys payable to the Crown under the adjustments approved by the Minister pursuant to subsection (1) which have not been recovered by utilization of the security deposit may be recovered as a debt due and owing to the Crown by action in a Wardens Court.

(3) In an action under subsection (2) for recovery of a debt due to the Crown, the production to the Wardens Court of a certificate by the Director-General certifying the amount of that debt shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the debt and the amount thereof.

5.35 Prior notice of entry to be served. (1) At least 7 days (or such shorter period as is acceptable to the owner of the land and endorsed on the notice of entry) before entry is made on occupied land under the authority of an exploration permit, the holder of the exploration permit shall serve on the owner of the land written notice in the prescribed form of intention to enter that land which notice shall contain a description of the exploration proposed and an indication of the times when activities proposed under the exploration permit are to be carried out.

(2) A notice served under subsection (1) or a renewed notice served under paragraph (a) shall expire after 3 months unless—

(a) a notice in the prescribed form renewing that entry is served on the owner at least 7 days but not more than 21 days prior to the expiry of the notice then current containing a description of the exploration proposed in the ensuing period and an indication of the times when activities are to be carried out;

or

(b) the owner in writing consents to a longer period than 3 months which consent shall be lodged by the holder with the mining registrar who shall make an appropriate noting in the register.

(3) If upon application by the holder of an exploration permit, the mining registrar for the mining district within which the relevant land is situated is satisfied that it is impracticable to serve on the owner of that land a notice of intention as prescribed in subsection (1), the mining registrar may, in the exercise of his discretion, endorse upon the notice that the obligation to so serve the notice is dispensed with whereupon the owner of the land shall be taken to have been duly served with the notice.

(4) Before making an endorsement authorized under subsection (3), a mining registrar may require the holder of the exploration permit to take such action to publicise the proposed entry (which may include the publication of an advertisement in a newspaper or other publication) as the mining registrar considers appropriate.

5.36 Holder of exploration permit to rehabilitate land. (1) Unless the Minister otherwise approves, the holder of an exploration permit shall to the satisfaction of the Minister progressively rehabilitate the surface of any disturbed land, as nearly as may be, to its state and condition prior to the commencement of exploration operations under the exploration permit.

(2) Unless the Minister otherwise approves, the holder of an exploration permit shall ensure that all excavations are filled in at the conclusion of any activity purported to be carried on under the authority of the exploration permit on any land.

(3) Unless the Minister otherwise directs, the holder of an exploration permit, or other person to whom an exploration permit applies, who applies for a mineral development licence or a mining lease in respect of land included in the exploration permit is not obliged to comply with subsections (1) and (2) in respect of land the subject of the application unless and until the application is rejected or abandoned.

5.37 Production of exploration permit. (1) A person purporting to be upon land under the authority of an exploration permit shall upon demand made by the owner of that land, an agent of the owner or a person authorized in that behalf by the Minister for proof of his authority for being on the land, produce or cause to be produced to the person making the demand the exploration permit or a written authorization in a form acceptable to the Minister from the holder of the exploration permit authorizing him to enter or be upon that land for exploration purposes.

(2) For so long as a person fails to comply with a demand lawfully made of him under subsection (1) he does not have any of the entitlements under this Part.

(3) This section does not apply to prevent a person entering land for the purpose of delivering goods or substances or providing services ancillary to the purpose for which an exploration permit is granted to a person who is lawfully on that land under this Part.

5.38 Utilization of security deposit towards subsequent exploration permit. Where the holder of an exploration permit makes application for a further exploration permit, the Minister, if he is satisfied that the whole or part of the security deposited in respect of the existing permit is or will be refundable under section 5.16, notwithstanding that the period of 6 months after the termination of that permit may not have elapsed, may retain that security or part thereof (together with any further security fixed by the Minister) as the security (in which case it shall be taken to be or to be part of the security) deposited by the applicant in respect of the application for the further exploration permit and not refund that amount to the holder.

5.39 Report to mining registrar by owner of land. (1) Where a person purports to enter or be upon land under the authority of an exploration permit, the owner of the land who considers that that person

is not authorized to enter or be upon that land or is not complying with any condition of the exploration permit or of any provision of this Act may report accordingly to the mining registrar of the mining district in which is situated the land.

(2) The mining registrar shall have the report investigated and shall advise the owner of land who reports under subsection (1) of any action taken upon the report.

5.40 Discovery of minerals to be reported. (1) The holder of an exploration permit shall, within 14 days after discovery of any mineral of commercial value in what appears to be payable quantities within the area specified in the exploration permit by any person acting under the authority of the exploration permit, report to the Minister the fact of that discovery and such other particulars as the Minister requires.

(2) The Minister may direct the holder of an exploration permit to apply for a mineral development licence or mining lease over all or part of the land specified in the exploration permit as the Minister directs in respect of any mineral discovered.

(3) If the holder of an exploration permit to whom a notice under subsection (2) is given does not apply for a mineral development licence or a mining lease as directed within the specified time, the Minister may in his discretion cancel the exploration permit.

(4) Any refund of moneys held in respect of an exploration permit that is cancelled pursuant to subsection (3) (including any security deposited) shall be at the Minister's discretion.

5.41 Reduction of land under exploration permit upon grant of mineral development licence or mining lease. Upon the grant of a mineral development licence or mining lease consequent upon an application made by the holder of an exploration permit granted in respect of the same land for the same mineral (whether or not at the direction of the Minister) or by an eligible person with the consent of the holder, the land to which the exploration permit applies shall be reduced accordingly and the terms and conditions applying to the exploration permit may be varied as the Minister directs.

5.42 Discovery etc. of mineral does not vest property. A person who whilst acting under the authority of an exploration permit discovers or takes any mineral does not thereby acquire property therein and shall not dispose of any such mineral except with the consent of the Minister whose consent may be subject to such terms and conditions as the Minister thinks fit (including prescribed conditions as to the payment of royalties).

PART 6—MINERAL DEVELOPMENT LICENCES

6.1 Mineral development licence. Unless otherwise approved by the Minister pursuant to section 6.36 (2) (b), a mineral development licence in respect of a mineral occurrence may be applied for by an eligible

person in respect of land which, at the time the application for the grant is made, is comprised in—

- (a) an exploration permit;
- or

- (b) a mineral development licence,

in respect of the same mineral of which the applicant or, where more than one person is the applicant, at least one of them is, with or without others, the holder.

6.2 Only eligible persons to hold mineral development licences. A mineral development licence shall not be held by a person who is not an eligible person.

6.3 Obligations and entitlements under mineral development licence.

(1) During the currency of a mineral development licence, the holder shall carry out or cause to be carried out such activities as are specified in the licence by the Minister.

The Minister may specify in a mineral development licence that no activity need be carried out for the term of the licence or for such period as is specified therein.

(2) Without in any way limiting the activities that the Minister may specify in a mineral development licence, activities leading to the evaluation and economic development of an ore body by or on behalf of the holder may include—

- (a) geological, geophysical and geochemical programmes and other works as are reasonably necessary to evaluate the potential for development of any mineral occurrence of possible economic potential occurring in or on land comprised in the mineral development licence;
- (b) mining feasibility studies;
- (c) metallurgical testing;
- (d) environmental studies;
- (e) marketing studies;
- (f) engineering and design studies;
- and
- (g) such other activities as the Minister considers appropriate.

(3) During the currency of a mineral development licence—

- (a) the holder—

- (i) may carry out or cause to be carried out any activities (including activities referred to in subsection (2)) as are appropriate for the purpose for which the licence is granted; and
- (ii) may, in relation to the land comprised in the mineral development licence, do all such things as are authorized or were authorized, at the time of the application for the

mineral development licence, under the relevant exploration permit then held by the applicant for the mineral development licence;

and

- (b) the holder and any person who acts for the purpose of carrying out any activity authorized by the mineral development licence with or by such vehicles, vessels, machinery and equipment as may be necessary or expedient for the purpose may, subject to compliance with section 6.29, enter and be upon—

- (i) any part of the land comprised in the mineral development licence that is not the surface area of a reserve;

and

- (ii) with the consent of the owner, or the consent of the Governor in Council, any part of the land comprised in the mineral development licence that is the surface area of a reserve,

for any purpose permitted or required under the licence or by this Act;

- (c) the holder of the mineral development licence, subject to compliance with this Act, may have considered for grant, in priority to all other persons, any number of mineral development licences and mining leases relating to any minerals specified in the mineral development licence in respect of any land (or part thereof) to which the mineral development licence applies and may enter and be upon that land for the purpose of doing all acts necessary to comply with this Act relating to an application therefor.

For the purposes of paragraph (b) (ii), the holder of a mineral development licence has the consent of an owner of land if that consent in writing has been previously lodged with the Director-General and has not been withdrawn as provided for in subsection (5).

Consent given as required by paragraph (b) (ii) may be restricted as to time or to a part of the land in question.

(4) A mineral development licence does not authorize a person to enter or be upon the surface of land of an owner which, at the time of the application for the mineral development licence is—

- (a) within 100 metres laterally of—

- (i) a dwelling-house or other building of the owner (not of a temporary nature) on that land principally used for accommodation of persons or used for the conduct of business;

or

- (ii) a building (not of a temporary nature) on that land currently being used for community, sporting or recreational purposes or as a place of worship;

or

(b) within 50 metres laterally of—

(i) a principal stockyard or a dam, bore or artesian well of that owner or other artificial water storage of the owner connected to a supply of water;

or

(ii) a cemetery or burial place,

except with the written consent of the owner of that land lodged with the Director-General.

Consent given pursuant to this subsection shall specify the period of the consent and any conditions applicable to the consent and once given that consent cannot be withdrawn.

For the purpose of this subsection, a dwelling-house or building means a fixed structure that is wholly or partly enclosed by walls and is roofed.

(5) Consent referred to in subsection (3) (b) (ii) can only be withdrawn by the owner of the relevant land giving notice in writing to the Director-General and shall only be effective when the Minister accepts the withdrawal or, if not accepted, after the holder of the mineral development licence has been given an opportunity by the Minister to apply for the consent of the Governor in Council in lieu of the owner's consent—

(a) if, within the time allowed by the Minister for the holder to do so, the holder does not apply for that consent, that time expires;

or

(b) if, within the time allowed by the Minister for the holder to do so, the holder applies for that consent, the Governor in Council gives or refuses to give that consent.

(6) The holder of a mineral development licence, and each person who enters or is upon land under the authority of the licence, shall comply with the terms and conditions upon which any consent required to be given under this Act in respect thereof was given by the owner of that land.

(7) If an owner of land that is a reserve refuses or fails within a reasonable time to give a consent required by subsection (3) (b) (ii) or imposes terms and conditions thereon that the holder of the relevant mineral development licence considers to be so harsh as to be unreasonable, the holder of the mineral development licence may apply in writing to the Minister who may refuse the application or may recommend to the Governor in Council that consent be given.

(8) Upon receipt of an application under subsection (5) or (7), the Minister shall seek the views of the owner of the relevant land on the application.

(9) If the Minister is satisfied that it is unreasonable for an owner of land that is a reserve to refuse to give to the holder of a mineral development licence the consent required by subsection (3) (b) (ii), to withdraw consent previously given or to have imposed the terms and conditions upon which that consent was given, the Governor in Council may, upon the recommendation of the Minister—

- (a) subject to such terms and conditions as he thinks appropriate, give that consent in lieu of the consent of the owner;
- or
- (b) set aside or vary as he thinks fit the terms and conditions upon which the consent is subject,

whereupon the owner of the land shall, subject to compliance by the holder of the mineral development licence with any terms and conditions set by the Governor in Council, be deemed to have given the consent or, as the case may be, have set aside or varied the terms and conditions in accordance with the Governor in Council's determination.

(10) The Governor in Council may make a determination under subsection (9) whether or not an owner of land makes any submission to the Minister pursuant to subsection (8).

(11) The Director-General shall notify the holder of a mineral development licence and the owner of land that is a reserve of particulars of any relevant determination made by the Governor in Council pursuant to subsection (9) before any entry of that land is made under the authority of the mineral development licence except where the entry is in accordance with any consent given by the owner.

(12) (a) For the purposes of exercising his entitlements under this Part a person who enters or is upon land under the authority of a mineral development licence may stay at night thereon and for that purpose may set up temporary accommodation thereon.

(b) A person who stays on land under or purportedly under the authority of a mineral development licence shall dispose of any refuse (including human waste) and rubbish in a safe and sanitary manner.

(13) The terms and conditions upon which consent required by subsections (3) (b) (ii) and (4) is given shall be deemed to be part of the terms and conditions of the relevant mineral development licence.

(14) Consent given as required by subsection (3) (b) (ii) may be restricted as to time or to a part only of the land in question.

6.4 Application for mineral development licence. An application for the grant of a mineral development licence shall—

- (a) be in or to the effect of the prescribed form;
- (b) specify the name of each applicant;
- (c) specify the name and address for service of one person upon whom any notice may be served on behalf of the applicant or the applicants;
- (d) describe all parcels of land the whole or part of which are the subject of the application and specify the current use of the land and the names and addresses of the owner or

- owners of the land and of land which is to be used as access thereto;
- (e) identify in the prescribed manner the boundaries of the land applied for;
 - (f) specify the mineral or minerals in respect of which the mineral development licence is sought;
 - (g) give reasons why the mineral development licence should be granted in respect of the area and shape of the land described in the application;
 - (h) be accompanied by a sketch, map or other graphic representation acceptable to the Director-General setting out the boundaries of any land referred to in paragraphs (d) and (i);
 - (i) describe and identify in the prescribed manner any land proposed to be used as access from a point outside the boundary of the mineral development licence acceptable to the Director-General to any part on the surface of the land sought to be included in the mineral development licence;
 - (j) nominate the term of the mineral development licence sought and give reasons therefor;
 - (k) be accompanied by the consent in writing of each person who alone or with others is the holder of the exploration permit or the mineral development licence in respect of the land the subject of the application and is not the applicant;
 - (l) be lodged by the applicant at the office of the Director-General;
 - (m) be accompanied by—
 - (i) the prescribed application fee;
and
 - (ii) a statement acceptable to the Minister specifying—
 - (A) a detailed description and technical particulars of the mineral occurrence in respect of which the mineral development licence is sought together with any necessary supporting documents;
 - (B) the activities proposed, if any, including any work programme, expenditure and studies to be undertaken;
and
 - (C) the financial and technical resources available to the applicant to carry out those activities (if any).

6.5 Description of mineral development licence. In an application for the grant of a mineral development licence—

- (a) the commencement point for the description shall be accurately related by measured distances and compass bearings (or other method acceptable to the Director-General)

- to a survey mark or other fixed and well defined point acceptable to the Director-General;
- (b) the boundaries of the mineral development licence shall be described by accurately measured distances and compass bearings or other method acceptable to the Director-General;
 - (c) the surface access from a point acceptable to the Director-General to the land over which the mineral development licence is sought shall be described by measured distances and compass bearings along the centre line of that access together with the width of that access or by some other method acceptable to the Director-General;
- and
- (d) the datum post or commencement point of the description of any land the subject of a mining claim, mineral development licence or mining lease or application for the grant of a mining claim, mineral development licence or mining lease, in any case wholly within the land sought for the mineral development licence shall be related by measured distances and compass bearings (or other method acceptable to the Director-General) to the commencement point of the description of the land the subject of the application.

6.6 Priority of applications for grant of mineral development licences. Applications for the grant of mineral development licences duly made in respect of or including the same land shall take priority according to the Minister's determination.

6.7 Minister may grant or reject application for mineral development licence. (1) If, in respect of an application for a mineral development licence, the Minister is satisfied that—

- (a) the applicant has complied with the provisions of this Act with respect to the application;
 - (b) there exists to a high degree of definition on or in the land in respect of which the application is made a significant mineral occurrence of possible economic potential;
 - (c) the area of land in respect of which the application is made is appropriate to further investigation of that occurrence;
- and
- (d) the financial and technical resources available to the applicant and any activities proposed pursuant to section 6.4 (m) (ii) are appropriate and acceptable to the Minister,

the Minister may grant and issue to the applicant a mineral development licence over all or part of the land in respect of which the application is made.

(2) The Minister may reject an application for the grant of a mineral development licence.

(3) Where the Minister rejects an application for the grant of a mineral development licence in whole or in part he shall, as soon as

practicable after making his decision, notify the applicant in writing of his reasons.

(4) Where the Minister grants a mineral development licence in respect of part only of the land applied for, the application in so far as it relates to the balance of that land shall be taken to be rejected.

(5) A mineral development licence shall be in the prescribed form and shall specify—

- (a) the identification number of the licence;
 - (b) the name of the holder;
 - (c) the address for service of notices on the holder;
 - (d) the description of land in respect of which the licence is granted;
 - (e) the term and date of commencement of the licence;
 - (f) the conditions (other than conditions prescribed by this Act) to which the licence is subject;
- and
- (g) the minerals the subject of the licence.

6.8 Holder to notify owners of land of grant. Within 21 days, or such longer period as the Minister shall in the particular case allow, after the grant of a mineral development licence, the holder shall give notice in the prescribed form to the owners of the parcels of land subject to the licence.

6.9 Upon rejection of application, application fee or part may be retained. If the Minister rejects an application for the grant of a mineral development licence he may determine, at his discretion whether all or part of the application fee that accompanied the application for the licence shall be retained.

6.10 Abandonment of application for mineral development licence.

(1) The applicant for the grant of a mineral development licence may, at any time before the grant of the mineral development licence, by notice in writing to the Director-General abandon his application.

(2) The abandonment of an application for the grant of a mineral development licence shall take effect on the day next following its receipt by the Director-General.

(3) Upon the abandonment of an application for the grant of a mineral development licence, the Minister, at his discretion, may retain the whole or part of the application fee.

(4) Upon the abandonment of an application for the grant of a mineral development licence taking effect the land that ceases to be comprised in that application shall form part of any existing exploration permit or mineral development licence over that land of which the applicant is holder.

6.11 Provision of security. (1) Before a mineral development licence is granted or renewed the Minister, taking into consideration the matters outlined in section 6.4 (m) (ii) (A) and (B), shall determine the amount of security to be deposited by the holder of that licence as reasonable security for—

- (a) compliance with the conditions of the licence;
- (b) compliance with the provisions of this Act;
- (c) rectification of any actual damage that may be caused by any person whilst purporting to act under the authority of the mineral development licence to any land or any improvements situated on or off that land;
and
- (d) payment of any moneys (including penalties) payable under this Act to the Crown and unpaid by the holder.

(2) A mineral development licence shall not be granted or renewed until the applicant for the grant or renewal of the licence deposits the security as determined under this section.

(3) The Minister, if he is satisfied that any condition of the mineral development licence or any provision of this Act has not been complied with or that damage referred to in subsection (1) (c) has been caused by any person purporting to act under the authority of a mineral development licence or who enters land upon the instruction of the holder, he may require that person to take all action necessary to rectify that non-compliance or damage and, save where the person was not the holder and was not upon the land with the holder's approval at the time the damage was caused, may utilize for that purpose the whole or part of the amount of the security deposited in respect of that mineral development licence.

(4) Where pursuant to section 6.27 the Minister imposes a penalty on the holder of a mineral development licence and that penalty has not been paid in the specified time, the Minister may utilize the whole or part of the amount of the security deposited in respect of that mineral development licence towards payment of that penalty.

(5) If, at any time (whether during or within 28 days after the expiration of the term of a mineral development licence) the amount or any part of the amount deposited under this section is utilized as provided by subsection (3) or (4) or the Minister considers that, in view of the damage caused or likely to be caused by any person purporting to act under the authority of the mineral development licence or upon the instruction of the holder or for any other reason, a further amount of security should be deposited in respect of that mineral development licence, he shall require the holder or former holder of the mineral development licence, within the time specified by the Minister, to deposit the further security.

(6) The Minister may accept a bond or a guarantee or indemnity by, or other financial arrangement with, a bank, insurance company or other financial institution approved by the Minister or other form of security acceptable to the Minister as the whole or part of the security to be deposited under this section.

(7) It shall be a condition of a mineral development licence that the holder shall deposit security or further security from time to time in accordance with a requirement made as provided by this section.

(8) Within 28 days after the expiration or termination of a mineral development licence, the person who was the holder shall notify all owners of land comprised in the mineral development licence that any claims for rectification of actual damage to land caused under the authority or purported authority of the mineral development licence must be lodged within 6 months of the expiration or termination with the Director-General.

(9) Where a mineral development licence has expired or been terminated, the Minister—

- (a) in a case where every owner of land the subject of the mineral development licence certifies that there is no actual damage to land that should be rectified, at any time;
or
- (b) in any other case, not earlier than 6 months after the expiration or the termination,

shall, subject to subsection (10), refund to the holder of the licence (or as the holder in writing directs) any security deposited and not utilized as provided by subsections (4) and (5) less any amount determined by the Minister to be retained towards—

- (c) rectification of any matters caused by the non-compliance with any of the conditions of the mineral development licence or with any order or direction made or given by the Minister under this Act and directed to the holder;
and
- (d) any moneys (including penalties) owing to the Crown (whether arising before or after the termination of the mineral development licence) by the holder pursuant to this Act or the terms and conditions of the mineral development licence and unpaid.

(10) Where security under this section in respect of a mineral development licence is accepted by way of a bond or a guarantee or indemnity by, or other financial arrangement with, a bank, insurance company or other financial institution, any money payable to the holder under subsection (9) shall be refunded to that bank, insurance company or, as the case may be, financial institution and not to the holder of the mineral development licence.

6.12 Compensation. Notwithstanding section 6.11, the Crown or an owner is entitled to recover from time to time, in the Wardens Court the cost of rectification of actual damage caused to land by reason of a person acting or purporting to act under the authority of a mineral development licence but any moneys paid under that section in respect of rectification of damage the subject of the proceeding shall be taken into account in assessing the compensation.

The holder of a mineral development licence is not liable under this section in respect of damage caused by another person who is not a holder and is not a person authorized by the holder to be upon the land the subject of the mineral development licence.

6.13 Initial term of mineral development licence. (1) The initial term of a mineral development licence shall, unless the licence is sooner terminated, be for a period not exceeding five years (or such longer period as the Minister in exceptional circumstances approves) commencing on the first day of the month which next follows the day on which the mineral development licence is granted.

(2) From the grant of a mineral development licence to the commencement of the initial term thereof the holder shall have all the entitlements, powers, duties and functions that he has during the term of the licence except section 6.14 shall not apply.

6.14 Rental payable on mineral development licence. (1) (a) Upon the grant of a mineral development licence rental shall first be payable thereon with respect to the period from the commencement of the term of the licence to 31 December of that year (in this section called the "first rental period") and shall be paid within 28 days (or such longer period as the Minister in the particular case approves) of the grant of the mineral development licence.

(b) The amount of the rental payable in respect of the first rental period shall be an amount that bears to the yearly rental prescribed pursuant to subsection (3) for the year in which the first rental period falls the same proportion that the number of whole calendar months of the first rental period bears to 12.

(2) In respect of each year or part thereof of the term of a mineral development licence (other than the first rental period) a full year's rental shall be payable in advance not later than 31 December of the previous year.

(3) If the full year's rental is paid in advance as prescribed by subsection (2), the amount of the rental shall be the amount prescribed in respect of the year in which the rental period falls.

(4) If rental is not paid in advance as prescribed by subsection (2)—

(a) the Minister shall, prior to 31 January of that year, notify the holder of and any person holding a recorded interest in the mineral development licence (other than an interest recorded pursuant to section 6.24) that the rental has not been paid as prescribed by subsection (2) and of the amount of rental as prescribed by paragraph (b);
and

(b) the amount of the full year's rental shall be payable before 31 March of that year and shall be an amount equal to the amount prescribed in respect of the year in which the rental

period falls plus an amount equal to 25 per centum of that prescribed amount.

(5) Upon the renewal of a mineral development licence, no further rental shall be payable in respect of the period that, if the renewal was a grant of a mineral development licence, would be the first rental period, except where that period commences on 1 January.

(6) Except as provided in subsection (7), where in any year a mineral development licence is surrendered or terminated through effluxion of time and is not renewed there shall be refundable to the last holder of the mineral development licence an amount that bears to the amount of the rental that was paid in respect of that year the same proportion that the number of whole calendar months from—

(a) the date of surrender or termination;

or

(b) the date of rejection of the application for renewal,
whichever is the later, to 31 December of that year bears to 12.

(7) No amount shall be refunded pursuant to subsection (6) where a mineral development licence is surrendered within its first rental period after its original grant.

6.15 Conditions of mineral development licence. (1) Each mineral development licence shall be subject to—

- (a) a condition that the holder shall carry out such activities (if any) for which the mineral development licence was granted and in accordance with this Act and the conditions of the mineral development licence and for no other purpose;
- (b) a condition that the holder shall, to the satisfaction of the Minister, provide for the control of the impact on the environment of any activities carried out under the authority of the mineral development licence;
- (c) a condition that the holder shall, to the satisfaction of the Minister, undertake rehabilitation of the surface of land disturbed as a result of any such activities;
- (d) a condition that the holder, prior to the termination of the mineral development licence for whatever cause, shall remove all equipment and plant on or in the land comprised in the mineral development licence unless otherwise authorized in writing by the Minister;
- (e) a condition that without the prior approval in writing of the Minister the holder shall not obstruct or interfere with any right of access had at any time during the term of the mineral development licence by any person in respect of

land the subject of the mineral development licence for so long as that right of access is exercised;

- (f) a condition that the holder shall not assign or mortgage the mineral development licence or any part thereof without the consent in writing of the Minister;
- (g) a condition that the holder shall furnish at such times and in such manner as required by the Minister progress, relinquishment and final reports accompanied by relevant maps, sections, charts and other data giving full particulars and results of the activities carried out on the specified area including detailed information of expenditure incurred during specified periods within the term of the mineral development licence;
- (h) a condition that the holder—
 - (i) shall pay the rental as prescribed;
and
 - (ii) shall deposit as required by the Minister any security from time to time under this Act;
- (i) a condition that the holder shall comply with the provisions of this Act;
- (j) such other conditions as are prescribed;
and
- (k) such other conditions as are determined by the Minister.

(2) The Minister may from time to time, with the agreement of the holder of a mineral development licence vary any condition imposed by the Minister.

(3) The holder of a mineral development licence and all persons acting under the authority of the licence shall comply with the conditions for the time being of the licence.

(4) Conditions may be imposed in respect of a mineral development licence that relate to action to be taken to minimize the effect on the environment (including land degradation and air and water pollution) on or outside the land specified in the mineral development licence of activities undertaken under the authority of the licence.

6.16 Renewal of mineral development licence. (1) The holder of a mineral development licence may, at least 6 months (or such shorter period as the Minister in a particular case allows) prior to and not more than 12 months before the expiration of the current term of the mineral development licence, make application for renewal of that mineral development licence.

(2) An application for renewal of a mineral development licence shall be made in writing to the Director-General in the prescribed manner and form and shall be accompanied by—

- (a) an analysis of the work and expenditure undertaken (if any) during the term of the licence to the date of the application for renewal, and the results, if any, obtained;
- (b) the applicant's proposed activities (if any) and expenditure during the proposed renewed term;
- (c) the applicant's reasons for seeking a renewal of the licence rather than applying for a mining lease;
and
- (d) the prescribed application for renewal fee.

(3) The Minister may from time to time grant to the holder of a mineral development licence a renewal of the licence for such further term as the Minister thinks fit not exceeding five years or such longer term as the Minister in exceptional circumstances approves subject, in addition to any prescribed conditions to any such further conditions whatever as the Minister may determine.

(4) Where an application for renewal of a mineral development licence is duly made by the holder but the application has not been disposed of by the Minister before the date on which the term of the mineral development licence then current would, but for the operation of this subsection have expired, then, subject to payment of the prescribed rental and compliance with this Act and the conditions of the mineral development licence, the mineral development licence shall continue in force and shall not be taken to have expired until the application is disposed of by the Minister.

(5) The term of a mineral development licence that is renewed (whether the renewal is granted before or after the date the mineral development licence expires or would, but for the operation of subsection (4), have expired) shall commence or be deemed to have commenced on the day following that expiry date but the conditions of the renewed mineral development licence shall apply from—

- (a) the commencement of that term;
- or
- (b) the date the renewal is granted,

whichever is the later.

(6) Where an assignment of a mineral development licence is approved and recorded under this Act after the date on which an application for a renewal of that licence is made but before that application is disposed of by the Minister, any renewal granted upon that application shall be in the name of the assignee under the assignment last so approved and recorded before the grant of that renewal.

6.17 Assignment, etc. of mineral development licence. (1) With the approval of the Minister, a mineral development licence or an interest

therein may be assigned or mortgaged in the prescribed manner and upon payment of the prescribed fee.

Where there are 2 or more holders of a mineral development licence, an application for assignment under this subsection shall be made by all the holders and, if a mortgage is recorded in respect of the mineral development licence, shall be accompanied by the mortgagee's consent.

(2) The holder of a mineral development licence desirous of exercising a power referred to in subsection (1) shall apply in writing to the Director-General for the Minister's approval to that exercise and shall furnish to the Director-General such information with respect thereto as the Minister requires.

(3) Upon an application made pursuant to subsection (2) the Minister shall cause the applicant to be given notice—

(a) that, subject to compliance with this Act in respect thereof and with any conditions specified in the notice within 3 months from the date of the notice or such other period as is specified in the notice, the Minister will approve the exercise;

or

(b) that the Minister does not approve the exercise.

(4) Upon receipt within the prescribed time of the prescribed document of assignment or mortgage that gives effect to an assignment or mortgage referred to in subsection (1) and upon compliance with this Act and all conditions specified in the notice given pursuant to subsection (3) (a) in respect of that assignment or mortgage and payment of the prescribed fee, the assignment or mortgage shall be approved and such particulars as are necessary to give effect to or evidence that assignment or mortgage shall be recorded in the appropriate register and endorsed on the mineral development licence.

(5) An assignment or mortgage of a mineral development licence shall not be in respect of part only of the land the subject of the mineral development licence.

(6) A purported assignment or mortgage of a mineral development licence or of an interest shall not be effective unless it is made in accordance with this section and approved as provided in subsection (4) and shall take effect on the day next following its approval by the Minister under subsection (4).

(7) Within 28 days of the Minister granting his approval of an assignment under this section, the assignee shall notify the owners of the relevant land of that approval.

6.18 Lodgment of caveat. (1) (a) Subject to paragraph (b), a person who claims a right or interest in or in respect of a mineral development licence may by a caveat in the prescribed form forbid the recording of any assignment or mortgage in respect of the mineral development

licence (save any assignment or mortgage the recording of which is excepted in the caveat) either absolutely or until after notice of intention to record such an assignment or mortgage is served on the caveator.

(b) A caveat duly lodged pursuant to this section does not apply in respect of an assignment or mortgage the application for approval of which was lodged with the Director-General before the lodgment of the caveat.

(2) A caveat referred to in subsection (1) shall—

- (a) be in or to the effect of the prescribed form;
- (b) specify the name and address for service of one person upon whom any notice may be served on behalf of the caveator or caveators;
- (c) identify the mineral development licence concerned;
- (d) specify the nature of the right or interest claimed by the caveator;
- (e) specify the period during which it is to continue in force;
- (f) be signed by the caveator, his solicitor or other person authorized in writing by the caveator;
- (g) if any person consents to the lodging of the caveat, be endorsed with that person's consent;
- (h) be lodged with the Director-General;
and
- (i) be accompanied by the prescribed lodgment fee.

6.19 Director-General's functions upon receipt of caveat. Upon receipt of a duly lodged caveat referred to in section 6.18, the Director-General shall—

- (a) notify the holder or holders of the affected mineral development licence;
- (b) notify all other persons who have an interest (other than an interest recorded pursuant to section 6.24) in the mineral development licence recorded in the register including any subsisting prior caveator;
and
- (c) record the existence of the caveat in the register.

6.20 Effect of caveat. (1) For so long as a caveat remains in force, an assignment or mortgage, in respect of the mineral development licence identified in the caveat shall not be recorded unless—

- (a) the assignment or mortgage is specifically excepted in the caveat;
or
- (b) the written consent of the caveator in the prescribed form to the recording of the assignment or mortgage is lodged with the Director-General.

(2) For the purposes of subsection (1), unless and until a caveat is removed or withdrawn as prescribed, a caveat continues in force—

- (a) in a case where the consent of each holder of the mineral development licence concerned has been lodged with the caveat, for the term specified in the caveat or, if no term is specified, indefinitely;
 - (b) in a case where the caveat (not being a caveat referred to in paragraph (a)) specifies a period of not more than 3 months during which it is to continue in force, until the expiration of that period;
 - (c) in a case where the Wardens Court or another court of competent jurisdiction so orders for so long as that order remains in force;
- or
- (d) in any other case, until the expiration of 3 months from the date of lodgment of the caveat.

6.21 Second caveat not available to same person. When a caveat has lapsed or has been removed or withdrawn as prescribed, it shall not be competent to the caveator to lodge in respect of the same mineral development licence another caveat whereby he claims the same or substantially the same right or interest unless—

- (a) the consent of each holder of the mineral development licence has been lodged with the lastmentioned caveat;
- or
- (b) the Wardens Court or another court of competent jurisdiction so orders.

6.22 Removal or withdrawal of caveat. (1) A caveat lodged pursuant to section 6.18 that has lapsed shall be removed by the Director-General and the register noted accordingly.

(2) Upon the plaint of a person who has a right or interest (present or prospective) in a mineral development licence affected by a caveat or whose right (present or prospective) to deal with a mineral development licence is affected by a caveat lodged in respect of the mineral development licence, the caveator may be summonsed to attend the Wardens Court or another court of competent jurisdiction to show cause why the caveat should not be removed.

(3) The Wardens Court or another court of competent jurisdiction may, upon the return of a summons referred to in subsection (2) or at any later time to which the hearing may be adjourned, make such order either *ex parte* or otherwise as the court deems just.

(4) If the Wardens Court or another court of competent jurisdiction orders that a caveat be removed, the Director-General shall give effect to the order.

(5) A caveator may withdraw his caveat at any time by notifying the Director-General in writing.

(6) The removal or withdrawal of a caveat shall be effected by the Director-General recording the removal or withdrawal in the register.

6.23 Compensation for lodging caveat without reasonable cause. A person who lodges a caveat in respect of a mineral development licence without reasonable cause is liable to pay such damages as may be recovered at law by any person aggrieved.

6.24 Recording of agreements, arrangements, dealings or interests.

(1) Upon application made in the prescribed form, payment of the prescribed fee, and production of a document purporting to evidence an agreement, arrangement or other dealing or interest (legal or equitable) in or in relation to a mineral development licence (other than an assignment or mortgage of the mineral development licence) to the Director-General, the Director-General shall—

(a) record in the register maintained by him, the relevant particulars set out in the application form;

and

(b) retain the document or a copy thereof.

(2) The Director-General shall make the recordings prescribed by subsection (1) in the order of time in which applications are lodged with the Director-General.

(3) The Director-General is not required to examine any document produced under this section or to determine the validity of any agreement, arrangement, dealing or interest alleged in an application made under subsection (1).

(4) An agreement, arrangement, dealing or interest, particulars of which are recorded under this section shall, subject to being otherwise legally enforceable, take priority over any other agreement, arrangement, dealing or interest—

(a) particulars of which have not been recorded under this section;

or

(b) particulars of which have been recorded under this section after particulars of the firstmentioned agreement, arrangement, dealing or interest had been recorded.

(5) Subsection (4) does not apply in respect of—

(a) an interest that is a registrable charge to and in relation to which the provisions of Division 9 of Part VI of the *Companies (Queensland) Code* mentioned in section 200 (1) of that Code apply;

or

(b) an estate or interest in land (whether freehold or leasehold) or a dealing therein which is registered or registrable by the Registrar of Titles, the Registrar of Dealings or other like registering authority.

6.25 Correction of instrument of mineral development licence. If, at any time the Minister is of the opinion that the instrument of a mineral development licence should be corrected by reason that—

- (a) the boundaries and area of the land comprised in the mineral development licence have been more accurately ascertained;
- (b) facts have appeared or been established since the grant of the mineral development licence that warrant a correction of the mineral development licence;

or

(c) the instrument is defective owing to error in its preparation, the Minister may correct the instrument and shall record details thereof in the register of mineral development licences kept by the Director-General and endorse the instrument which shall take effect accordingly.

6.26 Replacement of instrument of mineral development licence. (1) Where the Minister is satisfied that the instrument of a mineral development licence should be cancelled and a replacement instrument issued in its place, he shall cancel the instrument and cause a replacement instrument to be issued in its place.

(2) A replacement instrument of a mineral development licence issued under this section—

- (a) shall be the instrument in place of the instrument previously issued and cancelled under this section which last mentioned instrument shall, upon the issue of the fresh instrument, cease to be of any force or effect;
 - (b) may bear a form of endorsement which briefly traces the devolution of the licence from the original holder of the mineral development licence to the person appearing as holder thereof at the time the replacement instrument is issued;
 - (c) shall bear endorsement of all apparently subsisting mortgages affecting the mineral development licence and endorsed on the instrument so cancelled;
- and
- (d) shall be delivered to the person who appears to the Minister to be lawfully entitled to possession thereof.

The Director-General shall cause the instrument so cancelled to be suitably endorsed and a suitable recording made in the register kept by the Director-General that a replacement instrument has been issued in its place.

The cancelled instrument shall be retained by the Director-General.

6.27 Contravention by holder of mineral development licence. (1) If the Minister considers that the holder of a mineral development licence—

- (a) has carried out activities that are not bona fide for the purposes for which the mineral development licence was granted;
- (b) has failed to pay any moneys (other than rental) payable thereunder or in respect thereof by the due date for payment;

or

- (c) has failed to comply with any condition that is to be observed and performed by the holder under or in respect of the mineral development licence, other than a condition with respect to matters referred to in subsection (2) (a) or (b),

the Minister may—

- (d) cancel the mineral development licence;

or

- (e) impose on the holder a penalty not exceeding 1 000 penalty units.

(2) If the Minister considers that the holder of a mineral development licence—

- (a) in any year has failed after notice given to him in accordance with section 6.14 (4) to pay by 31 March of that year the amount of the rental payable under that section by that date in respect of that mineral development licence;

or

- (b) has failed to pay a penalty imposed on him pursuant to subsection (1) (e) within the time allowed for the payment by the Minister,

the Minister may cancel the mineral development licence and shall notify the holder and each person who currently holds a recorded interest in respect of the mineral development licence accordingly.

(3) The Minister shall not act pursuant to subsection (1) until he has, by notice in writing in or to the effect of the prescribed form served on the holder of the mineral development licence, called upon the holder to show cause within the time specified therein why the mineral development licence should not be cancelled or a penalty imposed and served a copy of the notice on every person who currently holds a recorded interest in respect of the mineral development licence and such cause has not been shown to the satisfaction of the Minister.

(4) When the Minister pursuant to this section cancels a mineral development licence he shall notify the holder and every person who holds a recorded interest in respect of the mineral development licence accordingly.

(5) For the purposes of this section a recorded interest in a mineral development licence does not include an interest recorded pursuant to section 6.24.

(6) The Minister upon cancellation of a mineral development licence pursuant to subsection (2) (b) may utilize the security or part thereof deposited in respect of that mineral development licence under section 6.11 towards payment of the unpaid penalty.

6.28 Surrender of mineral development licence. (1) The holder of a mineral development licence may apply to surrender the mineral

development licence or any part of the land comprised therein at any time before the expiration of its term.

(2) The holder of a mineral development licence who desires to surrender a mineral development licence or any part of the land comprised therein shall lodge with the Director-General—

- (a) a notice of surrender in the prescribed form;
 - (b) in the case of a surrender of part of the land comprised in a mineral development licence—
 - (i) a plan prepared in a manner acceptable to the Director-General of that part of the land to be retained in the mineral development licence;
 - (ii) identification in the prescribed manner of the boundaries of the land to be retained;and
 - (iii) if land other than land specified in the mineral development licence is required as access from a point outside the boundary of the land to be retained to any part on the surface of that land, a description and identification in the prescribed manner of that land;
- and
- (c) the prescribed fee.

(3) A purported surrender of a mineral development licence or of any part of the land comprised in a mineral development licence shall not be effective unless—

- (a) the holder has complied with this section;
- and

- (b) the Minister consents to the surrender,

and shall, except in the case of a surrender referred to in subsection (7), take effect on the day next following the Minister's consent.

(4) Where a mineral development licence is surrendered in respect of part only of the land comprised in the mineral development licence, the licence issued in respect thereof shall be corrected by excising that part and taking any other steps required to conform with this Act and thereupon the mineral development licence shall continue in force in respect of the land retained.

(5) (a) Upon a surrender of a mineral development licence, all adjustments between the holder and the Crown in respect of the payment of rental, fees and other moneys shall be at the discretion of the Minister.

(b) Where any moneys are specified pursuant to paragraph (a) as a debt due to the Crown, the Minister may direct that the security deposited in accordance with section 6.11 may be utilized for payment thereof.

(c) Any moneys specified pursuant to paragraph (a) by the Minister to be payable or that part thereof not recovered under paragraph (b)

shall be a debt due by the person specified as liable to pay to the Crown and may be recovered by action in a Wardens Court.

(6) In an action under subsection (5) for recovery of a debt due to the Crown, the production to the Wardens Court of a certificate by the Director-General certifying the amount of that debt shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the debt and the amount thereof.

(7) Where, at the time when the holder of a mineral development licence purports to surrender the mineral development licence or a part of the land comprised therein, that holder duly makes application for a new mineral development licence in respect of the whole or part of the land comprised in the current mineral development licence the purported surrender shall take effect immediately prior to the grant of the new mineral development licence.

6.29 Prior notice of entry to be served. (1) At least 7 days (or such shorter period as is acceptable to the owner of the land and endorsed on the notice of entry) before entry is made on occupied land under the authority of a mineral development licence, the holder of the mineral development licence shall serve on the owner of the land written notice in the prescribed form of intention to enter that land which notice shall contain a description of activities proposed to be carried out thereon and an indication of the times when those activities are to be carried out.

(2) A notice served under subsection (1) or a renewed notice served under paragraph (a) shall expire after 3 months unless—

(a) a notice in the prescribed form renewing that entry is served on the owner at least 7 days but not more than 21 days prior to the expiry of the notice then current containing a description of the activities proposed in the ensuing period and an indication of the times when activities are to be carried out;

or

(b) the owner in writing consents to a longer period than 3 months which consent shall be lodged by the holder with the mining registrar who shall make an appropriate noting in the register.

(3) If upon application by the holder of a mineral development licence, the mining registrar for the mining district within which the relevant land is situated is satisfied that it is impracticable to serve on the owner of that land a notice of intention as prescribed in subsection (1), the mining registrar may, in the exercise of his discretion, endorse upon the notice that the obligation to so serve the notice is dispensed with whereupon the owner of the land shall be taken to have been duly served with the notice.

(4) Before making an endorsement authorized under subsection (3), a mining registrar may require the holder of the mineral development

licence to take such action to publicise the proposed entry (which may include the publication of an advertisement in a newspaper or other publication) as the mining registrar considers appropriate.

6.30 Holder of mineral development licence to rehabilitate land. (1) Unless the Minister otherwise approves, the holder of a mineral development licence shall to the satisfaction of the Minister progressively rehabilitate the surface of any disturbed land, as nearly as may be, to its state or condition prior to operations under the mineral development licence.

(2) Unless the Minister otherwise approves, the holder of a mineral development licence shall ensure that all excavations are filled in at the conclusion of any activity purported to be carried on under the authority of the mineral development licence on any land.

(3) Unless the Minister otherwise directs, the holder of a mineral development licence, or other person to whom a mineral development licence applies, who applies for a mining lease in respect of land included in the mineral development licence is not obliged to comply with subsections (1) and (2) in respect of land the subject of the application unless and until the application is rejected or abandoned.

6.31 Rights and obligations extended upon application for mining lease. (1) The holder of a mineral development licence who, during the term of the licence makes application for the grant of a mining lease in respect of any land to which the licence applies, shall, during the period from the expiration of the licence until the determination of the application, for so long as the provisions of this Act and the terms and conditions that would apply if the licence were current are complied with, have all the responsibilities, powers, authorities and duties that he would have had in respect of the land the subject of the application if the licence was current but during that period no rental shall be payable under this Part in respect of the land the subject of the application.

(2) The entitlements of the holder of a mineral development licence are not reduced or limited by reason only of his application for the grant of a mining lease in respect of any land to which a mineral development licence applies.

6.32 Production of mineral development licence. (1) A person purporting to be upon land under the authority of a mineral development licence shall forthwith upon demand by the owner of that land, an agent of the owner or a person authorized in that behalf by the Minister for proof of his authority for being on the land, produce or cause to be produced to the person making the demand the mineral development licence or a written authorization in a form acceptable to the Minister from the holder of the mineral development licence authorizing him to enter or be upon that land for any purposes authorized thereunder.

(2) For so long as a person fails to comply with a demand lawfully made of him under subsection (1) he does not have any of the entitlements under this Act.

(3) This section does not apply to prevent a person entering land for the purpose of delivering goods or substances or providing services ancillary to the purpose for which the mineral development licence is granted to a person who is lawfully on that land under this Part.

6.33 Report to mining registrar by owner of land. (1) Where a person purports to enter or be upon land under the authority of a mineral development licence, the owner of the land who considers that that person is not authorized to enter or be upon that land or is not complying with any condition of the licence or of any provision of this Act may report accordingly to the mining registrar of the mining district in which is situated the land.

(2) The mining registrar shall have the report investigated and shall advise the owner of the land who reports under subsection (1) of any action taken upon the report.

6.34 Utilization of security deposit towards subsequent mineral development licence or mining lease. Where the holder of a mineral development licence makes application for the grant of a subsequent mineral development licence or a mining lease, the Minister notwithstanding that the period of 6 months after the termination of that licence may not have elapsed may, instead of refunding the whole or part of the security deposited in respect of the current mineral development licence, retain that security or part thereof (together with any further security fixed by the Minister) as the security (in which case it shall be taken to be or to be part of the security) deposited by the applicant in respect of the subsequent mineral development licence or the mining lease.

6.35 Direction to apply for mining lease. (1) If, at any time during the currency of a mineral development licence, the Minister is of the opinion that actual mining operations should commence on any land comprised in the licence, he shall give to the holder written notice directing him to indicate, within the time specified in the notice, why the holder should not apply for a mining lease for that purpose.

(2) If the holder of a mineral development licence to whom a notice under subsection (1) has been given does not, within the time specified in the notice, or such longer time as the Minister in writing may approve, reply to the notice, or the Minister, on considering the holder's reply, is not satisfied that the holder should not apply for a mining lease, the Minister may give the holder a further written notice directing him, within the time specified in the notice or such extended time as the Minister in writing may approve, to apply for such a mining lease.

(3) If the holder to whom a notice under subsection (2) is given does not apply for a mining lease as directed within the specified time or such extended time, the Minister may in his discretion cancel the mineral development licence.

(4) Upon the cancellation of a mineral development licence pursuant to subsection (3), the land comprised in the mineral development licence

does not become part of the land comprised in any current exploration permit.

(5) Any refund of moneys held in respect of a mineral development licence that is cancelled pursuant to subsection (3) (including any security deposited) shall be at the Minister's discretion.

6.36 Minister may determine availability of certain land. (1) Where in respect of any land—

- (a) an application for a mineral development licence or for renewal thereof is rejected by the Minister;
 - (b) a mineral development licence expires by effluxion of time and an application to renew the licence is not duly made;
 - (c) a mineral development licence is cancelled pursuant to section 6.27 or 6.35;
- or
- (d) a mineral development licence is surrendered or an application for the grant of a mineral development licence is abandoned in respect of land over which the holder of or the applicant for the grant does not hold an exploration permit that adjoins that land,

that land, shall not be available for any subsequent application for the grant of a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease unless and until approved by the Minister.

(2) (a) An approval of the Minister under subsection (1) may limit the type of application or grant that may be made in respect of the land specified in the approval and may stipulate the conditions under which applications therefor may be made.

(b) An approval of the Minister under subsection (1) may provide that a subsequent application by an eligible person need not be by the holder of a prospecting permit, exploration permit or a mineral development licence.

(3) Notwithstanding subsection (1), where the applicant for a mineral development licence that is rejected is at the time of the rejection the holder of an exploration permit in respect of the same land, that land shall, upon the rejection, be subject to the exploration permit.

6.37 Discovery etc. of mineral does not vest property. A person who whilst acting under the authority of a mineral development licence discovers or takes any mineral does not thereby acquire property therein and shall not dispose of any such mineral except with the consent of the Minister whose consent may be subject to such terms and conditions as the Minister thinks fit (including conditions as to the payment of royalties).

6.38 Effect of termination of mineral development licence. (1) Upon the termination of a mineral development licence for any cause (other

than for the purpose of granting a mineral development licence or a mining lease to the holder of the terminated mineral development licence) all machinery and equipment then in or on the land comprised in the terminated mineral development licence under the authority of that licence shall be divested from the person in whom it vested immediately prior to that termination and shall become the property of the Crown.

(2) (a) Upon an application made in writing to the Minister by a person who was the holder of the mineral development licence immediately prior to its termination or any other person who appears to the Minister to have a sufficient interest therein made within 28 days (or such longer period not exceeding 3 months as the Minister in a particular case approves) after the date of termination, the Minister shall give permission for that person, within the period specified by the Minister, to enter upon the land in question and subject to compliance with any condition imposed by the Minister remove machinery, plant and other removable improvements therein or thereon at the date of the termination other than any cover, fencing, casing, lining, timbering or other things, securing the safety of the land to the extent that he was entitled so to do immediately prior to that date.

(b) Any thing duly removed from land pursuant to permission given under paragraph (a) shall thereupon be divested from the Crown and shall become the property of the person entitled thereto according to law immediately prior to the date of termination of the mineral development licence.

(3) The entitlement of a person who was the holder of a mineral development licence that has terminated or any other person to act pursuant to subsection (2) shall not be derogated by a subsequent grant of a mining claim, exploration permit, mineral development licence or mining lease.

(4) Any thing vested in the Crown pursuant to this section may be sold by the mining registrar upon the direction of the Director-General which sale shall be at public auction unless the Minister otherwise directs.

The proceeds of such a sale shall be applied as follows—

- (a) firstly, in payment of the expenses of the sale;
- (b) secondly, in payment of moneys due and payable by the former holder to the Crown in right of the State on any account whatever;
- (c) thirdly, in payment of costs of rectification of actual damage in respect of which the relevant security deposit could have been utilized to the extent that the security deposit was not so utilized or was deficient;
- (d) lastly, but subject to the provisions of the next following paragraph, in payment to the former holder of the balance then remaining.

If, at the date of termination of a mineral development licence, the land in question was subject to a mortgage recorded under this Act and, at the date the balance of the proceeds of sale is to be applied any sum secured thereby remains unpaid, the Minister may cause the balance or any part thereof to be applied in satisfaction or part satisfaction of the unpaid sum and the balance otherwise payable to the former holder to be reduced accordingly.

(5) Where the Minister is unaware of the identity or the whereabouts of a person to whom any part of the proceeds of a sale should be paid pursuant to subsection (4) (d), that part shall be paid to the Public Trustee of Queensland as unclaimed moneys and the provisions of the *Public Trustee Act 1978-1989* with respect to unclaimed moneys shall apply thereto.

PART 7—MINING LEASES

7.1 Land subject to mining lease. (1) Unless otherwise approved by the Minister pursuant to section 6.36 (2) (b), a mining lease in respect of a mineral or minerals may be applied for by an eligible person in respect of contiguous land comprised in—

- (a) a prospecting permit or prospecting permits;
- (b) an exploration permit or exploration permits;
- or
- (c) a mineral development licence or mineral development licences,

in respect of that mineral or those minerals of which the applicant or, where more than one person is the applicant, at least one of them is, with or without others, the holder.

(2) Where a mining lease may be granted to a person pursuant to subsection (1) a mining lease may also be granted to that person for any purpose for which mining leases may be granted.

7.2 Only eligible persons to hold mining leases. A mining lease shall not be held by a person who is not an eligible person.

7.3 Governor in Council may grant mining lease. The Governor in Council may grant and cause to be issued to an eligible person or persons, a mining lease for all or any of the following purposes:—

- (a) to mine the mineral or minerals specified in the lease and for all purposes necessary to effectually carry on that mining;
- (b) such purposes, other than mining, as are specified in the mining lease and that are associated with, arising from or promoting the activity of mining.

7.4 Entitlements of holder of mining lease. (1) During the currency of a mining lease, the holder of the mining lease and any person who acts as agent or employee of the holder (or who delivers goods or

substances or provides services to the holder) for a purpose for which the mining lease is granted—

- (a) may enter and be—
 - (i) within the land comprised in the mining lease;
and
 - (ii) upon the surface area comprised in the mining lease,
for any purpose for which the mining lease is granted or
for any purpose permitted or required under the lease or
by this Act;
- (b) may do all such things as are permitted or required under
the lease or by this Act.

(2) Where any Act provides that water may be diverted or appropriated only under authority granted under that Act, the holder of a mining lease shall not divert or appropriate water unless he holds that authority.

7.5 Entitlement to use sand, gravel and rock. (1) Subject to compliance with any conditions specified in the mining lease and payment of the prescribed royalty to the person having the property in any sand, gravel or rock the holder of the mining lease may utilize, upon the land comprised in the mining lease and for any purpose permitted under the mining lease, sand, gravel and rock occurring in or on the land comprised in the mining lease except to the extent that an authority granted under any other Act prior to the grant of the mining lease or, with the consent of the holder of the mining lease, after the grant of the mining lease for the use or disposal applies thereto.

(2) A provision in any other Act that, but for this subsection, would require a person acting pursuant to subsection (1) to obtain a licence or other authority thereunder to so act or would prohibit that person from so acting unless he held such a licence or authority does not apply to that person.

(3) For the purposes of Part 9, sand, gravel and rock utilized by the holder of a mining lease pursuant to this section shall be deemed to be mineral mined by the holder.

7.6 Mining lease over surface that is reserve or near dwelling-house etc. only with consent. (1) A mining lease shall not be granted over the surface of land that is a reserve except with—

- (a) the consent of the owner of that land lodged in writing with the mining registrar;
- or
- (b) the consent of the Governor in Council which shall be expressly stated in the grant of the lease.

(2) A mining lease shall not be granted over the surface of land of an owner that, at the time the application for the grant of the mining lease is lodged at the office of the mining registrar, is—

(a) within 100 metres laterally of—

(i) a dwelling-house, or other building of the owner (not of a temporary nature) on that land principally used for accommodation of persons or used for the conduct of business;

or

(ii) a building (not of a temporary nature) on that land currently used for community, sporting or recreational activities or as a place of worship;

or

(b) within 50 metres laterally of—

(i) a principal stockyard or a dam, bore or artesian well of the owner of that land or other artificial water storage of that owner connected to a supply of water;

or

(ii) a cemetery or burial place,

except with the written consent of the owner of that land lodged with the mining registrar on or before the date on or before which objections to the application for the grant of the mining lease may be lodged.

For the purposes of this section, a dwelling-house or building means a fixed structure that is wholly or partly enclosed by walls and is roofed.

Consent referred to in this subsection, once given, cannot be withdrawn.

7.7 Restriction on mining leases where land freed from exploration permit. (1) Upon an area of land, for whatever reason, ceasing to be the subject of an exploration permit, then, for a period of 2 calendar months following the end of the month in which that cessation occurs—

(a) any application for a mining lease in respect of land within that area that exceeds 50 hectares shall be rejected;

and

(b) a person shall not apply for the grant of or hold or have an interest (whether direct or indirect) in mining leases over any of that land the aggregate area of which exceeds 300 hectares.

(2) Subsection (1) does not apply where the land was the subject of an exploration permit in respect of coal or of a specified mineral or specified minerals pursuant to section 5.5 (2).

7.8 Marking out land before application for grant of mining lease. (1) An eligible person who wishes to apply for the grant of a mining lease shall mark out, in the prescribed manner which shall include a datum post, the boundary of the land proposed to be the subject of the

application, whether or not the surface of the land is included in the application.

(2) Where an application for a mining lease is for part only of the surface of the land proposed to be the subject of the mining lease a person shall not, in complying with subsection (1), be required to peg the boundary of the surface area which is to be included in the mining lease.

7.9 Manner of marking out land proposed to be subject of mining lease. (1) Before making an application for the grant of a mining lease, the intending applicant or some person authorized on his behalf shall mark out the land by inserting firmly in the ground at each and every corner of the land applied for a round post which shall be not less than 10 centimetres in diameter or a square post each side of which shall be not less than 10 centimetres in width standing at least 1 metre above the surface and sunk not less than 50 centimetres in the ground. That part of each post above the surface shall be painted white.

Where posts are of timber construction they shall be barked and dried of sap before use.

One of the posts shall be selected to be the datum post for the purpose of the commencement of the description and from which a surveyor shall commence any survey of the land.

(2) (a) There shall be engraved or in some way durably marked on each post the applicant's initials and surname (or of one applicant should there be more than one) and the numerals indicating the date on which the subject land was marked in accordance with this section and the engraving or marking shall be so maintained until action is taken in accordance with section 7.18 (3) (a) and (b). Where the applicant is a company the initials of that company (or of any one company should there be more than one) shall be engraved and marked as prescribed herein on the posts.

(b) If a post cannot be inserted in the manner prescribed there shall be erected a cairn of stones at least 50 centimetres high in the place where the post should have been inserted.

If cairns of stones are erected there shall be engraved or in some way durably marked thereon the particulars which would have been required had a post been inserted.

(c) Where it is not practicable to insert a post or erect a cairn of stones in the manner prescribed at every corner of the land applied for, there may be inserted a datum post only and compass bearings shall be taken and distances measured, as required by section 7.14.

(3) Where it is impossible to insert a datum post or erect a cairn of stones in the manner prescribed by subsection (1) the land shall be marked by measuring a distance on a given bearing from a reference post to a point which shall be the nominal position of the starting point and from which any survey of the land shall commence and the reference

post shall in all respects comply with the provisions of this Act relating to a datum post, except the provisions relating to position.

7.10 Consent of mining registrar required to certain marking out of land. Where the land the subject of a mining lease is marked out in accordance with section 7.9 (2) (c) or 7.9 (3) the consent of the mining registrar is required and his consent may be given at any time prior to the issue of the certificate of application. Where consent is so given, the mining registrar shall note the register accordingly.

7.11 Time for application for grant of mining lease. An eligible person who marks out the boundary of land in accordance with this Part, may during the currency of his prospecting permit, exploration permit or mineral development licence but within 7 days of so marking out, apply in the prescribed manner for the grant of a mining lease over that land.

7.12 If application for mining lease not made, is rejected or abandoned, posts, etc. to be removed. (1) A person who marks out the boundary of land for the purpose of making an application for the grant of a mining lease shall remove or cause to be removed forthwith all posts, cairns and other things used by him to mark out the boundary (not being a survey mark or other thing required by any other Act not to be removed)—

(a) where he has not made the application within 7 days of the marking out, upon the expiration of those 7 days;

or

(b) where he has made the application as prescribed, upon the rejection or abandonment of the application.

(2) For the purpose of removing posts, cairns and other things in compliance with subsection (1), a person may enter and be upon the relevant land.

7.13 Application for grant of mining lease. (1) An application for the grant of a mining lease shall—

(a) be in or to the effect of the prescribed form;

(b) specify the name of each applicant;

(c) specify the name and address for service of one person upon whom any notice may be served on behalf of the applicant or the applicants;

(d) describe all parcels of land the whole or part of which are the subject of the application and specify the current use of the land and whether it is subject to erosion control works and the names and addresses of the owner or owners of the land and of land which is to be used as access thereto;

(e) identify in the prescribed manner the boundaries of the land applied for;

(f) identify in the prescribed manner the boundaries of any surface area of land within the boundaries described pursuant

- to paragraph (e) to be included in the mining lease and specify the purpose for which that area is to be used;
- (g) identify any improvements referred to in section 7.6 (2) on land identified in the application as required by paragraph (f);
 - (h) describe and identify in the prescribed manner any land proposed to be used as access from a point outside the boundary of the mining lease acceptable to the mining registrar to land over which the mining lease is sought;
 - (i) give reasons why the mining lease should be granted in respect of the area and shape of the land described in the application;
 - (j) be accompanied by a sketch, map or other graphic representation acceptable to the mining registrar setting out the boundaries of any land referred to in paragraphs (e), (f) and (h);
 - (k) identify the mineral or minerals or purpose in respect of which the mining lease is sought;
 - (l) nominate the term of the mining lease sought and give reasons therefor;
 - (m) subject to section 7.15, be lodged by the applicant personally at the office of the mining registrar for the mining district in which is situated the land in respect of which the mining lease is sought during the hours prescribed for the conduct of business at that office;
 - (n) be accompanied by the consent in writing of each person who is a holder of the exploration permit or the mineral development licence in respect of the land the subject of the application and is not an applicant;
 - (o) be accompanied by—
 - (i) proof to the satisfaction of the mining registrar of the identity of the applicant;
 - (ii) such additional copies of the application and other documents lodged therewith as the mining registrar requires;
 - (iii) the prescribed application fee;and
 - (iv) a statement acceptable to the Minister specifying—
 - (A) the financial and technical resources of the applicant;
 - (B) an outline of the mining programme proposed and the method of its operation or any other use proposed for the land and an indication when operations are expected to commence;
 - (C) proposals for any infrastructure requirements that will or may be necessary to enable the mining programme

- to proceed or the additional activities to be carried on pursuant to section 7.68 to ascertain those requirements;
- (D) proposals for protecting the environment, including surface water and ground water, on, and in the vicinity of, the area of the proposed lease during its term;
and
 - (E) proposals for progressive and final rehabilitation of the land.

The Minister shall not accept a mining programme referred to in paragraph (o) (iv) (B) which is inconsistent with the provisions of this Act.

(2) For the purposes of subsection (1) (m), an application is lodged personally if it is lodged by a natural person who is—

- (a) the applicant;
or
- (b) a person authorized in writing in that behalf by the applicant.

7.14 Description of mining lease. In an application for the grant of a mining lease—

- (a) the datum post shall be accurately related by measured distances and compass bearings (or other method acceptable to the mining registrar) to a survey mark or other fixed and well defined point acceptable to the mining registrar;
- (b) the boundaries of the mining lease shall be described by accurately measured distances and compass bearings on the ground or other method acceptable to the mining registrar;
- (c) the boundaries of any surface areas shall be described by accurately measured distances and compass bearings on the ground or other method acceptable to the mining registrar and the description shall be related to a boundary post of the land referred to in the application by accurately measured distances and compass bearings;
- (d) the surface access, if any, from a point acceptable to the mining registrar to a surface area of land within the boundaries of the mining lease applied for shall be described by measured distances and compass bearings along the centre line of that access together with the width of that access or by some other method acceptable to the mining registrar;
and
- (e) the datum post or commencement point of the description of any land the subject of a mining claim, mineral development licence or mining lease or application for the grant of a mining claim, mineral development licence or mining lease, in any case wholly within the land sought for the mining lease shall be related by measured distances and compass bearings on the ground (or other method acceptable

to the mining registrar) to the datum post of the land the subject of the application.

7.15 Lodgment of application where land in more than one mining district. (1) Where an application for a mining lease relates to land that is situated in more than one mining district, the application shall be lodged personally with the mining registrar for the mining district in which the major portion of the land is situated.

(2) A mining registrar who accepts the lodgment of an application referred to in subsection (1), shall notify forthwith the mining registrar for each other district in which land the subject of the application is situated.

7.16 Rejection of application by mining registrar. (1) A person who lodges an application for the grant of a mining lease shall provide the mining registrar with such information and particulars relating to the requirements set out in section 7.13 (1) on behalf of the applicant as the mining registrar requires and on failure to provide that information the mining registrar may reject the application.

(2) A mining registrar may reject an application for a mining lease in respect of land the whole or part of which appears, on evidence available to the mining registrar, to be the subject of a mining claim, mineral development licence or a mining lease or of an application for the grant of a mining claim, mineral development licence or mining lease.

(3) For the purposes of subsection (2) where a mining claim, mineral development licence or mining lease is terminated or an application for a mining claim, mineral development licence or mining lease is abandoned or rejected, the relevant land shall be deemed to continue to be subject to the mining claim, mineral development licence or mining lease, or application until the day next following that termination, abandonment or rejection.

(4) (a) A person whose application for the grant of a mining lease is rejected by the mining registrar pursuant to subsection (1) or (2) may appeal against the rejection to the Wardens Court by lodging a written notice of appeal with the registrar of the Wardens Court within 28 days of the rejection.

(b) The Wardens Court shall hear and determine the appeal and its determination thereon shall be final.

(c) At a hearing pursuant to this subsection the Wardens Court shall take such evidence, shall hear such persons and inform itself in such manner as it considers appropriate in order to determine the appeal and shall not be bound by any rule or practice as to evidence.

If the Wardens Court does not confirm the rejection by the mining registrar the warden shall direct the mining registrar to proceed with the application and the mining registrar shall do all things necessary to implement that decision.

7.17 Priority of applications for grant of mining lease. (1) Applications for the grant of mining leases duly made in respect of or including the same land shall take priority for the purpose of consideration and determination of applications according to the order of the time on which they are lodged as prescribed.

(2) If the mining registrar is or, where applications are lodged with different mining registrars, those registrars are of the opinion that the circumstances of the lodgment of some applications for the grant of mining leases made in respect of the same land are such that the applications should be treated as having been lodged simultaneously, the mining registrar or registrars may treat the applications as having been lodged simultaneously and shall determine their respective priorities by ballot.

The mining registrar shall advise all applicants when and where the ballot is to be held.

7.18 Certificate of application, etc. (1) (a) Upon being satisfied that the applicant for the grant of a mining lease is eligible to apply for the mining lease and that the applicant has complied with the requirements of this Act with respect to that application the mining registrar shall prepare a certificate of application for a mining lease in or to the effect of the prescribed form.

(b) The mining registrar shall endorse on the certificate of application the number of the proposed mining lease, the date and time of lodgment of the application and a date fixed by the mining registrar on or before which objections to the application may be lodged such date being not less than 21 days therefrom and the person who lodges the application shall thereupon sign the certificate.

(c) Upon the signing of a certificate of application for a mining lease as prescribed in paragraph (b), the particulars set forth in the certificate, to the extent of any conflict with particulars set forth in the application for the grant of the mining lease, shall be deemed to be the particulars set forth in the application in place of the conflicting provisions in the application.

(2) (a) The mining registrar shall forthwith post at his office and shall therein keep posted until the last date fixed for the receipt of objections a copy of the certificate of application duly endorsed pursuant to subsection (1).

(b) The mining registrar shall forward a copy of each application for the grant of a mining lease lodged with him together with a copy of the certificate of application (if any) issued by him to the Director-General.

(3) Within 7 days after the endorsement of the certificate of application pursuant to subsection (1) (or such longer period as the mining registrar in the particular case at any time determines) the applicant shall—

(a) cause a true copy of the endorsed certificate of application to be posted on the datum post of the land the subject of

the application and shall keep a copy thereon posted until the last date fixed for the receipt of objections pursuant to subsection (1) in respect of the application;

- (b) engrave or in some way durably mark on the datum post of the land the subject of the application the number of the proposed mining lease;
- (c) cause a true copy of the application and of the endorsed certificate of application to be served on—
 - (i) each owner of land to which the proposed mining lease and access thereto relates;
 - and
 - (ii) the relevant Local Authority;
- and
- (d) cause a true copy of the endorsed certificate of application to be advertised in the prescribed manner in a newspaper approved by the mining registrar and circulating in the relevant mining district at least 14 days prior to the last date for the receipt of objections pursuant to subsection (1).

(4) An advertisement published pursuant to subsection (3) (d) need not include a copy of a map or plan set forth in the certificate of application for the mining lease, but the mining registrar may direct the applicant to include in the advertisement a sketch plan, approved by the mining registrar, that indicates with reasonable certainty the location of the land to which the application relates.

(5) An applicant for a mining lease shall, within 7 days or such longer period as the mining registrar in the particular case, at any time, allows after the date fixed pursuant to subsection (1) as the last date for the receipt of objections to his application, lodge with the mining registrar a declaration made under the provisions of the *Oaths Act 1867-1988* as to his compliance with subsection (3).

(6) Until the applicant for the grant of a mining lease lodges the declaration prescribed by subsection (5) with the mining registrar, the warden—

- (a) shall not make any final recommendation (other than a recommendation to reject the application) to the Minister in respect of that application;
- (b) may at any time refuse to hear further any matter in respect of the application.

(7) An applicant for the grant of a mining lease who supplies the mining registrar with any additional information relevant to the application shall forthwith supply the owner of the land concerned and the Local Authority with that information.

7.19 Owner of land may request conference. (1) Within 7 days (or such longer period as the mining registrar in a particular case approves) of receipt by him of a copy of a certificate of application for a mining

lease duly endorsed pursuant to section 7.18 (1), an owner of land to which the application relates may apply to the mining registrar for a conference to be convened with the applicant.

The owner shall indicate any particular matters he wishes to discuss at the conference.

(2) Upon receipt of an application for a conference by an owner of land, the mining registrar as soon as practicable shall convene and chair a conference with the applicant and the owner which shall be held not later than on the last date for the receipt of objections fixed in respect of the application for the mining lease at a time and place determined by the mining registrar.

(3) The owner of land and the applicant for the grant of the mining lease shall attend the conference which, at the request of the owner or the applicant, the mining registrar may with the agreement of the parties adjourn from time to time and place to place.

(4) The mining registrar shall not adjourn a conference if he considers the adjournment will not facilitate the resolution of any conflict between the owner of land and the applicant.

(5) The mining registrar may at his discretion determine that one conference shall be convened in respect of all owners of land the subject of an application for a mining lease who request a conference.

(6) Any agreement reached between parties at a conference convened under this section shall be reduced to writing and executed by or on behalf of the parties so agreeing and lodged with the mining registrar prior to the date set for the hearing of the application for the mining lease.

(7) Any submission made or evidence adduced by a party at a conference convened under this section shall be confidential between the mining registrar and each of the parties and, except where it is included in an agreement made pursuant to subsection (6), shall not be published or admitted as evidence in any hearing or proceeding without that party's consent.

(8) With the approval of the mining registrar a party may be assisted at a conference by another person.

(9) For the purposes of this section, the mining registrar who convenes a conference is not a party to the conference.

(10) Upon application by a party to a conference, the warden may award such costs as he considers appropriate to that party against a party who fails to appear at the conference.

7.20 Objection to application for grant of mining lease. (1) An eligible person, Local Authority or owner of land may, on or before the last date fixed for the receipt of objections, lodge with the mining registrar an objection in writing in the prescribed form.

(2) An owner of land who attends a conference with the applicant for the grant of a mining lease may lodge an objection on or before the

expiration of 7 days after the conclusion of that conference or if the applicant for the grant of the mining lease fails to attend the conference after the day upon which the conference was convened, notwithstanding that the period for objection prescribed by subsection (1) has expired.

(3) An objection referred to in subsection (1) or (2) shall state the grounds of objection and the facts and circumstances relied on by the objector in support of those grounds.

(4) Each objector to an application for the grant of a mining lease shall serve upon the applicant on or before the last date that he may lodge an objection to that application a copy of the objection lodged by him.

7.21 Minister may direct study. At any time following the issue of the certificate of application and before the grant of a mining lease, the Minister may require the applicant to undertake or cause to be undertaken a study into the environmental impact of the grant of such a mining lease.

7.22 Mining registrar to fix hearing date. The mining registrar shall immediately after the last date that objections to an application for the grant of a mining lease may pursuant to section 7.20 (1) be lodged, fix a date, being not sooner than 7 days after—

(a) the last date for the receipt of objections;

or

(b) the conclusion of any conference convened pursuant to section 7.19,

whichever is the later, for the hearing by the Wardens Court of the application and any objections to that application duly lodged.

The mining registrar shall notify the applicant and all objectors accordingly.

7.23 Mining registrar may recommend rejection of application for non-compliance. At any time after the issue of a certificate of application, a mining registrar, who is of the opinion that an applicant for the grant of a mining lease has not complied with any requirement placed upon him by or under this Act in respect of his application, may recommend to the Minister that the application be rejected.

7.24 Minister may reject application at any time. (1) The Minister, whether or not the mining registrar has so recommended, may at any time reject an application for the grant of a mining lease notwithstanding that the application has not been the subject of a hearing by the Wardens Court if—

(a) he is satisfied that the applicant has not complied with any requirement placed upon him by or under this Act in respect of his application;

or

(b) he considers that it is not in the public interest for the mining lease to be granted.

7.25 Hearing of application for grant of mining lease. (1) On the date fixed for the hearing of the application for the grant of the mining lease and objections thereto, the Wardens Court shall hear the application and any objections thereto and all other matters that pursuant to this Part are to be heard, considered or determined by the Wardens Court in respect of that application at the one hearing of the Wardens Court.

The hearing shall be open to the public.

(2) (a) At a hearing pursuant to subsection (1) the Wardens Court shall take such evidence, shall hear such persons and inform itself in such manner as it considers appropriate in order to determine the relative merits of the application, objections (if any) and other matters and shall not be bound by any rule or practice as to evidence.

(b) The Wardens Court shall not entertain an objection to an application or any ground thereof or any evidence in relation to any ground if the objection or ground is not contained in an objection that has been duly lodged in respect of the application.

(3) The Wardens Court may direct an inspection or view of the land the subject of the application.

(4) Nothing in subsection (1) shall prevent the adjournment from time to time of a hearing.

(5) Nothing in subsection (1) shall prevent the question of compensation being determined by the Wardens Court pursuant to section 7.36.

(6) The Minister may require at any time the warden to advise the reasons why a hearing under this section has not been finalized.

(7) The Wardens Court shall not take evidence in a hearing of an application for the grant of a mining lease until the results of any study into the environmental impact of such a grant requested by the Minister are available to the court.

7.26 Warden's recommendation on hearing. (1) Upon the hearing by the Wardens Court under this Part of all matters in respect of an application for the grant of a mining lease, the warden shall forward to the Minister—

- (a) any objections lodged in relation thereto;
- (b) the evidence adduced at the hearing;
- (c) any exhibits;
- and
- (d) his recommendation.

(2) The recommendation of the warden upon an application for the grant of a mining lease shall consist of—

- (a) a recommendation to the Minister that the application should be granted or rejected in whole or in part;

and

- (b) in the case of an application that relates to land that is the surface of a reserve and the owner of that reserve does not consent to the grant of a mining lease over that surface area, a recommendation to the Minister as to whether the Governor in Council should consent to the grant of the mining lease over that surface area and, if so, recommend the conditions (if any) to which the mining lease should be subject.

A recommendation may include a recommendation that the mining lease be granted subject to such conditions as the warden considers appropriate, including a condition that mining shall not be carried on above a specified depth below specified surface area of the land.

(3) The warden, when making a recommendation to the Minister that an application for a mining lease be granted in whole or in part, shall take into account and consider whether—

- (a) the provisions of this Act have been complied with;
- (b) the area of land applied for is mineralised or the other purposes for which the lease is sought are appropriate;
- (c) if the land applied for is mineralised there will be an acceptable level of development and utilization of the mineral resources within the area applied for;
- (d) the land and the surface area of the land in respect of which the mining lease is sought is of an appropriate size and shape;
- (e) the term sought is appropriate;
- (f) the applicant has the necessary financial and technical capabilities to carry on mining operations under the proposed mining lease;
- (g) the past performance of the applicant has been satisfactory;
- (h) the operations to be carried on under the authority of the proposed mining lease will conform with sound land use management;
- (i) there will be any adverse environmental effect caused by those operations and, if so, the extent thereof;
- (j) the public right and interest will be prejudiced;
- (k) any good reason has been shown for a refusal to grant the mining lease.

(4) Where the warden recommends to the Minister that an application for the grant of a mining lease be rejected in whole or in part he shall furnish the Minister with his reasons for that recommendation.

7.27 Procedure where no objections lodged. (1) The warden may, in his discretion, dispense with a hearing of an application for the grant of a mining lease if he is satisfied that—

- (a) the provisions of this Part (other than the provisions requiring the hearing) have been complied with in respect of the application;
 - (b) no objection to the grant of the mining lease has been duly lodged;
 - (c) where the application relates to land that is the surface of a reserve, the owner thereof consents to the grant of the mining lease;
- and
- (d) where the application is in respect of land over which, pursuant to section 7.6 (2), a mining lease shall not be granted without the consent of another person or other persons, that person or those persons consent to the grant.

(2) The warden shall indicate in any recommendation for the grant of a mining lease where the hearing of the application therefor has been dispensed with, that he has taken into account and considered all matters in respect thereof set out in section 7.26 (3).

7.28 Minister to consider recommendation made in respect of application for grant of mining lease. (1) Every recommendation made by a warden in respect of an application for the grant of a mining lease shall be considered by the Minister who after taking into account the matters specified in section 7.26 (3) may—

- (a) recommend to the Governor in Council that a mining lease be granted and an instrument of lease be issued to the applicant with respect to the whole or part of the land the subject of the application and, if necessary, where any surface of the land is reserve, that consent to the grant be given;
 - (b) reject the application;
- or
- (c) direct the Wardens Court to hold a hearing or further hearing into the application generally or limited to such matter as the Minister specifies.

(2) A recommendation by the Minister pursuant to subsection (1) (a) that a mining lease be granted in respect of part only of the land the subject of an application for the grant is a rejection by the Minister pursuant to subsection (1) (b) of the application with respect to that part of the land included in the application that is not included in the recommendation for the grant.

(3) Where the Minister rejects an application pursuant to subsection (1) (b) or (2), he shall inform the applicant of his reason for the rejection.

7.29 Minister may remit to Wardens Court for additional evidence. (1) Where, pursuant to section 7.28 (1) (c), the Minister directs that a

hearing or further hearing of an application for the grant of a mining lease be held, the mining registrar shall fix a time and date therefor and shall notify at least 7 days before that hearing the applicant and in the case of a further hearing all other persons who appeared or were represented at the original hearing of that application and any other party required to attend.

(2) At the conclusion of the hearing under this section the warden shall forward that evidence and any exhibits to the Minister and any recommendation he may make in relation to that additional evidence.

7.30 Restriction on grant of mining lease that does not include surface of land. A mining lease over land shall not be granted unless—

- (a) it includes such an area of the surface of that land;
or
- (b) where it does not include an area of the surface of that land, the applicant is the holder of such an adjoining mining lease,

as will enable the holder to carry out the purposes for which the firstmentioned mining lease is granted.

7.31 Holder of a mining lease to mark boundary posts. Unless the land the subject of a mining lease has been surveyed, the holder of the mining lease shall, within 7 days of the date of grant of the mining lease, engrave or in some way durably mark on every boundary post of the land the subject of the mining lease or cairn erected as prescribed in lieu thereof the number of that mining lease and shall maintain those posts or cairns duly engraved or marked while the mining lease subsists and the land is not surveyed.

7.32 Application for inclusion of surface of land in mining lease.

(1) Notwithstanding section 7.1, the holder of a mining lease that does not include any portion of the surface of the land to which that mining lease relates or that includes a portion only of the surface of the land to which that mining lease relates may at any time apply for an additional area of surface of that land to be included in the mining lease.

(2) An application made under this section shall be made and dealt with in the same manner as if it were an application for a mining lease made under this Part, and for that purpose—

- (a) the posting of any notice on a conspicuous part of the area applied for shall be sufficient compliance with the provisions of this Act relating to the posting of that notice on the land;
and
- (b) the mining registrar shall endorse upon the certificate of application pursuant to section 7.18 (1) (b) as the number of the proposed mining lease the number of the existing lease together with the words “addition of surface area”.

7.33 Conditions of mining lease. (1) Each mining lease shall be subject to—

- (a) a condition that the holder shall use the land comprised in the mining lease bona fide for the purpose for which the mining lease was granted and in accordance with this Act and the conditions of the mining lease and for no other purpose;
- (b) a condition that the holder shall in the prescribed manner from time to time submit to the Minister a plan of operations as prescribed;
- (c) a condition that the holder shall to the satisfaction of the Minister provide for the control of the impact on the environment of the operations carried out under the authority of the mining lease;
- (d) a condition that the holder shall undertake rehabilitation of the surface area comprised in the mining lease, and of any other land adversely affected by the carrying on of operations authorized by the mining lease, to the satisfaction of the Minister;
- (e) a condition that the holder, prior to the termination of the mining lease for whatever cause, shall remove any building or structure purported to be erected under the authority of the mining lease and all mining equipment and plant, on or in the land comprised in the mining lease unless otherwise approved by the Minister;
- (f) a condition that without the prior approval of the Minister the holder shall not obstruct or interfere with any right of access had by any person in respect of land the subject of the mining lease;
- (g) a condition that the holder shall not assign, sublease, or mortgage the mining lease or any part thereof without the consent in writing of the Minister;
- (h) a condition that the holder shall furnish as prescribed all prescribed reports, returns, documents and statements whatever;
- (i) where the mining lease is in respect of land that is a reserve, a condition that the holder shall comply with the terms and conditions upon which the consent of the owner or the Governor in Council to the grant of the mining lease was given;
- (j) a condition that the holder shall maintain during the term of the lease the marking out of the land the subject of the mining lease including any survey pegs but that boundary posts or cairns need not be maintained after the land has been surveyed;
- (k) a condition that the holder shall make all payments of compensation and comply with all terms of any agreement or determination relating to compensation at the time or

times as agreed or determined pursuant to section 7.36, 7.37, 7.38 or 7.39;

- (l) a condition that the holder—
 - (i) shall pay the rental as prescribed;
 - (ii) shall pay the royalty as prescribed;
 - (iii) shall pay all local authority rates and charges lawfully chargeable against the holder in respect of the land comprised in the mining lease;
and
 - (iv) shall deposit as required by the Minister any security from time to time under this Act;
- (m) a condition that the holder shall comply with the provisions of this Act;
- (n) such other conditions as are prescribed;
and
- (o) such other conditions as the Governor in Council determines.

(2) The Governor in Council may, on the recommendation of the Minister, grant a mining lease without the imposition of the conditions specified in subsection (1) (d), (e) and (j).

(3) Conditions may be imposed in respect of a mining lease that relate to standards and methods to be applied to minimize the effect on the environment (including land degradation and air and water pollution) on or outside the land specified in the mining lease, of mining and other activities carried on under the authority of the mining lease.

(4) A mining lease may be subject to a condition that mining operations under the mining lease shall commence within a specified period after its grant or as otherwise approved in writing by the Minister.

7.34 Provision of security. (1) Before a mining lease is granted or renewed, the Minister taking into consideration the matters outlined in section 7.13 (1) (o) (iv) (B), shall determine the amount of the security to be deposited by the holder of that mining lease as reasonable security for—

- (a) compliance with the conditions of the mining lease;
- (b) compliance with the provisions of this Act;
- (c) rectification of any actual damage that may be caused by any person whilst purporting to act under the authority of the mining lease to any land or any improvements situated on or off that land;
and
- (d) payment of any moneys (including royalties and penalties) payable under this Act to the Crown and unpaid by the holder.

(2) The holder of a mining lease shall deposit the amount determined pursuant to subsection (1) or, with the approval of the Minister, other security as prescribed in that amount with the Minister before operations to be carried out under the authority of the mining lease commence.

(3) The Minister, if he is satisfied that any condition of the mining lease or any provision of this Act has not been complied with or that damage referred to in subsection (1) (c) has been caused by any person purporting to act under the authority of the mining lease or who enters land upon the instruction of the holder, he may require that person to take all action necessary to rectify that non-compliance or damage and, save where the person was not the holder and was not upon the land with the holder's approval at the time the damage was caused, may utilize for that purpose the whole or part of the amount of the security deposited in respect of that mining lease.

(4) Where pursuant to section 7.63 the Minister imposes a penalty on the holder of a mining lease and that penalty has not been paid in the specified time, the Minister may utilize the whole or part of the amount of the security deposited in respect of that mining lease towards payment of that penalty.

(5) (a) If the amount of the security deposited by the holder of a mining lease is not earlier reviewed pursuant to paragraph (b), the Minister shall review that amount at the expiration of 5 years from the grant of the mining lease or from the previous review.

(b) Upon the lodgement of each plan of operations in respect of a mining lease and also upon the utilization pursuant to this section of any part of the security deposited in respect of a mining lease, the Minister may review the amount of the security deposited by the holder in respect of that mining lease.

(c) If, upon that review, the Minister considers that a further amount of security should be deposited in respect of that mining lease, he shall require the holder of the mining lease, within the time specified by the Minister to deposit a further specified security.

(6) The Minister may accept a bond or a guarantee or indemnity by, or other financial arrangement with, a bank, insurance company or other financial institution approved by the Minister or other form of security acceptable to the Minister as the whole or part of the security to be deposited under this section.

(7) It shall be a condition of a mining lease that the holder shall deposit security or further security from time to time in accordance with a requirement made as provided by this section.

(8) Where a mining lease has expired or been terminated, the Minister shall, subject to subsection (9), refund to the holder of the mining lease (or as the holder in writing directs) any security deposited and not utilized as provided by subsections (3) and (4) less any amounts determined by the Minister to be retained towards—

- (a) rectification of any matters caused by the non-compliance with any of the conditions of the mining lease or with any order or direction made or given by the Minister under this Act and directed to the holder;

and

- (b) any moneys (including penalties) owing to the Crown (whether arising before or after the termination of the mining lease) by the holder pursuant to this Act or the terms and conditions of the mining lease and unpaid.

(9) Where security under this section in respect of a mining lease is accepted by way of a bond or a guarantee or indemnity by, or other financial arrangement with, a bank, insurance company or other financial institution, any money payable to the holder under subsection (8) shall be refunded to that bank, insurance company or, as the case may be, financial institution and not to the holder of the mining lease.

7.35 Utilization of security deposit towards subsequent mining lease.

If the holder of a mining lease or an expired mining lease makes application for a further mining lease, the Minister may, instead of refunding the whole or part of the security deposited in respect of the existing or expired mining lease, retain that security or part thereof (together with any further security fixed by the Minister) as the security (in which case it shall be taken to be or to be part of the security) deposited by the applicant in respect of the further mining lease.

7.36 Compensation to be settled before grant of mining lease. (1)

A mining lease shall not be granted or renewed unless—

- (a) compensation has been determined (whether by agreement or by determination of the Wardens Court) between the applicant and each person who is the owner of land the surface of which is the subject of the application and of any surface access to the mining lease land;

or

- (b) there is no person (other than the applicant) who is the owner of any of the land referred to in paragraph (a);

and the conditions of the agreement or determination have been or are being complied with by the applicant.

For the purposes of paragraph (a) where the Wardens Court makes a determination of an amount of compensation, that compensation is not determined until—

- (a) where no appeal against that determination is lodged within the period prescribed therefor, upon the expiration of that period;

or

- (b) where an appeal is duly lodged against that determination, upon the determination of the appeal.

(2) An agreement made pursuant to subsection (1) (a) shall not be effective unless and until—

- (a) it is in writing signed by or on behalf of the parties;

and

- (b) it is filed in the office of the mining registrar.

If an agreement referred to in this subsection is required by any

law of Queensland to be stamped, it shall not be filed until it is stamped according to law.

(3) If compensation has not been agreed upon or the question of the amount of compensation has not been referred to the Wardens Court for determination pursuant to the proceeding under section 7.38 in respect of an application for the grant of a mining lease upon the expiration of 3 months from—

(a) in the case where the land or a part of land the subject of the application is a reserve and the Governor in Council consents to the grant in respect of that land, the date of the consent;

or

(b) in any other case the date the warden or, as the case may be, the Wardens Court recommends the grant of the mining lease,

whichever is the later, the mining registrar shall refer the question of the amount of compensation payable to the Wardens Court which shall make a determination in accordance with section 7.38.

7.37 Compensation for owner of land where surface area not included.

(1) An owner of land the subject of a mining lease where no part of the surface area of that land is included in the lease may agree with the holder of the mining lease as to compensation for any damage caused to the surface of the land.

(2) An agreement made pursuant to subsection (1) shall not be effective unless and until—

(a) it is in writing signed by or on behalf of the parties;

and

(b) it is filed in the office of the mining registrar.

If an agreement referred to in this subsection is required by any law of Queensland to be stamped, it shall not be filed until it is stamped according to law.

7.38 Determination of compensation by Wardens Court. (1) At any time before an agreement is made pursuant to section 7.36 or 7.37, a person who could be a party to such agreement may apply in writing to the mining registrar to have the Wardens Court determine the amount of compensation and the terms, conditions and times of payment thereof.

(2) The Wardens Court is hereby authorized to hear and determine matters referred to in subsection (1).

(3) Upon an application made under subsection (1), a Wardens Court shall settle the amount of compensation an owner of land is entitled to as compensation for—

- (a) in the case of compensation referred to in section 7.36—
 - (i) deprivation of possession of the surface of land of the owner;
 - (ii) diminution of the value of the land of the owner or any improvements thereon;
 - (iii) diminution of the use made or which may be made of the land of the owner or any improvements thereon;
 - (iv) severance of any part of the land from other parts thereof or from other land of the owner;
 - (v) any surface rights of access;
 - (vi) all loss or expense that arises,
 - as a consequence of the grant or renewal of the mining lease;
 - and
- (b) in the case of compensation referred to in section 7.37—
 - (i) diminution of the value of the land of the owner or any improvements thereon;
 - (ii) diminution of the use made or which may be made of the land of the owner or any improvements thereon;
 - (iii) all loss or expense that arises,
 - as a consequence of the grant or renewal of the mining lease.

(4) In assessing the amount of compensation payable under subsection (3)—

- (a) where it is necessary for the owner of land to obtain replacement land of a similar productivity, nature and area or resettle himself or relocate his livestock and other chattels on other parts of his land or on the replacement land, all reasonable costs incurred or likely to be incurred by the owner in obtaining replacement land, his resettlement and the relocation of his livestock or other chattels as at the date of the assessment shall be considered;
- (b) no allowance shall be made for any minerals that are or may be on or under the surface of the land concerned;
- (c) if the owner of land proves that the status and use currently being made (prior to the application for the grant of the mining lease) of certain land is such that a premium should be applied, an appropriate amount of compensation may be determined;
- (d) loss that arises may include loss of profits to the owner calculated by comparison of the usage being made of land prior to the lodgment of the relevant application for the

grant of a mining lease and the usage that could be made of that land after the grant;

- (e) an additional amount shall be determined to reflect the compulsory nature of action taken under this Part which amount, together with any amount determined pursuant to paragraph (c), shall be not less than 10 per centum of the aggregate amount determined under subsection (3).

(5) In any case the Wardens Court may determine the amounts and the terms, conditions and times when payments aggregating the total compensation payable shall be payable.

(6) The Wardens Court's determination of any matter under this section shall be deemed to be an agreement between the parties and shall be given effect accordingly.

(7) The Wardens Court shall give written notice of its determination to all parties and may make such order as to costs between the parties to the determination as it thinks fit.

7.39 Appeal against Wardens Court's determination upon compensation. (1) A party aggrieved by a determination of a Wardens Court made under section 7.38 may, within 28 days of the date of that determination or within such further period as the Land Court, on the application of that party in that behalf prior to the lodgement of the appeal, considers appropriate in any particular circumstances, appeal against the determination to the Land Court.

(2) The appeal shall be instituted by, within the time and in the manner prescribed—

- (a) lodging in the Land Court registry, written notice of appeal which shall include the grounds of appeal;
- (b) serving copies of the notice of appeal on the mining registrar and each other party;
- and
- (c) giving security (approved by the registrar of that court) for the costs of the appeal.

(3) As soon as practicable after being served with a notice of appeal the mining registrar shall transmit to the registrar of the Land Court the evidence, notes, reasons and proceedings taken in the Wardens Court.

(4) The Land Court shall have jurisdiction to hear and determine an appeal under this section.

(5) Upon hearing an appeal under subsection (1) the Land Court may—

- (a) vary the determination of the Wardens Court in such way as it thinks just;
- or
- (b) disallow the appeal and confirm the determination of the Wardens Court,

and may make such order as to costs of the appeal as it thinks fit.

(6) A Land Court shall not admit further evidence upon an appeal from a determination of a Wardens Court under subsection (1) unless—

(a) it is satisfied that admission of the evidence is necessary to avoid grave injustice and there is sufficient reason that the evidence was not previously adduced;

or

(b) the appellant and respondent agree to its admission.

(7) The determination of the Land Court on appeal shall be final and conclusive.

7.40 Public Trustee may act in certain circumstances. (1) If there is doubt as to the identity of the owner of land or the owner of land cannot be found, the Wardens Court may determine that the Public Trustee shall represent the owner for the purpose of any negotiation or proceeding under section 7.36, 7.37, 7.38 or 7.39.

Any action taken or thing done or omitted to be done by the Public Trustee as representative of the owner of land pursuant to this subsection shall be taken for all purposes to be taken, done or omitted by that owner.

(2) Where, pursuant to subsection (1) the Public Trustee represents an owner of land, for the purposes of this Part any moneys paid to the Public Trustee under any agreement or determination made under section 7.36, 7.37, 7.38 or 7.39 shall be deemed to have been paid to the owner.

7.41 Initial term of mining lease. (1) The initial term of a mining lease shall, unless the mining lease is sooner terminated, be for a period approved by the Governor in Council on the recommendation of the Minister, commencing on the first day of the month which next follows the day on which the mining lease is granted but shall not be for a term longer than the period in respect of which compensation has been agreed or determined pursuant to section 7.36, 7.38 or 7.39.

(2) From the grant of a mining lease to the commencement of the initial term thereof the holder shall have all the entitlements, powers, duties and functions that he has during the term of the lease except section 7.47 shall not apply.

7.42 Mining lease may be specified it is not renewable. (1) Upon the recommendation of the Minister that the land the subject of an application for the grant of a mining lease is (or will be) required for some purpose other than mining, the Governor in Council may grant the mining lease subject to the condition that the holder is not entitled to have the mining lease renewed.

(2) If the Minister is satisfied that the land the subject of an application for the renewal of a mining lease is (or will be) required for some purpose other than mining, the Governor in Council may grant

a renewal of the mining lease subject to the condition that the holder is not entitled to have the mining lease further renewed.

(3) Where a mining lease is granted or renewed subject to a condition referred to in subsection (1) or (2), the applicant shall be advised of the reasons therefor.

(4) Where a mining lease is renewed subject to a condition referred to in subsection (2) that condition shall be endorsed on the instrument of lease.

7.43 Renewal of mining lease. (1) The holder of a mining lease, including a mining lease that is subject to a condition referred to in section 7.42, may, at least 6 months (or such shorter period as the Minister in a particular case allows) prior to and not more than 12 months before the expiration of the current term of the mining lease, make application for renewal of that mining lease.

(2) An application for renewal of a mining lease shall—

- (a) be made in writing in the prescribed manner and form to the mining registrar for the mining district in which is situated the land the subject of the mining lease;
- (b) be accompanied by the prescribed application for renewal fee.

(3) If, in respect of an application for the renewal of a mining lease, the Minister is satisfied that—

- (a) in a case where the mining lease is subject to a condition that the holder is not entitled to have the mining lease renewed or further renewed, the mining lease should be renewed;
- (b) the holder has observed and performed all the covenants and conditions applicable to the lease and on his part to be observed and performed;
- (c) the holder has complied with all the provisions of this Act applicable to him in respect of that mining lease;
and
- (d) the land, the subject of the mining lease still contains workable quantities of mineral or mineral bearing ore or is otherwise required for purposes for which the mining lease was granted,

then the Minister shall recommend to the Governor in Council who may grant a renewal of that mining lease in the name of the holder for such further term as the Governor in Council specifies subject to any prescribed conditions and such further conditions as the Governor in Council determines but the further term shall not include a period that is not covered by an agreement as to or a determination of compensation pursuant to section 7.36, 7.38 or 7.39.

The Minister's recommendation under this subsection in respect of a mining lease referred to in paragraph (a) shall specify that the mining lease is such a lease.

(4) The Minister shall not reject an application for renewal of a mining lease until he has, by notice in writing in or to the effect of the prescribed form served on the holder of the mining lease, called upon the holder to show cause within the time specified therein why the application should not be rejected and such cause has not been shown to the satisfaction of the Minister.

(5) Where an application for renewal of a mining lease is duly made by the holder but the application has not been granted or rejected before the date on which the term of the mining lease then current would, but for this subsection have expired, then, subject to payment of the rental prescribed in section 7.47, royalties and other moneys required by this Act to be paid and compliance with this Act and the conditions of the mining lease, the mining lease shall continue in force until the application is granted unless it is sooner withdrawn or rejected.

(6) The term of a mining lease that is renewed (whether the renewal is granted before or after the date the mining lease expires or would, but for the operation of subsection (5), have expired) shall commence or be deemed to have commenced on the day following that expiry date but the conditions of the renewed mining lease that differ from conditions of the expired mining lease shall apply from—

(a) the commencement of that term;

or

(b) the date the renewal is granted,

whichever is the later.

7.44 Reasons for rejection of application for renewal of mining lease. Where the Minister rejects an application for renewal of a mining lease he shall give written notice to the applicant stating the reasons for rejection.

7.45 Survey. (1) Except as provided in section 7.46, a mining lease shall only be granted in respect of land that has been surveyed as prescribed by subsection (2) and if the applicant therefor lodges with the Director-General survey plans for registration in the Department of Mines on plan forms approved by the Director-General together with field notes.

(2) For the purposes of subsection (1), land shall be surveyed by a licensed surveyor within the meaning of the *Surveyors Act 1977-1987* and approved by the Minister and shall be performed—

(a) in accordance with the provisions of the *Surveyors Act 1977-1987* after first having obtained instructions in that behalf from the Director-General;

(b) in a defined area of the State declared by Order in Council, by a method detailed in that Order in Council;

or

(c) notwithstanding paragraph (b), in a particular case authorized by the Minister, by a method acceptable to the Minister.

(3) Upon the request in writing of the Minister given at any time, the holder of a mining lease shall have the land the subject of the lease or any part thereof specified by the Minister surveyed or further surveyed in a manner prescribed by subsection (2) as indicated in the request.

(4) Liability at law shall not attach to the Crown, the Minister or any officer of the Department of the Government for the time being administering this Act for any error or inaccuracy in a survey carried out or the resultant plan of survey prepared by a licensed surveyor for the purpose of this section or for any thing done or omitted to be done on the assumption that the survey or plan was accurate.

(5) The applicant for a mining lease or the holder of a mining lease shall incur and be liable to pay all costs associated with the work carried out by a licensed surveyor under this Act in respect of that mining lease or application.

7.46 Mining lease where area not surveyed. (1) The Governor in Council may grant or renew a mining lease and the instrument of lease therefor may be issued notwithstanding that the boundaries and area of the land for which that mining lease is to issue have not been surveyed as prescribed by section 7.45, if the Minister in a particular case recommends accordingly to the Governor in Council.

(2) In an instrument of lease referred to in subsection (1) the area and boundaries of land shall be specified as nearly as may be then ascertained and the lease shall not be avoided by reason only of any defect in the description of that land or those boundaries as specified in the instrument.

7.47 Rental payable on mining lease. (1) (a) Upon the grant of a mining lease rental shall first be payable thereon with respect to the period from the commencement of the term of the mining lease to 31 December of that year (in this section called the "first rental period") and shall be paid within 28 days (or such longer period as the Minister in the particular case approves) of the grant of the mining lease.

(b) The amount of the rental payable in respect of the first rental period shall be an amount that bears to the yearly rental prescribed pursuant to subsection (3) for the year in which the first rental period falls the same proportion that the number of whole calendar months of the first rental period bears to 12.

(2) In respect of each year or part thereof of the term of a mining lease (other than the first rental period) a full year's rental shall be payable in advance not later than 31 December of the previous year.

(3) If the full year's rental is paid in advance as prescribed by subsection (2), the amount of the rental shall be the amount prescribed in respect of the year in which the rental period falls.

(4) If rental is not paid in advance as prescribed by subsection (2)—

(a) the mining registrar shall, prior to 31 January of that year, notify the holder of and any person holding a recorded

interest in the mining lease that the rental has not been paid as prescribed by subsection (2) and of the amount of rental payable as prescribed by paragraph (b);
and

- (b) the amount of the full year's rental shall be payable before 31 March of that year and shall be an amount equal to the amount prescribed in respect of the year in which the rental period falls plus an amount equal to 25 per centum of that prescribed amount.

(5) Upon the renewal of a mining lease, no further rental shall be payable in respect of the period that, if the renewal was a grant of a mining lease, would be the first rental period, except where that period commences on 1 January.

(6) Except as provided in subsection (7), where in any year a mining lease is surrendered or terminated through effluxion of time and is not renewed there shall be refundable to the last holder of the mining lease an amount that bears to the amount of the rental that was paid in respect of that year the same proportion that the number of whole calendar months from—

- (a) the date of surrender or termination;
or

(b) the date of rejection of the application for renewal,
whichever is the later, to 31 December of that year bears to 12.

(7) No amount shall be refunded pursuant to subsection (6) where a mining lease is surrendered within its first rental period after its original grant.

7.48 Plan of operations. (1) Not less than 2 months (or such shorter period as the Minister in the particular case approves) before commencing operations under the authority of a mining lease and from time to time after the submission of any plan of operations at intervals of not more than 5 years or such longer intervals as the Governor in Council in granting the mining lease determines during the currency of the mining lease, the holder shall submit to the Minister a proposed plan of operations for the carrying out, in accordance with this Act and conditions of the mining lease, of the purposes for which the mining lease is granted.

(2) (a) Unless the Minister is satisfied that a proposed plan of operations addresses the manner and method for carrying out purposes for which the mining lease is granted and such manner and method—

- (i) are in conformity with the conditions of the mining lease and the provisions of this Act;
- (ii) shall adequately provide for the control of the impact on the environment of the operations to be carried out under the authority of the mining lease;
- (iii) shall adequately address the matter of rehabilitation of any disturbed ground within the boundaries of the mining lease;

and

- (iv) if the mining lease is for the mining of minerals, shall provide for the effective utilization of the resource defined by the holder,

he shall by notice in writing to the holder, within 28 days of the submission of the plan, inform the holder that the proposed plan of operations is not acceptable. An existing plan of operations shall continue in force until an acceptable plan of operations is submitted.

(b) The plan of operations for the time being current shall form part of the conditions of the mining lease.

(3) (a) The holder may submit from time to time a proposed variation of a plan of operations in respect of a mining lease and unless the Minister within 28 days of the submission of the variation notifies the holder in writing that the variation is unacceptable and gives the reasons therefor, that plan as varied shall be the plan of operations in respect of that mining lease.

(b) For the purposes of subsection (1), a variation submitted under this subsection shall not affect the term of the plan of operations it varies.

(4) If a proposed plan of operations in respect of a mining lease is not acceptable to the Minister, he shall notify the holder of the mining lease the reason therefor and shall specify a time within which a fresh proposed plan of operations or amendments to the proposed plan of operations shall be submitted to him.

(5) Unless sooner superseded by another plan of operations, a plan of operations shall remain in force—

- (a) if a period has been specified therefor by the Governor in Council when granting the mining lease, for that period;

or

- (b) in any other case, for a period of 5 years,

from the date it first takes effect unless the Minister, within 28 days of the submission of the plan, determines that the plan shall remain in force for a shorter period, in which case the plan shall remain in force for that shorter period.

(6) Not less than 2 months (or such shorter period as the Minister in the particular case approves) before the expiration of the existing plan of operations the holder shall submit a fresh plan of operations for the carrying out, in accordance with this Act and conditions of the mining lease, of the purposes for which the mining lease is granted to take effect upon the expiration of the current plan of operations and unless the Minister notifies the holder within 28 days of the submission of the plan that the fresh plan is unacceptable together with the reasons therefor, the fresh plan shall become the plan of operations for that mining lease upon the expiration of the existing plan of operations.

(7) The holder of a mining lease and any person purporting to act under the authority of the mining lease shall not carry out any operations

in respect of that mining lease unless those operations are in conformity with the current plan of operations in respect of that mining lease.

7.49 Variation of conditions of mining lease. (1) The conditions to which a mining lease is for the time being subject, may be varied by the Governor in Council in terms not inconsistent with this Act upon the recommendation of the Minister and the agreement in writing of the holder of the mining lease.

(2) A mining lease that is duly varied pursuant to subsection (1) shall thereafter until again varied, be subject to its conditions as so varied.

(3) Particulars of every variation of a mining lease shall be endorsed on the instrument of lease if the lease has been issued.

7.50 Variation of mining lease for accuracy etc. (1) Whenever—

(a) the boundaries and area of a mining lease have been more accurately ascertained and described by survey or some other method acceptable to the Minister;

(b) the Governor in Council approves the exchange, pursuant to agreement by the holders of mining leases of contiguous land, of areas abutting upon a part of a boundary common to both mining leases;

or

(c) facts have appeared or been established since the grant of the mining lease which satisfy the Minister that a variation of the mining lease should be made,

the Governor in Council may vary the mining lease or mining leases accordingly.

(2) A variation of a mining lease pursuant to subsection (1) shall take effect from the time indicated in that variation.

(3) Notice of every variation of a mining lease pursuant to subsection (1) shall be given in writing by the Minister to the holder of the mining lease and to all persons holding an interest recorded as provided in this Part in the mining lease.

The notice to the holder shall direct the holder to produce any instrument of lease for endorsement.

The Minister upon receipt of the instrument of lease shall make all endorsements thereon to give effect to the variation.

The Minister shall cause suitable recordings to be made in the register that the mining lease has been varied.

(4) (a) Where, prior to receiving a notice of variation pursuant to subsection (3) the holder of a mining lease has placed any improvements, machinery, plant or equipment on land which, by reason of the variation, has ceased to be part of the land comprised in the mining lease, he may within 28 days after receipt by him of that notice, apply to the

Minister for permission to enter upon that land and to remove the improvements, machinery, plant or equipment or any part thereof.

(b) Upon application duly made to him under this subsection, the Minister shall grant permission to the applicant in respect thereof for such period and upon such conditions as the Minister thinks fit.

(c) The applicant, together with his workmen and persons delivering goods or substances or providing services ancillary to that purpose and vehicles and equipment, may enter upon land and remove improvements, machinery, plant or equipment or any part thereof in accordance with the permission granted pursuant to this subsection.

(5) Where a mining lease has been varied pursuant to subsection (1), the holder thereof shall be deemed to hold indemnified the Crown, the Minister and all officers, servants and agents of the Crown and the Minister against all claims arising out of anything done pursuant to this Act or done on or in land which, by reason of that variation, has ceased to be part of the land comprised in the mining lease.

(6) (a) Where the boundaries and area of the land comprised in a mining lease have been varied pursuant to subsection (1) (a)—

(i) the conditions referred to in section 7.33 (1) (d), (1) (e) and (3) that applied before the variation shall continue to apply after that variation in respect of activities carried on before that variation;

and

(ii) the conditions (other than conditions referred to in paragraph (i)) that applied before the variation shall cease to apply after that variation in respect of activities carried on after that variation,

in respect of the area of land that has ceased to be part of the land comprised in the mining lease.

(b) Where the boundaries and area of the land comprised in a mining lease have been varied pursuant to subsection (1) (a), the conditions of the lease shall from that variation also apply in respect of land that becomes part of the land comprised in the mining lease.

(c) Where an exchange of areas of land comprised in mining leases has been effected pursuant to subsection (1) (b), in respect of each mining lease—

(i) the conditions that applied before the exchange shall continue to apply in respect of the area of land comprised in the mining lease after the exchange;

and

(ii) the conditions that applied before the exchange shall cease to apply in respect of the area of land that has ceased to be part of the land comprised in the mining lease.

(d) Notwithstanding paragraphs (a) and (c), the provisions of sections 7.34 and 7.63 shall continue to apply after a variation of a

mining lease pursuant to subsection (1) in respect of any acts done or omitted to be done before that variation.

(e) The Minister may direct and authorize the holder of a mining lease to enter upon land that has ceased to be part of the land comprised in the mining lease to comply with any condition referred to in paragraph (a) or (c).

(7) This section shall not be construed to abrogate or prejudice any right had by the Crown or a person, authority or body in respect of land which by reason of a variation pursuant to subsection (1) has ceased to be part of a mining lease, from proceeding in any court of competent jurisdiction or independently of this Act to recover damages or to obtain any other remedy in respect of damage or injury suffered or loss incurred by him by reason of a person acting or purporting to act under the authority of that mining lease but any moneys paid under section 7.34 in respect of damage the subject of the proceedings shall be taken into account by that court in assessing the loss or damage.

(8) The person who was the holder of a mining lease that is varied pursuant to this section shall pay the prescribed royalty in respect of all mineral mined by him or on his behalf from land that ceases to be comprised in the mining lease as if it had been mined under the authority of that mining lease.

7.51 Correction of instrument of lease. (1) If, at any time, the Minister is of the opinion that an instrument of lease of a mining lease should be corrected by reason that the instrument is defective owing to error in its preparation, the Minister may correct the instrument and shall endorse every copy thereof accordingly.

(2) When an instrument of lease is corrected under this section it shall be construed and operate as if it had been originally issued as corrected.

7.52 Replacement instrument of lease. (1) Where the Minister is satisfied that an instrument of lease of a mining lease should be cancelled and a replacement instrument of lease issued in its place, he shall cancel the instrument in question and cause a replacement instrument of lease to be issued in its place.

(2) A replacement instrument of lease of a mining lease issued under this section—

- (a) shall be the instrument of lease issued in respect of the mining lease concerned in place of the instrument of lease previously issued in respect thereof and cancelled under this section which lastmentioned instrument shall, upon the issue of the fresh instrument, cease to be of any force or effect;
- (b) may bear a form of endorsement which briefly traces the devolution of the title from the original holder of the mining

lease to the person appearing as holder thereof at the time the replacement instrument of lease is issued;

- (c) shall bear endorsement of all apparently subsisting mortgages affecting the mining lease concerned and endorsed on the instrument of lease so cancelled;

and

- (d) shall be delivered to the person who appears to the Minister to be lawfully entitled to possession thereof.

The Minister shall cause the instrument of lease so cancelled to be suitably endorsed and a suitable recording to be made in the register that a replacement instrument of lease has been issued in its place.

The cancelled instrument of lease shall be retained by the Director-General.

7.53 Mining other minerals or use for other purposes. (1) The holder of a mining lease for the mining of minerals may lodge an application in writing with the mining registrar for the Minister's approval to mine specified minerals, being minerals not specified in the mining lease, in respect of the whole or that part of the land specified in the mining lease that is not currently the subject of a mining lease or mineral development licence (or an application for a mining lease or mineral development licence) in respect of those specified minerals.

The application shall be accompanied by the prescribed application fee.

(2) An application referred to in subsection (1) and any other application for the grant of a mining lease in respect of the same minerals shall take priority according to the order of the time and date the applications are lodged as prescribed.

(3) The holder of a mining lease granted for purposes (other than mining of minerals) may lodge an application in writing with the mining registrar for the Minister's approval for the addition of such purposes not specified in the mining lease (being not those of mining for minerals), which the Minister accepts are appropriate for the mining lease and are not inconsistent with this Act.

The application shall be accompanied by the prescribed fee.

(4) The holder of a mining lease granted for the mining of minerals may apply in writing to the mining registrar for the Minister's approval for the addition of such purposes not specified in the mining lease as are not inconsistent with this Act.

The application shall be accompanied by the prescribed fee.

(5) The Minister may approve or reject an application under this section.

(6) Upon the Minister approving an application under this section and compliance by the applicant with any requirements imposed by the

Minister, the relevant mining lease shall be deemed to include the specified minerals or, as the case may be, the additional purposes but the holder of the mining lease shall not be entitled to carry on operations in respect of those minerals or purposes unless the minerals and purposes are incorporated in a plan of operations in respect of that mining lease.

(7) An approval of the Minister under this section may be subject to—

- (a) the imposition of such conditions as the Governor in Council on the recommendation of the Minister determines;
and
- (b) the requirement to deposit such security under section 7.34 as the Minister determines.

(8) Particulars of an approval under this section shall be recorded in the appropriate register and endorsed on the relevant instrument of mining lease.

7.54 Consolidation of mining leases. (1) The holder of mining leases for the mining of minerals in respect of contiguous land may lodge an application in writing with the mining registrar for the mining district in which the major portion of the area of the mining leases is situated for the grant of a mining lease consolidating those mining leases.

The application shall be accompanied by the prescribed fee.

(2) (a) On the recommendation of the Minister, the Governor in Council may cancel the mining leases referred to in an application lodged pursuant to subsection (1) and grant the mining lease applied for, subject to such conditions as may be imposed by or under this Act.

The relevant instruments of lease shall be cancelled or, as the case may be, evidence the cancellation and grant of the mining leases.

(b) The Minister shall not make a recommendation referred to in paragraph (a) unless he is satisfied that—

- (i) the appropriate surveys have been carried out;
and
- (ii) arrangements for compensation, the deposit of security prescribed under this Act and proposed conditions of the mining lease are adequate.

(3) The provisions of sections 7.1, 7.6, 7.8, 7.9, 7.11, 7.13, 7.17, 7.18, 7.19, 7.20, 7.22, 7.23, 7.25, 7.26, 7.27, 7.28, 7.29, 7.31 and 7.32 and such other provisions as the Governor in Council, on the recommendation of the Minister approves do not apply in respect of an application for and grant of a mining lease under this section.

(4) The provisions of section 7.67 (7) do not apply in respect of a mining lease terminated for the purposes of the grant of a mining lease under this section.

(5) Notwithstanding the provisions of section 7.34 (8), the security that pursuant to that section would have been refunded to the holder of the cancelled mining leases or as he directs may, at the request of the applicant, be retained by the Minister towards security required under section 7.34 (1) to be deposited by the holder of the new mining lease issued under subsection (2).

(6) Unless the Minister otherwise approves, mining operations shall not commence or continue under a mining lease granted under subsection (2) until a fresh plan of operations has been submitted in respect of that mining lease in accordance with section 7.48.

7.55 Assignment, etc. of mining lease or application therefor. (1) With the approval of the Minister—

- (a) a mining lease or an interest therein may be assigned or mortgaged;
- (b) a mining lease may be subleased;
- and
- (c) an application for a mining lease or an interest therein may be assigned,

in the prescribed manner and upon payment of the prescribed fee.

(2) The holder of a mining lease or an applicant therefor desirous of exercising a power referred to in subsection (1) shall apply in writing to the mining registrar for the Minister's approval to that exercise and shall furnish to the Minister such information with respect thereto as the Minister requires.

An application for assignment or sublease under this subsection if a mortgage is recorded in respect of the mining lease, shall be accompanied by the mortgagee's consent.

(3) Upon an application made pursuant to subsection (2) the Minister shall cause the applicant to be given notice—

- (a) that, subject to compliance with this Act in respect thereof and with any conditions specified in the notice within three months from the date of the notice or such other period as is specified in the notice, the Minister will approve the exercise;
- or
- (b) that the Minister does not approve the exercise.

Without in any way limiting the conditions that the Minister may impose under this subsection, the Minister may require the holder of a mining lease desiring to sublease that mining lease or a portion of the land comprised in the lease to have a survey thereof carried out in the prescribed manner by a licensed surveyor within the meaning of the *Surveyors Act 1977-1987* approved by the Minister.

(4) (a) If the Minister indicates that he will approve the exercise, then upon receipt by the mining registrar for the district in which the mining lease is recorded within the prescribed time of an appropriate document in the prescribed form (if any) that gives effect to an exercise

of a power referred to in the indication, compliance with this Act and all conditions specified in the notice given pursuant to subsection (3) (a) in respect thereof and payment of the prescribed fee the exercise of the power shall be approved by the Minister and such particulars thereof as are necessary to give effect to or evidence that exercise of power shall be recorded in the appropriate register and endorsed on the instrument of lease.

(b) Notwithstanding that subsections (2) and (3) have not been complied with in a particular case, the Minister may approve and record particulars of an exercise of a power as provided in paragraph (a) if he is satisfied that, if subsection (2) had been complied with, he would have approved the exercise of power and any conditions he would have specified under subsection (3) have been complied with.

(5) An assignment or mortgage of a mining lease shall not be in respect of part only of the land the subject of the mining lease.

(6) The Minister shall not approve the assignment of a mining lease unless it is accompanied by the approval in writing of any existing mortgagees and a duly completed royalty return prescribed by Part 9 together with royalty payable to the Crown or evidence of payment to the person entitled thereto as prescribed in Part 9.

(7) A purported assignment, sublease or mortgage of a mining lease or an assignment of an application therefor or of any interest therein shall not be effective unless it is made and approved in accordance with this section and shall take effect on the day next following its approval by the Minister under subsection (4).

(8) Within 28 days of the Minister granting his approval of an assignment under this section, the assignee shall notify the owners of the relevant land of that approval.

7.56 Lodgment of caveat. (1) (a) Subject to paragraph (b), a person who claims a right or interest in or in respect of a mining lease or an application for the grant of a mining lease may by a caveat in the prescribed form forbid the recording of—

(i) any assignment, sublease or mortgage in respect of the mining lease;

or

(ii) any assignment of the application for the grant of the mining lease,

(save any such dealings the recording of which is excepted in the caveat) either absolutely or until after notice of intention to record such a dealing is served on the caveator.

(b) A caveat duly lodged pursuant to this section does not apply in respect of—

(i) an assignment, sublease or mortgage duly lodged with the mining registrar before the lodgment of the caveat;

or

- (ii) an assignment, sublease or mortgage the application for approval of which was lodged with the mining registrar before the lodgment of the caveat.

(2) A caveat referred to in subsection (1) shall—

- (a) be in or to the effect of the prescribed form;
 - (b) specify the name and address for service of one person upon whom any notice may be served on behalf of the caveator or caveators;
 - (c) identify the mining lease or application concerned;
 - (d) specify the nature of the right or interest claimed by the caveator;
 - (e) specify the period during which it is to continue in force;
 - (f) be signed by the caveator, his solicitor or other person authorized in writing by the caveator;
 - (g) if any person consents to the lodging of the caveat, be endorsed with that person's consent;
 - (h) be lodged at the office of the mining registrar for the mining district in which is situated the land the subject of the mining lease or application concerned;
- and
- (i) be accompanied by the prescribed lodgment fee.

7.57 Mining registrar's functions upon receipt of caveat. Upon receipt of a duly lodged caveat referred to in section 7.56, a mining registrar shall—

- (a) notify the holder or holders of the affected mining lease or application;
 - (b) notify all other persons who have an interest in the mining lease or application recorded in the register including any subsisting prior caveator;
- and
- (c) record the existence of the caveat in the register.

7.58 Effect of caveat. (1) For so long as a caveat remains in force, a mining registrar shall not record—

- (a) any assignment, sublease or mortgage in respect of the mining lease;
- or
- (b) any assignment of the application for the grant of the mining lease,

identified in the caveat unless—

- (c) the dealing is specifically excepted in the caveat;
or
 - (d) the written consent of the caveator in the prescribed form to the recording of the dealing is lodged with the mining registrar.
- (2) For the purposes of subsection (1), unless and until a caveat is removed or withdrawn as prescribed, a caveat continues in force—
- (a) in a case where the consent of each holder of the mining lease or of the application for the grant of the mining lease concerned has been lodged with the caveat, for the term specified in the caveat or, if no term is specified, indefinitely;
 - (b) in a case where the caveat (not being a caveat referred to in paragraph (a)) specifies a period of not more than three months during which it is to continue in force, until the expiration of that period;
 - (c) in a case where the Wardens Court or another court of competent jurisdiction so orders for so long as that order remains in force;
or
 - (d) in any other case, until the expiration of three months from the date of lodgment of the caveat.

7.59 Second caveat not available to same person. When a caveat has lapsed or has been removed or withdrawn as prescribed, it shall not be competent to the caveator to lodge in respect of the same mining lease or application for the grant of the mining lease another caveat whereby he claims the same or substantially the same right or interest unless—

- (a) the consent of each holder of the mining lease or, as the case may be, each applicant has been lodged with the lastmentioned caveat;
or
- (b) the Wardens Court or another court of competent jurisdiction so orders.

7.60 Removal or withdrawal of caveat. (1) A caveat lodged pursuant to section 7.56 that has lapsed shall be removed by the mining registrar and the register noted accordingly.

(2) Upon the plaint of a person who has a right or interest (present or prospective) in a mining lease or in an application for the grant of mining lease affected by a caveat or whose right (present or prospective) to deal with a mining lease or with an application for the grant of a mining lease is affected by a caveat lodged in respect of the mining lease or application, the caveator may be summonsed to attend the Wardens Court or another court of competent jurisdiction to show cause why the caveat should not be removed.

(3) The Wardens Court or another court of competent jurisdiction may, upon the return of a summons referred to in subsection (2) or at any later time to which the hearing may be adjourned, make such order either *ex parte* or otherwise as the court deems just.

(4) If the Wardens Court or another court of competent jurisdiction orders that a caveat be removed, the mining registrar shall give effect to the order.

(5) A caveator may withdraw his caveat at any time by notifying the mining registrar in writing.

(6) The removal or withdrawal of a caveat shall be effected by the mining registrar recording the removal or withdrawal in the register.

7.61 Compensation for lodging caveat without reasonable cause. A person who lodges a caveat in respect of a mining lease or of an application for the grant of a mining lease without reasonable cause is liable to pay such damages as may be recovered at law by any person aggrieved.

7.62 Abandonment of application for the grant of a mining lease. (1) The applicant for a mining lease may, at any time before the grant of the mining lease, by notice in writing to the mining registrar abandon his application in respect of the whole or part of the land to which the application relates.

The abandonment shall take effect on the day next following its receipt by the mining registrar.

(2) The applicant for the grant of a mining lease who gives a notice referred to in subsection (1) to the mining registrar shall forthwith serve a copy of that notice on all other persons upon whom he was required under this Act to give a copy of the certificate of application for the mining lease.

(3) Where an application for the grant of a mining lease is abandoned in respect of part only of the land to which the application relates, the application shall be amended to show the area in respect of which the mining lease application is to remain in force in the same manner as is required for an original application and the amended application shall proceed in respect of that area in accordance with this Part.

7.63 Contravention by holder of mining lease. (1) If the Minister considers that the holder of a mining lease—

- (a) has carried out activities that are not *bona fide* for the purposes for which the mining lease was granted;
- (b) has failed to pay the royalty or any other moneys payable thereunder (other than rental) or in respect thereof by the due date for payment;
- or
- (c) has failed to comply with any condition that is to be observed and performed by the holder under or in respect of the

mining lease, other than a condition with respect matters referred to in subsection (2) (a) or (b),

the Minister may—

- (d) cancel the mining lease;
or
 - (e) impose on the holder a penalty not exceeding 1 500 penalty units.
- (2) If the Minister considers that the holder of a mining lease—
- (a) in any year has failed after notice given to him in accordance with section 7.47 (4) to pay by 31 March of that year the amount of the rental payable under that section by that date in respect of that mining lease;
or
 - (b) has failed to pay a penalty imposed on him pursuant to subsection (1) (e) within the time allowed for the payment by the Minister,

the Minister may cancel the mining lease.

(3) The Minister shall not act pursuant to subsection (1) until he has, by notice in writing in or to the effect of the prescribed form served on the holder of the mining lease, called upon the holder to show cause within the time specified therein why the mining lease should not be cancelled or a penalty imposed and served a copy of the notice on every person who currently holds a recorded interest in respect of the mining lease at his address last recorded by the mining registrar and such cause has not been shown to the satisfaction of the Minister.

(4) When the Minister pursuant to this section cancels a mining lease he shall notify the holder and every person who holds a recorded interest in respect of the mining lease accordingly stating the reason for the cancellation.

(5) The Minister upon cancellation of a mining lease pursuant to subsection (2) (b) may utilize the security or part thereof deposited in respect of that mining lease under section 7.34 towards payment of the unpaid penalty.

(6) The cancellation of a mining lease under this section shall take effect on the day next following the Minister's determination to cancel the mining lease.

7.64 Surrender of mining lease. (1) The holder of a mining lease may apply to surrender the mining lease or any part of the land comprised therein at any time before the expiration of its term.

(2) The holder of a mining lease who desires to surrender a mining lease or any part of the land comprised therein shall lodge with the mining registrar—

- (a) a notice of surrender in the prescribed form;
- (b) in the case of a surrender of part of the land comprised in

a mining lease, a plan of survey (as prescribed for the grant of mining leases) of that part of the mining lease that is to remain in force or a request for exemption from the requirement to survey that part;

(c) in the case of a surrender of the whole of the land comprised in a mining lease, a duly completed royalty return prescribed by Part 9 together with the royalty payable to the Crown as prescribed by Part 9 or evidence of payment to the person entitled thereto;

and

(d) the prescribed fee.

(3) A purported surrender of a mining lease or of any part of the land comprised in a mining lease shall not be effective unless—

(a) the holder has complied with this section;

and

(b) the Minister consents to the surrender.

(4) Where a mining lease is surrendered in respect of part only of the land comprised in a mining lease, the instrument of lease issued in respect thereof shall be endorsed accordingly and thereupon the mining lease shall continue in force in respect of the land not surrendered.

(5) (a) Upon a surrender of a mining lease, all adjustments between the holder and the Crown in respect of the payment of rental, fees and other moneys shall be at the discretion of the Minister.

(b) Where any moneys are specified pursuant to paragraph (a) as a debt due to the Crown, the Minister may direct that the security deposited in accordance with section 7.34 may be utilized for payment thereof.

(6) (a) Nothing in this section shall prevent the Crown from recovering moneys from a person specified in subsection (5) as liable to pay and unpaid (whether directly or through utilization of the security deposit) by action in the Wardens Court.

(b) In an action under paragraph (a) for recovery of a debt due to the Crown, the production to the Wardens Court of a certificate by the Director-General certifying the amount of that debt shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the debt and the amount thereof.

(7) Where, at the time when a holder of a mining lease purports to surrender the mining lease or a part of the land comprised therein, that holder duly makes application for a new mining claim or mining lease in respect of the whole or part of the land comprised in the current mining lease, the purported surrender shall take effect immediately prior to the grant of the new mining claim or mining lease.

(8) Nothing in section 7.1 shall prevent a holder of a mining lease, at the time he surrenders the mining lease or part of the land comprised in the mining lease, from applying for the grant of a mining lease over

the whole or part of the land comprised in the surrendered mining lease and the grant of the mining lease applied for.

(9) A surrender of a mining lease (other than a surrender referred to in subsection (7)) shall take effect on the day next following its acceptance by the Minister.

7.65 Minerals taken become property of holder of mining lease. All minerals lawfully mined under the authority of a mining lease cease to be the property of the Crown or person who had property therein and become the property of the holder of the mining lease subject however to the rights to royalty payments under this Act of the Crown or any other person.

7.66 Royalties in respect of minerals taken under mining lease. The holder of a mining lease shall pay in respect of all minerals mined or purported to be mined under the authority of the mining lease, the royalty prescribed pursuant to Part 9.

7.67 Effect of termination of mining lease. (1) Notwithstanding section 7.65, upon the termination (for whatever cause other than for the purpose of granting a mining claim or mining lease to the holder of the terminated mining lease) of a mining lease all mineral, ore, tailings and other material stacked on the land that comprised the mining lease together with any structures, machinery and equipment therein or thereon under the authority of that mining lease shall divest from the person who was the holder of the mining lease and shall become the property of the Crown.

(2) (a) Upon an application made in writing to the Minister by a person who was the holder of the mining lease immediately prior to its termination or by any other person who appears to the Minister to have a sufficient interest therein within 28 days (or such longer period not exceeding 3 months as the Minister in a particular case approves) after the date of the termination of a mining lease, the Minister shall give permission for that person, within the period specified by the Minister, to enter upon the land in question and subject to compliance with any condition imposed by the Minister remove mineral, ore, tailings and other material stacked on the land, machinery, plant and other removable improvements therein or thereon at the date of the termination other than any cover, fencing, casing, lining, timbering or other things, securing the safety of the land to the extent he was lawfully entitled so to do immediately prior to that date.

(b) Any thing duly removed from land pursuant to permission given under paragraph (a) shall thereupon be divested from the Crown and shall become the property of the person entitled thereto according to law immediately prior to the date of termination of the mining lease.

(3) The entitlement of a person who was the holder of a mining lease that has terminated or any other person to act pursuant to subsection (2) shall not be derogated by a subsequent application for or grant of a mining claim, exploration permit, mineral development licence or mining lease.

(4) Where pursuant to subsection (1), any mineral, ore, tailings, or other material has become the property of the Crown, any such mineral, ore, tailings or other material that has not been removed by—

(a) in a case where an application for permission has been made as prescribed or permitted by subsection (2) and that permission has been given specifying a time by which the mineral, ore, tailings and other material are to be removed, the expiration of that time;

or

(b) the expiration of 3 months after the termination of the relevant mining lease,

whichever is the later, shall divest from the Crown and form part of the land.

(5) Any structure, machinery or equipment vested in the Crown pursuant to this section may be sold by the mining registrar upon the direction of the Director-General which sale shall be at public auction unless the Minister otherwise directs.

The proceeds of such a sale shall be applied as follows—

- (a) firstly, in payment of the expenses of the sale;
- (b) secondly, in payment of moneys due and payable by the former holder to the Crown in right of the State on any account whatever;
- (c) thirdly, in payment of costs of rectification of actual damage in respect of which the relevant security deposit could have been utilized, to the extent that the security deposit was not so utilized or was deficient;
- (d) fourthly, in payment of moneys due and payable to a Local Authority by the former holder for rates levied in respect of the land in question, proportioned to the date of termination of the lease;
- (e) lastly, but subject to the provisions of the next following paragraph, in payment to the former holder of the balance then remaining.

If, at the date of termination of a mining lease, the land in question was subject to a mortgage recorded under this Act and, at the date the balance of the proceeds of sale is to be applied any sum secured thereby remains unpaid, the Minister may cause the balance or any part thereof to be applied in satisfaction of the unpaid sum and the balance otherwise payable to the former holder to be reduced accordingly.

(6) Where the Minister is unaware of the identity or the whereabouts of a person to whom any part of the proceeds of a sale should be paid pursuant to subsection (5) (e) that part shall be paid to The Public Trustee of Queensland as unclaimed moneys and the provisions of the *Public Trustee Act 1978-1989* with respect to unclaimed moneys shall apply thereto.

(7) Upon the termination of a mining lease (for whatever reason) the person who was the holder thereof immediately prior to the termination shall forthwith remove every post or other thing used to mark the land pursuant to this Part not being a survey mark or other thing required by any other Act not to be removed.

7.68 Approval of additional activities upon mining lease application.

(1) Without limiting his entitlements as applicant for a mining lease, the applicant for a mining lease may apply in writing to the Minister for approval to enter and be upon land comprised in the application for the mining lease or such part thereof as is specified in the authority for such purposes for which a mining lease may be granted.

The application shall be accompanied by the prescribed fee.

The Minister's approval may be subject to such conditions as he thinks appropriate and the applicant shall comply with those conditions.

(2) Where an application pursuant to subsection (1) relates to land that is a reserve the Minister, before granting approval shall seek and take into account the views of the owner.

(3) (a) The Minister may impose a condition upon an approval under subsection (1) that the applicant deposit an amount of security for compliance with the approval and rectification of any damage caused to the land or improvements therein or thereon in which case the provisions of section 7.34 shall apply as if the applicant were a holder of a mining lease and the approval were the mining lease in question.

(b) For so long as any security required is not deposited or kept renewed, the approval is not effective.

(4) An applicant for the grant of a mining lease shall not, without an approval under subsection (1) to do so, enter or be upon land the subject of the application for the mining lease for a purpose for which he is not otherwise entitled to enter or be upon that land.

Penalty: 300 penalty units and, if the offence is a continuing one, a further penalty of 20 penalty units for each day during which the offence continues.

(5) Whether or not an applicant for a mining lease is proceeded against for an offence against subsection (4), the Minister may reject the application for the grant of the mining lease if the Minister is of the opinion that the applicant has contravened that subsection.

7.69 Mining lease for carriage through land. (1) Notwithstanding the provisions of section 7.1, a mining lease may be granted to a person who is the holder of a current mining lease for the purpose of carrying any thing through, over or under land not comprised in the current mining lease by means of a pipeline, aerial ropeway, conveyor apparatus, transmission line or similar means.

(2) An application for a mining lease referred to in subsection (1) shall be lodged as prescribed by this Part at the office of the mining

registrar for the mining district in which is situated the current mining lease.

(3) The Director-General may dispense, in a particular case, with the requirement under this Part that a person mark out the land the subject of an application for a mining lease pursuant to subsection (1) whereupon the provisions of section 7.8 shall not apply to the extent set out in the dispensation.

PART 8—EFFECT ON TOWN PLANNING PROVISIONS

8.1 Effect on town planning provisions. (1) Where, by or under this Act, a person is authorized to use land for a specified purpose, the use of the land in accordance with that authorization shall, notwithstanding the provisions of the *Local Government Act 1936-1988* or the *City of Brisbane Town Planning Act 1964-1988*, be a permitted use of that land for the purposes of those Acts.

(2) Upon the grant or renewal of a mining claim, mineral development licence or mining lease, the mining registrar for the district in which the claim, licence or lease is recorded shall notify the Local Authority for the Area in which the land is situated and the Director of Local Government of particulars thereof.

(3) Upon receipt of a notification pursuant to subsection (2), a Local Authority and the Director of Local Government shall by notation in the prescribed form on town planning scheme maps for the Local Authority Area or part of the Area indicate that the use of land comprised in a mining claim, mineral development licence or mining lease for purposes in accordance with the claim, licence or lease is deemed by this Act to be a permitted use of the land and that interested persons may obtain particulars of the claim, licence or lease granted in the Area by contacting the relevant mining registrar in respect of mining claims and mining leases and the Director-General in respect of mineral development licences.

(4) Notwithstanding the provisions of the *Local Government Act 1936-1988* or of the *City of Brisbane Town Planning Act 1964-1988* the Governor in Council shall not be competent to amend a town planning scheme in relation to land that is comprised in a mining lease or mineral development licence unless the views of the Minister have been obtained in writing and taken into account.

(5) For the purposes of a town planning scheme under the *Local Government Act 1936-1988* or the *City of Brisbane Town Planning Act 1964-1988*, activities carried on under the authority of a prospecting permit or an exploration permit are not uses of land.

PART 9—ROYALTIES

9.1 Royalty return and payment. (1) The holder of a mining claim, mining lease or other authority under this Act or any other Act relating to mining who mines or allows to be mined mineral, whether or not the Crown has the property in the mineral, from land the subject of

that mining claim, mining lease or other authority shall pay royalty as prescribed at the rate for the time being prescribed in respect of that mineral.

(2) Subsection (1) does not apply in respect of—

(a) coal, that is not the property of the Crown, mined under the authority of a mining lease granted or renewed or deemed to be granted or renewed under this Act for as long as there subsists an agreement made prior to the commencement of the *Mining Act Amendment Act 1976* with the owner of the coal or his predecessor in title as to the royalty to be paid to the owner in respect of the coal mined or where such an agreement has, as provided in that agreement, been renewed, whether before or after the commencement of the *Mining Act Amendment Act 1976* for as long as there subsists a renewal of such an agreement;

or

(b) mineral, that is not the property of the Crown and is not referred to in paragraph (a), mined under the authority of a mining claim or mining lease granted or renewed under this Act for so long as there subsists an agreement made prior to the commencement of this Act with the owner of the mineral or his predecessor in title as to the royalty to be paid to the owner in respect of the mineral mined or where such an agreement has, as provided in that agreement, been renewed, whether before or after the commencement of this Act for so long as there subsists a renewal of such an agreement.

(3) Where mineral is mined under the authority of a mining claim or a mining lease royalty payable under this Part shall be payable—

(a) where the Crown has the property in the mineral, to the Crown;

or

(b) in any other case to the person who has the property in the mineral.

(4) (a) The holder of a mining claim, mining lease or other authority under this Act or any other Act relating to mining who mines or allows to be mined mineral, in respect of which royalty shall be payable to the Crown, from land the subject of that mining claim, mining lease or other authority shall lodge such prescribed royalty returns as prescribed.

(b) The holder of a mining claim or mining lease which authorizes the mining of minerals in respect of which royalty is or would be payable to the Crown shall lodge the prescribed royalty return as prescribed notwithstanding that no mineral has been mined during the period of the return unless otherwise prescribed.

(5) Where, during a period in respect of which a royalty return is required to be lodged, mineral is mined by more than one person under

a mining claim or mining lease or other authority under this Act or any other Act the holder shall ensure lodgment of the prescribed royalty return and payment of the prescribed royalty in respect of all mineral mined during the whole of the period under the mining claim, mining lease or other authority.

(6) A person who mines from land, mineral, whether or not the Crown has the property in the mineral, otherwise than under a mining claim, mining lease or other authority referred to in subsection (1) or (2), shall—

- (a) lodge such prescribed royalty returns as prescribed;
- and
- (b) pay as prescribed to the Crown or other person having property in the mineral royalty at the rate for the time being prescribed in respect of that mineral.

(7) The Minister may in his discretion determine that for the purpose of calculating royalty payable under this Part, mineral has been mined under the one mining operation notwithstanding that that operation may be carried on under more than one authority granted under this or any other Act to mine that mineral.

9.2 Prescription of royalty. (1) Regulations made pursuant to section 11.31, may prescribe the royalties payable in respect of mineral mined from land to the Crown or other person who had the property in the mineral.

(2) Royalty may be prescribed whether the obligation to pay the royalty arises under this Act or under any agreement made with the State of Queensland or under any undertaking given by any person and shall be calculated at such rate or rates, in such manner and on such basis or bases as are prescribed by regulation or provided for in subsection (4).

(3) Without limiting the authority of the Governor in Council to regulate with respect to royalty, a rate of royalty and the manner and basis of its calculation—

- (a) may be prescribed by reference to the quantity of mineral-bearing ore removed or by reference to the quantity of mineral mined;
- (b) may be prescribed by reference to a proportion of the profits made from specified operations or from a particular operation

or of the gross proceeds of the sale or disposal of the product of specified operations or of a particular operation;

- (c) may vary as between royalties payable in respect of different minerals;
- (d) may vary as between royalties payable by the same person or by different persons whether—
 - (i) in respect of the same mineral or different minerals;
 - (ii) in respect of mineral mined at the same place or at different places;
 - (iii) in respect of mineral mined at the same point in time or at different points in time;
 - (iv) in respect of mineral mined by the same method of mining or by different methods of mining;
- (e) may be prescribed to apply generally throughout the State or in any prescribed locality of the State;
- (f) may be prescribed in respect of all mining operations in the State or in respect of a particular mining operation or in respect of the mining operations of a particular person.

(4) The rate or basis of calculation of a particular royalty prescribed by the regulations may be varied by Order in Council in such circumstances as the Minister considers reasonable.

9.3 Minister may request audit. (1) Without in any way limiting the powers of the Minister or any other person under this Act, in order to ascertain the accuracy of any royalty return document or statement lodged as prescribed by or under this Act for the purposes of this Part by a person who is or was the holder of a mining claim or mining lease or who otherwise mines or who, the Minister suspects, may have mined from any land mineral, the Minister may, at any time, request and authorize—

- (a) the Auditor-General;
- or
- (b) with the concurrence of the Auditor-General, an officer of the Department of the Auditor-General,

to examine that person's accounts and accounting records and to compare such records with the return, document or, as the case may be, statement.

(2) The Auditor-General or officer authorized under subsection (1)—

- (a) shall examine such of that person's accounts and accounting records as he considers necessary and forthwith upon completion of the examination and comparison, shall report to the Minister the result thereof;
- (b) shall have, in respect of that person's accounts and accounting records, the subject of the examination and comparison, such powers as are prescribed;
- (c) where the return, document or statement has been lodged by or on behalf of a company within the meaning of the *Companies (Queensland) Code* may rely upon the work performed by the auditors who have examined that company's accounts in compliance with that Code.

(3) The provisions of the *Financial Administration and Audit Act 1977-1988* that apply in relation to audits of accounts required by any Act to be performed by the Auditor-General apply in relation to examinations and reports under this section.

(4) A person shall not obstruct or hinder the Auditor-General or any officer authorized under this section in the performance of his duty or in the exercise by him of any power or authority in aid thereof.

9.4 Resolving inconsistency between differing royalty provisions.

Where there is inconsistency between the requirements of the regulations and the provisions of any agreement made with the State of Queensland or of any undertaking given by any person (whether made or given before or after the commencement of the *Mining Royalties Act 1974* and whether or not such provisions have the force of law) as respects the royalty payable to the Crown in respect of mineral mined or mineral-bearing ore removed in any mining operation or as respects the manner or basis of its calculation, the requirements of the regulations shall prevail and the royalty payable and the manner and basis of its calculation shall be as prescribed by the regulations, and any amount of royalty paid pursuant to such agreement or undertaking in relation to any period shall be offset against the amount of royalty duly payable pursuant to the regulations in relation to the same period.

9.5 Utilization of security deposit towards royalty payments. Where royalty is payable under this Part by a person in respect of one mining operation (as determined by the Minister pursuant to section 9.1 (7)) and is unpaid, that amount may be recovered by the Minister or, as the case may be, the mining registrar by utilization of security deposited by or on behalf of that person in respect of mining claims or mining leases or any of them under which the mining operation is carried on.

This section shall not be construed to limit the right to utilize a security deposit for any purpose under any other provision of this Act.

9.6 Royalty return and payment upon assignment or surrender of mining claim or mining lease. (1) A person who assigns or surrenders, otherwise than for the purpose of a grant of a new mining claim or mining lease, a mining claim or a mining lease shall lodge with the document of assignment or surrender a royalty return with respect to mineral mined under the authority of the mining claim or mining lease for the current return period up to the last day of the month immediately preceding the lodgement of the assignment or surrender and shall lodge with the return the prescribed royalty in respect of that mineral.

(2) Nothing in subsection (1) shall abrogate the liability of a holder of a mining claim or mining lease at the time that minerals are mined thereunder to pay royalty on the minerals mined during the period from the date up to which the return required under subsection (1) is required up to the date the assignment or surrender thereof takes effect.

9.7 Maintenance of records. A person who is the holder of a mining claim or a mining lease or who otherwise mines mineral from land shall keep accurate and proper accounting records such as are necessary to determine the amount of royalty payable from time to time under this Part in respect of mineral mined.

Such records shall be retained by that person for a period of seven years after the completion of the transactions, acts or operations to which they relate.

9.8 Minister may require information. (1) The Minister may, for the purpose of—

- (a) ascertaining whether there is any liability on a person to pay an amount of royalty under this Act, and if so, the amount of the liability;
 - (b) ascertaining whether a person is required to comply with this Part or whether this Part has been contravened or not complied with by a person in any respect;
 - or
 - (c) enquiring into any matter connected with the administration of this Part,
- require a person—
- (d) to lodge a royalty return as prescribed in respect of a specified period, whether or not any mineral has been mined during that period;
 - (e) to give information of a kind and in a form or manner required or to produce records (or copies thereof) (being information or records believed to be within the knowledge, in the custody or under the control of the person) at a place and within a time specified by the Minister, to the Minister or an officer authorized by the Minister;
 - or
 - (f) to attend before the Minister or other officer specified by the Minister at a time and place specified by the Minister

and there to give information and to produce records of a kind specified (being information or records believed to be within the knowledge, in the custody or under the control of the person) and to answer questions or to do all or any of those things.

(2) A person appointed for that purpose by the Minister and all other persons acting in aid of him may enter any place wherein or whereon that person suspects on reasonable grounds that there are accounts, records, documents or other information in respect of which a requirement could be made under subsection (1), may search for and require production at that place, at the mining registrar's office or at any other specified place of such accounts, records, documents and information and may examine, copy and make extracts from any such accounts, records, documents and information.

(3) (a) Before a person referred to in subsection (2) enters a part of any place which part is used exclusively as a dwelling-house he shall, save where he has the permission of the occupier of that part to his entry, obtain from a justice a warrant to enter.

(b) A justice who is satisfied upon the complaint of a person referred to in subsection (2) that there is reasonable cause to suspect that in any place there are accounts, records, documents or other information referred to in subsection (2), may issue his warrant directed to the complainant to enter the place named in the warrant for the purpose of exercising therein the powers conferred upon that person under this Act.

(c) A complaint made under paragraph (b) shall be made on oath or affirmation and shall set out the grounds on which the suspicion of the person making the same is based.

(d) A justice who is the Director-General or other officer of the Department of the Government for the time being administering this Act is not competent to issue a warrant to which paragraphs (a), (b) and (f) apply.

(e) A justice who issues his warrant pursuant to paragraph (b) shall forward a copy of the warrant to the mining registrar for the mining district in which the dwelling-house is situated.

(f) A warrant shall be, for the period of one month from the date of its issue, sufficient authority for the person named therein and all persons acting in aid of him—

(i) to enter the place specified in the warrant;
and

(ii) to exercise therein the powers conferred upon the person named therein by or under this Act.

(g) In this subsection premises that are used as a dwelling-house do not include the curtilage of those premises.

(4) The Minister or an officer authorized by the Minister pursuant to subsection (1) may require information sought under this section to

be given, verbally on oath or in writing by statutory declaration, as the case may be, and for that purpose the Minister, that officer or any justice may administer an oath or take a declaration.

(5) The Minister or an officer authorized by the Minister pursuant to subsection (1) may cause to be made copies of or extracts from the whole or part of the information or accounts, records or documents produced in accordance with subsection (1).

(6) A requirement pursuant to subsection (1) which requires a person to give information to, to attend before or to produce accounts, records or documents to an officer authorized by the Minister pursuant to subsection (1) may specify that officer by name or by the office that he holds.

(7) Notwithstanding that a requirement made pursuant to subsection (1) requires a person to give information to, to attend before or to produce accounts, records or documents to an officer whose name or office is specified in the requirement, the Minister may at any time (without notice to the person to whom the notice was given) authorize another officer for that purpose to exercise any power or perform any duty that he would be able to exercise or perform if he were authorized pursuant to subsection (1).

(8) Any reasonable expenses incurred by a person whose attendance is required under this section which are acceptable to the Minister may be allowed.

9.9 Offence not to comply with section 9.8. (1) A person shall not fail to comply with a requirement made of him under section 9.8.

(2) A person shall not be convicted of an offence defined in subsection (1), if the Wardens Court hearing the charge is satisfied—

(a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates;

or

(b) that the defendant complied with that requirement to the extent of the defendant's ability to do so.

(3) A person is not excused from complying with a requirement under section 9.8 to give information or answer a question on the ground that the information or answer might tend to incriminate him or make him liable to a penalty.

(4) Information given or an answer made by a person in complying with a requirement under section 9.8, which might tend to incriminate him or make him liable to a penalty, is not admissible against him in

any proceedings brought against him in a court in Queensland with a view to his punishment for an alleged offence except—

- (a) proceedings in respect of an offence under this Act;
or
 - (b) proceedings in respect of an offence in connexion with verification of the information or answer by oath or affirmation.
- (5) Where a person commits an offence defined in subsection (1)—
- (a) the offence shall be a continuing offence and be deemed to continue for as long as the requirement in respect of which the offence was committed is not complied with;
and
 - (b) the Wardens Court may, upon convicting the person of the offence, in addition to any penalty that it may impose under subsection (1), order the person to pay a penalty of 5 penalty units for each day on which the offence is, pursuant to paragraph (a), deemed to have continued to the date of the person's conviction of the offence.

(6) Subsection (5) applies notwithstanding that the failure or conduct alleged against a defendant related to a particular time by or a particular period in which the requirement was to be complied with.

(7) Where a person has been convicted of an offence against subsection (1), the court may, in addition to imposing a penalty that it may impose under subsection (1) and, where applicable, subsection (5), order the person to comply with the requirement in respect of which the offence was committed.

(8) Where a court makes an order under subsection (7), it shall specify therein a place where and a time or period by or within which the order is to be complied with.

(9) A person shall not fail to comply with an order made by the Wardens Court pursuant to subsection (7).

(10) A person who after conviction of an offence defined in subsection (1) or this subsection (in this subsection called the "previous conviction") continues to fail to comply with the requirement in respect of which he incurred the previous conviction commits an offence against this Act.

Penalty: 10 penalty units for each day on which he has continued to fail to comply with the requirement from the date of the last occurring previous conviction to the date of his conviction for the offence under this subsection last committed by him.

(11) When a person is convicted of an offence as defined in subsection (1) and the court makes an order under subsection (7), the person shall not be punished under subsection (10) for continuing to fail to comply with the requirement to which the order relates.

9.10 False or misleading statements. (1) A person shall not give an answer, whether orally or in writing, that is false or misleading in a material particular to a question put to him under section 9.8.

(2) A person shall not, in providing information in accordance with section 9.8, make a statement or representation that is false or misleading in a material particular.

(3) It is a defence to a charge under subsection (1) or (2) to prove that the defendant believed on reasonable grounds that the answer, statement or representation was neither false nor misleading.

9.11 Determination of facts by Minister. Where, in the opinion of the Minister a person who is required by this Act to lodge a royalty return in respect of a period fails to lodge the return as prescribed or fails to keep adequate records to enable the amount of royalty payable by that person to be determined, or the Minister considers that all relevant information has not been specified or information supplied is inaccurate or inappropriate, the Minister may determine what are the facts relevant to the determination of the royalty payable and the royalty payable shall be calculated and be payable accordingly.

9.12 Reassessment of royalty. If the Minister, at any time, is satisfied that royalty has been assessed upon incorrect or inaccurate facts, the Minister may reassess the royalty payable. Where the royalty payable, upon a reassessment, is greater than any amount paid the person liable to pay the royalty shall pay the difference in the time specified by the Minister.

Where the royalty paid, upon a reassessment, is greater than the royalty payable the Minister shall cause the difference to be refunded.

9.13 Interest upon unpaid royalty. A person who fails to pay any amount of royalty payable by him to the Crown under this Part by the prescribed time for payment may be liable at the discretion of the Minister to pay to the Crown interest on the amount outstanding at the rate prescribed for the time being which interest shall form part of the royalty payable.

9.14 Recovery of unpaid royalties. Without limiting in any way any other means of recovery thereof, the Crown or any other person to whom any royalty is payable under this Part may recover in the Wardens Court or other court of competent jurisdiction the royalty or such part as remains unpaid and, in the case where the royalty is payable to the Crown interest at the prescribed rate from the person by whom the royalty is payable as a debt due and owing to the Crown or, as the case may be, that other person.

9.15 Confidentiality of information. (1) Except as provided in this section, an officer shall not disclose information or publish a record obtained by that officer or another person in connexion with the

administration of this Part, unless the disclosure or publication is made—

- (a) with the consent (express or implied) of the person to whose affairs the information or record relates;
 - (b) in connexion with the administration of this Act;
 - (c) for the purpose of any legal proceedings (including any report thereon) arising out of this Act;
- or
- (d) with the consent of the Minister.

(2) The Minister may, if he is of the opinion that it is necessary to do so for the purpose of enforcing a law which is designed to protect the public revenue of Queensland, disclose information or publish a record referred to in subsection (1) to such persons as necessary for the purpose of enforcing that law so as to enable those persons to exercise or perform a power or duty conferred or imposed on those persons by law.

(3) A person shall not disclose information or publish a record communicated to him under subsection (2) unless the disclosure or publication—

- (a) is made with the consent of the Minister;
- and
- (b) is to enable a person to exercise or perform, for a purpose referred to in subsection (2), a power or duty conferred or imposed on the person by law.

(4) Neither the Minister nor an officer nor a person authorized by the Minister to represent him shall be required to produce in court any return, declaration, statement, assessment, notice or any other document or disclose to a court the fact that he has received any information or the nature thereof or the name of the person who gave such information or any matter or thing coming under his notice in the performance of his duties under this Part, except when it is necessary to do so for the purposes of the administration of this Act.

(5) For the purposes of this section, an officer means an officer of the Public Service of Queensland whose duties include the carrying out of duties in the administration of this Act and other persons engaged to carry out such duties.

9.16 Furnishing false particulars etc. A person whether liable to the payment of royalty or not shall not—

- (a) fail or neglect to furnish a royalty return as and when required to do so by this Act;
- (b) fail or neglect to comply with any requirement of the Minister in regard to a royalty return;

or

- (c) make or deliver a false royalty return or supply false information with respect to a royalty return so made or delivered by him.

PART 10—ADMINISTRATION AND JUDICIAL FUNCTIONS

Division 1—Mining Registrars and Other Officers

10.1 Appointment of mining registrars and other officers. (1) Such mining registrars, field officers and other officers as may be necessary for carrying this Act and any other Act relating to mining into effect may be appointed and shall hold office under, subject to and in accordance with the *Public Service Management and Employment Act 1988*.

(2) A mining registrar may from time to time appoint a bailiff or bailiffs to carry out the service and execution of all process, judgements and orders authorized under this Act or any other Act relating to mining and such other duties as may be prescribed.

10.2 Acting mining registrars. The Minister may appoint any duly qualified person to act as a mining registrar during the absence from duty of a mining registrar or in any other case where the Minister considers it proper to do so.

For so long as his appointment continues, a person appointed to act as a mining registrar shall have and may exercise and perform all the powers, authorities and functions of a mining registrar under this Act and under any other Act relating to mining and shall be subject to all the disabilities of a mining registrar prescribed by this Act or by any other Act relating to mining.

10.3 Disability of mining registrars and field officers. (1) A mining registrar or field officer shall not hold or be entitled (directly or indirectly) to the benefits of any interest in any prospecting permit, mining claim, exploration permit, mineral development licence or mining lease.

Penalty: 100 penalty units or imprisonment for 6 months or both such fine and imprisonment.

(2) A mining registrar or field officer who has or acquires an entitlement or expectation of entitlement which, but for the operation of section 11.24, would be an interest referred to in subsection (1), shall forthwith upon becoming aware of that fact, give notice in writing to the Director-General giving the prescribed particulars.

(3) If, in relation to carrying out any of his functions in respect of a particular matter, a mining registrar or field officer is aware that his having an entitlement or expectation of an entitlement (referred to in subsection (2)) could be construed as influencing his conduct, he shall inform the parties concerned and, if then requested by a party, shall arrange for another mining registrar or, as the case may be, field officer to attend to the matter.

10.4 Scope of authority of mining registrars. (1) Each mining registrar shall be a mining registrar for the whole State.

(2) The Minister may assign from time to time a mining registrar to a mining district.

(3) The mining registrar assigned to a mining district shall be the registrar for any Wardens Court convened within that district and shall have custody of the records of that court unless, by order of the court, records of a particular matter are transmitted to a registrar of that or another Wardens Court to be convened at another place and to which that matter is adjourned.

10.5 Scope of authority of field officers. A field officer appointed pursuant to section 10.1 shall be a field officer for the whole State.

10.6 Establishment of offices of mining registrars. The Minister may from time to time appoint or cancel the appointment of a place within a mining district at which the office of the mining registrar for that district shall be established or located.

10.7 Powers of mining registrars and others. (1) At all times—

- (a) a mining registrar;
- (b) a field officer;
- and
- (c) any other person (including an officer appointed pursuant to section 10.1) who in the particular case is authorized in that behalf by the Minister,

may—

- (d) have full and free access to and enter and be upon any land and whilst thereon may—
 - (i) drill, dig, take cores, samples of soil, air, water or rock, make such inspections and carry out such investigations and do such other acts ordinarily connected with prospecting, exploring or mining as he thinks fit;
 - (ii) if he is satisfied that a post, cairn or other thing, not being a survey mark or other thing required by any other Act not to be removed, purporting to mark or apparently marking out boundaries of land for the purposes of this Act do not relate to any existing mining claim, mining lease or application for the grant of a mining claim or mining lease duly made under this Act, remove or cause to be removed that post, cairn or other thing;
 - (iii) may make such investigation and enquiry as is necessary to ascertain whether the provisions of this Act including the conditions applying to any prospecting permit, mining claim, exploration permit, mineral development licence,

mining lease or any other authority granted under this Act are being complied with;

- (e) may stop, detain and search any vehicle or vessel used or that he believes on reasonable grounds is being or is likely to be used for prospecting, exploring or mining;
- (f) subject to subsection (4), may question a person found by him in any place to ascertain whether this Act is being complied with and require a person so found to answer the questions put;
- (g) may require a person found by him committing an offence against this Act or who he believes on reasonable grounds has committed an offence against this Act or whose name and address are in his opinion reasonably required to state his full name and the address of his usual place of residence and, if he suspects on reasonable grounds that a name or address so stated is false, may require evidence of the correctness thereof;
- (h) may require a person to produce to him any prospecting permit, exploration permit, certificate of mining claim, mineral development licence, instrument of a mining lease or other authority under this Act granted and issued to that person or alleged by that person to have been granted to him or any books, accounts, records or documents and may inspect, examine and make copies of or extracts from any permit, certificate, licence, instrument or authority or any book, account, record or document so produced;
- (i) may, in a case where he is obstructed or has reasonable grounds to believe that he will be obstructed in the exercise of his powers or authorities or the discharge of his functions or duties, call to his aid—
 - (i) a mining registrar, field officer or other officer;
 - (ii) a member of the Queensland Police Force,
whereupon it shall be the duty of a person so called to assist him as required and in accordance with this Act and a person so assisting shall have the same powers and authorities as are conferred under this Act upon the person he is assisting;
- (j) may call to his aid a person who he thinks is competent to assist him in the exercise of his powers and authorities or the discharge of his functions and duties and a person so assisting shall have the same powers and authorities as are conferred under this Act upon the person he is assisting;
- (k) may use such force as is reasonably necessary in the exercise of the powers and authorities or the discharge of the functions and duties conferred or imposed upon him by this Act;
- (l) may, by order in writing, require a person who has failed to comply with this Act to take within such time as is

specified such steps as are specified and to remedy those matters in respect of which non-compliance has occurred;

- (m) may exercise such other powers and authorities and discharge such other functions and duties as are prescribed.

An order pursuant to subparagraph (l) shall not prejudice or affect in any way any proceeding or action that has been or may be taken for the failure to comply that resulted in the order, save that the person to whom the order is given is not liable for a continuance of the failure to comply during the time specified therein.

(2) (a) Before a mining registrar, field officer or other officer or person enters a part of any place which part is used exclusively as a dwelling-house he shall, save where he has the permission of the occupier of that part to his entry, obtain from a justice a warrant to enter.

(b) A justice who is satisfied upon the complaint of a mining registrar, field officer or other officer or person authorized by the Minister in that behalf that there is reasonable cause to suspect—

- (i) that in any place an offence against this Act has been, is being or is likely to be committed;
- (ii) that there is in any place any thing in respect of which an offence against this Act has been, is being or is likely to be committed,

may issue his warrant directed to the complainant to enter the place named in the warrant for the purpose of exercising therein the powers conferred upon a mining registrar, field officer or other officer or person authorized by the Minister in that behalf under this Act.

(c) A complaint made under paragraph (b) shall be made on oath or affirmation and shall set out the grounds on which the suspicion of the person making the same is based.

(d) A justice who is the Director-General or other officer of the Department of the Government for the time being administering this Act is not competent to issue a warrant to which paragraphs (a), (b) and (f) apply.

(e) A justice who issues his warrant pursuant to paragraph (b) shall forward a copy of the warrant to the mining registrar for the mining district in which the dwelling-house is situated.

(f) A warrant shall be, for the period of one month from the date of its issue, sufficient authority for the person named therein and all persons acting in aid of him—

- (i) to enter the place specified in the warrant;
and
- (ii) to exercise therein the powers conferred upon the person named therein by or under this Act.

(g) In this subsection premises that are used as a dwelling-house do not include the curtilage of those premises.

(3) For the purpose of gaining entry to a place a mining registrar, field officer or other officer or person authorized by the Minister may call to his aid such persons as he thinks necessary and those persons, while acting in his aid in the lawful exercise by him of his power of entry, shall have a like power of entry.

(4) Except as provided in section 9.9, a person is not obliged under this Act to answer any question or give any information or evidence tending to incriminate him.

10.8 Seizure of minerals produced by or vehicles, machinery etc. used in unauthorized mining. (1) If he believes on reasonable grounds that any mineral is being or has been mined without authority by or under this Act or any other Act relating to mining or that any vehicle, machinery, equipment or thing of whatever description is used by any person in contravention of this Act or any authority granted under this Act—

(a) a mining registrar;

(b) a field officer;

or

(c) any other officer appointed pursuant to section 10.1 who in the particular case is authorized in that behalf by the Minister,

may, without further authority, seize that mineral, vehicle, machinery, equipment or thing (in this section called the “subject property”) whereupon the subject property shall be taken to be in the custody of the mining registrar, field officer or, as the case may be, other officer.

(2) A mining registrar, field officer or other officer who seizes the subject property may—

(a) remove, dismantle and do all such things as he thinks necessary to transport the subject property to a place of safe keeping;

(b) direct that mineral so seized be deposited by the person from whom it is seized at a place of safekeeping set out in the direction;

(c) if the subject property is not removed to or deposited at a place of safekeeping, do all such things as are prescribed or, if not prescribed, as he thinks fit to show that the subject property has been so seized and is in his custody.

(3) Upon an application in writing by the owner of the subject property or a person acting on his behalf or claiming a right to possession of the subject property the mining registrar, field officer or other officer who has the custody of the subject property may release the subject property to the applicant.

(4) (a) If, upon the expiration of 3 months from the date of seizure of the subject property, the subject property is not released under subsection (3) and the subject property is not required as evidence in proceedings that have been instituted for a breach of any provision of

this Act or of any other Act relating to mining alleged to have been committed by the person from whom the subject property was seized then, as soon as practicable thereafter, the mining registrar, field officer or other officer who seized the subject property shall cause to be served by post upon the owner of the subject property, if he can be ascertained, at his last place of address known to the person who seized the subject property notice in writing that the subject property may be collected.

(b) The mining registrar, field officer or other officer who seized the subject property may, if he considers it desirable, give public advertisement to the owner in one or more newspapers circulating in the locality in which the subject property was seized or in other localities that the subject property may be collected.

(5) If the subject property is required as evidence in any proceedings instituted for a breach of any provision of this Act or any other Act relating to mining and is not forfeited, the mining registrar, field officer or other officer who seized the subject property shall, upon the final determination of those proceedings give the notice or advertisement referred to in subsection (4).

(6) (a) If within 28 days from the date of service or advertisement of the notice, whichever shall last occur, the owner of the subject property or a person acting on his behalf or claiming a right to the possession of the subject property has not obtained possession of the subject property in accordance with the provisions of this section, the mining registrar, field officer or other officer who seized the subject property may—

- (i) by notice published in a newspaper circulating in the locality in which the subject property was seized and, if he considers it desirable, in a newspaper circulating in any other locality, advertise that he will offer the subject property for sale at the place and time stated in the advertisement;
- (ii) at the time on the day stated in the advertisement (which day shall be not earlier than 14 days after the date when the advertisement was first published) and at the place stated in the advertisement, offer the subject property for sale unless the owner thereof or a person acting on his behalf or claiming a right to possession thereof has sooner obtained possession of the subject property in accordance with the provisions of this section.

Subject property sold pursuant to this paragraph shall be sold by public auction unless the Minister otherwise directs.

(b) The proceeds of the sale or disposal of the subject property shall be applied as follows:—

- (i) firstly, in payment of the expenses of the sale or disposal;
- (ii) secondly, in payment of the cost of seizure of, removal of and holding the subject property and the service and

advertisement of any notice served or advertised under this section;

- (iii) thirdly, in payment of the cost of rehabilitation of land required as a result of the use of the subject property in contravention of this Act or any authority granted under this Act or any other Act relating to mining;
- (iv) fourthly, in payment of the balance of the proceeds to the owner of the subject property or, if after reasonable enquiry, he cannot be ascertained, to The Public Trustee of Queensland as unclaimed moneys and the provisions of the *Public Trustee Act 1978-1989* with respect to unclaimed moneys shall apply thereto.

(7) Subject property in the custody of the mining registrar, field officer or other officer who seized it shall not be delivered to the owner thereof, or to another person acting on his behalf or claiming a right to the possession thereof unless—

- (a) the owner or person acting on his behalf or claiming a right to possession of the subject property has applied in writing signed by him to the mining registrar, field officer or other officer for the release of the subject property;
- (b) the applicant has furnished proof to the satisfaction of the mining registrar, field officer or other officer of ownership or right to possession of the subject property and, in the case of the applicant being a person acting on behalf of the owner, has furnished proof to the satisfaction of the mining registrar, field officer or other officer, of his authority to so act;
- (c) the applicant has paid all expenses incurred by the mining registrar, field officer or other officer and not waived pursuant to the provisions of this subsection in connexion with the seizure of, removal of and holding the subject property and the service or advertisement of any notice served or advertised by the mining registrar, field officer or other officer in relation to the availability for collection or intended sale of the subject property;
- (d) the applicant has signed a receipt for the delivery of the subject property to him.

If the mining registrar, field officer or other officer who seized the subject property considers that special circumstances exist, he may recommend to the Director-General that he waive payment of the whole or part of the expenses referred to in provision (c).

(8) A person who takes delivery, or obtains possession of or removes or attempts to remove from or interferes in any way with subject property which is in the custody of a mining registrar, field officer or other officer who seized the property except in accordance with the provisions of this section commits an offence against this Act.

(9) In this section the term "subject property" includes any part of the subject property.

(10) It is the duty of every member of the Police Force to assist a mining registrar, field officer or other officer authorized to do the things permitted or directed to be done by this section, when called upon to do so.

Division 2—Wardens Courts

10.9 Appointment of wardens. (1) The Governor in Council from time to time may by Order in Council appoint such number of duly qualified legal practitioners or persons duly qualified for admission as legal practitioners as he considers necessary each to be a warden for the purposes of this Act and any other Act relating to mining.

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

- (a) by way of secondment of an officer of the Public Service of Queensland;
- (b) under the *Public Service Management and Employment Act 1988*;
- or
- (c) upon terms and conditions determined by the Minister, and may be for a limited duration or upon a tenure that is not limited.

(3) The Director-General shall not be a warden.

10.10 Disability of warden. (1) A warden shall not hold or be entitled (directly or indirectly) to the benefits of any interest in any prospecting permit, mining claim, exploration permit, mineral development licence or mining lease.

Penalty: 100 penalty units or imprisonment for six months or both such fine and imprisonment.

(2) A warden who has or acquires an entitlement or expectation of entitlement which, but for the operation of section 11.24, would be an interest referred to in subsection (1), shall forthwith, upon becoming aware of that fact, give notice in writing to the Minister giving the prescribed particulars.

(3) If, in relation to the hearing of any matter, a warden is aware that his having an entitlement or expectation of an entitlement (referred to in subsection (2)) could be construed as influencing his conduct, he shall inform the parties concerned and, if then requested by a party, shall arrange for another warden to hear the matter.

(4) Nothing in subsection (3) shall limit the jurisdiction of a warden to grant an interim injunction.

10.11 Scope of wardens authority. (1) Each warden shall be a warden for the whole State.

(2) The Minister may assign from time to time one or more than one warden to one or more than one mining district.

(3) The Minister may assign from time to time such functions of a warden as are specified to a warden in respect of the whole of the State or such part thereof as is specified in the assignment.

(4) The exercise or performance by a warden of the powers, authorities and functions of a warden shall have force and effect throughout the State and a summons, warrant or other process issued by him shall be enforced and given effect to accordingly.

10.12 Establishment of offices of wardens. The Minister may from time to time appoint or cancel the appointment of a place within the State at which an office of a warden shall be established and maintained and assign a warden to attend at that office.

10.13 Acting wardens. The Governor in Council may by notification in the Government Gazette appoint any duly qualified legal practitioner or a person duly qualified for admission as a legal practitioner to act as warden during the absence from duty of a warden or in any other case where the Governor in Council considers it proper to do so.

For so long as his appointment continues, a person appointed to act as a warden shall have and may exercise and perform all the powers, authorities and functions of a warden under this Act and under any other Act relating to mining and shall be subject to all the disabilities of a warden prescribed by this Act or by any other Act relating to mining.

10.14 Power to enter land. For the purpose of carrying out or facilitating the carrying out of any of the functions of a warden or a Wardens Court, a warden and all persons authorized in writing by a warden in that behalf may enter and be upon any land.

10.15 Constitution of Wardens Courts. (1) Each warden sitting alone and in open court shall constitute a Wardens Court which shall be convened by him from time to time within each mining district assigned to him and in such other places within the State in respect of which his functions as a warden are assigned to him pursuant to section 10.11 (3).

(2) Within a mining district, a Wardens Court shall be convened by the warden at such place or places as the warden considers appropriate to the carrying out of the functions of the Wardens Court.

(3) Subject to section 10.28 a matter to be heard by a Wardens Court shall be heard by a Wardens Court convened at a place within the relevant mining district unless—

(a) the parties and the warden agree that the matter shall be heard within another mining district;

or

(b) the warden determines as provided for in this Act that the matter shall not be heard within that district.

(4) Where this Act authorizes the warden to determine that a matter shall not be heard by the Wardens Court, the warden is not required to convene a Wardens Court to make that determination.

(5) The person (whether or not he continues to be a warden) who constitutes a Wardens Court at the time the hearing of a matter is commenced shall continue to constitute that Wardens Court for the purpose of that matter being determined by that court unless—

(a) as provided in this Act the matter is adjourned to another Wardens Court;

or

(b) the Minister assigns that matter to another Wardens Court.

(6) At any time more than one Wardens Court may sit within a mining district.

10.16 Wardens Court a court of record. (1) A Wardens Court shall be a court of record.

(2) Each Wardens Court shall have a seal which shall be kept by the warden and shall be judicially noticed.

10.17 Form of decisions of Wardens Court. (1) Every judgment, decision, recommendation and order of a Wardens Court—

(a) shall be in writing;

(b) shall set out fully the facts found by it;

(c) shall set out its decisions on any relevant question of law raised during the hearing of the matter;

(d) shall be given and published in open court;

(e) may be given at a place other than where the matter was heard.

(2) Immediately after a Wardens Court gives a judgment, decision, recommendation or order at a place other than where the matter was heard, the Wardens Court, unless the parties otherwise agree, shall adjourn the matter to the next sitting of the Wardens Court at the place where the matter was heard to allow any applications for costs to be made.

(3) The warden shall cause each judgment, decision, recommendation and order published by the Wardens Court to be lodged with and filed by the registrar of the court and retained with the records of the court.

The registrar of a Wardens Court shall transmit a copy of every judgment, decision, recommendation and order of the court or of the warden published in the Wardens Court to the Director-General.

10.18 Right of audience in Wardens Court. A party to any matter before a Wardens Court may appear in person and conduct his own case by addressing the court and by examining and cross-examining witnesses or be represented by a duly qualified legal practitioner or any

person appointed by the party accepted by leave of the court, who may conduct the case on behalf of the party and address the court, examine and cross-examine witnesses.

10.19 Rules of evidence. (1) Except as otherwise provided in sections 4.25, 4.63, and 7.25 the rules of evidence observed in the Supreme Court shall be applicable to and shall be observed in the hearing of all questions of fact in a Wardens Court.

(2) At a hearing before a Wardens Court a document purporting to be the books of any court or tribunal exercising jurisdiction within Queensland and any entries therein and records of that court or tribunal or copies of those books, entries or records under the seal of that court or tribunal and purporting to be signed and certified by the clerk, registrar or other appropriate officer of that court or tribunal shall upon its production and proof of its relevance to the matter in issue be evidence of the contents of the books, entries or records and of the proceedings referred to in them and of the regularity of the proceedings and in the absence of evidence to the contrary conclusive evidence thereof.

(3) Relevant affidavits and other processes of a court purporting to be sealed shall be admitted in evidence by a Wardens Court without further proof thereof.

10.20 Substantive jurisdiction. (1) A Wardens Court shall have jurisdiction to hear and determine all actions, suits and proceedings arising in relation to prospecting, exploration or mining or to any permit, claim, licence or lease granted or issued under this Act or any other Act relating to mining.

(2) Without limiting the generality of subsection (1), a Wardens Court shall have jurisdiction to hear and determine actions, suits and proceedings with respect to—

- (a) the right to possession of or other interest or share in any mining claim, exploration permit, mineral development licence or mining lease;
- (b) the rights and entitlements to minerals mined under any prospecting permit, mining claim, mining lease or other authority granted under this Act or any other Act relating to mining and to the products of mining;
- (c) the area, dimensions and boundaries of land (including the surface area of land) the subject of a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease;
- (d) any encroachment or trespass upon or interference with or damage to land the subject of a prospecting permit, mining claim, exploration permit, mineral development licence, mining lease or other authority granted under this Act or the buildings, plant, machinery or equipment thereon;
- (e) any matter arising between applicants or holders in relation to prospecting, exploring or mining, or arising between

applicants or holders and owners of land in relation to prospecting, exploring or mining;

- (f) any determination of compensation as provided for under this Act or any other Act relating to mining;
 - (g) the enforcement of any agreement or determination as to compensation under this Act or any other Act relating to mining;
 - (h) any assessment of damage to land or improvements to land arising from activities purported to have been carried on under the authority of this Act or any other Act relating to mining;
 - (i) any application required by this Act or any Act relating to mining to be made or heard in a Wardens Court;
- and
- (j) any other matter prescribed to be heard in a Wardens Court.

(3) A Wardens Court also has jurisdiction to hear and determine actions, suits and proceedings with respect to any demand for debt or damages arising out of or made in respect of—

- (a) the carrying on of prospecting, exploring or mining;
- (b) any agreement relating to prospecting, exploring or mining.

(4) The jurisdiction of a Wardens Court includes jurisdiction to take cognisance of and determine all claims and interests arising in any proceeding before it, both legal and equitable, and in the exercise of its jurisdiction a Wardens Court shall have power to grant equitable remedies.

(5) The jurisdiction of a Wardens Court shall not be ousted by reason only of the fact that any proceeding before it relates to claims or interests of an equitable nature or involves the determination of title to land.

(6) In relation to any matter within its jurisdiction (or in relation to any matter which a Wardens Court considers necessary to determine to establish its jurisdiction), a Wardens Court may grant such remedy and relief as it thinks just and as is in accordance with law, including equitable remedy and relief.

(7) Nothing in this section shall be construed to confer upon a Wardens Court jurisdiction—

- (a) in any matter under the *Miners' Homestead Leases Act 1913-1986* or the *Mining Titles Freeholding Act 1980-1989*;
or
- (b) in respect of the recovery of wages or moneys due under industrial awards or agreements.

10.21 Application for interim orders by remote means. (1) Where by reason of distance, urgency or other circumstances affecting a particular case, it is impracticable for a party to a cause or matter within the

jurisdiction of a Wardens Court to make application to the warden for an order for the detention or preservation of any property or thing, being the subject-matter of the litigation or as to which any question may arise therein, the party may make the application to the mining registrar in the mining district in which the property or thing is situated in the same manner that an application could be made to the warden.

(2) Where an application is made pursuant to subsection (1) to a mining registrar, the mining registrar shall forthwith advise the warden (whether by means of telephone, radio, telex, facsimile transmission or other facility for distance communication) of the application and of all relevant details and any supporting evidence produced to the mining registrar in respect of the application.

(3) The warden who receives advice pursuant to subsection (2) may make any order that he could have made if the application had been made in his presence.

(4) Upon making an order pursuant to subsection (3) the warden shall forthwith inform the mining registrar by like means referred to in subsection (2) of the order and the mining registrar, as registrar of the Wardens Court, shall publish the order which shall include a statement—

(a) of the date on which and place at which the warden made the order;

and

(b) of the name of the warden who made the order.

(5) An order issued under this section shall take effect as an order of the warden.

10.22 Removal of proceedings from Supreme Court or District Court to Wardens Court. (1) If proceedings are pending in the Supreme Court or a District Court that might have been brought in a Wardens Court and—

(a) the parties have not consented to the proceeding being heard in the Supreme Court or, as the case may be, a District Court;

or

(b) the parties consent to the making of the following application, a party to the proceedings may at any time apply to the Supreme Court or a Judge thereof for an order remitting the proceedings to a Wardens Court or the Supreme Court or a Judge thereof may of its or his own motion order the party that brought the proceedings to show cause as directed therein why the proceedings should not be so remitted.

If the Supreme Court or a Judge thereof makes an order under this subsection on its or his own motion, the Registrar of that Court shall give notice of the order to the party in question and in accordance with the Rules of the Supreme Court.

(2) In a hearing conducted pursuant to subsection (1), unless it is shown to the satisfaction of the Supreme Court or the Judge—

(a) that unnecessary delay would be caused by a trial in a Wardens Court;

or

(b) that either by reason of the probable cost of trial in a Wardens Court, or by reason of the questions of law involved in the proceedings, or because there is reason to believe that a fair trial cannot be had in a Wardens Court, the case ought to be tried in the Supreme Court or, as the case may be, a District Court,

it or he may order the proceedings pending in the Supreme Court or, as the case may be, a District Court to be remitted to a Wardens Court convened in the relevant mining district.

(3) Where the Supreme Court or a Judge thereof makes an order under subsection (2) remitting proceedings pending before it or him to a Wardens Court, the Registrar of the Supreme Court shall transmit to the registrar of that Wardens Court a copy of the order and a copy of the writ, pleadings or other documents filed by the parties in the Registry of the Supreme Court in relation to the proceedings.

(4) (a) Where the Supreme Court or a Judge thereof makes an order under subsection (2) remitting proceedings pending before a District Court to a Wardens Court, the Registrar of the Supreme Court shall transmit to the Registrar of the District Court a copy of the order and any document filed by the parties in the Registry of the Supreme Court in relation to the application made under subsection (1).

(b) Upon receipt of a copy of an order and other documents transmitted pursuant to paragraph (a), the Registrar of the District Court shall transmit to the registrar of the Wardens Court a copy of that order and a copy of the writ, pleadings and other documents filed by the parties in the Registry of the District Court in relation to the proceedings.

(5) Proceedings remitted to a Wardens Court shall be heard and determined and judgement therein shall be entered as if the proceedings had been commenced in that Wardens Court.

(6) The costs of the parties in respect of proceedings remitted to a Wardens Court by an order made under subsection (2)—

(a) incurred subsequently to the order shall be determined by the Wardens Court;

(b) incurred before the order shall be in the discretion of the Supreme Court or a Judge thereof.

(7) This section shall not be construed to limit the operation of sections 77 and 78 of the *District Courts Act 1967-1988*.

(8) Except as provided by this section, proceedings to which this section may apply are not removable from the Supreme Court or a District Court to the Wardens Court.

10.23 Removal of proceedings from Wardens Court to Supreme Court or District Court. (1) If proceedings are pending in a Wardens Court that might have been brought in the Supreme Court or a District Court and—

(a) the parties have not consented to the proceedings being heard in the Wardens Court;

or

(b) the parties consent to the making of the following application, a party to the proceedings may apply to the Supreme Court or a Judge thereof for an order remitting the proceedings to the Supreme Court or to a District Court or the Supreme Court or a Judge thereof may of its or his own motion order the party that brought the proceedings to show cause as directed therein why the proceedings should not be so remitted.

If the Supreme Court or a Judge thereof makes an order under this subsection on its or his own motion, the Registrar of that Court shall give notice of the order to the party in question and in accordance with the Rules of the Supreme Court.

(2) In a hearing conducted pursuant to subsection (1), if it is shown to the satisfaction of the Supreme Court or the Judge that by reason of the questions of law involved in the proceedings or because there is reason to believe that a fair trial cannot be had in the Wardens Court, the case ought to be heard in the Supreme Court or a District Court, it or he may order the proceedings pending in the Wardens Court to be remitted to the Supreme Court or, as the case may be, a District Court.

(3) (a) Where the Supreme Court or a Judge thereof makes an order under subsection (2) remitting proceedings to the Supreme Court or a District Court, the Registrar of the Supreme Court shall transmit to the registrar of the Wardens Court a copy of the order and, in a case where the proceedings are remitted to a District Court, any documents filed by the parties in the Registry of the Supreme Court in relation to the application made under subsection (1).

(b) Upon receipt of a copy of an order transmitted pursuant to paragraph (a), the registrar of the Wardens Court shall transmit to the registrar of the Court to which the proceedings are remitted a copy of the order and a copy of the pleadings or other documents filed by the parties in the Registry of the Wardens Court in relation to the proceedings.

(4) Proceedings remitted to a Court by an order made under subsection (2) shall be heard and determined and judgement therein shall be entered as if the proceedings had been commenced in that Court.

(5) The costs of the parties in respect of proceedings remitted to a Court by an order made under subsection (2)—

(a) incurred subsequently to the order shall be allowed according to the scale prescribed in that Court;

(b) incurred before the order shall be in the discretion of the Supreme Court or a Judge thereof.

(6) This section shall not be construed to limit the operation of sections 77 and 78 of the *District Courts Act 1967-1988*.

(7) Except as provided by this section, proceedings to which this section may apply are not removable from the Wardens Court to the Supreme Court or a District Court.

10.24 Practice and procedure of Wardens Court. (1) The proceedings taken, forms used, and manner, time and place of hearing and determining matters within the jurisdiction of a Wardens Court shall be as prescribed.

(2) The Governor in Council may, by Order in Council from time to time make Rules of Court which in his opinion are necessary or desirable to regulate the pleading, practice and procedure in the Wardens Court.

(3) Where in relation to any matter of practice and procedure this Act is silent or does not prescribe sufficiently, such practice and procedure shall be, as nearly as may be, in accordance with the practice and procedure of Magistrates Courts exercising jurisdiction under the *Magistrates Courts Act 1921-1988* the provisions of which Act and the rules made thereunder shall in such case apply, with all necessary adaptations, with respect to proceedings before a Wardens Court and where in relation to any matter of practice or procedure that Act and those rules make no provision or inadequate provision the practice and procedure of a Wardens Court shall be, as nearly as may be, the practice and procedure of the Supreme Court.

10.25 Costs. (1) Costs may be awarded by the Wardens Court in respect of any matter (including the hearing of applications and objections under this Act) brought before the Wardens Court.

(2) Costs awarded by the Wardens Court shall be at the discretion of the warden and the amount thereof may be determined by him or taxed by the registrar of the Wardens Court as the warden may direct.

(3) Any order of the Wardens Court striking out any action or matter upon the grounds that the Wardens Court does not have jurisdiction to hear and determine the matter may include any award of costs to the same extent and recoverable in the same manner as if the Wardens Court had jurisdiction and had found against the party bringing the action or matter.

10.26 Adjournment by registrar of Wardens Court. When, by reason of the absence of the warden, a Wardens Court cannot be held at the time appointed and place convened, the registrar of that court at that place shall adjourn the court to such day as he considers convenient and shall record in the appropriate records of the court the cause of the adjournment.

10.27 Jurisdiction of Supreme Court. (1) The Supreme Court has jurisdiction to hear and determine any proceeding challenging or otherwise relating to the validity of any grant that has been made pursuant to this Act or any Act repealed by this Act or any other Act relating to

mining and, notwithstanding any other Act or law, that proceeding shall be heard and determined in that Court only.

(2) It is immaterial that the Crown is not a party to the proceeding.

(3) If the grant in question is declared by the Supreme Court to be invalid, the declaration binds the Crown and a copy of the judgement or order of the Court in respect thereof shall be served by the party who benefits from that declaration on the Director-General within 21 days from the date of that judgement or order.

10.28 Wardens Court proceedings. (1) The following provisions of this section do not apply in respect of hearings in respect of—

- (a) applications for the grant of mining claims or of mining leases;
- (b) application or references relating to determinations of compensation payable under this Act or any other Act relating to mining;
- and
- (c) proceedings for offences against this Act.

(2) Proceedings before a Wardens Court—

- (a) shall be commenced by plaint in the prescribed form and manner;
- (b) shall be brought and heard and determined in the Wardens Court convened within the mining district—
 - (i) in which any prospecting permit, mining claim, mineral development licence or mining lease the subject of that proceeding is situated or, in the case of an exploration permit, in which any part of the land subject to that permit is situated;
 - (ii) in which the cause of action either wholly or in some material point arises;
 - or
 - (iii) in which the defendant or one of the defendants resides:Provided that any proceeding may be heard and determined at any place if the parties thereto so consent in writing and it is acceptable to the warden for the district in which the location is situated. Such consent shall be filed with that warden.

(3) Notwithstanding any provision of this Act or any other Act relating to mining—

- (a) where a proceeding before a Wardens Court should have been brought in another Wardens Court or at another place;
- or
- (b) it appears to a Wardens Court or the warden appointed to constitute it that a proceeding brought or to be brought before that court at any place could be more conveniently

heard and determined in another Wardens Court or at another place,

the court may order or, as the case may be, the warden may arrange that the proceeding—

- (c) be transmitted to that other court at that place which thereupon shall have jurisdiction to hear and determine the proceeding;
- or
- (d) where the Wardens Court has jurisdiction to hear and determine proceedings at that place, be adjourned to be heard and determined at that place.

10.29 Attendance of witnesses. (1) The following provisions of this section do not apply in respect of hearings in respect of applications for the grant of mining claims or of mining leases.

(2) In any proceedings before a Wardens Court—

- (a) each defendant or respondent to the proceedings shall be summonsed by the registrar of the court, in the prescribed form and manner, to attend and, should he fail to attend pursuant to that summons, the court may if it thinks fit proceed to hear and determine the plaint *ex parte*;
- (b) witnesses shall be examined on oath or affirmation;
- (c) the warden, registrar of the court or bailiff may administer an oath or an affirmation;
- and
- (d) if any person, being duly summonsed to attend as a witness and to whom the prescribed expenses have been paid or tendered, fails to attend at the time and place named in the summons, refuses to be sworn or make an affirmation, or refuses to answer any lawful question put to him, the Wardens Court may impose a penalty not exceeding 20 penalty units and order imprisonment until the sum ordered is paid or for 14 days, whichever is the shorter period, unless reasonable cause is shown to the court's satisfaction for that person's failure or refusal.

(3) Where a person referred to in subsection (2) (d) fails to attend, the Wardens Court concerned irrespective of any other order it may make, may issue its warrant directed to all members of the Police Force to bring and have such person at a time and place therein stated before the Wardens Court to testify concerning the proceeding and the hearing thereof may be adjourned to that time and place upon such terms as to costs as the court orders.

A warrant so issued shall be sufficient authority to any member of the Police Force to execute the same according to its tenor.

10.30 Reservation of point of law. (1) At any stage of a proceeding before it (not being a hearing in respect of an application for the grant

of a mining claim or of a mining lease), the Wardens Court may, with the consent of the parties, reserve a question of law for the opinion of the Supreme Court, and with respect to a question so reserved—

- (a) the warden shall prepare and state a special case setting out the question of law and shall transmit that case to the Registrar of the Supreme Court;
 - (b) the Registrar of the Supreme Court shall set the special case down for argument before a judge of that court and shall forthwith notify the warden of the time and place appointed therefor;
 - (c) the warden shall give to each party concerned therein who is entitled to be heard in relation thereto notice of the time when and place where the Judge shall consider the case;
 - (d) the Supreme Court's opinion on that case shall, when given, be drawn up and transmitted by the Registrar of that Court to the warden;
 - (e) the costs of the special case shall be at the discretion of the Supreme Court;
- and
- (f) the Wardens Court shall act in accordance with the opinion received from the Supreme Court and pending receipt of that opinion, no judgement or order of the Wardens Court shall affect the question so reserved.

(2) When reserving a question under this section, the Wardens Court on the application of a party to the proceeding, on such terms as to costs or otherwise as it thinks fit, may make such order for an injunction or the appointment of a receiver, or for payment of money into court or for giving security for any purpose, as appears to it to be desirable in the interests of justice.

(3) The Judge, at any stage of the special case, may—

- (i) remit the case to the warden for amendment;
- (ii) direct that the case be set down for argument before the Full Court of the Supreme Court;
- (iii) proceed to hear and determine the question,

and the Full Court or Judge, as the case may be, may give such direction or opinion on the question submitted, as the Full Court or Judge thinks proper.

10.31 Contempt of court. (1) A person who—

- (i) wilfully insults a warden, a mining registrar, bailiff or other officer of a Wardens Court, during its sitting or, as the case may be, attendance in court, or in going to or returning from court;
- (ii) wilfully interrupts the proceedings of a Wardens Court or otherwise misbehaves himself in court;
- (iii) unlawfully obstructs or assaults any person in attendance in a Wardens Court;

or

- (iv) without lawful excuse, disobeys a lawful order or direction of a Wardens Court,

commits an offence under this section and may be excluded from the room or other place where the Wardens Court is sitting, by order of the Court and, whether or not he is so excluded, may be dealt with as provided by this section.

(2) A bailiff or other officer of the Wardens Court or a member of the Police Force may, by order of the court with the assistance of other persons should the case require it, take the offender under subsection (1) into custody and detain him until the rising of the Court.

(3) A person who does any other act or thing which is a contempt of a Wardens Court commits an offence under this section.

(4) At any time before the rising of the court, the Wardens Court may call upon an offender under this section, whether or not he is excluded as provided by subsection (1) or taken into custody as provided by subsection (2), to show cause why he should not be punished.

(5) A Wardens Court acting under this section may act on its own view and there is no need to take evidence or issue a summons in dealing with an offender under this section.

(6) If an offender under this section does not show cause why he should not be punished as called upon pursuant to subsection (4), a Wardens Court may order the offender to be committed to prison for a period not exceeding 14 days or may impose on him a fine not exceeding 20 penalty units and in the latter event may also order that in default of immediate payment the offender shall be committed to prison for a period not exceeding 14 days unless the fine is sooner paid.

10.32 Interpleader proceedings. A person may avail himself of interpleader proceedings in a Wardens Court subject to and in accordance with (as nearly as may be) the rules pertaining to interpleader proceedings made under the *Magistrates Courts Act 1921-1988*.

10.33 Powers of Wardens Court. (1) In all matters within its jurisdiction, a Wardens Court shall have power to—

- (a) enforce contracts and award damages;
- (b) appoint receivers;
- (c) grant adjournments or time to any party;
- (d) grant prohibitions, injunctions, attachment orders and charging orders;
- (e) add, join, substitute and strike out parties;
- (f) amend pleadings;
- (g) impose penalties;
- (h) cause minerals and other chattels to be restored to any person or place from which they have been improperly or

unlawfully taken or removed or cause them to be deposited for safe custody with any person or in any place or to be summarily seized;

(i) summon witnesses;

(j) award costs;

and

(k) generally make such orders, determinations or assessments and give such judgements,

as it thinks fit for the purpose of effectively disposing of any matter before it according to the merits of the case.

(2) If by reason of the exigencies of a particular case, it appears proper to a warden so to do, he may, on the application of a party to a proceeding before the Wardens Court, without notice to any other party, grant an interim injunction to be enforced for a period not exceeding 21 days, or until the injunction is sooner discharged.

10.34 Enforcement of decisions etc. of Wardens Court. (1) Every judgement, decision or order of a Wardens Court shall be carried out and enforced in the same manner as if it were a judgement, decision or order of a like nature of the Supreme Court and the provisions of enactments relating to the carrying out and enforcement of judgements, decisions and orders of the Supreme Court and Rules of Court made thereunder shall, with all necessary adaptations apply.

(2) Every warrant, order or any other process of a Wardens Court may be directed to and may be served or executed or put into effect by a bailiff or other officer of the Wardens Court or by a bailiff of the Supreme Court or of a District Court or a Magistrates Court, without being specifically named therein, or by any other person to whom it is specifically directed by a warden or registrar of the court in which the judgement, decision or order was given or made.

10.35 Power to order deposit of mineral etc. (1) At any stage after proceedings before a Wardens Court have been commenced, the warden may, upon an application duly made by a party thereto and subject to such terms as to costs or otherwise as the warden thinks fit, direct a party to that proceeding having possession, custody or control of any money, mineral, chattel, ore or other thing or which may later come into the possession, custody or control of that party to deposit it in accordance with the order with such person at the place and upon the terms specified in the order to abide the determination of the proceeding or in the event of an appeal from that determination, the judgement of the Court of appeal.

(2) An application referred to in subsection (1) is not duly made if the warden is not satisfied that the applicant has given at least 12 hours notice that he proposes to make the application to—

(a) all parties to the proceeding who may wish to oppose the application;

or

- (b) such of the parties referred to in provision (a) as, in the opinion of the warden, are sufficiently representative of all those parties.

(3) Where an appeal is lodged against a determination of a proceeding determined by the warden or the Wardens Court, for the purposes of subsection (1), that proceeding is not determined until judgement of the court on appeal.

(4) An order made under subsection (1) shall specify—

- (a) the person with whom;
- (b) the place at which;
- (c) the time or times within which;

and

- (d) the terms upon which, any money, mineral or other substance or thing specified therein shall be deposited.

(5) An order made by a warden under this section shall have the same force and effect and may be enforced as if it were an order of the Wardens Court.

(6) An order may be made under this section by a warden notwithstanding that the warden is not then within the mining district within which the matter is to be heard.

10.36 Inspection of land etc. (1) At any time before the conclusion of a hearing by a Wardens Court, the warden may, whether or not upon an application of a party, make an inspection of any land or thing the subject of dispute.

(2) If either of his own motion, or upon the application of any party to the proceeding it appears to a warden that for the proper determination of a hearing the Wardens Court should make an inspection of the land or thing the subject of dispute the court may make the inspection and shall cause all parties at the hearing to be given reasonable notice of intention to make the inspection and of the date, time and place of the inspection.

(3) The costs occasioned by or incidental to an inspection shall be costs in the hearing and be paid as the warden or, as the case may be, Wardens Court orders.

10.37 Wardens Court may order survey. If, at any time before or during the hearing by a Wardens Court of a plaint, it appears to the warden that it is necessary for the proper determination of the proceeding that a survey be made of any land, water, stack or other accumulation of ore, buildings or any other thing the Wardens Court may order any party to the proceeding as, to it, appears just to cause the survey to be made and the costs of or incidental to the survey shall be costs in the proceeding and shall be paid as the Wardens Court orders.

10.38 Power of Wardens Court to order surrender of minerals. (1) A Wardens Court may, upon determining any proceeding before it, order that a person ordered by the court to pay any amount in respect of a debt, damages or costs shall, within the time appointed by the court, deliver to the party to whom payment is ordered to be made or to the court itself for delivery to such party any ore or mineral in the possession of and being the property of that person in satisfaction or part satisfaction of the amount ordered to be paid and for this purpose may fix a value of that which is ordered to be delivered.

(2) An order made under subsection (1) shall not prejudice the recovery of the amount ordered to be paid by any other process or, where delivery of ore or mineral is made in part satisfaction of the amount ordered to be paid, the recovery of the balance of that amount.

10.39 Copies of orders, judgements, etc. (1) A person may, on application to the registrar of a Wardens Court and on payment of the prescribed fee, obtain a copy of any order, judgement, determination, decision, recommendation (including the wardens summation and reasons upon which the recommendation is based) or record (including transcripts and documents and evidence) of that Court or an entry in a book kept by the court.

(2) A document purporting to be a copy of an order, judgement, determination, decision, recommendation or record of a Wardens Court or entry in a book kept by the court, certified by the Registrar of that court under the seal of the court shall be admitted in all courts as conclusive evidence of that order, judgement, determination, decision, record, recommendation or entry and of the proceedings referred to in that document and of the regularity thereof.

Division 3—Appeals from Wardens Court

10.40 Appeals from Wardens Court. (1) Save where this Act or any other Act relating to mining prescribes another manner of appeal, any party aggrieved by a determination of a Wardens Court may, within 28 days of the date of that determination or within such further period as a District Court, on the application of that party in that behalf prior to the lodgement of the appeal, considers appropriate in any particular circumstances, appeal against the determination to a District Court: Provided that in a case where an amount not exceeding \$5 000 is claimed, and no other relief is sought, an appeal shall not lie unless a District Court or a judge thereof, upon being satisfied that an important principle of law or justice is involved, grants leave.

(2) The appeal shall be instituted by, within the time and in the manner prescribed—

- (a) lodging in the registry of the District Court, written notice of appeal which shall include the grounds of appeal;
- (b) serving copies of the notice of appeal on the mining registrar and each other party;

and

- (c) giving security (approved by the registrar of the District Court) for the costs of the appeal.

(3) As soon as practicable after being served with a notice of appeal the mining registrar shall transmit to the registrar of the District Court the evidence, notes, reasons and proceedings taken in the Wardens Court.

(4) The District Court shall have jurisdiction to hear and determine an appeal under this section.

(5) An appeal shall not be defeated by reason only of a defect in substance or in form in the contents of the notice of appeal.

If at the hearing of an appeal it appears to the judge that there is such a defect he shall, upon an objection taken thereto or, in the absence of an objection, may make such order for the amendment of the notice as appears to him to be necessary or desirable in the interests of justice and may make such order as to any costs occasioned by the defect and amendment as to him appears just.

(6) An appeal under subsection (1) shall not lie from a determination of a Wardens Court where—

- (a) before the determination is made, all parties to the proceeding in question agree, in writing signed by themselves or by their respective solicitors or representatives, that the determination of the Wardens Court shall be final;
- (b) the determination consists of a recommendation upon an application before the court, or a finding upon which the Governor in Council or the Minister may exercise his discretion to do or refrain from doing any act or thing;
- or
- (c) the determination consists of a direction to a mining registrar to reject or grant an application for the grant of a mining claim.

Where the parties to a proceeding have made an agreement in terms of subparagraph (a) the warden shall make an entry to that effect in the record of the proceeding.

10.41 Hearing of appeal from Wardens Court. (1) An appeal from a determination of a Wardens Court shall be by way of rehearing.

Upon consideration of the record of proceeding before the Wardens Court and, if the District Court (subject to this section) thinks fit, any further evidence admitted by it, the District Court may—

- (a) dismiss the appeal;
- (b) rescind the order made by the Wardens Court;
- (c) make the order which it considers should have been made by the Wardens Court in the first instance;
- (d) make any order as to costs and any incidental order it considers just.

(2) A District Court shall not admit further evidence upon an appeal from a determination of a Wardens Court unless—

(a) it is satisfied that admission of the evidence is necessary to avoid grave injustice and there is sufficient reason that the evidence was not previously adduced;

or

(b) the appellant and respondent agree to its admission.

(3) To the extent necessary to enable an appeal from a determination of a Wardens Court to be effectively disposed of, a District Court shall be deemed to possess all the powers, authorities and jurisdiction of the Supreme Court required to determine all questions arising from the proceedings in question including the jurisdiction to grant equitable remedies and to determine entitlements pursuant to this Act and, furthermore, shall have and may exercise all the powers and authorities conferred by law upon a Wardens Court for the purpose of determining matters of plaint before it.

(4) Where upon such an appeal a District Court substitutes its order for that of the Wardens Court, its order shall be of the same force and effect as if it were made by the Wardens Court in the first instance and may be enforced as an order of that court.

(5) The determination of the District Court on appeal shall be final and conclusive.

10.42 Appeal not to arrest determination. The institution of an appeal from a determination of a Wardens Court shall not operate as a stay of execution upon the determination unless the warden having jurisdiction at the place where the determination was made or a judge of the District Court to which the appeal is brought otherwise orders.

Where application is made to the warden or to the judge for an order staying execution the warden or judge may, in addition, make such other order in the nature of an injunction, appointment of a receiver, payment of money to the warden or to the District Court to abide the event of the appeal or otherwise as appears to him desirable.

10.43 Special case. (1) A judge of a District Court who is hearing an appeal from a determination of a Wardens Court may, of his own motion or at the request of any party to the appeal, reserve for the opinion of the Supreme Court any question of law arising on the appeal.

(2) Any question of law reserved pursuant to subsection (1) shall be submitted by way of special case stated by the judge of the District Court to the Supreme Court which shall adjudicate thereon and may make therein any order as to costs as to the court seems just.

(3) The Registrar of the Supreme Court shall notify the relevant warden of the time and place appointed for argument of the special case by a judge of a District Court pursuant to subsection (1) and the warden shall cause the parties to the appeal to be notified thereof.

(4) The parties to an appeal from which a special case is reserved for the opinion of the Supreme Court are entitled to be heard in relation to the special case.

PART 11—GENERAL

11.1 Registers to be maintained. (1) Within each mining district the mining registrar shall maintain a register in which shall be recorded particulars as prescribed of—

- (a) all prospecting permits, mining claims and mining leases the applications for the grant of which were lodged with the mining registrar;
 - (b) applications for the grant of mining claims and of mining leases the lodgement of which is accepted by the mining registrar;
 - (c) assignments, mortgages and other dealings in respect of mining claims, mining leases and of applications for mining leases duly lodged with the mining registrar and approved as provided for under this Act;
 - (d) caveats duly lodged in respect of mining claims, mining leases and of applications for mining leases recorded in the register;
- and
- (e) such other matters and things relating to the mining district as are prescribed to be recorded in the register.

(2) The Director-General shall maintain a register in which shall be recorded particulars of—

- (a) all exploration permits and mineral development licences;
 - (b) applications for the grant of exploration permits and of mineral development licences;
 - (c) assignments of exploration permits and assignments and mortgages of mineral development licences duly lodged and approved as provided for under this Act;
 - (d) caveats duly lodged in respect of exploration permits and of mineral development licences;
- and
- (e) such other matters and things as are prescribed to be recorded in the register maintained by the Director-General.

11.2 Notification of change of address etc. A person who pursuant to a provision of this Act supplies the Minister or Director-General or a mining registrar with his address or the name and address of another person for service upon him, in respect of a matter then, for as long as the firstmentioned person has any interest in that matter, he shall, if he changes his address or the name and address of a person for service upon him, forthwith notify on the prescribed form the Minister, Director-General or, as the case may be, mining registrar of particulars thereof.

11.3 Duplicate permits, leases etc. A holder of a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease who has lost his permit, certificate of grant of mining claim, instrument of permit, licence or lease may apply in writing to the Director-General or mining registrar who maintains the relevant register for a duplicate thereof.

The application shall be accompanied by the prescribed fee.

If the Director-General or, as the case may be, mining registrar is satisfied that the applicant has lost his permit, certificate or instrument and is entitled to a duplicate thereof he may issue a duplicate, endorsed accordingly, and deliver it to the applicant.

For the purposes of this Act a duplicate permit, certificate or instrument issued under this section shall have the same effect as the original.

11.4 Priority of competing applications. (1) The types of grant to which subsection (2) applies are—

- mining claims
- exploration permits
- mining leases.

(2) Except as provided in sections 4.16, 5.6, 6.6 and 7.17, an application for a type of grant that is effectively lodged prior to another application for a different type of grant in respect of the whole or part of the same land being effectively lodged shall take priority over that other application for the purpose of the consideration of the application.

(3) For the purposes of subsection (2), an application is effectively lodged—

- (a) in the case of an application for the grant of a mining claim or a mining lease upon the acceptance of the lodgment of the application;
- (b) in the case of an application for the grant of an exploration permit on the day next following the acceptance of the lodgment of the application.

(4) If the mining registrar is or, where the applications are lodged with different mining registrars, those registrars are of the opinion that the circumstances of the lodgment of an application for the grant of a mining claim and an application for the grant of a mining lease made in respect of or including the same land are such that the applications should be treated as having been lodged simultaneously, the mining registrar or registrars may treat the applications as having been lodged simultaneously and shall determine their respective priorities by ballot.

The mining registrar shall advise all applicants when and where the ballot is to be held.

11.5 Restriction, etc. on grants. (1) The Governor in Council may from time to time by Order in Council in respect of the whole or a part of the State specified in the Order in Council—

- (a) prohibit the grant or application for the grant of prospecting permits, mining claims, exploration permits, mineral development licences and mining leases or such of them as are specified in the Order in Council;
- (b) determine that a prospecting permit, mining claim, exploration permit, mineral development licence or, as the case may be, mining lease may not be granted over an area of land that exceeds the area specified in the Order in Council in respect of that grant;
- (c) provide that any one person at any time shall not be the holder (whether alone or with others) of more than a specified number of exploration permits, mineral development licences or mining leases;
- (d) provide that any one person at any time shall not be the holder (whether alone or with others) of mining leases the aggregate area of which exceeds the area specified in the Order in Council;
- (e) provide that any one person at any time shall not be the holder (whether alone or with others) of mineral development licences the aggregate area of which exceeds the area specified in the Order in Council;
- (f) provide that any one person at any time shall not be the holder (whether alone or with others) of exploration permits the aggregate area of which exceeds the area specified in the Order in Council.

(2) Differing areas of land may be specified in an Order in Council made under subsection (1) (b) in respect of mining claims, exploration permits, mineral development licences or, as the case may be, mining leases granted for different purposes or in respect of different minerals.

(3) (a) Differing numbers of exploration permits may be specified in an Order in Council made under subsection (1) (c) in respect of exploration permits granted in respect of different minerals.

(b) Differing numbers of mineral development licences may be specified in an Order in Council made under subsection (1) (c) in respect of mineral development licences granted in respect of different minerals.

(c) Differing numbers of mining leases may be specified in an Order in Council made under subsection (1) (c) in respect of mining leases granted for different purposes or in respect of different minerals.

(4) (a) Differing aggregate areas of land may be specified in an Order in Council made under subsection (1) (d) in respect of mining leases granted for different purposes or in respect of different minerals.

(b) Differing aggregate areas of land may be specified in an Order in Council made under subsection (1) (e) in respect of mineral

development licences granted in respect of different minerals.

(c) Differing aggregate areas of land may be specified in an Order in Council made under subsection (1) (f) in respect of exploration permits granted in respect of different minerals.

11.6 Substantial compliance with Act may be accepted as compliance.

Where this Act provides that in respect of any matter, the Governor in Council, the Minister, the Director-General, a warden or a mining registrar may act if any thing has been done in the prescribed manner and form, but that thing has not been done in the prescribed manner and form, the Governor in Council, the Minister, the Director-General, a warden or, as the case may be, a mining registrar who is satisfied that there has been substantial compliance with the prescribed manner and form in respect of that thing may record that fact in writing and may so act and the thing shall be deemed to have been done in the prescribed manner and form.

11.7 Applicant or holder excused for neglect or default of mining registrar etc. (1) Where the holder of or an applicant for the grant of a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease is required to do anything to comply with a provision of this Act and the holder or applicant proves to the satisfaction of the Minister that—

- (a) he had been unable to do that thing as prescribed by reason of the neglect or default of the Minister, Director-General, warden, mining registrar, field officer or other officer authorized under this Act or of circumstances over which he did not have any control;
- and

- (b) he has done all that he could to comply with that provision, whether or not within any time prescribed therefor,

the Minister may determine in writing that the holder or applicant has complied with that provision and the holder or applicant shall be deemed to have complied with that provision accordingly.

(2) A determination made under subsection (1) may be conditional upon the holder or applicant complying with any specified conditions.

11.8 Declaration of State Forests etc. over land subject to grants.

(1) For the purposes of setting apart and declaring a State Forest, Timber Reserve or Forest Entitlement Area under the *Forestry Act 1959-1987*, Crown land that is the subject of an exploration permit shall be Crown land within the meaning of that Act.

(2) Prior to taking action to set apart and declare Crown land as a State Forest, Timber Reserve or Forest Entitlement Area under the *Forestry Act 1959-1987* which land is the subject of a mining claim, mineral development licence or mining lease or an application therefor, the views of the Minister shall be obtained and taken into account and,

if the Minister agrees, that land shall be Crown land within the meaning of the *Forestry Act 1959-1987*.

The agreement of the Minister may be subject to compliance with specified conditions.

11.9 Minister's views before creation of National Park, Environmental Park etc. (1) Notwithstanding the provisions of the *National Parks and Wildlife Act 1975-1984*, a recommendation for the setting apart of any land under and for the purposes of that Act as a National Park shall not be made without the Minister's views in writing having first been obtained and taken into account.

(2) Notwithstanding the provisions of the *Land Act 1962-1988*, land shall not be reserved and set apart under that Act as environmental park without the views of the Minister in writing having first been obtained and taken into account.

(3) Prior to the reservation or designation of any land under any Act, other than the *Forestry Act 1959-1987*, where the reservation or designation has the effect of prohibiting or restricting prospecting, exploration or mining in, on or under that land, the Minister administering that Act shall obtain and take into account the views of the Minister.

11.10 Application of Act where fossicker's licence held. Nothing in this Act shall require the holder of a fossicker's licence under the *Mining (Fossicking) Act 1985* to be the holder of a prospecting permit or mining claim in order to do anything that he is authorized to do under his licence.

11.11 Application of other Acts. Except as otherwise provided in this Act or any other Act relating to mining, the provisions of the *Recreation Areas Management Act 1988* or of any other Act shall not operate to restrict the entry of persons on land under the authority of any prospecting permit, mining claim, exploration permit, mineral development licence or mining lease or other authority granted under this Act or any other Act relating to mining.

11.12 Liability of owner restricted. Notwithstanding any Act or law, an owner of land shall not be civilly liable for an injury suffered by any person the cause of which was wholly or partly the unsafe or dangerous nature of that land to the extent that the unsafe or dangerous nature of the land contributed to the injury to the extent that he shows—

- (a) that the unsafe or dangerous nature of that land was caused by the activities of a person or persons, acting or purporting to act under the authority of a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease;
- and
- (b) that the owner—
 - (i) at the time the injury occurred, was not aware of the

unsafe or dangerous nature of the land caused by the activities referred to in paragraph (a);

or

(ii) before the time the injury occurred, was aware of the unsafe or dangerous nature of the land caused by the activities referred to in paragraph (a) but—

(A) at the time he became so aware, persons were continuing to carry on such activities in the vicinity and since then it had not come to his knowledge that such activities have ceased and that the nature of the land remained unsafe or dangerous;

or

(B) he had, forthwith upon becoming aware of the unsafe or dangerous nature of the land, reported that fact to the mining registrar and requested rectification thereof.

11.13 Delegation by Minister. (1) The Minister may by instrument in writing—

(a) delegate all or any of his powers, duties or functions under this Act (except this power of delegation);

and

(b) vary or revoke a delegation given by him.

(2) The Minister may make a delegation of the same power, duty or function to more than one person.

(3) A power, duty or function delegated by the Minister may be exercised or performed by the delegate in accordance with the instrument of delegation as in force from time to time.

(4) Any act or thing done in the exercise of a power or the performance of a duty or function by a person to whom that power, duty or function has been delegated by the Minister under subsection (1) has the same force or effect as if it had been done by the Minister.

(5) A delegation under this section does not prevent the exercise of the power or the performance of the duty or function by the Minister.

11.14 Mode of service of documents. (1) A notice or other document required by this Act to be given or served by a holder of, or applicant for the grant of, a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease to an owner of land shall be duly given or served if—

(a) it is served personally upon the owner;

or

(b) it is sent by registered post to the place of residence or business of the owner last known to the holder or applicant.

(2) Except as provided in subsection (1), a direction, notice, order or other document required or authorized by this Act to be given or

served upon any person by the Minister, warden, mining registrar, field officer or any other officer authorized under this Act or person shall be duly given or served if—

- (a) it is served personally upon the person to whom it is directed;
- (b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives or serves it;
- or
- (c) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives or serves it.

(3) Where this Act in respect of a matter requires or authorizes a person's name and address to be specified then for the purpose of service of any direction, notice, order or other document in respect of that matter the last address of that person recorded in the register in respect of that matter shall be deemed to be his place of residence or business last known to the person so giving or serving.

(4) Where this Act in respect of a matter requires or authorizes the name and address for service of a person upon whom any notice may be served on behalf of another person or other persons to be specified, then service upon the person so specified shall be deemed to be service upon the other person or other persons.

11.15 Acting in aid of mining registrar etc. (1) Whenever a mining registrar, field officer or other authorized officer is empowered or required by this Act to cause any act to be performed it shall be lawful for any person to perform such an act under the oral authority of the mining registrar, field officer or other authorized officer where the act is performed in his presence or under the written authority of the mining registrar, field officer or other authorized officer where the act is performed in his absence.

(2) All members of the Police Force shall, when required by a mining registrar, field officer or other authorized officer, act in aid of the mining registrar, field officer or other authorized officer in the discharge by him of his duties and in the exercise by him of his powers under this Act.

11.16 Protection against liability. No act, omission, thing or decision done or made by the Minister, the Director-General, warden, mining registrar, field officer, other authorized officer, police officer or other person acting under the authority of any of those persons as provided by this Act—

- (a) for the purpose of giving effect to any provision of this Act;
- or
- (b) purporting to be for the purpose of giving effect to any provision of this Act and done or made in good faith and without negligence,

shall render the Crown, the Minister, the Director-General, warden, mining registrar, field officer, other authorized officer, police officer or other person liable at the suit of any person.

11.17 Offences with respect to unauthorized mining etc. (1) A person shall not—

- (a) enter or be upon land to carry on prospecting, exploration or mining unless he is the holder of the relevant authority granted pursuant to this Act or is otherwise duly authorized under this Act or any other Act relating to mining;
- (b) employ or suffer any other person to enter or be upon land to carry on prospecting, exploration or mining unless that other person is the holder of the relevant authority granted pursuant to this Act or is otherwise duly authorized under this Act or any other Act relating to mining;
- (c) stay upon or erect any structure, including a residence, on land for purposes associated with prospecting, exploring or mining unless he is duly authorized under this Act or any other Act relating to mining;
- (d) carry on mining operations upon or remove mineral or ore from land unless he is duly authorized under this Act or any other Act relating to mining;
- (e) in a mining district or part of a mining district the subject of an Order in Council, use machinery or equipment for the purpose of prospecting, exploring or mining which by that Order in Council has been declared shall not be used for that purpose.

(2) A person found on land contravening any provision of subsection (1) may, whether or not he is prosecuted for an offence, be ejected from that land using such force as is necessary for that purpose, by a mining registrar or a field officer, any other officer duly authorized pursuant to this Act, or police officer or other person assisting any of them.

11.18 Offences regarding land subject to mining claim or mining lease. (1) A person shall not—

- (a) enter or be upon land;
- (b) use or occupy land;
- or
- (c) erect any building or structure on or make any other improvement to land,

that is the subject of a mining claim or the surface area of a mining lease unless—

- (d) he is authorized by or under this Act or any other Act relating to mining in that regard;
- or
- (e) he is the owner of the land or is authorized in that behalf by the owner and, in either case, he has the consent of the

holder of the mining claim or, as the case may be, mining lease.

(2) Subsection (1) (a) shall not operate to prevent a member of the police force or an inspector or other person appointed or authorized under any Act or law to enter land for the purpose of carrying out his duties from so entering and carrying out those duties.

11.19 Offence to resist warden, etc. A person shall not—

- (a) assault, resist, obstruct or attempt to obstruct a warden, bailiff, mining registrar, field officer, member of the Police Force or other authorized officer engaged in executing his duty or exercising his powers for the purposes of this Act or of any other Act relating to mining;
- (b) forcibly or clandestinely retake or attempt to retake possession of land from which he has been removed pursuant to this Act or of any part of that land;
- (c) resist or wilfully obstruct any person in the exercise by him of his rights under a determination of a Wardens Court or engaged in putting such a determination into effect;
- (d) assault any person in whose favour a determination of a Wardens Court has been made on account of that determination.

11.20 Directions etc. to be complied with. Where pursuant to any authority under this Act a mining registrar, field officer or other authorized officer gives to a person a direction or makes a requirement of that person that person shall comply with the direction or requirement but, if he is aggrieved by the direction or requirement and no other avenue of appeal against the direction or requirement is provided by this Act, he may apply in writing to the Director-General for a review by the Minister of that direction or requirement setting out the grounds for review and providing a copy to the mining registrar, field officer or other authorized officer who gave the direction or made the requirement.

11.21 Minister may require survey. (1) Upon the request in writing of the Minister given at any time, the applicant for the grant of or holder of a mining claim, exploration permit, mineral development licence or mining lease shall have the land the subject thereof or any part thereof specified by the Minister surveyed or further surveyed in a manner prescribed by subsection (2) as indicated in the request.

(2) For the purposes of subsection (1), land shall be surveyed by a licensed surveyor within the meaning of the *Surveyors Act 1977-1987* and approved by the Minister and shall be performed as prescribed by section 7.45.

(3) Liability at law shall not attach to the Crown, the Minister or any officer of the Department of the Government for the time being administering this Act for any error or inaccuracy in a survey or plan of survey carried out by a licensed surveyor for the purpose of this

section or for any thing done or omitted to be done on the assumption that the survey or plan was accurate.

(4) The applicant or holder to whom a request is made under subsection (1) shall incur and be liable to pay all costs associated with the work carried out by a licensed surveyor under this section.

11.22 Surveyor not to have interest. (1) A licensed surveyor who holds or is entitled (directly or indirectly) to the benefits of any share or interest in a mining claim, exploration permit, mineral development licence or mining lease or in an application for the grant of any of them shall not carry out a survey of land the subject thereof for the purposes of this Act.

(2) A licensed surveyor who has an entitlement or expectation of entitlement to share in profits of a public company which company is entitled to the benefits (directly or indirectly) of any share or interest referred to in subsection (1) does not have a share or interest referred to in subsection (1).

11.23 Removal orders. (1) Where a person is alleged to be in occupation of or upon any land, or to have erected or possess or control any building or structure or to have made any other improvement to land that is the subject of a mining claim or the surface area of a mining lease, without any authority that he is required to have by this Act or any other Act relating to mining or in contravention of this or that Act, upon the plaint of—

- (a) a field officer;
- (b) any other officer duly authorized pursuant to this Act;
- (c) a police officer;
- (d) a person who claims to be entitled to occupy that land;
- or
- (e) a holder of any authority granted under this Act or any other Act relating to mining in respect of that land (other than a prospecting permit, exploration permit or mineral development licence),

that person may be summonsed to appear before the Wardens Court at a time and place therein named to show cause why he should not be removed from that land or ordered to remove any building, structure or other improvement.

(2) If a person summonsed pursuant to subsection (1) fails to appear at the time and place specified or having appeared fails to show sufficient cause to the satisfaction of the Wardens Court, the warden may order—

- (a) the removal of the person summonsed from the land in question;
- (b) the removal, disposal or destruction of any building, structures or other improvements erected on or made to

the land in contravention of this Act or any other Act relating to mining;

- (c) the removal, seizure or disposal of any machinery or equipment upon the land that is or is capable of being used in contravention of this Act or of any other Act relating to mining and is not lawfully upon that land.

(3) An order made pursuant to subsection (2) may direct the person summonsed to appear to—

- (a) remove himself from the land in question;
- (b) remove, dispose of or destroy buildings, structures or other improvements;

or

- (c) remove machinery or equipment,

forthwith or within a time specified in the order and may further direct that if action referred to in paragraph (b) or (c) specified to be taken in the order is not taken in the time specified, the mining registrar and all persons acting under his direction, using such force as is necessary, may enter upon the land and do all things necessary to seize and dispose of buildings, structures, improvements, machinery and equipment specified in the order.

Anything seized by the mining registrar pursuant to this subsection shall be forfeited to and becomes the property of the Crown and shall be disposed of in such manner as the Minister determines.

(4) At the time of making an order pursuant to subsection (2) or at any later time, a warden may issue his warrant addressed to the person who commenced proceedings and to all members of the police force requiring the appropriate action to be taken and the warrant shall be sufficient authority for that person or any member of the police force to execute the warrant according to its tenor using such force as is necessary for the purpose.

(5) The costs reasonably incurred by the mining registrar in taking any action under this section shall be a debt due and owing to the Crown by the person who failed to take the action ordered by the warden and may be recovered in the Wardens Court.

(6) In an action under subsection (5) for the recovery of a debt due to the Crown, the production to the appropriate court of a certificate by the mining registrar certifying the amount of that debt shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the debt and the amount thereof.

11.24 Certain interests not interests for certain purposes. For the purposes of this Act a person who holds or becomes entitled (directly

or indirectly) to the benefits of any interest in a mining claim, exploration permit, mineral development licence or mining lease by virtue of—

(a) his being a beneficiary in a deceased estate;

or

(b) his entitlement to share in profits of a public company, does not hold an interest in the mining claim, exploration permit, mineral development licence or mining lease.

11.25 Indemnity against liability. (1) Neither the Crown, a warden, mining registrar, field officer, other authorized officer, police officer nor any other person who acts or purports to act under the authority of section 10.7 (3) or 10.8 shall be liable to pay damages or compensation for loss or injury suffered on account of anything done or omitted by any person acting pursuant to any provision of section 10.7 (3) or 10.8 or purporting to act bona fide and without negligence for the purposes of that provision.

(2) A warden, mining registrar, field officer, other authorized officer, police officer or any other person who acts or purports to act under the authority of section 10.7 (3) or 10.8 shall not be criminally liable on account of anything done by him pursuant to any provision of section 10.7 (3) or 10.8 or purportedly pursuant to any such provision bona fide and without negligence for the purposes of that provision.

(3) Nothing in subsection (1) and (2) shall protect a person from his liability to be dealt with pursuant to the *Public Service Management and Employment Act 1988* on account of any contravention or a failure to comply with any provision of that Act by him.

11.26 Offences and recovery of penalties, etc. (1) A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act and, save where a specified penalty is otherwise prescribed, is liable to a penalty of 200 penalty units or to imprisonment for 12 months or to both such penalty and imprisonment.

(2) A proceeding against any person who commits an offence against this Act may be taken before a Wardens Court by way of summary procedure under and in accordance with the *Justices Act 1886-1989* and may be taken within one year after the commission of the offence or within six months after the offence comes to the knowledge of the complainant, whichever period is the later to expire.

(3) All moneys payable under this Act, other than by way of a penalty (whether for an offence, or for a breach of the conditions of a prospecting permit, mining claim, exploration permit, mineral development licence, mining lease or other authority under this Act, or otherwise) and not recovered by way of utilization of any security deposit may be recovered by proceedings by way of summary procedure under the *Justices Act 1886-1989* taken before a Wardens Court, or by way of action for debt in a Wardens Court.

(4) For the purposes of proceedings taken before it by way of summary procedure under the *Justices Act 1886-1989*, a Wardens Court

shall have and may exercise all the powers of a Magistrates Court subject to and in accordance with that Act.

(5) Where a person convicted of an offence against this Act is a company, every person who at the time of the commission of the offence was a member of the governing authority of that company shall be deemed to have committed a like offence and be liable to the penalty prescribed for the offence unless he proves—

- (a) that the offence was committed without his knowledge;
and
- (b) that he used all due diligence to avoid the contravention of or non-compliance with this Act in question.

11.27 Evidentiary provisions. (1) In any proceedings for the purposes of this Act—

- (a) a certificate purporting to have been made by or on behalf of the Secretary of the Land Administration Commission or by the Registrar of Titles or the Local Deputy Registrar of Titles that in relation to the land therein identified there exist or do not exist factors that are material to classifying that land as being or not being occupied land shall, upon its production, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;
- (b) a certificate purporting to be made by a mining registrar that in relation to the land therein identified there is no record in the register maintained by the mining registrar in respect of the mining district in which the land is situated of—
 - (i) the grant;
or
 - (ii) an application for the grant of,
a prospecting permit, mining claim or mining lease, shall upon its production, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;
- (c) a certificate purporting to be made by the Director-General that in relation to the land therein identified there is no record in the register maintained by him of—
 - (i) the grant;
or
 - (ii) an application for the grant of,
an exploration permit or mineral development licence shall upon its production, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matter contained therein;
- (d) a certificate purporting to be made by a mining registrar that within the mining district to which the register relates

- at a specified time or during a specified period a specified person was or was not the holder of a prospecting permit, mining claim or mining lease in respect of any or any specified land or mineral shall, upon its production, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;
- (e) a certificate purporting to be made by the Director-General that at a specified time or during a specified period a specified person was or was not the holder of an exploration permit or mineral development licence in respect of any or any specified land or mineral shall, upon its production, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;
 - (f) a certificate purporting to be made by the Director-General or a mining registrar that any or a particular return prescribed to be furnished in respect of a specified authority issued pursuant to this Act to the Director-General or as the case may require the mining registrar has not at any time or during a specified period been so furnished by or on behalf of any specified person shall, upon its production, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;
 - (g) a document or writing purporting to be a copy of a direction, notice or order given or served by or on behalf of the Minister, Director-General, warden, mining registrar, field officer or other duly authorized officer under this Act, shall, upon its production, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the direction, notice or, as the case may be, order and of the matters contained therein;
 - (h) it shall not be necessary to prove the appointment of the Director-General, a warden, mining registrar or field officer or any other officer or his authority to do any act, take any proceeding or give any order or direction;
 - (i) a signature purporting to be that of the Minister, the Director-General, a mining warden, mining registrar, field officer or any other authorized officer shall be taken to be the signature it purports to be until the contrary is proved;
 - (j) a document purporting to be a copy of any permit, claim, lease, licence, certificate or any other authority under this Act, shall, upon its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of that permit, claim, lease, licence, certificate or other authority;
 - (k) an allegation or averment in a complaint of the date on which the commission of an offence against this Act came to the knowledge of the complainant shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of that allegation or averment.

(2) Where there is no record—

- (a) in a register maintained by a mining registrar in relation to particular land within the mining district assigned to that mining registrar, of the grant of a prospecting permit, mining claim or mining lease or of an application therefor;
- or
- (b) in the register maintained by the Director-General in relation to particular land of the grant of an exploration permit or a mineral development licence or of an application therefor,

it shall be presumed, until the contrary is proved, that there is no such grant or application in respect of that land.

11.28 Failure to supply information constitutes non-compliance with Act. Where a provision of this Act relating to an application that may be made under this Act provides for a request that may be made to the applicant to supply any further information, the failure to supply the information within the time provided therefor shall be deemed to be a failure to comply with the requirements of this Act that apply in respect of the application.

11.29 Copies of decisions to be sent to Director-General. Upon the making of any decision or other order by any court or tribunal exercising jurisdiction in Queensland upon any matter relating to prospecting, exploring or mining or to this Act or any other Act relating to mining, the registrar or other proper officer of the Court or tribunal performing the duties of a registrar shall forthwith forward a copy of that decision or order to the Director-General.

11.30 Rights independent of this Act preserved. Save in relation to compensation expressed to be payable by this Act, the provisions of this Act shall not be construed to abrogate or prejudice any right had by any person independently of this Act to recover damages or obtain any other remedy in respect of damage or injury suffered or loss incurred by him by reason of prospecting, exploring or mining.

11.31 Regulations. (1) The Governor in Council may make regulations not inconsistent with this Act for or with respect to—

- (a) the forms to be used for the purposes of this Act and the purposes for which those forms shall be used;
- (b) the fees to be paid under this Act;
- (c) the amounts or rates or methods of calculation of amounts of the annual rentals payable in respect of mining claims, exploration permits, mineral development licences and mining leases which in respect of each such type of grant may vary according to the respective areas of land or upon such other criteria as are specified in the regulations;
- (d) the identification (by pegging, surveying or otherwise) of land the subject of any mining claim, exploration permit,

-
- mineral development licence or mining lease, granted or any application therefor under this Act;
- (e) the conditions which shall and conditions which may be imposed in respect of any prospecting permit, mining claim, exploration permit, mineral development licence, mining lease or other authority under this Act;
 - (f) the cleaning and keeping clean of land the subject of prospecting permits, mining claims, exploration permits, mineral development licences or mining leases and the prevention or mitigation of any nuisance thereon;
 - (g) the prevention of pollution or wastage, due to prospecting, exploring or mining, of water which may be used for domestic purposes; the reservation of any accumulation or potential accumulation of water or of any watercourse, which might otherwise be so polluted or wasted, as a supply for domestic purposes; the prevention, mitigation and remedying of pollution or obstruction of, damage to, or interference with watercourses, lakes and reservoirs and land adjacent thereto caused by the discharge therein or thereon of mineralized or impure water, sludge, or debris;
 - (h) the location of mine workings at minimum distances from public or private roads or railways;
 - (i) the protection from injury or unlawful removal of any improvements, machinery, plant or equipment situated on any land the subject of a mining claim, mineral development licence or mining lease and of any races, drains, dams, reservoirs, stored water, pegs, posts, fences, notices or other things used in connexion with mining; the protection from obstruction of races, drains, dams, reservoirs, channels and watercourses used in connexion with mining;
 - (j) the doing of any act or thing required by this Act to be done, and the attesting to the doing of that act or thing by way of statutory declaration or otherwise;
 - (k) the powers and duties of wardens, mining registrars and all other persons whatsoever in the discharge of their functions for the purposes of this Act;
 - (l) the amount or rates or methods of calculation of royalty to be paid under this Act and the time and manner of its assessment and payment, the collection and enforcement of payment;
 - (m) the manner of making and lodging royalty returns, documents and statements and the keeping of records and books of accounts;
 - (n) the practice and procedure of Wardens Courts, the jurisdiction thereof and the costs of proceedings therein;
 - (o) the furnishing of information, reports, returns, documents and statements for the purposes and by the persons specified in the regulations;
 - (p) the medium and format (whether by electronic or digital means or otherwise) by which information shall be supplied;
 - (q) the particulars to be recorded in registers and the examination or provision of particulars from registers maintained under

this Act and the prescribing of the fees payable in respect thereof;

- (r) penalties for a contravention or failure to comply with any regulation;
- (s) all other matters required or permitted by this Act to be prescribed and no other manner of prescription is specified;
- (t) all matters that may be convenient for the administration of this Act or that may be necessary or expedient for carrying out or giving effect to this Act.

(2) The power to regulate includes the power to prohibit.

(3) A regulation may be made to apply generally or in a particular case and to apply throughout the State or in respect of one or more mining districts or a part of a mining district.

(4) A regulation may constitute a contravention or failure to comply with a regulation or an order of a court a continuing offence and impose a penalty that it is to be calculated by reference to the length of time the offence continues notwithstanding that the total penalty so calculated would exceed the maximum pecuniary penalty prescribed by section 11.26.

(5) A regulation may provide that a document is not in a prescribed form unless it is in a form prescribed by regulation and is made and completed in the manner prescribed at the time of making the document.

(6) Regulations may also prescribe—

- (a) the size, type and quality of paper upon which a form may be printed;
- (b) the size and nature of the type to be used in the printing and completion of a form;
- (c) the ink or other substance with which a form shall or may be printed or completed;
- and
- (d) for the purpose of facilitating the recording in a register of any information, any other matter or thing in respect of a form.

(7) Regulations—

- (a) may adopt wholly or partly and specifically or by reference any of the standard rules, codes or methods from time to time, relating to the subject matter of the regulations of any specified body or institution;
- (b) may provide for the approval of the Director-General or other specified person or officer to be the standard applicable in respect of a particular matter.

11.32 Tabling of Orders in Council. Section 28A of the *Acts Interpretation Act 1954-1989* (Tabling of Regulations) shall apply with respect to Orders in Council made for the purposes of this Act and, for

the purposes of such application that section shall be read and construed as if references to regulations were references to Orders in Council made for the purposes of this Act.

FIRST SCHEDULE			[s.1.5]
Short Title of Act	Number of Act	Extent of Repeal	
<i>Mining Act 1968</i>	No. 51 of 1968	The whole	
<i>Mining Act Amendment Act 1971</i>	No. 24 of 1971	The whole	
<i>Mining Act Amendment Act 1971</i> (No. 2)	No. 82 of 1971	The whole	
<i>Land Act and Other Acts</i> <i>Amendment Act 1973</i>	No. 41 of 1973	Part IV	
<i>Mining Royalties Act 1974</i>	No. 47 of 1974	The whole	
<i>Mining Act and Another Act</i> <i>Amendment Act 1974</i>	No. 49 of 1974	Part II	
<i>Mining Act Amendment Act 1976</i>	No. 15 of 1976	The whole	
<i>Mining Act Amendment Act 1976</i> (No. 2)	No. 50 of 1976	The whole	
<i>Mining Act Amendment Act 1976</i> (No. 3)	No. 75 of 1976	The whole	
<i>Mining Act Amendment Act 1979</i>	No. 14 of 1979	The whole	
<i>Mining Act Amendment Act 1980</i>	No. 13 of 1980	The whole	
<i>Mining Act and Other Acts</i> <i>Amendment Act 1982</i>	No. 23 of 1982	Part II	
<i>Mining Act and Petroleum Act</i> <i>Amendment Act 1983</i>	No. 13 of 1983	Part II	

SECOND SCHEDULE

SAVINGS, TRANSITIONAL AND VALIDATION

[s. 1.7]

1. Prescribed period. In this schedule unless the contrary intention appears “prescribed period” means the period of three months from the commencement of this Act or where, in a particular case, the Minister has before the expiration of those three months approved a longer period, that period.

2. Mining claims. (1) This clause applies to claims that are—

- (a) all special gem claims, alluvial mining claims, extended alluvial claims, extended scheelite claims, restricted mining claims, extended gold reef claims, extended mineral lode claims, extended alluvial tin claims, mineral claims, dredging claims, extended lode tin claims, lode tin claims, extended lode wolfram claims, mining claims, ordinary reef claims, alluvial claims, river and creek gold claims, puddling claims, auriferous sands claims, prospecting claims, extended claims, hydraulic claims and amalgamated dredging claims;
- and

(b) all other such claims and mining claims,

current immediately prior to the commencement of this Act and registered under the *Mining Act 1968* or any previous Act relating to mining.

(2) Notwithstanding that the provisions of sections 4.1, 4.4 (2), 4.6 and 4.8 may be contravened or not complied with, a claim (other than a claim which does not relate to the whole of the surface of the land comprised therein) shall upon the commencement of this Act be deemed to be a mining claim granted for the balance of its term current at that date or, if no term is expressed, for a period of five years from that commencement and the holder of the claim immediately prior to that commencement shall hold the mining claim subject to the provisions of this Act.

(3) A claim that pursuant to subclause (2) is deemed to be a mining claim shall be in respect of the land over which the claim was registered immediately prior to the commencement of this Act, notwithstanding the provisions of section 4.6.

(4) Rental payable in respect of a claim that pursuant to subclause (2) is deemed to be a mining claim shall be payable—

- (a) in respect of the period ending 31 December next following the commencement of this Act, in accordance with any provision applying in respect thereto prior to that commencement;
- and
- (b) in respect of the period commencing 1 January next following the commencement of this Act, in accordance with the provisions of this Act.

(5) The provisions of section 4.8 shall not apply to prevent the operation of subclause (2).

(6) Notwithstanding the provisions of sections 4.3, 4.57, 4.58, 4.59 and 4.60 and of any Orders in Council made thereunder, a holder of a claim that pursuant to subclause (2) is deemed to be a mining claim may use machinery in, on or under the land comprised in the mining claim to the same extent (and under the same conditions as applied thereto) that he could use that machinery prior to the commencement of this Act until—

(a) the expiration of the prescribed period;

or

(b) if the holder, within the prescribed period, makes application for the grant of a mining lease in respect of the whole or part of the land comprised in the mining claim (whether with or without contiguous land comprised in other mining claims) in respect of the purposes for which the claim is or claims are held, the application is determined or abandoned,

whichever is the later.

(7) (a) Where a claim is deemed pursuant to subclause (2) to be a mining claim, the mining claim shall be subject to a condition that, before the expiration of 28 days (or such longer as the mining registrar in the particular case approves) after the expiration of the prescribed period, the holder shall submit to the mining registrar of the mining district in which the land the subject of the mining claim is situated an outline to the satisfaction of the mining registrar of the mining programme proposed and the times when the operations are expected to be carried out and a brief description of the measures proposed to be taken to minimise adverse environmental impact and that the holder shall comply with the programme and measures outlined.

(b) Paragraph (a) shall cease to apply to a mining claim, upon the holder making application pursuant to subclause (8) for a mining lease in respect of the land comprised in the mining claim.

(8) (a) The holder of a claim may make application, within the prescribed period, for the grant of a mining lease in respect of the whole or part of the land comprised in the mining claim (whether with or without contiguous land comprised in other mining claims) in respect of the purposes for which the claim is or claims are held.

(b) The provisions of Part 7 shall apply in respect of the application for and grant of a mining lease under this subclause except that—

(i) sections 7.1, 7.2, 7.6, 7.18 (other than subsection (1) as modified by paragraph (ii) hereof), 7.19, 7.20, 7.22, 7.25, 7.26, 7.27, 7.28, 7.29, 7.36, 7.37, 7.38 and 7.39 do not apply;

(ii) a certificate of application for a mining lease issued pursuant to section 7.18 shall not be endorsed with a date fixed by the mining registrar on or before which objections to the

application may be lodged but shall be endorsed with a statement that no objections to the application may be lodged;

- (iii) the Minister shall consider whether the provisions of this Act as modified by this clause have been complied with and if those provisions have not been complied with, he shall reject the application;
- (iv) if the Minister considers that the provisions referred to in paragraph (iii) have been complied with, he shall make a recommendation to the Governor in Council that the mining lease be granted;
and
- (v) the provisions of section 7.45 shall apply only if the Minister in the particular case so determines.

(c) Upon the grant of a mining lease pursuant to an application made under this subclause the provisions of this Act shall apply in respect of the mining lease granted except that operations consistent with the operations carried on under the authority of the mining claim held by the holder prior to the grant may be continued to be carried on under the authority of the mining lease until—

- (i) in a case where a plan of operations is not submitted before the expiration of 3 months (or such longer period as the Minister in the particular case allows) after the date of the grant, the expiration of that period;

or

- (ii) the expiration of the period of 28 days after the submission by the holder of a plan of operations referred to in section 7.48 in respect of that mining lease in respect of which plan the Minister has not, before the expiration of that period informed the holder that the plan of operations is not acceptable,

whichever is the earlier.

(9) Where at the commencement of this Act an application made prior to that commencement for the forfeiture of a claim pursuant to section 160 of the *Mining Act 1968-1986* has not been determined, the provisions of that section, notwithstanding its repeal, shall apply to the extent that those provisions would take effect consequent upon that application if those provisions had not been repealed.

(10) Where prior to the commencement of this Act a claim has been terminated pursuant to section 160 of the *Mining Act 1968-1986*, the provisions of that section, notwithstanding its repeal, shall continue to apply to the extent that those provisions would take effect consequent upon the termination if those provisions had not been repealed.

(11) Where at the commencement of this Act an application made prior to that commencement for exemption from work on a claim has not been determined, the application shall be discontinued and any fee paid in respect thereof shall be refunded.

(12) (a) The holder of a claim deemed pursuant to subclause (2) to be a mining claim shall comply with all conditions and requirements to which the claim was subject at the commencement of this Act except to the extent that compliance therewith would contravene any provision of this Act and those conditions and requirements shall be deemed to be conditions to which the mining claim is subject.

(b) Conditions that are work conditions applying to a claim referred to in paragraph (a) shall cease to apply upon an outline to the satisfaction of the mining registrar that is submitted in compliance with subclause (7) (a) becoming a condition of the mining claim.

This subclause shall not be construed to prevent a variation of conditions of a mining claim pursuant to section 4.30.

(13) Where at the commencement of this Act, an application duly made prior to that commencement for the registration of a mining claim has not been determined—

(a) in a case where a hearing has been wholly or partly held before that commencement, the application shall be proceeded with as if the *Mining Act 1968-1986* had not been repealed and for that purpose, the person, who, immediately prior to that commencement, was the warden hearing the application, shall be deemed to continue to be a warden but after the warden hears the application the warden shall instruct the mining registrar—

(i) to reject the application;

or

(ii) if the warden is satisfied regarding the matters specified in section 16H (8) of that Act, to act as provided in section 4.26,

and thereafter the application shall be deemed to have been an application for the grant of a mining claim and the provisions of this Act that apply consequent upon a hearing of an application for the grant of a mining claim shall apply in respect thereof;

(b) in a case where before that commencement a certificate of application had been issued under the *Mining Act 1968-1986* but at that commencement no hearing has been held or commenced, the application shall be deemed to be an application for the grant of a mining claim duly made under this Act and the provisions of this Act (other than sections 4.18, 4.19 (2) and 4.20 (1) (b)) that apply to and consequent upon the hearing shall apply thereto;

(c) in a case where before that commencement no certificate of application had been issued under the *Mining Act 1968-1986*, the application shall not be proceeded with but if the applicant within 28 days (or such longer period as the mining registrar in the particular case approves) after that commencement lodges an application under this Act for the

grant of a mining claim over substantially the same land, that application shall take priority in respect of other applications made under this Act as if the application had been made on the day on which the firstmentioned application had been made;

- (d) if section 16D of the *Mining Act 1968-1986* would not have prevented the registration of the mining claim applied for, section 4.8 shall not operate to prevent the grant of the mining claim;

and

- (e) in all cases any moneys deposited pursuant to the *Mining Act 1968-1986* shall be refunded by the mining registrar and any fees prescribed to be paid under this Act in respect of the application shall not be payable.

(14) Where, prior to the commencement of this Act in respect of a mining claim—

- (a) an application for—

- (i) the renewal of the registration thereof;
(ii) the approval of the assignment or transfer thereof;
(iii) the approval of the mortgage or encumbrance thereof;

or

- (iv) the inclusion therein of an additional surface area of the land which if granted would incorporate in the mining claim the whole of the surface area of the land comprised in the mining claim;

or

- (b) a surrender thereof,

has been duly made under the *Mining Act 1968-1986* but has not at that commencement been determined—

- (c) the application referred to in paragraph (a) shall be deemed to be an application for—

- (i) the renewal of the mining claim;
(ii) the approval of the assignment of the mining claim;
(iii) the approval of the mortgage of the mining claim;

or, as the case may be,

- (iv) the grant of a mining claim;

or

- (d) the surrender shall be deemed to be a surrender made,

under this Act and the provisions of this Act shall apply accordingly but in a case referred to in paragraph (a) (iv) the provisions of sections 4.18, 4.19 (2) and 4.20 (1) (b) shall not apply.

(15) Where, prior to the commencement of this Act, an application for the inclusion of an additional surface area of land in respect of a mining claim has been made which is not an application referred to in

subclause (14) (a) (iv), the application shall be rejected and any fees paid shall be refunded.

(16) Any notice to show cause or direction given before the commencement of this Act in respect of a claim that pursuant to subsection (2) is deemed to be a mining claim shall be deemed to be a notice to show cause or direction given under this Act and the provisions of this Act shall apply accordingly.

(17) (a) Where prior to the commencement of this Act a holder of a miner's right has marked out land in accordance with the *Mining Act 1968-1986* with a view to applying for the registration of a mining claim thereunder but has not at that commencement duly made the application, he shall have the same entitlements in respect of that land as a holder of a prospecting permit who had marked out the land under this Act and may, within the time prescribed for the making of that application under the *Mining Act 1968-1986*, make application for the grant of a mining claim under this Act notwithstanding that the land may not have been marked out as prescribed by this Act but he shall within 7 days (or such longer period as the mining registrar in the particular case approves) after the lodgment of his application mark out the land as required by section 4.9.

(b) If an applicant under paragraph (a) does not mark out the land within the time or in the manner prescribed his application shall be rejected.

(18) (a) If a holder of a claim which at the commencement of this Act does not relate to the whole of the surface of the land comprised therein, within the prescribed period lodges with the mining registrar for the mining district in which the claim is recorded a compensation agreement with each owner of the land the surface of which is not included in the claim, he shall be entitled to have that surface included in his mining claim whereupon the provisions of this clause shall apply thereto as if the claim had included the whole of the surface of the land comprised therein at that commencement.

(b) If a holder of a claim referred to in paragraph (a) does not act in accordance with that paragraph or in accordance with subclause (8), the claim shall, by virtue of this Act, be cancelled at the expiration of the prescribed period.

(c) Until—

(i) the expiration of the prescribed period;

or

(ii) the claim becomes a mining claim under this Act pursuant to paragraph (a),

whichever shall first occur, the claim shall continue to be a claim and the holder shall continue to have all the entitlements and obligations that he had under the repealed Acts as if those Acts had not been repealed.

3. Mining leases. (1) (a) Notwithstanding that the provisions of section 7.1, 7.2 or 7.6 may be contravened or not complied with, a lease that is—

(i) a gold mining lease, special gold mining lease, mineral lease, special mineral lease, dredging lease, coal mining lease, special coal mining lease or mining lease granted or deemed to have been granted under the repealed Acts or any other Act relating to mining or any other such lease or mining lease;

or

(ii) a mining lease, special bauxite mining lease, special mineral lease, coal mining lease or special coal mining lease granted pursuant to any of the Acts specified in the following table,

and that is current immediately prior to the commencement of this Act shall, upon that commencement be deemed to be a mining lease granted for the balance of its term current at that date.

(b) The holder of a lease referred to in paragraph (a) (i) immediately prior to commencement of this Act shall hold the mining lease subject to the provisions of, and the conditions imposed under, this Act and all special covenants and special conditions to which the lease was subject (including special covenants and conditions under section 28 (2) (b) or Part VII of the *Mining Act 1968-1986*) shall be deemed to be conditions of the mining lease but, if a special covenant or a special condition to which the lease was subject pursuant to that section 28 (2) (b) or pursuant to any other similar statutory provision is inconsistent with this Act or conditions thereunder, that special covenant or special condition, to the extent of the inconsistency, shall prevail.

(c) Except as provided in subclauses (3) and (8), the holder of a lease referred to in paragraph (a) (ii) immediately prior to the commencement of this Act shall hold the mining lease subject to—

(i) the provisions of, and the conditions imposed under, this Act;

(ii) the covenants and conditions to which it was subject at that commencement;

and

(iii) the provisions of the Act under which it was granted, but if a provision, covenant or condition referred to in provision (ii) or (iii) is inconsistent with this Act or a condition thereunder, that provision, covenant or condition, to the extent of the inconsistency shall prevail.

TABLE

The Alcan Queensland Pty. Limited Agreement Act of 1965

Aurukun Associates Agreement Act 1975

Central Queensland Coal Associates Agreement Act 1968-1984

The Commonwealth Aluminium Corporation Pty. Limited Agreement Act of 1957

Queensland Nickel Agreement Act 1970-1988

Mount Isa Mines Limited Agreement Act 1985

Queensland Cement & Lime Company Limited Agreement Act 1977

The Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Acts, 1962-1965.

(2) The provisions of this Act relating to rental payable under this Act in respect of mining leases shall prevail over conflicting provisions that applied prior to the commencement of this Act from the times as prescribed by subclause (3).

(3) Rental payable in respect of a lease that, pursuant to subclause (1), is deemed to be a mining lease shall be payable—

- (a) until the mining lease is first renewed after the commencement of this Act, in accordance with any provisions applying in respect thereto prior to that commencement; and
- (b) in respect of the periods of any such renewals thereof, in accordance with the provisions of this Act.

(4) (a) The provisions of section 7.48 shall apply, subject to this subclause, to a lease that, pursuant to subclause (1) is deemed to be a mining lease.

(b) A lease that, pursuant to subclause (1), is deemed to be a mining lease shall be subject to a condition that the holder thereof shall, before the expiration of the prescribed period submit to the Minister a proposed plan of operations for the carrying out, in accordance with this Act and the conditions of the mining lease, of the purposes for which the lease was granted.

(c) Until the expiration of 28 days after the submission by the holder of the plan of operations in respect of which plan the Minister has not before the expiration of that period informed the holder that the plan is not acceptable, the holder of the mining lease may continue to carry on operations under the mining lease as authorized prior to the commencement of this Act.

(d) If the Minister does not indicate, within 28 days of the submission of a plan of operations, that the plan is unacceptable, the holder shall, on the expiration of that period, commence to carry on operations in accordance with that plan.

(e) If the Minister does indicate, within 28 days of the submission of a plan of operations, that the plan is unacceptable, the holder may only continue to carry on operations under the mining lease as authorized prior to the commencement of this Act for such period as the Minister specifies in his indication.

(f) Upon the holder of a mining lease referred to in subclause (1) commencing to carry out operations in accordance with a plan of operations duly submitted under this subclause, any labour conditions or expenditure conditions attaching to that lease prior to the commencement of this Act shall cease to apply.

(5) Where, at the commencement of this Act, the land, the subject of a lease that, pursuant to subclause (1) is deemed to be a mining lease, has not been surveyed as prescribed by Part 7, a survey of the land shall not be required prior to the renewal of the mining lease unless the Minister so directs.

(6) (a) Where, prior to the commencement of this Act, an application for the forfeiture of a mining lease had been duly made pursuant to section 39A of the *Mining Act 1968-1986*, then, notwithstanding the repeal of that section, the provisions of that section shall continue to apply in respect of that mining lease as if this Act had not been enacted.

(b) A person who, pursuant to paragraph (a) and section 39A of the *Mining Act 1968-1986*, is entitled to apply for the grant of a mining lease is entitled, within the time prescribed under that section, to apply with the priorities therein set forth, for the grant of a mining lease, but if the application is made after the commencement of this Act, the application shall be made in accordance with this Act and any mining lease granted consequent thereon shall be granted pursuant to this Act.

(7) Any application made under the *Mining Act 1968-1986* for exemption from any labour or expenditure conditions attaching to a lease referred to in subclause (1) or for amalgamation of leases but not determined prior to the commencement of this Act shall lapse and any fees paid in respect thereof shall be refunded.

(8) The provisions of this Act relating to the payment of royalties shall prevail over conflicting provisions of any other Act or conflicting terms and conditions of any lease referred to in subclause (1).

(9) (a) Where, prior to the commencement of this Act, a person who desires to have granted and issued to him a mining lease under the *Mining Act 1968-1986* had marked out land in accordance with that Act with a view to applying for that mining lease but has not at that commencement duly made the application—

(i) if he is not the holder of an authority to prospect or a permit to enter under that Act in respect of that land, he shall have the same entitlements in respect of that land as a holder of a prospecting permit who had marked out the land under this Act;
and

(ii) he may, within the time prescribed for the making of that application under the *Mining Act 1968-1986*, make application for the grant of a mining lease under this Act notwithstanding that the land may not have been marked out as prescribed by this Act but he shall, within 7 days (or such longer period as the mining registrar in the particular

case approves) after the lodgment of his application, mark out the land as required by Part 7.

(b) This subclause shall not be construed to restrict the rights of a holder of an authority to prospect or a permit to enter under the *Mining Act 1968-1986* who has marked out land as provided in paragraph (a).

(c) If an applicant under paragraph (a) does not mark out the land within the time or in the manner prescribed, his application shall be rejected.

(10) Where, at the commencement of this Act, an application duly made prior to that commencement for the grant of a mining lease has not been determined any application fee prescribed by this Act to be paid shall not be payable and—

- (a) in a case where a hearing has, wholly or partly, been held before that commencement, the application shall be proceeded with as if the *Mining Act 1968-1986* had not been repealed and for that purpose, the person, who, immediately prior to that commencement, was the warden hearing the case, shall be deemed to continue to be a warden but any mining lease granted consequent upon the application shall be deemed to be a mining lease granted under this Act and the provisions of this Act shall apply thereto;
- (b) in a case where, before that commencement, a certificate of application had been issued under the *Mining Act 1968-1986* but no part of the hearing has been held, the application shall be deemed to be an application for the grant of a mining lease duly made under this Act and the provisions of this Act (other than section 7.1) that apply to and consequent upon the hearing shall apply thereto;
- (c) in a case where, before that commencement, no certificate of application had been issued under the *Mining Act 1968-1986*, the application shall be deemed to be an application made under this Act and the provisions of this Act (other than section 7.1) shall apply thereto;
- (d) in any case referred to in paragraph (b) or (c), the applicant shall furnish forthwith any additional information required to comply with this Act;
- (e) in all cases any survey fee deposited with the application as prescribed by the *Mining Act 1968-1986* shall be refunded and any other moneys deposited prior to the commencement of this Act shall be retained or disposed of as the Minister in each case determines;
- (f) any approval or authorization given by the Minister in respect thereof pursuant to section 23 or 112A of the *Mining Act 1968-1986* shall continue to be effective according to its tenor and the relevant provisions of those sections shall, notwithstanding their repeal, continue to apply until the application is determined or the approval expires whichever is the earlier.

(11) Where, prior to the commencement of this Act in respect of a mining lease—

(a) an application for—

- (i) the renewal of the mining lease;
 - (ii) the approval of the assignment or transfer thereof;
 - (iii) the approval of the mortgage or encumbrance thereof;
 - (iv) the inclusion therein of an additional surface area of land;
- or
- (v) approval to mine mineral not specified in the mining lease or to use land comprised in the lease for a purpose not specified in the lease;

or

(b) a surrender thereof,

has been duly made under the *Mining Act 1968-1986* but has not at that commencement been determined—

(c) the application referred to in paragraph (a) shall be deemed to be an application for—

- (i) the renewal of the mining lease;
 - (ii) the approval of the assignment of the mining lease;
 - (iii) the approval of the mortgage of the mining lease;
 - (iv) the inclusion of an additional surface area of land;
- or, as the case may be,
- (v) the approval to mine mineral or use land for a purpose not specified in the lease;

or

(d) the surrender shall be deemed to be a surrender made,

under this Act and the provisions of this Act shall apply accordingly but in a case referred to in paragraph (a) (iv) the provisions of section 7.19 shall not apply.

4. Authorities to prospect. (1) Notwithstanding that the provisions of sections 5.3 and 5.18 may be contravened or not complied with, an authority to prospect granted and issued under the *Mining Act 1968-1986* and current at the commencement of this Act shall upon that commencement be deemed to be an exploration permit granted for the balance of its term current at that date and the holder thereof shall hold the exploration permit subject to the provisions of this Act.

(2) For the purpose of the application of sections 5.14, 5.18 and 5.19 to an authority to prospect that pursuant to subclause (1) is deemed to be an exploration permit, the exploration permit shall be deemed to be in the first year of its term.

(3) Where at the commencement of this Act, an application duly made to a Warden prior to that commencement for the grant of an authority to prospect has not been determined—

(a) the application shall be deemed to be an application for the grant of an exploration permit made to a mining registrar

with the priority it had under the *Mining Act 1968-1986* and the provisions of this Act shall apply in respect of that application;

- (b) the application fee prescribed by this Act to be payable in respect of applications for the grant of an exploration permit shall not be payable and any moneys lodged pursuant to the *Mining Act 1968-1986* in respect of the application shall be refunded;
- (c) for the purpose of applying the provisions of this Act to an application referred to in paragraph (a), the applicant shall furnish such information as the Minister considers appropriate.

(4) Upon the commencement of this Act, in any case where the provisions of section 17 (1AA) of the *Mining Act 1968-1986* applied immediately prior to that commencement, those provisions, notwithstanding their repeal, shall continue to apply and for that purpose, for so long as it is not competent for a person under those provisions to apply for an authority to prospect in respect of certain land, it is not competent for that person to apply for an exploration permit in respect of that land.

(5) Where, prior to the commencement of this Act, an application for the renewal of an authority to prospect had been duly made under the *Mining Act 1968-1986* but has not at that commencement been determined, the application shall be deemed to be an application for renewal of the exploration permit under this Act and the provisions of this Act shall apply accordingly except that the prescribed application fee shall not be payable.

(6) For the purpose of the application of section 5.32 in respect of an authority to prospect that is, pursuant to subclause (1) deemed to be an exploration permit—

- (a) any failure to comply with any stipulation or condition of the authority;
- or
- (b) any failure to pay the rental by the date due for payment, prior to the commencement of this Act shall be deemed to be—
- (c) a failure to comply with a stipulation or condition of the exploration permit;
- or, as the case may be,
- (d) a failure to pay the rental by the date due for payment under the exploration permit.

(7) Where, prior to the commencement of this Act a holder of an authority to prospect had surrendered his interest in the whole or part of the land comprising the authority for the purpose that he may be granted a new authority to prospect over land that is included in the authority to prospect or part surrendered but at that commencement his application for the new authority had not been determined, the

provisions of section 19A (4) of the *Mining Act 1968-1986*, notwithstanding their repeal, shall continue to apply until the application is determined and the surrender shall be deemed to be a surrender in whole or part of the land comprising an exploration permit.

(8) Where, prior to the commencement of this Act, a holder of an authority to prospect (which on that commencement is pursuant to subclause (1) deemed to be an exploration permit) has made application under section 19B of the *Mining Act 1968-1986* to the Minister to approve that all the entitlements of the holder under that Act with respect to the whole of the land the subject of the authority shall vest in—

(a) another person or other persons;

or

(b) the holder and another person or other persons,

specified in the application and upon that commencement the Minister has not determined the application, the provisions of that section, notwithstanding their repeal, shall continue to apply in respect of that application and if the application is approved the exploration permit shall be assigned accordingly and section 5.23 (2) shall not apply in respect thereto.

5. Residence areas, business areas and market garden areas.

Notwithstanding the repeal of the Acts specified in the First Schedule, the provisions of those Acts that, immediately prior to the commencement of this Act, applied in respect of residence areas, business areas and market garden areas (other than any provision requiring a holder of such an area to hold a miner's right) shall continue to apply in respect of those areas.

6. Machine areas, areas for stacking tailings, areas for erection of furnaces and drainage areas. (1) A person who at the commencement of this Act is the holder of a machine area, area for stacking tailings, area for erection of furnaces or drainage area under the *Mining Act 1968-1986* or any previous Act relating to mining may, within the prescribed period, make application for the grant of a mining lease for purposes associated with mining in respect of that area.

(2) The provisions of Part 7 shall apply in respect of the application for and grant of a mining lease under subclause (1) except that—

(a) sections 7.1, 7.2, 7.6, 7.18 (other than subsection (1) as modified by paragraph (b) hereof), 7.19, 7.20, 7.22, 7.25, 7.26, 7.27, 7.28, 7.29, 7.36, 7.37, 7.38 and 7.39 do not apply;

(b) a certificate of application for a mining lease issued pursuant to section 7.18 shall not be endorsed with a date fixed by the mining registrar on or before which objections to the application may be lodged but shall be endorsed with a statement that no objections to the application may be lodged;

(c) the Minister shall consider whether the provisions of this Act as modified by this clause have been complied with

and if those provisions have not been complied with, he shall reject the application;

- (d) if the Minister considers that the provisions referred to in paragraph (c) have been complied with, he shall make a recommendation to the Governor in Council that the mining lease be granted;

and

- (e) the provisions of section 7.45 shall apply only if the Minister in the particular case so determines.

(3) Upon the grant of a mining lease pursuant to an application made under subclause (1) the provisions of this Act shall apply in respect of the mining lease granted.

(4) An area, being one of the areas referred to in subclause (1), shall continue in existence, notwithstanding the repeal of the Acts specified in the First Schedule, until—

- (a) the expiration of the prescribed period;

or

- (b) if the holder, within the prescribed period, makes application for the grant of a mining lease in respect of that area, the application is determined or abandoned,

whichever is the later and thereupon the area shall be terminated and no person shall have any rights or entitlements in respect thereof.

7. Miner's common. Any miner's common subsisting at the commencement of this Act under the *Mining Act 1968-1986* or any previous Act relating to mining shall, upon that commencement, be terminated and no person shall have any rights or entitlements in respect thereof.

8. Permits to enter. (1) Notwithstanding the repeal of the *Mining Act 1968-1986*, a permit to enter upon land that is current immediately prior to the commencement of this Act shall continue in force for the balance of its term and for that purpose the provisions of the *Mining Act 1968-1986* shall continue to apply in respect of that permit.

(2) Where at the commencement of this Act an application made prior to that commencement for a permit to enter upon land pursuant to the *Mining Act 1968-1986* has not been determined—

- (a) in the case of an application made by the holder of an authority to prospect granted under that Act, the application shall be discontinued and any fees thereunder shall be refunded;

- (b) in any other case, the application shall be deemed to be an application for a prospecting permit made at the date of that commencement and the provisions of this Act shall apply thereto and, where the application had been accompanied by the filing fee prescribed under the *Mining*

Act 1968-1986, that fee shall be deemed to be the application fee paid as prescribed under this Act.

9. Miner's rights. (1) Notwithstanding that the provisions of sections 3.3, 3.5, 3.10 and 3.13 may be contravened or not complied with, a miner's right issued under the *Mining Act 1968-1986* and current immediately prior to the commencement of this Act shall, upon that commencement, be deemed to be a prospecting permit issued in respect of Crown land as defined in that Act for the balance of its term current at that date and the holder thereof shall hold the prospecting permit subject to the applicable provisions of this Act.

(2) Where, at the commencement of this Act an application made prior to that commencement for the issue of a miner's right has not been determined, the application shall be discontinued and any fee paid in respect thereof shall be refunded.

10. Licence to construct drives through alien land. (1) Notwithstanding the repeal of the *Mining Act 1968-1986*, a licence granted pursuant to section 42 of that Act that is current immediately prior to the commencement of this Act shall continue in force for the balance of its term and for that purpose the provisions of that section 42 shall continue to apply in respect of that licence save that the licence shall not be renewed.

(2) The holder of a mining lease to which a licence referred to in subclause (1) relates may, at any time while the licence exists, apply to the mining registrar to have the land the subject of the licence included in the mining lease.

Upon the Minister being satisfied that all agreements that are required by section 42 of the *Mining Act 1968-1986* to be entered into have been entered into he may determine that the land shall become part of the land comprised in the mining lease, the area of the mining lease shall be adjusted and the instrument of lease shall be endorsed accordingly.

For the purpose of calculating rental payable in respect of the mining lease, the adjustment of the area of the mining lease shall be deemed to take effect immediately prior to 1 January next following the land becoming part of the land comprised in the mining lease.

11. Licence to carry any thing across alien land. (1) Notwithstanding that the provisions of sections 7.1, 7.2, 7.6, 7.8 and 7.36 may be contravened or not complied with, a licence granted pursuant to Part VI of the *Mining Act 1968-1986* and current immediately prior to the commencement of this Act shall, upon that commencement be deemed to be a mining lease granted for the balance of its term current at that date and the holder of the licence immediately prior to that commencement shall hold the mining lease subject to the provisions of this Act and for that purpose all covenants and conditions to which the licence was subject shall be deemed to be conditions of the mining lease.

(2) Rental shall not be payable in respect of a licence that, pursuant to subclause (1), is deemed to be a mining lease until the mining lease is first renewed and thereafter shall be payable in accordance with the provisions of this Act.

(3) For the purpose of renewing a mining lease pursuant to this clause the applicant therefor shall provide a description of the land the subject of the lease by measured distances and compass bearings along the centre line of the land together with the width of the land or by such other method as is acceptable to the Minister.

(4) (a) The provisions of section 7.48 shall apply, subject to this subclause, to a licence that, pursuant to subclause (1) is deemed to be a mining lease.

(b) A licence that, pursuant to subclause (1), is deemed to be a mining lease shall be subject to a condition that the holder thereof shall, before the expiration of the prescribed period, submit to the Minister a proposed plan of operations for the carrying out, in accordance with this Act and the conditions of the mining lease, of the purposes for which the licence was granted.

(c) Until the expiration of 28 days after the submission by the holder of the plan of operations in respect of which plan the Minister has not before the expiration of that period informed the holder that the plan is not acceptable, the holder of the mining lease may continue to carry on operations under the mining lease as authorized prior to the commencement of this Act.

(d) If the Minister does not indicate, within 28 days of the submission of a plan of operations, that the plan is unacceptable, the holder shall, on the expiration of that period, commence to carry on operations in accordance with that plan.

(e) If the Minister does indicate, within 28 days of the submission of a plan of operations, that the plan is unacceptable, the holder may only continue to carry on operations under the mining lease as authorized prior to the commencement of this Act for such period as the Minister specifies in his indication.

(5) Where, at the commencement of this Act, the land, the subject of a licence that, pursuant to subclause (1) is deemed to be a mining lease, has not been surveyed as prescribed by Part 7, a survey of the land shall not be required prior to the renewal of the mining lease unless the Minister so directs.

(6) (a) Where, at the commencement of this Act, an application duly made prior to that commencement for the grant of a licence under Part VI of the *Mining Act 1968-1986* has not been determined, the application shall be deemed to be an application for the grant of a mining lease made under this Act and the provisions of this Act shall apply thereto and, where the application has been accompanied by an application fee prescribed under that Act, that fee shall be deemed to be the application fee paid as prescribed under this Act.

(b) For the purposes of facilitating the determination of an application referred to in paragraph (a), the applicant shall furnish such information as the Minister considers appropriate.

12. Substances lawfully mined but not under authority of Repealed Acts. (1) Where, immediately prior to the commencement of this Act operations are lawfully being carried on for mining purposes, then, notwithstanding that a mining claim or mining lease is not current in respect of those operations, those operations may continue for the prescribed period after the commencement of this Act but, subject to subclause (2), shall cease on the expiration of that period.

(2) Where, within the prescribed period, an application for the grant of a mining claim or a mining lease is made in respect of an operation referred to in subclause (1), the operation may continue after the expiration of the prescribed period until the determination of the application.

13. Appeals from Wardens Court. (1) Where, prior to the commencement of this Act an appeal against the determination of the Wardens Court has been instituted pursuant to Division IV of Part IX of the *Mining Act 1968-1986*, then, notwithstanding the repeal of that Act, the provisions of that Division shall continue to apply in respect of that appeal as if this Act had not been enacted.

(2) A person who is or would, but for the repeal of Division IV of Part IX of the *Mining Act 1968-1986*, be entitled to institute an appeal pursuant to that Division in respect of a determination made before the commencement of this Act shall continue to be so entitled to the extent indicated in that Division after that commencement and for that purpose the provisions of that Division shall continue to apply as if this Act had not been enacted.

14. Compensation. (1) An application for an assessment of the amount of damage likely to be caused made pursuant to section 43AA of the *Mining Act 1968-1986* but not determined prior to the commencement of this Act shall lapse.

(2) Where, prior to the commencement of this Act, an application has been made pursuant to section 43IA or 129 of the *Mining Act 1968-1986* but has not been determined prior to that commencement, then, notwithstanding the repeal of that Act, the provisions of those sections shall continue to apply as if this Act had not been enacted and for the purpose of a determination being made, the person who, immediately prior to that commencement was the warden to whom the application was made shall be deemed to continue to be the warden.

(3) (a) Where, prior to the commencement of this Act an appeal against the determination of the Wardens Court has been lodged pursuant to section 43JA or 129A of the *Mining Act 1968-1986*, then, notwithstanding the repeal of that Act, the provisions of those sections shall continue to apply in respect of that appeal as if this Act had not been enacted.

(b) A person who is or would, but for the repeal of section 43JA or 129A of the *Mining Act 1968-1986*, be entitled to lodge an appeal pursuant thereto in respect of a determination made before the commencement of this Act shall continue to be so entitled to the extent indicated in that section after that commencement and for that purpose the provisions of that section shall continue to apply as if this Act had not been enacted.

(4) An agreement entered into pursuant to section 43IA or 129 of the *Mining Act 1968-1986* prior to the commencement of this Act shall—

(a) if it is of force and effect under that section, continue to be of force and effect according to its tenor as an agreement made pursuant to this Act;

or

(b) if it is not of force and effect under that section, may be lodged and filed as an agreement made in accordance with this Act,

and the provisions of this Act shall apply accordingly.

15. Payment for security for compensation. Any amount paid or deposited pursuant to section 43BA or 121 of the *Mining Act 1968-1986* and not utilized at the commencement of this Act shall be deemed to be security deposited by the holder of the relevant mining claim, exploration permit, mining lease or application under this Act and the provisions of this Act shall apply accordingly.

16. Caveats. A caveat duly lodged prior to the commencement of this Act pursuant to section 43A of the *Mining Act 1968-1986* and in force immediately prior to that commencement shall continue in force as a caveat lodged under and subject to this Act.

17. Entitlements other than previously provided for. (1) Except where this Act otherwise provides, a person who prior to the commencement of this Act holds an entitlement in respect of anything under any Act relating to mining which after the commencement of this Act is an entitlement that is to be granted under a prospecting permit, mining claim, exploration permit, mineral development licence, mining lease or other authority under this Act and the other provisions of this Schedule do not provide in relation thereto, may during the prescribed period or at any later date in the particular case approved by the Minister, apply for the grant of a relevant prospecting permit, mining claim, exploration permit, mineral development licence, mining lease or other authority, notwithstanding that he may not be qualified to do so under the relevant Part of this Act.

(2) Until the expiration of the prescribed period or, if an application referred to in subclause (1) is made within that period, until the application is determined, whichever is the later, the applicant may continue to carry on operations as he was authorized to carry on prior to that commencement subject to that authorization not being withdrawn by a person who is entitled so to do.

18. Prior acts etc. to continue under this Act. (1) Any act done or omitted prior to the commencement of this Act that constituted an act or omission for which any security deposited under any of the repealed Acts could be utilized shall, after that commencement, be deemed to be an act done or omitted for which the security deposited may be utilized under this Act to the extent that the security was not utilized prior to that commencement.

(2) Any act done or omitted prior to the commencement of this Act that constituted a breach of any covenant or condition of a claim, mining claim, authority to prospect, mining lease or licence under, or a contravention of, any of the repealed Acts shall, after that commencement, be deemed to be an act done or omitted that constituted a breach of a condition of the relevant mining claim, exploration permit or mining lease under, or a contravention of, this Act and action may be taken in respect thereof to the extent that action has not been taken under the relevant repealed Act.

19. Unforeseen circumstances. If in any case in respect of the transition from the law in force before the commencement of this Act to the provisions of this Act it appears to the Governor in Council that no provision or no sufficient provision is made to effectuate that transition, he may by Order in Council make such provision as he thinks fit with respect thereto providing for and supplying such omission or insufficiency, and that provision shall have effect accordingly.

20. Royalties. Where, pursuant to section 70 of the *Mining Act 1968-1986*, royalty has been prescribed to be paid on mineral won before the commencement of this Act, that royalty shall be payable notwithstanding the repeal of that Act and may be recovered in the manner prescribed under this Act as royalty payable under Part 9.

21. Royalties on rock in block or slab form etc. (1) Where, pursuant to an agreement made prior to the commencement of this Act, royalty is payable to the owner of land in respect of rock in block or slab form for building purposes that is extracted after that commencement, that royalty shall continue to be payable and, notwithstanding the provisions of Part 9, any royalty payable to the Crown under that Part in respect of that rock shall be reduced by the amount of royalty paid in respect of that rock to the owner of the land under that agreement or where such an agreement has, as provided in that agreement, been renewed, whether before or after the commencement of this Act for so long as there subsists a renewal of such an agreement.

22. Transfer of registers, records, security deposits etc. Upon the commencement of this Act—

- (a) the person who, immediately prior to that commencement, had the custody of any register, record, application, document or other material which, after that commencement is to be in the custody of a mining registrar shall hand over to the

mining registrar that register, record, application, document or material;

- (b) any security deposited with a warden under any of the repealed Acts shall be delivered to and held by the relevant authority under this Act for the purposes for which the security was deposited but the provisions of this Act shall apply in respect thereto.

23. Existing registers to form part of registers under this Act. (1)

A register that pursuant to clause 22 (a) is handed over to a mining registrar shall become and form part of the register that the mining registrar is required by this Act to maintain.

(2) The register maintained at the Department of Mines Brisbane under the repealed Acts shall become and form part of the register maintained by the Director-General for the purpose of this Act.

(3) A person who is required under this Act to maintain a register may develop and use a system of numbering or other identification system different to the system used prior to the commencement of this Act for the purpose of collating or identifying particulars on the register and for that purpose any mining claim, exploration permit or mining lease may be renumbered or have its identification changed and the relevant documentation shall be endorsed accordingly.