

WESTERN AUSTRALIA.

MINING ACT 1978-1981.

ARRANGEMENT

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Approved for Reprint 11 December 1981

WESTERN AUSTRALIA.

MINING.

No. 107 of 1978.¹

(Affected by Act No. 15 of 1981.)

[As amended by Acts:

No. 69 of 1981, assented to 30 October 1981, and reprinted pursuant to the Amendments Incorporation Act 1938.]

AN ACT to Consolidate and Amend the Law relating to Mining and for incidental and other purposes.

[Assented to 8 December 1978.]

BE it enacted—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Mining Act 1978-1981*.

Short title.
Amended by
Act No. 69 of
1981, s. 2.

2. (1) The long title, the heading Part I—Preliminary, section 1, this section, the heading Second Schedule, and Clause 3 of the Second Schedule to this Act shall come into operation on the day on which this Act receives the Royal Assent.

Commence-
ment.

¹ See section 2. Balance proclaimed to operate from 1 January 1982; see *Gazette* 11/12/81, p. 5085.

(2) The remaining provisions of this Act shall come into operation on a date to be fixed by proclamation.¹

Repeals and
amend-
ments.
Amended by
No. 69 of 1981,
s. 3.

3. The Acts specified in—

- (a) Part I of the First Schedule to this Act are hereby repealed;
- (b) Part II of the First Schedule to this Act are amended as shown therein.

(2) [*Repealed by No. 69 of 1981, s. 3.*]

Transition.
Amended by
No. 69 of 1981,
s. 4.

4. Without prejudice to the application of the Interpretation Act 1918, and in particular sections 15 and 16 thereof, to this Act (except where such application would be inconsistent with the transitional provisions set forth in the Second Schedule to this Act) the transitional provisions set forth in the Second Schedule to this Act shall have effect.

Saving.
Amended by
No. 69 of 1981,
s. 5.

5. (1) Nothing in this Act shall affect the provisions of any Act in force on the commencing date that approves or ratifies any agreement to which the State is a party and under which a party to the agreement is authorized or required to carry out any mining operations pursuant to the agreement.

(2) Notwithstanding anything in the Second Schedule to this Act, a party to an agreement referred to in subsection (1) of this section—

- (a) who is the holder of an existing mining tenement under that agreement may continue, subject to that agreement, to exercise the rights conferred by that mining tenement; or
- (b) to whom an existing right of occupancy has been granted under section 276 of the repealed Act or that agreement, or under both section 276 of the repealed Act and

¹ Came into operation on 1 January 1982; see *Gazette* 11/12/81, p. 5085.

that agreement, as the case requires, may continue, subject to that agreement, to exercise that right of occupancy,

as though the repealed Act had not been repealed.

(3) Subject to the relevant agreement referred to in subsection (1) of this section, a person may, in accordance with this Act, apply for a mining tenement in respect of an area or part thereof that is the subject of a mineral lease granted in accordance with that agreement.

6. This Act shall be read and construed subject to the Environmental Protection Act 1971, as enacted on the commencing date to the intent that if a provision of this Act is inconsistent with a provision of that Act, the firstmentioned provision shall, to the extent of the inconsistency, be deemed to be inoperative.

Operation of
this Act.

7. This Act is divided into Parts, as follows—

Arrangement
of Act.

PART I.—PRELIMINARY, ss. 1-9.

PART II.—ADMINISTRATION, MINERAL FIELDS
AND COURTS, ss. 10-17.

PART III.—LAND OPEN FOR MINING.

Division 1.—Crown Land, ss. 18-22.

Division 2.—Public Reserves, etc., ss. 23-26.

Division 3.—Private Land, ss. 27-39.

PART IV.—MINING TENEMENTS.

Division 1.—Prospecting Licence, ss. 40-56.

Division 2.—Exploration Licence, ss. 57-70.

Division 3.—Mining Lease, ss. 71-85.

Division 4.—General Purpose Lease, ss. 86-90.

Division 5.—Miscellaneous Licences, ss. 91-94.

*Division 6.—Surrender and Forfeiture of Mining
Tenements, ss. 95-101.*

*Division 7.—Exemption from Expenditure
Conditions, ss. 102-103.*

PART V.—GENERAL PROVISIONS RELATING TO
MINING AND MINING TENEMENTS, ss. 104-120.

PART VI.—CAVEATS, ss. 121-122.

Mining.

PART VII.—COMPENSATION, ss. 123-126.

PART VIII.—ADMINISTRATION OF JUSTICE, ss. 127-151.

PART IX.—MISCELLANEOUS AND REGULATIONS, ss. 152-162.

Interpretation.
Amended by
No. 69 of 1981,
s. 6.

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

“commencing date” means the date of the coming into operation of the provisions of this Act referred to in subsection (2) of section 2;

“council of the municipality” means the council of a municipality constituted under the Local Government Act 1960 for the municipal district in which the subject matter in relation to which the term is used, arose, or is;

“Crown land” means all land in the State, except—

(a) land that has been reserved for or dedicated to any public purpose other than—

(i) land reserved for mining or commons;

(ii) land reserved and designated for Public Utility for any purpose under the Land Act 1933;

(b) land that has been lawfully granted or contracted to be granted in fee simple by or on behalf of the Crown;

(c) land that is subject to any lease granted by or on behalf of the Crown for any purpose other than a pastoral or timber purpose;

“dam” means any accumulation or storage of water, whether natural or artificial;

“expenditure conditions” in relation to a mining tenement means the prescribed conditions applicable to a mining tenement that

require the expenditure of money on or in connection with the mining tenement or the mining operations carried out thereon or proposed to be so carried out;

“land” includes water; and also includes the foreshore and the sea bed within the meaning of section 25;

“machinery” includes all mechanical appliances of whatever kind used or intended to be used for any mining purpose;

“mine”, as a noun, means any place in, on or under which mining operations are carried on;

“mine”, as a verb, includes any manner or method of mining operations;

“minerals” includes all naturally occurring substances obtained or obtainable from land by mining operations whether carried out under or on the surface of land, and includes gravel, shale (including oil shale), sand, clay, limestone, rock and evaporites, but does not include—

(a) soil or any substance the recovery of which is governed by the Petroleum Act 1967, or the Petroleum (Submerged Lands) Act 1967; or

(b) gravel, shale (not being oil shale), sand, clay, limestone or rock when on private land;

“mineral field” means a mineral field constituted under this Act or deemed so to be;

“mining” means mining operations and includes prospecting and exploring for minerals;

“mining operations” means any mode or method of working whereby the earth or any rock structure stone fluid or mineral bearing substance may be disturbed removed washed sifted crushed leached roasted distilled evaporated smelted or refined or dealt with for the purpose of obtaining any

Mining.

mineral therefrom whether it has been previously disturbed or not and includes—

- (a) the removal of overburden by mechanical or other means and the stacking, deposit, storage and treatment of any substance considered to contain any mineral;
- (b) operations by means of which salt or other evaporites may be harvested;
- (c) operations by means of which mineral is recovered from the sea or a natural water supply; and
- (d) the doing of all lawful acts incident or conducive to any such operation or purposes;

“mining product” means any material won from land by mining;

“mining registrar” means a mining registrar appointed in accordance with this Act or deemed so to be;

“mining tenement” means a prospecting licence, exploration licence, mining lease, general purpose lease or a miscellaneous licence granted or acquired under this Act or the repealed Act; and includes the specified piece of land in respect of which the mining tenement is so granted or acquired;

“occupier” in relation to any land includes any person in actual occupation of the land under any lawful title granted by or derived from the owner of the land;

“oil shale” includes naturally occurring hydrocarbons that are or may be contained in rocks from which they cannot be recovered otherwise than by mining those rocks as oil shale;

“owner” in relation to any land means—

- (a) the registered proprietor thereof or in relation to land not being land under the Transfer of Land Act 1893 the owner in fee simple or the person entitled to the equity of redemption thereof;
- (b) the lessee or licensee from the Crown in respect thereof;
- (c) the person who for the time being, has the lawful control and management thereof whether on trust or otherwise; or
- (d) the person who is entitled to receive the rent thereof;

“private land” means any land that has been or may hereafter be alienated from the Crown for any estate of freehold, or is or may hereafter be the subject of any conditional purchase agreement, or of any lease or concession with or without a right of acquiring the fee simple thereof other than for pastoral or timber purposes, but—

- (a) in relation to mining for minerals other than gold, silver and precious metals, for the purposes of Division 3 of Part III of this Act, does not include land alienated before the first day of January, eighteen hundred and ninety-nine, except as provided in that Division; and
- (b) no land that is the subject of a mining tenement is private land for the purposes of that Division;

“public purpose” means any of the purposes for which land may be reserved pursuant to section 29 of the Land Act 1933, and any purpose declared by the Governor pursuant to that Act, by notification in the *Government Gazette* to be a public purpose within the meaning of that Act;

“section” means a section of this Act;

“the Department” means the Department of the Public Service of the State principally assisting the Minister in the administration of this Act;

“the repealed Act” means the Mining Act 1904;

“the warden” or “the mining registrar” means the warden or the mining registrar of the mineral field or district thereof in which the subject matter in relation to which the term is used arose or is;

“Under Secretary” means the person for the time being occupying the office under the Public Service Act 1978 of permanent head of the Department;

“warden” means a warden of mines appointed in accordance with this Act or deemed so to be;

“warden’s court” means the warden’s court constituted under this Act or deemed so to be for the mineral field or district thereof in which the subject matter in relation to which the term is used arose or is.

(2) Notwithstanding anything in subsection (1) of this section, the Minister may, in the event of a dispute whether a particular substance is or is not oil shale, decide whether that substance is or is not oil shale for the purposes of this Act and the Petroleum Act 1967 and his decision in the matter shall be final.

(3) A reference in this Act to the owner and occupier of private land includes a reference to a person who is both the owner and occupier of private land and parts of speech in the plural number shall be construed accordingly.

Rights in
respect of oil
shale or coal.
Inserted by No.
69 of 1981, s.7.

8A. (1) Notwithstanding anything in section 8, a mining tenement (other than a coal mining lease) granted and in force under, or continued in force by, this Act in respect of land which is the subject of an exploration permit specified in the Schedule to the Petroleum Act 1967 does not confer on the holder of that mining tenement any rights in respect of oil shale or coal.

(2) If land referred to in subsection (1) of this section ceases to be the subject of an exploration

permit referred to in that subsection, the holder of the mining tenement referred to in that subsection may apply to the Minister for rights in respect of oil shale or coal or both in respect of that land.

(3) On receiving an application made under subsection (2) of this section, the Minister may in writing confer on the applicant such rights in respect of oil shale or coal or both in respect of the land concerned as he thinks fit, in which case the mining tenement concerned shall be amended accordingly.

9. (1) Subject to this Act—

- (a) all gold, silver, and any other precious metal existing in its natural condition on or below the surface of any land in the State whether alienated or not alienated from the Crown and if alienated whenever alienated, is the property of the Crown;
- (b) all other minerals existing in their natural condition on or below the surface of any land in the State that was not alienated in fee simple from the Crown before the first day of January, eighteen hundred and ninety-nine are the property of the Crown.

Gold and silver
and other
precious metals
property of
Crown.

(2) Notwithstanding anything in this Act or any previous enactment the owner, grantee, lessee or licensee of, or other person entitled to, any land to which this section or any corresponding provisions apply, that is not the subject of a mining tenement, is entitled to use any mineral existing in a natural state on or below the surface of the land for any agricultural, pastoral, household, road making, or building purpose, on that land.

PART II.—ADMINISTRATION, MINERAL FIELDS AND COURTS.

10. (1) This Act shall be administered by the Minister.

Administration
of Act.

(2) The Minister—

- (a) shall be a corporation sole, with perpetual succession and shall have an official seal; and

- (b) may, in his corporate name, acquire, hold, lease and otherwise dispose of real and personal property, and may sue and be sued in that name.

(3) All courts, judges and persons acting judicially shall take notice of the official seal of the Minister affixed to a document and shall presume that it was duly affixed.

Permanent
head and other
officers.

11. There shall be a department of the Public Service of the State to assist the Minister in the administration of this Act, to which department there shall be appointed, under the Public Service Act 1978, a permanent head and such number of persons to be mining registrars, geologists, surveyors, inspectors and such other officers as may be necessary for the due administration of this Act.

Delegation.

12. (1) The Minister may—

- (a) by instrument in writing delegate any of his powers and functions (except this power of delegation) to any officer of the Department; and

- (b) vary or revoke a delegation given by him.

(2) Any delegation of a power or function under this section by the Minister ceases to have effect upon the appointment (other than in the capacity of an acting Minister) of another person to be the Minister for the purpose of this Act.

(3) A power or function delegated by the Minister under this section—

- (a) shall, if exercised or performed, be exercised or performed in accordance with the instrument of delegation; and

- (b) may, if the exercise of the powers or the performance of the functions is dependent upon the opinion, belief or state of mind of the Minister in relation to a matter—be exercised upon the opinion, belief or state of mind of the delegate in relation to that matter.

Wardens of
mines.

13. (1) Any person holding office as a stipendiary magistrate under the Stipendiary Magistrates Act

1957, may be appointed by the Governor to be a warden of mines.

(2) Without prejudice to subsection (1) of this section the Governor may appoint other fit and proper persons to be wardens of mines, and the persons so appointed shall be paid such remuneration as the Governor determines.

(3) The Public Service Act 1978, does not apply to any appointment made under subsection (2) of this section but an officer of the Public Service—

- (a) may, with the consent of the Public Service Board, be appointed to the office of a warden of mines under that subsection for such period as the Governor determines; and
- (b) may hold that office in conjunction with his office as an officer under that Act.

14. (1) When and as often as a warden is absent on leave, or in consequence of sickness or for any other reason is temporarily unable to perform the duties of his office, the governor may appoint a fit and proper person to be an acting warden for the period during which such warden is temporarily absent or unable to perform the duties of his office.

Power to appoint acting warden.

(2) While a person appointed under subsection (1) of this section is acting as a warden—

- (a) he may exercise the same jurisdiction and has all the powers and authorities conferred upon a warden by this Act; and
- (b) he shall be a Justice of the Peace, by virtue of his office.

15. (1) A warden who acts or adjudicates in any matter in which he has directly or indirectly any pecuniary interest, is guilty of a misdemeanour.

Warden prohibited from adjudicating in certain matters and officer prohibited from using information.

Penalty: Imprisonment for two years or a fine of one thousand dollars.

(2) An officer appointed pursuant to section 11 who uses any information that comes to his knowledge in the course of, or by reason of, his

Criminal Code s. 3.

employment as such an officer for the purpose of personal gain is guilty of a misdemeanour.

Penalty: Imprisonment for two years or a fine of one thousand dollars.

Power to
proclaim
mineral fields.

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

- (a) constitute any part of the State to be a mineral field;
- (b) divide any mineral field into districts;
- (c) alter or amend the boundaries of a mineral field or district; or
- (d) abolish a mineral field or district.

(2) Any part of the State that was immediately before the commencing date a mineral field or district thereof or a goldfield or district thereof under the repealed Act, shall be deemed to be a mineral field or district thereof constituted under this Act and may be dealt with as provided in subsection (1) of this section.

(3) No Crown land that is in a mineral field shall be leased, granted, or disposed of under the provisions of the Land Act 1933, without the approval of the Minister.

Power to make
proclamation
etc. to apply
generally or
particularly.

17. Every proclamation, order in council or notice required to be published in the *Government Gazette* under this Act may be made from time to time, and so as to apply in any manner, particularly or generally, in relation to any matter, person, time or place, and may at any time in like manner be revoked in whole or in part or amended or any error appearing therein, corrected.

PART III.—LAND OPEN FOR MINING.

Division 1.—Crown Land.

Crown land
open for
mining.
"This Act"
includes regu-
lations. s. 4,
Act No. 30 of
1918.

18. Subject to and in accordance with this Act, all Crown land not being Crown land that is the subject of a mining tenement, is open for mining.

Power to set
apart Crown
land for mining
or exempt it
therefrom.
Amended by
No. 69 of 1981,
s. 8.

19. (1) The Minister may from time to time by instrument in writing under his hand—

- (a) exempt any Crown land, not being Crown land that is the subject of a mining

tenement or of an application therefor,
from—

- (i) mining;
 - (ii) a specified mining purpose;
 - (iii) this Act; or
 - (iv) a specified provision of this Act;
- or

- (b) vary or cancel an exemption referred to in paragraph (a) of this subsection,

and shall cause any such instrument to be published in the *Government Gazette* as soon as is practicable after its execution by him.

(2) Each instrument made under subsection (1) of this section has effect on and from the date thereof and shall specify the area and description of land to which the instrument relates.

(3) While any land is so exempted from mining or any specified mining purpose, or from this Act or any specified provision thereof, the land to the extent of the exemption, ceases to be subject to the operation of this Act.

(4) The Minister may, while any Crown land is exempted under this section, call in such manner as he determines for applications for the grant of such mining tenements as he determines in respect of that Crown land or a part thereof.

(5) A person applying to the Minister for the grant of a mining tenement in respect of any Crown land or a part thereof referred to in subsection (4) of this section shall do so in such manner as the Minister directs.

(6) On receiving an application made under subsection (5) of this section, the Minister may—

- (a) grant the mining tenement applied for or another mining tenement subject to such terms and conditions as he thinks fit; or
- (b) refuse that application.

(7) This Act applies to a mining tenement granted under this section as if that mining tenement had been granted under Part IV of this Act.

General rights
to prospect and
protection of
certain Crown
land.

20. (1) The Minister, the Under Secretary for Mines, a warden or a mining registrar may issue or cause to be issued to a person upon payment of the prescribed fee a Miner's Right which is not transferable and not limited in term and such a Miner's Right shall be in the prescribed form.

(2) Subject to this Act the holder of a Miner's Right is authorized to do all or any of the following things—

- (a) to pass and repass over Crown land with such employees and agents, vehicles machinery and equipment as may be necessary or expedient for the purpose of prospecting for minerals and marking out of any land open for mining;
- (b) to prospect on Crown land (not being Crown land that is the subject of a mining tenement) for minerals and conduct tests for any mineral thereon for the purpose of determining which area of the land is to be marked out or applied for, or both, for the purpose of making an application for a mining tenement in respect thereof;
- (c) to extract and remove samples or specimens not exceeding the prescribed quantity of rock, ore or minerals for testing purposes only, with as little damage to the surface of such land as possible and to keep as his property samples and specimens of any mineral found by him on such land;
- (d) to take, subject to the Rights in Water and Irrigation Act 1914, water from any natural spring, lake, pool or water course situated in or flowing through such land and subject to that Act to sink a well or bore on such land and take water therefrom and to use the water so taken for the purposes of prospecting and for domestic purposes only; and

- (e) subject to any Act relating to Crown lands and the regulations thereunder for the time being in force for the preservation of timber, to cut and remove timber from such land for the purpose of prospecting, and to erect and remove any building or structure on any such land lawfully occupied by him for the purpose of prospecting, and remove the building or structure in such manner and subject to such conditions as may be prescribed.

(3) Any person acting under the authority of subsection (2) of this section shall—

- (a) cause all holes, pits, trenches and other disturbances on the surface of the land which were made while he was so acting and which are likely to endanger the safety of any person or animal, to be filled in, together with such other holes, pits, trenches and other disturbances as the Minister directs; and
- (b) take all necessary steps to prevent fire, damage to trees or other property and to prevent damage to any property or damage to livestock by the presence of dogs, the discharge of firearms or otherwise.

(4) The provisions of subsections (5) and (6) of this section apply to and in relation to a person acting under the authority of subsection (2) of this section as if he were the holder of a mining tenement.

(5) Notwithstanding that any Crown land to which this subsection refers may be marked out as or be included in a mining tenement, a mining tenement does not entitle the holder thereof to enter on or interfere with any Crown land that is—

- (a) for the time being under crop, or which is situated within one hundred metres thereof;
- (b) used as or situated within one hundred metres of a yard, stockyard, garden, cultivated field, orchard, vineyard, plantation, airstrip or airfield;

Mining.

- (c) situated within one hundred metres of Crown land that is in actual occupation and on which a house or other substantial building is erected;
- (d) the site of or situated within one hundred metres of any cemetery or burial ground;
- (e) the site of or situated within four hundred metres of any water works, race, dam, well or bore,

without the written consent of the occupier, unless the warden by order otherwise directs.

(6) The warden shall not make an order unless he is satisfied that the land is *bona fide* required for mining purposes and that compensation for improvements (but not including the value of the land), injurious affection and all other loss or damage suffered by the occupier has been agreed upon or assessed and settled by the warden under this Act.

Power to
resume land.

21. (1) The Governor may from time to time, under and subject to the Public Works Act 1902, resume on behalf of the Crown any land (not being land that is the subject of a mining tenement or land on which mining operations are lawfully being carried on under an agreement in writing with the owner of the land) that in his opinion ought to be resumed for the purposes of this Act, and for the purpose of any such proposed resumption may cause the land to be inspected, surveyed, explored, and reported upon by such officers and workmen as he directs, all of whom may thereupon enter upon the land and carry out all necessary operations.

(2) The Governor may from time to time under and subject to the Public Works Act 1902, and at the request of a person interested in land resumed or intended to be resumed under subsection (1) of this section, resume on behalf of the Crown any land that is being or is intended to be used in conjunction with the land so resumed or so intended to be resumed.

(3) Upon any such resumption the owner and occupier is entitled to compensation, and the amount of the compensation shall be determined in the manner prescribed by the Public Works Act 1902 but in assessing the amount of such compensation, no

allowance shall be made for the value of any minerals known or supposed to be on or under the land resumed, other than minerals which are the property of the owner.

(4) When it is proved to the satisfaction of the Compensation Court that damage has been sustained by a claimant by reason of the severance of the land resumed from other adjoining land of the claimant, that Court may order that such adjoining land or some portion thereof shall also be so resumed.

22. Where any private land is resumed pursuant to section 21 the land by force of this section becomes Crown land and shall be open for mining under and subject to this Act, but every mining tenement granted in respect of, or occupied upon the land shall notwithstanding any of the provisions of this Act to the contrary, be subject to such rent, royalty or other payment to the Crown as may be determined by the Minister in each case, and the provisions as to royalty, other than as to the amount thereof as hereinafter provided by this Act shall be applicable.

Effect of
resumption.

Division 2.—Public Reserves, etc.

23. Subject to and in accordance with this Act, land of the classes to which sections 24 and 25 apply and not being land that is the subject of a mining tenement, is only open for mining as provided in those sections.

Mining on
public reserves.

24. (1) The classes of land to which this section applies are—

Classification
of reserves.

- (a) land that is in the South-West Division of the State as described in section 28 of the Land Act 1933, or in the municipal district of the Shire of Esperance or Ravensthorpe and that is reserved pursuant to Part III of that Act and classified as of Class "A" pursuant to that Part or so classified pursuant to any other Act;

- (b) land in such Division or in any such municipal district reserved pursuant to Part III of the Land Act 1933 and however classified pursuant to that Act, which land is known as, provided for, or used as a "national park";
- (c) land reserved pursuant to Part III of the Land Act 1933, not being—
 - (i) land to which paragraph (a) or (b) of this subsection refers;
 - (ii) land reserved for mining or commons;
 - (iii) land reserved and designated for Public Utility for any purpose pursuant to that Part;
- (d) land that is a State forest or a timber reserve within the meaning of the Forests Act 1918;
- (e) land that is a water reserve or catchment area for the purposes of the Metropolitan Water Supply, Sewerage, and Drainage Act 1909 or of the Country Areas Water Supply Act 1947;
- (f) land proclaimed to be a reserve for persons of Aboriginal descent pursuant to the Aboriginal Affairs Planning Authority Act 1972; and
- (g) land that is reserved under any Act other than those Acts already referred to in this subsection.

(2) (a) The Governor may, from time to time, by order in council, apply this section to any other land or class of land specified in the order in council and as from the date so specified this section shall apply to the extent and in the manner specified in the order in council.

(b) The Minister shall cause an order in council made pursuant to paragraph (a) of this subsection to be laid on the table of each House of Parliament within twelve sitting days of its making and if either House does not pass a resolution disallowing such order in council within twelve sitting days of that House after the order in council has been laid before it the order in council shall have effect from the date of its making.

(3) (a) Subject to subsection (4) of this section, mining may be carried out on any land referred to in paragraph (a) or (b) of subsection (1) of this section with the written consent of the Minister who may refuse his consent or who may give his consent subject to such terms and conditions as the Minister specifies in the consent.

(b) Before giving his consent whether conditionally or unconditionally the Minister shall first consult with, and obtain the concurrence thereto, of the responsible Minister.

(4) No mining lease or general purpose lease shall be granted on any land referred to in paragraph (a) or (b) of subsection (1) of this section unless both Houses of Parliament by resolution consent thereto, and then only on such terms and conditions as are specified in the resolution.

(5) (a) Mining on any land referred to in paragraph (c) of subsection (1) of this section may be carried out with the written consent of the Minister who may refuse his consent or who may give his consent subject to such terms and conditions as the Minister specifies in the consent.

(b) Before giving his consent whether conditionally or unconditionally the Minister shall first consult the responsible Minister and the council of the municipality, public body, or trustees or other persons in which the control and management of such land is vested with respect thereto, and obtain its or their recommendations thereon.

(6) (a) Mining may be carried out on any land referred to in paragraph (d) of subsection (1) of this section with the written consent of the Minister who may refuse his consent or who may give his consent subject to such terms and conditions as are specified in the consent.

(b) Before giving his consent, whether conditionally or unconditionally the Minister shall first consult with, and obtain the concurrence thereto, of the Minister for Forests.

(7) (a) Mining may be carried out on any land referred to in paragraph (e), (f) or (g) of subsection (1) of this section with the written consent of the

Minister who may refuse his consent or who may give his consent, subject to such terms and conditions as are specified in the consent.

(b) Before giving his consent, whether conditionally or unconditionally, the Minister shall first consult the responsible Minister with respect thereto and obtain his recommendation thereon.

(8) The responsible Minister for the purposes of this section is the Minister for the time being charged with the administration of the land or the enactment to which the land is subject, and if in any case a question arises as to who is the responsible Minister under this section, the question shall be determined by the Governor whose decision shall be final.

Mining on
foreshore, sea
bed, navigable
waters and site
for town.

25. (1) The classes of land to which this section applies are—

- (a) any part of the foreshore, being the area between the mean high water springs level of the sea and the mean low water springs level of the sea;
- (b) any part of the sea bed between the mean low water springs level of the sea and the seaward limits of the territorial waters of the State;
- (c) any land under navigable waters in the State; and
- (d) any land reserved as a site for a town.

(2) (a) Mining on any land referred to in paragraph (a), (b) or (c) of subsection (1) of this section may be carried out with the written consent of the Minister who may refuse his consent or who may give his consent subject to such terms and conditions as the Minister specifies in the consent.

(b) Before giving his consent whether conditionally or unconditionally the Minister shall first consult the Minister for Works, the Minister for Lands and the Minister for Conservation and the Environment with respect thereto and obtain their recommendations thereon.

(3) (a) Mining on any land referred to in paragraph (d) of subsection (1) of this section may be carried out with the written consent of the Minister who may

refuse his consent or who may give his consent subject to such terms and conditions as the Minister specifies in the consent.

(b) Before giving his consent whether conditionally or unconditionally the Minister shall first consult the Minister for Local Government and the Minister for Lands and the council of the municipality in whose municipal district the land is, in respect thereto and obtain their recommendations thereon.

26. (1) The terms and conditions that may be imposed pursuant to sections 24 and 25 may include among others a condition that—

Terms and conditions.

- (a) any person carrying out mining operations on the land shall make good injury to the surface of the land or injury to anything on the surface thereof;
- (b) if default is made in making good any such injury the person having the control and management of such land may carry out the work necessary to do so and recover the cost thereof in a court of competent jurisdiction from the person in default;
- (c) mining operations shall be confined to such depth below the surface of the land as may be specified in the conditions;
- (d) the person carrying out such mining operations shall lodge with the Minister a security in accordance with section 126 to cover the probable cost of the work referred to in paragraph (b) of this subsection;
- (e) compensation to be assessed in accordance with this Act shall be paid to the person having the control and management of the land affected for any loss or damage caused by such mining operations.

(2) Any land to which—

- (a) paragraph (a) or (b) of subsection (1) of section 24 refers may with the consent of the Minister and the responsible Minister be marked out as a mining tenement in accordance with this Act;

- (b) paragraph (d) of that subsection refers may be marked out as a mining tenement in accordance with this Act and such conditions and restrictions if any, as are lawfully prescribed pursuant to section 30 of the Forests Act 1918;
- (c) paragraph (c), (e), (f) or (g) of that subsection or paragraph (a), (b), (c) or (d) of subsection (1) of section 25 refers may be marked out as a mining tenement in accordance with this Act.

Division 3.—Private Land.

Private land
open for
mining.

27. (1) Subject to and in accordance with this Act, private land not being private land that is the subject of a mining tenement is open for mining.

(2) This Division does not apply to the land specified in the Third Schedule to this Act.

Unlawful entry
on private
land.

28. No person shall enter or remain upon the surface of any private land for any of the purposes of this Division or those specified in subsection (1) of section 104 unless he—

- (a) is the owner in occupation of that private land; or
- (b) is authorized to do so, by a permit issued by the warden under section 30, or by any other provision of this Act, or by virtue of a mining tenement.

Granting of
mining
tenements in
respect of
private land.
Substituted by
No. 69 of 1981,
s. 9.

29. (1) Subject to this Act, but notwithstanding any other Act or law, a mining tenement may be granted in respect of an area that consists of private land only or partly of private land and partly of any other land and the authority conferred thereby on the holder thereof may be exercised by that holder in respect of any such land.

(2) Except with the consent in writing of the owner and the occupier of the private land concerned, a mining tenement shall not be granted in respect of private land—

- (a) which is in *bona fide* and regular use as a yard, stockyard, garden, orchard, vineyard,

plant nursery or plantation or is land under cultivation;

- (b) which is the site of a cemetery or burial ground;
- (c) which is the site of a reservoir;
- (d) on which there is erected a substantial improvement;
- (e) which is situated within 100 metres of any private land referred to in paragraph (a), (b), (c) or (d) of this subsection; or
- (f) which is a separate parcel of land and has an area of 2 000 square metres or less,

unless the mining tenement is granted only in respect of that part of that private land which is not less than 30 metres below the lowest part of the surface of that private land.

(3) In subsection (2) of this section—

“land under cultivation” includes—

- (a) land being used for the purpose of cropping or pasturing;
- (b) land, whether cleared or uncleared, used for the grazing of stock in the ordinary course of management of the land of the owner of which the land so used forms the whole or any part;

“reservoir” means dam, bore, well or spring.

(4) For the purposes of subsection (2) (d) of this section, the warden is the sole judge of whether or not any improvement is substantial.

(5) The holder of a mining tenement which—

- (a) has been granted wholly or partly in respect of private land referred to in paragraph (a), (b), (c), (d), (e) or (f) of subsection (2) of this section;
but

- (b) has not been granted in respect of that portion of the private land referred to in paragraph (a) of this subsection that is less than 30 metres below the lowest part of the surface of that private land because the consents referred to in subsection (2) of this section have not been given,

may apply to the Minister for that mining tenement to be amended by granting it in respect of the portion referred to in paragraph (b) of this subsection as well as in respect of the land in respect of which that mining tenement is already granted.

(6) On receiving an application made under subsection (5) of this section, the Minister may, if he is satisfied that both the owner and the occupier of the private land referred to in paragraph (a) of that subsection have consented in writing to the grant of the mining tenement concerned in respect of the portion referred to in paragraph (b) of that subsection, grant that application.

(7) A mining tenement granted under this Division in respect of any private land—

- (a) shall, subject to this Act, authorize the holder of that mining tenement—
 - (i) to carry out mining on the surface of the private land and at any depth thereunder; or
 - (ii) to carry out mining at a depth of not less than 30 metres from the lowest part of the surface of the private land;
- (b) shall comprise a right of ingress thereto and egress therefrom by a right of way, to be marked in the prescribed manner at the expense of the holder of that mining tenement, from the private land through any land, whether occupied under a mining tenement or otherwise, to the nearest practicable point of a street or road, but except with the consent in writing of the owner and the occupier of any land used as a yard, garden, orchard or cultivated field no such right of way shall be had by the holder of that mining tenement through that land;

- (c) does not without the consent in writing of the owner and the occupier of the private land authorize the holder of that mining tenement to use water artificially conserved by that owner or occupier or to fell trees, strip bark or cut timber on the private land or, except in connection with mining carried out on the private land, to remove earth or rock therefrom;
- (d) does not authorize the holder of that mining tenement to impound any stock or other animals belonging to or being in the custody or under the control of the owner or occupier of any land adjoining the mining tenement, or to disturb or molest any such stock or other animals in any manner whatever, or to prevent any such stock or other animals from depasturing on or over the land the subject of the mining tenement, unless that land is fenced.

30. (1) A person who desires to enter on any private land to search for any mineral or to mark out a mining tenement may apply in writing to the warden for a permit to enter on the private land.

Granting of permits in respect of private land. Substituted by No. 69 of 1981, s. 10.

(2) An application under subsection (1) of this section shall be made in the prescribed manner and be in the prescribed form and shall contain—

- (a) such description of the private land concerned as in the opinion of the warden will enable it to be identified;
and
- (b) such particulars relating to the private land concerned as will enable the warden to determine if it is private land.

(3) The warden, on being satisfied that an application made under subsection (1) of this section is made in good faith, may grant a permit in writing to enter on the private land concerned—

- (a) for such term not exceeding 30 days from the date thereof; and
- (b) subject to such conditions,

as he thinks fit and specifies in that permit.

(4) The warden may, on granting a permit under subsection (3) of this section, fix a sum of money and require that sum to be paid to him by the applicant for the permit before the issue thereof to the applicant.

(5) The warden shall—

- (a) hold the sum of money paid to him under subsection (4) of this section to compensate the owner and the occupier of the private land to which the permit concerned relates for any damage likely to be caused by the holder of that permit during the currency thereof;
- (b) pay the sum referred to in paragraph (a) of this subsection either wholly or in part to the owner or the occupier of the private land to which the permit concerned relates or to both, if he or they suffer any damage caused by the holder of that permit during the currency thereof.

(6) If the warden does not pay any or all of the sum referred to in paragraph (a) of subsection (5) of this section in accordance with that subsection, he shall return that sum or the balance thereof, as the case requires, to the holder of the permit concerned as soon as is practicable after the expiry of that permit.

Holder of
permit to give
notice to owner
and occupier.

31. (1) The holder of a permit issued under section 30 or his duly authorized agent shall hand a copy of the permit to the occupier of the private land over which the permit has been granted on the first occasion that the holder or his agent enters upon that land after the issue of the permit, but if the occupier is not present on the private land on that occasion, the holder of the permit or his agent shall—

- (a) on entering the land on that occasion place a copy of the permit in a prominent position on the occupier's dwelling or in a prominent position at the main entrance to the land if no such dwelling is situated on the land; and

- (b) in any event, within forty-eight hours of his first entering the land after the issue of the permit, cause a copy of the permit to be sent by prepaid registered post to the occupier at his last known place of abode or business.

(2) Where the occupier of the private land is also the owner or one of the owners of that private land, no further notice other than that required by subsection (1) of this section is required to be served on that owner or any of the other owners of that land for the purposes of subsection (3) of this section.

(3) Where none of the owners of any private land is also in occupation of that land, the holder of a permit granted over that private land shall cause a copy of the permit to be sent, within forty-eight hours of the issue thereof, by prepaid registered post to one of those owners at—

- (a) in the case of an owner which is a body corporate—the registered office of the body corporate; or
- (b) in the case of an owner who is not a body corporate—to his last known place of abode or business.

32. (1) The holder of a permit issued under section 30 or his duly authorized agent is thereby authorized—

Rights
conferred by a
permit.
Amended by
No. 69 of 1981,
s. 11.

- (a) to enter upon and remain upon the surface of the private land to which the permit relates;
- (b) to search thereon for any mineral and detach one or more samples of any vein or lode outcropping on the surface thereof not exceeding in the aggregate thirteen kilograms and to take therefrom such other samples as may be agreed by the owner or, where the owner is not in occupation of the private land, the occupier of the private land; and
- (c) to remove from the private land such samples for the purpose of assaying or testing the value thereof, and to mark out a mining tenement with respect to that land or any part thereof,

but the holder or his duly authorized agent shall not carry out any other mining on or otherwise disturb the surface of the land.

Appeal to
Minister from
refusal of
warden to
grant permit.

(2) Where the warden refuses to grant an application for a permit under section 30 or grants the application on conditions the applicant considers unreasonable or fixes a sum of money under subsection (4) of section 30 which the applicant considers excessive the applicant may within the time and in the manner prescribed appeal to the Minister against such refusal, conditions or amount as the case may be.

(3) The Minister may dismiss the appeal or uphold the appeal and grant the permit which he is hereby authorized to do.

Application for
mining
tenement by
permit holder.

33. (1) Where an application is made in accordance with this Act for a mining tenement that relates to private land notice of the application shall be given by the applicant as prescribed to—

- (a) the clerk of the council of the municipality;
- (b) the owner and occupier of the private land, but if there is no occupier, notice of the application shall be affixed in some conspicuous place on the land; and
- (c) each mortgagee of the land under a mortgage endorsed or noted on the title or land register or record relating to that land.

(2) The owner and occupier of the private land and any mortgagee referred to in paragraph (c) of subsection (1) of this section are entitled to be heard before the application is granted and if the owner or occupier objects to the granting of the mining tenement, the warden may, if in the circumstances of the case he considers it proper so to do, and irrespective of the manner in which the application for the mining tenement is disposed of, order that the applicant pay to the objector or objectors, such sum by way of costs as the warden orders.

(3) Nothing in subsection (2) of this section limits or otherwise affects the other powers conferred by this Act upon a warden.

34. [*Repealed by No. 69 of 1981, s. 12.*]

35. (1) The holder of a mining tenement shall not commence any mining on the surface or within a depth of thirty metres from the lowest part of the surface of any private land unless and until he has paid or tendered to the owner and the occupier thereof the amount of compensation, if any, that he is required to pay under and as ascertained in accordance with this Act, or he has made an agreement with the owner and occupier as to the amount, times and mode of the compensation, if any.

Compensation to be agreed upon or determined before mining operation commences.
Amended by No. 69 of 1981, s. 13.

(2) Where any person to whom compensation is payable under this Act cannot be found or is dead, any payment of compensation may be made to the Minister in trust for that person or his personal representative as the case requires.

36. [*Repealed by No. 69 of 1981, s. 14.*]

37. (1) Any person may in manner prescribed apply to the Minister to have any private land alienated before the first of January eighteen hundred and ninety-nine brought within the operation of this Division for the purpose of mining for minerals other than gold, silver and precious metals.

Application to bring certain private land under this Division.

(2) In respect of an application under subsection (1) of this section, the Minister may authorize and instruct a geologist or any other professional officer in the Department to enter, inspect and report upon the private land to which the application relates and thereupon the geologist or the professional officer with assistants may enter and prospect the private land and do all things necessary to ascertain whether there is a reasonable likelihood of that land containing any mineral in payable quantities.

Inspection by geologist or other officer.

(3) (a) If the geologist or the professional officer reports to the Minister that in the geologist's or professional officer's opinion there is a reasonable likelihood of the private land containing any mineral in payable quantities, the Minister may, with the approval of the Governor, by notice published in the *Government Gazette*, declare that at the expiration of a period specified in the notice, being a period of not less than six months from the date the notice is so published, the private land shall come within the operation of this Division.

Power to bring land under this Division.

(b) A copy of the notice published in the *Government Gazette* shall be served upon the owner of the private land to which the notice relates, as soon as practicable after it is so published.

Right of owner
to apply for
mining
tenement.
Amended by
No. 69 of 1981,
s. 15.

38. (1) The owner of the private land to which section 37 refers may, at any time within the period referred to in paragraph (a) of subsection (3) of that section, apply for a mining tenement in respect of the private land or any part thereof.

(2) Where within the period referred to in subsection (1) of this section the owner of the private land fails to apply for and be granted a mining tenement with respect to the land as provided in that subsection—

- (a) the land shall come within the operation of this Division and all rent and royalties received by the Crown for any minerals won from the land shall be paid to the owner of the land less one-tenth of the amount thereof; and
- (b) the Minister may grant to the person who made the application under subsection (1) of section 37 for such period as he thinks fit, the prior right to the exclusion of all other persons to mark out the private land or any part thereof and/or apply for a mining tenement in respect thereof.

Owner to
comply with
mining
tenement
conditions.

39. Where the owner of any private land is granted a mining tenement on an application made under section 38 he shall comply with the terms and conditions of the mining tenement and in particular the expenditure conditions applicable thereto, but no rent or royalty shall be payable by the owner with respect to the land the subject of the mining tenement or in respect of any mineral won therefrom.

PART IV.—MINING TENEMENTS.

Division 1.—Prospecting Licence.

Granting of
prospecting
licence.

40. (1) Subject to this Act, the warden may, on the application of any person grant to that person a licence to be known as a prospecting licence.

(2) The Area of land in respect of which any one prospecting licence may be granted shall not exceed two hundred hectares.

(3) Subject to this Act no more than ten prospecting licences, whether contiguous or otherwise, may be granted to the same person without the approval of the Minister.

41. (1) An application for a prospecting licence—

Application for prospecting licence.

- (a) shall be made in the prescribed form;
- (b) shall be accompanied by the amount of the prescribed rent for the first year or portion thereof as prescribed;
- (c) shall be accompanied by a map on which are clearly delineated the boundaries of the area of the land in respect of which the licence is sought together with a written description of the area;
- (d) shall be accompanied by details of any prospecting licence held or any current application for a prospecting licence made by the applicant;
- (e) shall be lodged with the warden of the mineral field or the district thereof wherein the land to which the application relates is.

(2) Within fourteen days after lodging such an application the applicant shall serve such notice of the application as may be prescribed, on the owner and occupier of the land to which the application relates, and on such other persons as may be prescribed.

(3) An applicant for a prospecting licence shall at the request of the warden furnish such further information in relation to his application, or such evidence in support thereof, as the warden may require but the warden shall not require information or evidence relating to assays or other results of any testing or sampling that the applicant may have carried out on the land the subject of his application.

Applicant to furnish further information or evidence relating to application.

42. (1) An application for a prospecting licence shall be heard by the warden in open court and any person is entitled to object to the granting of the application.

Hearing of application for prospecting licence.

(2) A person who desires to object to the granting of the application shall lodge at the warden's office within the prescribed time and in the prescribed manner a notice of objection.

Priority of applicants.

43. When more than one application for a prospecting licence is made with respect to the same land, the applicant who has first marked out the land in accordance with the regulations has, subject to this Act, the right in priority over the other applicants to have granted to him a prospecting licence in respect of the land.

Power to grant prospecting licence over all or part of land in application.

44. A prospecting licence may be granted by the warden in respect of all or part of the land to which the application therefor relates.

Terms of prospecting licence.

45. (1) A prospecting licence shall, subject to this Act, remain in force for a period of two years from and including the date on which it was granted, and shall then expire.

(2) When a prospecting licence is surrendered, forfeited or expires the land the subject of the prospecting licence or any part thereof shall not be marked out or applied for as a prospecting licence or an exploration licence—

- (a) by or on behalf of the person who was the holder of the prospecting licence immediately prior to the date of the surrender, forfeiture or expiry; or
- (b) by or on behalf of any person who had an interest in the prospecting licence immediately prior to that date,

within a period of three months from and including that date.

(3) Notwithstanding the provisions of subsection (1) of this section the Minister may in exceptional circumstances extend the term of a prospecting licence by a further period or periods of one year.

Conditions attached to every prospecting licence.
Amended by No. 69 of 1981, s. 16.

46. In addition to any conditions that may be prescribed or imposed by the Minister or the warden with respect to a prospecting licence, every

prospecting licence shall be deemed to be granted subject to the following conditions—

- (a) that all minerals of economic interest discovered in or on the land the subject of the prospecting licence be promptly reported in writing by the holder to the Minister;
- (b) that all holes, pits, trenches and other disturbances to the surface of the land the subject of the prospecting licence which are—
 - (i) made while prospecting; and
 - (ii) in the opinion of the State Mining Engineer, likely to endanger the safety of any person or animal,
 will be filled in or otherwise made safe to the satisfaction of the State Mining Engineer;
- (c) that all necessary steps are taken by the holder to prevent fire, damage to trees or other property and to prevent damage to any property or damage to livestock by the presence of dogs, the discharge of firearms, or otherwise.

47. (1) It shall not be necessary for the land the subject of a prospecting licence to be surveyed unless a dispute arises with respect to the position of such land or the boundaries or any boundary thereof, in which case the warden or Minister may order a survey to be made of the boundaries or the boundary in order to settle the dispute.

Survey of area of prospecting licence not required in first instance.

(2) The cost of the survey shall be paid by such party or parties to the dispute as the warden or the Minister determines.

48. A prospecting licence, while it remains in force, authorizes the holder thereof, subject to this Act, and in accordance with any conditions to which the licence may be subject—

Rights conferred by prospecting licence.

- (a) to enter and re-enter the land the subject of the licence with such agents, employees, vehicles, machinery and equipment as may be necessary or expedient for the purpose of prospecting for minerals in, on or under the land;

- (b) to prospect, subject to any conditions imposed under sections 24 and 25 for minerals, and to carry on such operations and carry out such works as are necessary for that purpose on such land including digging pits, trenches and holes, sinking bores and tunnels to the extent necessary for the purpose in, on or under the land;
- (c) to extract and remove, subject to any conditions imposed under sections 24 or 25, from such land for treatment and sale as his property a prescribed amount of ore or such greater amount as the Minister may, in any case, approve in writing;
- (d) to take and divert, subject to the Rights in Water and Irrigation Act 1914, water from any natural spring, lake, pool or stream situate in or flowing through such land and to sink a well or bore on such land and take water therefrom and to use the water so taken for his domestic purposes and for any purpose in connection with prospecting for minerals on the land.

Holder of
prospecting
licence to have
priority for
grant of mining
or general
purpose leases.

49. Subject to this Act and any conditions to which a prospecting licence is subject, the holder thereof has, while the licence continues in force, the right in priority over any other person, to have granted to him one or more mining leases or general purpose leases or both in respect of any part or parts of the land the subject of the prospecting licence but where the holder's application or applications for such lease or leases is or are refused on the ground that the holder did not accept the conditions, no other person shall be granted a mining lease or general purpose lease over the same land applied for by the holder on conditions more favourable than those to which such a lease, if granted to the holder, would have been subject, within a period of twelve months from and including the date on which the licence ceased to be in force.

Compliance
with
expenditure
conditions.

50. During the currency of a prospecting licence the holder thereof shall comply with the prescribed expenditure conditions relating thereto unless in accordance with this Act total or partial exemption therefrom is granted.

51. The holder of a prospecting licence shall, at such times and in such manner as may be prescribed, file or cause to be filed with the Department at Perth a report of all work done on, and money expended in connection with, prospecting in the area the subject of the licence, during the period to which the report relates.

Reports of work and expenditure.

Penalty: Five hundred dollars.

52. (1) Where—

- (a) the holder of a prospecting licence lodges an application for the grant to him of an additional one or more prospecting licences; or
- (b) any other person lodges an application for the grant to him of two or more prospecting licences,

Security relating to additional prospecting licence or licences.

he shall lodge with the application with respect to each prospecting licence to which the application relates, a security for compliance with the conditions to which each such prospecting licence, if granted, will from time to time be subject and with the provisions of this Part and the regulations.

(2) A security referred to in subsection (1) of this section shall be in accordance with and subject to the provisions of section 126.

53. The holder of a prospecting licence shall not, except with the consent of the Minister, transfer the prospecting licence at any time during the first six months of the term for which it was granted.

No transfer of prospecting licence during first six months.

54. Where there are special circumstances, the Minister may, on the recommendation of a warden, approve the granting of more than ten prospecting licences, whether contiguous or otherwise, to the same person provided that the number of prospecting licences that may be held or controlled by any one person at any time shall not exceed twenty.

Maximum holding of prospecting licences.

55. Notwithstanding the provisions of section 54 the Minister may, in exceptional circumstances and on the recommendation of a warden, approve the granting of a prospecting licence or prospecting licences to any person the effect of which would be

Maximum number of contiguous prospecting licences that may be held.

that more than twenty prospecting licences, whether contiguous or otherwise, would be held or controlled by such person at any time.

Power of
Minister and
warden to
require certain
information,
etc.

56. (1) For the purposes of giving effect to sections 54 and 55 the warden or the Minister may require any person—

- (a) to give him such information as he requires;
- (b) to answer any question put to him in relation to an application for a prospecting licence or in relation to any prospecting licence held by that person or any prospecting licence in which the Minister or the warden believes he has any interest whether direct or indirect,

and may require that such information or answer be verified by statutory declaration, but the Minister or the warden shall not require information or ask any question relating to assays or other results of any testing or sampling that the applicant may have carried out on the land the subject of his application.

(2) Where the warden refuses to grant an application for a prospecting licence under section 40 or grants the application on conditions the applicant considers unreasonable, the applicant may within the time and in the manner prescribed appeal to the Minister against such refusal or conditions as the case may be.

(3) The Minister may dismiss the appeal or uphold the appeal and grant the application on such conditions as he considers reasonable.

Division 2.—Exploration Licence.

Grant of
exploration
licence.
Amended by
No. 69 of 1981,
s. 17.

57. (1) Subject to this Act the Minister may on the application of any person and after receiving a recommendation of the warden in accordance with section 59, grant to that person a licence to be known as an exploration licence on such terms and conditions as the Minister may determine.

(2) The area of land in respect of which an exploration licence may be granted shall be—

- (a) neither less than 10 square kilometres nor more than 200 square kilometres; and
- (b) of the prescribed shape.

(3) The warden shall not recommend the grant of an exploration licence under this section unless he is satisfied that the applicant is able to effectively explore the land in respect of which the application has been made.

(4) Subject to subsection (5) of this section, where in any particular area extensive mining is being carried on, the Minister may, from time to time, by notice published in the *Government Gazette* declare that no application for an exploration licence shall be made or granted with respect to any land comprising the area or any land within such area as is specified in the notice.

(5) Subsection (4) of this section does not apply to an application for an exploration licence in respect of any land that immediately prior to the making of the application was the subject of an existing mineral claim or dredging claim under the repealed Act.

58. (1) An application for an exploration licence—

Application for
exploration
licence.

- (a) shall be in the prescribed form;
- (b) shall be accompanied by a statement specifying—
 - (i) the proposed method of exploration of the area in respect of which the licence is sought;
 - (ii) the details of the programme of work proposed to be carried out in such area;
 - (iii) the estimated amount of money proposed to be expended on the exploration;
 - (iv) the technical and financial resources available to the applicant;
- (c) shall be accompanied by the amount of the prescribed rent for the first year of the term of the licence or portion thereof as prescribed;

- (d) shall be lodged with the warden of the mineral field or the district thereof wherein the land to which the application relates is situated;
- (e) shall be accompanied by the prescribed application fee.

(2) (a) The application shall be accompanied by a map on which are clearly delineated the boundaries of the area of the land in respect of which the licence is sought together with a written description of the area.

(b) Where a dispute arises with respect to the position of such land or the boundaries or any boundary thereof the warden or Minister may order a survey to be made of the boundaries or the boundary in order to settle the dispute.

(c) The cost of the survey shall be paid by such party or parties to the dispute as the warden or Minister determines.

(3) An applicant shall at the request of the warden furnish such further information in relation to his application, or such evidence in support thereof, as the warden may require but the warden shall not require information or evidence relating to assays or other results of any testing or sampling that the applicant may have carried out on the land the subject of his application.

(4) Within fourteen days after the lodging of such an application, the applicant shall serve such notice of the application as may be prescribed, on the owner and occupier of the land to which the application relates and on such other persons as may be prescribed.

Hearing of
application for
exploration
licence.

59. (1) An application for an exploration licence shall be heard by the warden in open court and any person is entitled to object to the granting of the application.

(2) A person who desires to object to the granting of the application shall lodge at the warden's office within the prescribed time and in the prescribed manner a notice of objection and he may be heard by the warden in opposition to the granting of the application.

(3) The warden shall as soon as practicable after the hearing of the application, transmit to the Minister for his consideration the notes of evidence and any maps or other documents referred to therein, and his report recommending the granting or refusal of the exploration licence.

(4) On receipt of notes of evidence and any maps or documents transmitted to him pursuant to subsection (3) of this section, the Minister may grant or refuse the exploration licence as he determines, and whether or not the warden recommends the granting of the licence or the refusal thereof.

60. (1) The applicant for an exploration licence shall lodge at the Department at Perth within twenty-eight days of the warden's recommendation for the granting of the application, a security for compliance with the conditions to which the exploration licence, if granted, will from time to time be subject and with the provisions of this Part and the regulations.

Security relating to exploration licence.

(2) A security referred to in subsection (1) of this section shall be in accordance with and subject to the provisions of section 126.

61. (1) An exploration licence shall, subject to this Act, remain in force for a period of five years from and including the date on which it was granted, and shall then expire.

Term of exploration licence

(2) Notwithstanding the provisions of subsection (1) of this section the Minister may in exceptional circumstances extend the term of an exploration licence by a further period or periods of one year.

62. During the currency of an exploration licence the holder thereof shall comply with the prescribed expenditure conditions relating thereto, unless in accordance with this Act total or partial exemption therefrom is granted.

Expenditure conditions.

63. Every exploration licence shall be deemed to be granted subject to the condition that the holder thereof will explore for minerals and—

Condition attached to exploration licence.
Amended by No. 69 of 1981, s. 18.

- (a) will promptly report in writing to the Minister all minerals of economic interest discovered in, on or under the land the subject of the exploration licence;

- (b) will fill in or otherwise make safe to the satisfaction of the State Mining Engineer all holes, pits, trenches and other disturbances to the surface of the land the subject of the exploration licence which are—
 - (i) made while exploring for minerals; and
 - (ii) in the opinion of the State Mining Engineer, likely to endanger the safety of any person or animal;
 and
- (c) will take all necessary steps to prevent fire, damage to trees or other property and to prevent damage to any property or damage to livestock by the presence of dogs, the discharge of firearms, or otherwise.

When exploration licence liable to forfeiture.
 Inserted by No. 69 of 1981, s. 19.

63A. An exploration licence is liable to forfeiture if—

- (a) the prescribed rent or royalty in respect thereof is not paid in accordance with this Act;
- (b) the terms and conditions, including the conditions referred to in sections 62 and 63, to which the exploration licence is subject are not complied with; or
- (c) the holder of the exploration licence is convicted of an offence against this Act.

No transfer of exploration licence during first year.

64. (1) The holder of an exploration licence shall not transfer the exploration licence at any time during the first year of the term for which it was granted.

(2) The Minister may consent or refuse to consent to any application for the transfer of an exploration licence made at any time after the first year of the term of the exploration licence.

Surrender of certain areas subject to exploration licence.
 Amended by No. 69 of 1981, s. 20.

65. (1) Subject to subsection (1a) of this section, the holder of an exploration licence shall at the expiration of—

- (a) the third year of the term for which the licence was granted, surrender not less than half of the area of land that is subject to the licence;

- (b) the fourth year of the term for which the licence was granted, surrender not less than half of the area of the land that is then subject to the licence,

but so that after each such surrender the area of land that remains subject to the exploration licence consists of one, two or three discrete areas each of which is of the prescribed shape.

(1a) The Minister may, on the application in writing of the holder of an exploration licence who has been authorized by the Minister under section 111 to explore for iron on land the subject of the exploration licence, in writing exempt that holder from the requirements of this section.

(2) For the purposes of subsection (1) of this section—

- (a) where during the first, second or third years of the term for which an exploration licence was granted the holder has been granted a mining lease or general purpose lease of land then the subject of the exploration licence, the land the subject of the mining lease or general purpose lease shall be deemed to have been surrendered at the expiration of the third year of the term for which the licence was granted;
- (b) where during the fourth year of the term for which an exploration licence was granted the holder has been granted a mining lease or general purpose lease of land then the subject of the exploration licence, the land the subject of the mining lease or general purpose lease shall be deemed to have been surrendered at the expiration of the fourth year of the term for which the licence was granted.

(3) The holder of an exploration licence shall, at least one month before the expiration of the third and fourth years respectively referred to in subsection (1) of this section, notify the Under Secretary in the prescribed form of the particulars of the area of land that he desires shall remain subject to the exploration licence.

(4) Where the holder fails to so notify the Under Secretary at least one month before the date on which an area of land is required to be surrendered pursuant to subsection (1) of this section, the whole of the area of land which is then subject to the exploration licence shall by force of this subsection be surrendered and the exploration licence shall cease to apply thereto.

Surrendered
land open for
mining

(5) Where any area of land is surrendered pursuant to this section, notice thereof shall be simultaneously endorsed on the public plans—

- (a) in the Department at Perth; and
- (b) at the office of the mining registrar for the mineral field or district thereof in which the area of land is,

and thereupon such area of land is open for mining in accordance with this Act.

Rights
conferred by
exploration
licence.

66. An exploration licence, while it remains in force, authorizes the holder thereof, subject to this Act, and in accordance with any conditions to which the licence may be subject—

- (a) to enter and re-enter the land the subject of the licence with such agents, employees, vehicles, machinery and equipment as may be necessary or expedient for the purpose of exploring for minerals in, on or under the land;
- (b) to explore, subject to any conditions imposed under sections 24 or 25, for minerals, and to carry on such operations and carry out such works as are necessary for that purpose on such land including digging pits, trenches and holes, sinking bores and tunnels to the extent necessary for the purpose in, on or under the land;
- (c) to extract and remove, subject to any conditions imposed under sections 24 or 25, from such land for sampling and testing a prescribed amount of ore or such greater amount as the Minister may, in any case, approve in writing;

- (d) to take and divert, subject to the Rights in Water and Irrigation Act 1914, water from any natural spring, lake, pool or stream situate in or flowing through such land and to sink a well or bore on such land and take water therefrom and to use the water so taken for his domestic purposes and for any purpose in connection with exploring for minerals on the land.

67. Subject to this Act and any conditions to which the exploration licence is subject, the holder thereof has, while the licence remains in force, the right in priority over any other person, to have granted to him one or more mining leases or general purpose leases or both in respect of any part or parts of the land the subject of the exploration licence but where the holder's application or applications for such lease or leases is or are refused on the ground that the holder did not accept the conditions, no other person shall be granted a mining lease or general purpose lease over the same land applied for by the holder on conditions more favourable than those to which such a lease, if granted to the holder, would have been subject, within a period of twelve months from and including the date on which the licence ceased to be in force.

Holder of exploration licence to have priority for grant of mining or general purpose leases.

68. (1) The holder of an exploration licence shall keep complete and detailed records of the surveys and other operations conducted pursuant to the licence and shall, at the written request of the Minister, produce the records for the inspection of the Minister and the Director, Geological Survey.

Holder of exploration licence to keep geological records.

Penalty: Five hundred dollars.

(2) The holder of an exploration licence shall furnish the Minister with such information relating to the surveys and other operations conducted by him pursuant to the licence and such geological samples obtained by him in the course of those operations as the Minister may request, and shall at such times and in such manner as may be prescribed, file or cause to be filed with the Department at Perth a report of all work done on, and money expended in connection with, exploration in the area the subject

of the licence during the period to which the report relates.

Penalty: Five hundred dollars.

Land the
subject of
exploration
licence not to
be again
marked out for
certain period.

69. When an exploration licence is surrendered, forfeited, expires or any part of the land the subject of the licence is relinquished in accordance with section 65, the land the subject of the licence or the part so relinquished shall not be marked out or applied for as a prospecting licence or an exploration licence by or on behalf of the person who was the holder of the exploration licence immediately prior to the date of the surrender, forfeiture, expiry or relinquishment or by or on behalf of any person who had an interest in the exploration licence immediately prior to that date, within a period of three months from and including that date.

Prospecting
licences for
gold and/or
precious stones
may be granted
on an
exploration
licence.

70. (1) Notwithstanding section 117, where an application for an exploration licence is granted, any person may, at any time after the expiration of twelve months from the date the exploration licence is granted mark out and apply for a prospecting licence in accordance with section 41 of this Act for gold or precious stones or both in respect of any part of the land the subject of the exploration licence.

(2) The applicant for a prospecting licence pursuant to subsection (1) of this section shall give notice thereof to the holder of the exploration licence as if such holder were the occupier of the land to which the application relates.

(3) Where, after being served with notice of the application for the prospecting licence, the holder of the exploration licence does not lodge an objection against the application the warden may, subject to this Act, grant the application as provided in subsection (6) of this section.

(4) Where such an objection is lodged by the holder of the exploration licence the warden shall obtain a report from the Director, Geological Survey as to whether the prospecting for gold or precious stones or both on the land to which the application relates could be carried on without detriment to the exploration being carried on by that holder.

(5) After hearing the objection of the holder of the exploration licence the warden may refuse the application for the prospecting licence or he may recommend the application to the Minister who may refuse the application or subject to this Act, grant it as provided in subsection (6) of this section, but where the warden refuses an application under this subsection, the applicant may within the time and in the manner prescribed appeal to the Minister against such refusal and the Minister may dismiss the appeal or uphold the appeal and grant the application as provided in subsection (6) of this section.

(6) Subject to this section the warden or Minister may grant the application on such terms and conditions as he thinks fit but a prospecting licence granted pursuant to this section—

- (a) shall not exceed ten hectares in area;
- (b) shall authorize the holder to prospect only for gold or precious stones or both;
- (c) shall not unless the warden otherwise directs, prevent the holder of the exploration licence from exploring for minerals other than gold or precious stones in or on the land the subject of the prospecting licence and the exploration licence.

(7) No person shall hold or have any beneficial interest in more than one prospecting licence granted under this section.

(8) When the holder of a prospecting licence granted under this section makes an application for a mining lease for gold or precious stones or both in respect of the land or any part thereof which is the subject of the prospecting licence, if—

- (a) after being served with the prescribed notice of the application, the holder of the exploration licence does not lodge an objection against it; or

- (b) it is proved to the satisfaction of the Minister by a report from the Director, Geological Survey that gold or precious stones or both exist in payable quantities on or in the land to which the application relates,

the Minister may grant the application on such terms and conditions as he thinks fit, and thereupon the area of land in respect of which the mining lease is granted shall be excised from the exploration licence.

(9) Subject to this section, the provisions of this Act relating to a prospecting licence, or mining lease apply to a prospecting licence or mining lease granted pursuant to this section.

(10) In this section “precious stones” includes any stone ordinarily obtained by mining operations for the purpose of being cut, ground, polished or similarly treated for ornamental or display purposes or lapidary work.

Division 3.—Mining Lease.

Grant of
mining lease.

71. Subject to this Act, the Minister may, on the application of any person, after receiving a recommendation of the warden in accordance with section 75, grant to the person a lease to be known as a mining lease on such terms and conditions as the Minister may determine.

Person may be
granted more
than one
mining lease.

72. Any person may be granted more than one mining lease.

Area of mining
lease.

73. The area of land in respect of which any one mining lease may be granted shall not exceed ten square kilometres.

Application for
mining lease.

74. (1) An application for a mining lease—

- (a) shall be in the prescribed form;
- (b) shall be accompanied by the survey fee and the amount of the prescribed rent for the first year of the term of the lease or portion thereof as prescribed;
- (c) shall be accompanied by the prescribed application fee;

(d) shall be lodged with the warden of the mineral field or the district thereof wherein the land to which the application relates is.

(2) The applicant shall at the request of the warden furnish such further information in relation to the application, or such evidence in support thereof, as the warden may require but the warden shall not require any information or evidence relating to assays or other results of any testing or sampling that the applicant may have carried out on the land the subject of his application.

(3) Within fourteen days after lodging such an application the applicant shall serve such notice of the application as may be prescribed on the owner and occupier of the land to which the application relates and on such other persons as may be prescribed.

(4) The application shall be accompanied by a map on which are clearly delineated the boundaries of the land in respect of which the lease is sought together with a written description of the area of the land.

75. (1) An application for a mining lease shall be heard by the warden in open court on any day appointed by him that is at least thirty days after the receipt of the application.

Hearing of
application for
mining lease.

(2) A person who desires to object to the granting of the application shall lodge at the warden's office a notice of objection within the prescribed time and in the prescribed manner and he may be heard by the warden in opposition to the application.

(3) The warden shall as soon as practicable after the hearing of the application transmit to the Minister for his consideration the notes of evidence and any maps or other documents referred to therein and his report recommending the granting or refusal of the mining lease.

(4) On receipt of notes of evidence and any maps or documents transmitted to him pursuant to subsection (3) of this section, the Minister may grant or refuse the mining lease as he thinks fit, and whether or not—

(a) the warden recommends the granting of the mining lease or the refusal thereof; and

- (b) the applicant may or may not have in all respects complied with the provisions of this Act.

Priorities as to
mining
tenements.

76. Where an application for a mining lease includes any portion of land included in a current mining tenement held by a person other than the applicant, any mining lease granted on the application shall not include any such portion of land.

Priority as to
applications.

77. Where more than one application is made for a mining lease of the same land or any part thereof, the applicant who has first marked out the land in the prescribed manner has, subject to this Act, the right in priority over every other applicant to have granted to him a mining lease in respect of the land or the part.

Term of lease
and renewal
thereof.

78. (1) Subject to this Act, a mining lease shall remain in force for a period of twenty-one years.

(2) The Minister may, from time to time, upon receipt of due application in the prescribed form, renew a mining lease for successive terms of twenty-one years.

Approval of
application.

79. (1) Where a person has applied for a mining lease and has been notified in writing by or on behalf of the Minister that the Minister has granted the mining lease to which the application relates, the applicant shall be deemed to be the holder of the lease comprising the land in respect of which the lease is granted as from the date of the written notification.

(2) Where a written notification is given under subsection (1) of this section the term of the lease shall commence from the date of the written notification.

Postponement
of survey on
objection being
lodged.

80. When an objection has been lodged against an application for a mining lease, no survey of the land to which the application relates shall be proceeded with unless in the opinion of the Minister or warden, as the case requires a survey will materially assist him in coming to a decision upon the objection.

81. Upon the hearing of an application for a mining lease the warden—

Evidence and
report on
application.

- (a) shall take such evidence on oath as may be tendered by the applicant and by any objector to the application and may, if he thinks fit, take the evidence of any other person;
- (b) may, from time to time, adjourn the hearing and may direct an inspection of the land to which the application relates and direct that a report thereon be made to him by any person appointed by the warden.

82. (1) Every mining lease shall contain and be subject to the prescribed covenants by the lessee and in particular shall be deemed to be granted subject to the conditions that the lessee shall—

Covenants and
conditions of
lease.

- (a) pay the rents and royalties due under the lease at the prescribed time and in the prescribed manner;
- (b) use the land in respect of which the lease is granted only for mining purposes in accordance with this Act;
- (c) comply with the prescribed expenditure conditions applicable to such land unless partial or total exemption therefrom is granted in such manner as is prescribed;
- (d) not assign, underlet or part with possession of such land or any part thereof without the prior written consent of the Minister, or of an officer of the Department acting with the authority of the Minister;
- (e) lodge with the Department at Perth such periodical reports and returns as may be prescribed;
- (f) promptly report in writing to the Minister details of all minerals of economic significance discovered in, on or under the land the subject of the mining lease;
- (g) be liable to have the lease forfeited if he is in breach of any of the covenants or conditions thereof.

(2) Every mining lease shall contain a provision that after receiving the warden's recommendation for forfeiture of a lease for breach of any covenant or

condition of the lease by the lessee, the Minister may, as he thinks fit, impose a fine not exceeding one thousand dollars as an alternative to the forfeiture of the lease.

Issue of mining leases.

83. (1) Every mining lease—

- (a) shall be dated as of the day of the notification by the Minister under section 79; and
- (b) shall be executed by the Minister in duplicate.

(2) Of the two copies of the mining lease one shall be endorsed with the word "original" on the front page thereof and the other shall be endorsed on the front page thereof with the word "duplicate" and issued to the lessee on payment of the prescribed fee.

Conditions for prevention or reduction of injury to land.

84. (1) On the granting of a mining lease, or at any subsequent time, the Minister may impose on the lessee reasonable conditions for the purpose of preventing or reducing, or making good, injury to the surface of the land in respect of which the lease is sought or was granted, or injury to anything on the surface of that land or consequential damage to any other land.

(2) Without limiting the generality of subsection (1) of this section, the Minister may, on the granting of the mining lease or at any subsequent time, if it is reasonable in all the circumstances so to do, impose on the lessee a condition that mining operations shall not be carried out within such distance of the surface of the land in respect of which the lease is sought or was granted, as the Minister may specify.

(3) Any condition imposed under this section may at any time be cancelled by the Minister or from time to time varied by him.

Rights of holder of mining lease.

85. (1) Subject to this Act, a mining lease authorizes the lessee thereof and his agents and employees on his behalf to—

- (a) work and mine the land in respect of which the lease was granted for any minerals;
- (b) take and remove from the land any minerals and dispose of them;

- (c) take and divert subject to the Rights in Water and Irrigation Act 1914, water from any natural spring, lake, pool or stream situate in or flowing through such land, and subject to that Act to sink a well or bore on such land and take water therefrom and to use the water so taken for his domestic purposes and for any purpose in connection with mining for minerals on the land; and
- (d) do all acts and things that are necessary to effectually carry out mining operations in, on or under the land.

(2) Subject to this Act, the lessee of a mining lease—

- (a) is entitled to use, occupy, and enjoy the land in respect of which the mining lease was granted for mining purposes; and
- (b) owns all minerals lawfully mined from the land under the mining lease.

(3) The rights conferred by this section are exclusive rights for mining purposes in relation to the land in respect of which the mining lease was granted.

Division 4.—General Purpose Lease.

86. (1) Subject to this Act, the Minister may, on the application of a lessee of a mining lease, after receiving a recommendation of the warden in accordance with section 75, grant to such person a lease to be known as a general purpose lease for use by him in respect to the mining operations carried out on the mining lease.

Granting of general purpose lease.

(2) Any such person may be granted more than one general purpose lease.

(3) The area of land in respect of which any one general purpose lease may be granted shall not exceed two hundred and fifty hectares.

87. (1) A general purpose lease entitles the lessee thereof and his agents and employees to the exclusive occupation of the land in respect of which

Purposes for which general purpose lease may be granted.

the general purpose lease was granted for one or more of the following purposes—

- (a) for erecting, placing and operating machinery thereon in connection with the mining operations carried on by the lessee on the mining lease in relation to which the general purpose lease was granted;
- (b) for depositing or treating thereon minerals or tailings obtained from the land in respect of which such mining lease was granted;
- (c) for using the land for any other specified purpose directly connected with such mining operations.

(2) The purpose or purposes for which a general purpose lease is granted shall be specified in the lease.

Term of
general
purpose lease.

88. Subject to this Act, a general purpose lease remains in force until the date of surrender, forfeiture or expiry of the mining lease (or any renewal thereof) in relation to which it was granted, and shall then expire.

Form of
general
purpose lease.

89. A general purpose lease shall be in the prescribed form and shall contain such covenants, terms and conditions as are prescribed and specified therein and such additional terms and conditions as the Minister may in writing specify.

Certain
provisions
apply to
general
purpose leases.

90. The provisions of sections 74, 75, 76, 77, 79, 80, 81, 83, 84, 104 and 105, with such modifications as the circumstances require, apply to and in relation to a general purpose lease.

Division 5.—Miscellaneous Licences.

Grant of
licences for
roads,
tramways, etc.

91. (1) Subject to this Act, and in the case of a water licence to the Rights in Water and Irrigation Act 1914, the warden may, on the application of the holder of a prospecting licence, exploration licence or mining lease grant to such holder in respect of any land that is open for mining, or is the subject of a mining tenement a licence of any class of the following classes of licence—

- (a) a road licence;
- (b) a tramway licence;
- (c) an aerial rope way licence;

- (d) a pipeline licence;
- (e) a tunnel licence;
- (f) a bridge licence;
- (g) a water licence;
- (h) a licence for any prescribed purpose.

(2) Any such licence shall be in the prescribed form and shall authorize the holder to do such matters and things as are prescribed therein on such terms and conditions as are so prescribed.

(3) No licence shall be granted under this section unless the purpose for which it is granted is directly connected with mining operations.

(4) In addition to the prescribed terms and conditions specified in any such licence, the warden may specify therein such further terms and conditions as in the circumstances of the case he considers proper.

(5) Before an application is heard for a licence under this section, a copy of the application shall, at least ten days before the hearing thereof, be given to the council of the municipality in whose municipal district the land to which the application relates is and to such other persons as may be prescribed.

(6) The council is entitled to be heard on the application and may submit to the warden any terms and conditions to which it considers the licence, if granted, should be subject.

92. The provisions of section 41 with such modifications as the circumstances require, apply to and in relation to a licence granted under this Division.

Section 41
applicable to
miscellaneous
licences.

93. (1) Before making an application for the grant of a licence under section 91 the applicant shall mark out in the prescribed manner the land in respect of which the licence is sought.

Map to
accompany
plan.

(2) The application shall be accompanied by a map on which are clearly delineated the boundaries of the area of the land in respect of which the licence is sought, together with a written description of the land.

Term of
licence.

94. (1) Subject to this section, every licence granted under section 91 shall remain in force until the surrender, forfeiture or expiry of the prospecting licence, exploration licence or mining lease (or any renewal thereof) in respect of which it was granted, and shall then expire.

(2) If a mining lease is obtained for an area of land the subject of the prospecting licence or exploration licence by the holder of any such licence, the licence granted under section 91 shall remain in force until the day of surrender, forfeiture or expiry of the mining lease (or any renewal thereof) and shall then expire.

(3) Where the warden refuses an application for a miscellaneous licence under section 91 or grants the application on conditions the applicant considers unreasonable, the applicant may within the time and in the manner prescribed appeal to the Minister against such refusal or conditions as the case may be.

(4) The Minister may dismiss the appeal or uphold the appeal and grant the application on such conditions as he considers reasonable.

Division 6.—Surrender and Forfeiture of Mining Tenements.

Surrender of
mining
tenement.

95. (1) Subject to this Act the holder of any mining tenement may, in the prescribed manner and on payment of the prescribed fees, surrender the tenement in whole or in part.

(2) When the holder of a mining tenement surrenders it pursuant to subsection (1) of this section the liability of the holder—

- (a) to pay any rent, fee, royalty, penalty or other money on any other account, that is payable on or before such surrender;
- (b) to perform any obligation required to be performed on or before that date;
- (c) for any act done or default made on or before that date,

that is payable under, in respect of, or arises out of or in relation to that mining tenement, is not affected.

(3) When a mining tenement is surrendered under this section, the rent, whether paid or payable, shall be apportioned as provided for in the regulations; and the holder of the mining tenement is entitled to a refund of the rent accordingly.

(4) Where a mining tenement is being surrendered as to part only, the form of surrender shall be accompanied by a map on which are clearly delineated the boundaries of the part of the mining tenement that is being surrendered, together with a written description of the area of that part.

(5) Where part of a mining tenement is surrendered, notification thereof shall be endorsed as prescribed on the mining tenement and thereafter the rent payable in respect thereof shall be reduced as provided for in the regulations.

(6) Notwithstanding anything to the contrary in this Act, where a mining tenement is surrendered in whole or in part, every right, title and interest held under the mining tenement in respect of the whole of the land or the part thereof so surrendered as the case may be, shall absolutely cease and determine on the date the surrender is registered.

96. (1) The Warden may upon the application of—

- (a) the Minister or any officer of the Department authorized by the Minister in writing in that behalf; or
- (b) any person,

made in the prescribed form and in the prescribed manner, make an order for the forfeiture of any mining tenement other than an exploration licence, a mining lease or general purpose lease.

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

Forfeiture of
certain mining
tenements.
Amended by
No. 69 of 1981,
s. 21.

(3) A warden, as he thinks fit in the circumstances of the case, in lieu of making an order under this section for forfeiture of such mining tenement may—

- (a) impose a fine upon the holder of the mining tenement, not exceeding five hundred dollars;
- (b) award the whole or any part of the amount of any such fine to the applicant if the applicant is not the Minister or an officer of the Department authorized in writing by him; or
- (c) impose no penalty on the holder.

(4) Where an order for the forfeiture of a mining tenement is made under this section, if the applicant therefor was not the Minister or an officer authorized in writing by the Minister, such applicant shall have, for a period of fourteen days after the date of the order, a right in priority to any other person to mark out a mining tenement upon the whole or part of the land that was the subject thereof.

(5) If the applicant fails to proceed with his forfeiture application the warden may award the holder of the mining tenement such sum for costs and expenses as the warden thinks fit.

(6) Where any fine imposed in lieu of forfeiture under paragraph (a) of subsection (3) of this section is not paid within the time specified by the warden or within thirty days of the hearing of the application for forfeiture if no such time is specified by the warden, the mining tenement shall thereupon be forfeited and the rights conferred on the applicant for forfeiture under subsection (4) of this section shall apply as if the warden had made an order for forfeiture on the day on which the mining tenement is forfeited pursuant to this subsection.

(7) No prospecting licence shall be forfeited for non-compliance by the holder thereof with the expenditure conditions, if the holder satisfies the warden that the non-compliance therewith has been occasioned by a strike.

(8) The warden may, for any cause that he deems sufficient and subject to subsection (9) of this section, cancel—

- (a) an order for the forfeiture of any mining tenement made under subsection (1) of this section; or
- (b) the forfeiture arising under subsection (6) of this section of any mining tenement referred to in subsection (1) of this section,

and restore the mining tenement so forfeited to the holder thereof.

(9) The warden may, in effecting a cancellation and restoration under subsection (8) of this section, impose on the holder of the mining tenement restored under that subsection such conditions as he thinks fit.

96A. (1) When an exploration licence is liable to forfeiture by virtue of section 63A, the Minister may cause the exploration licence to be forfeited by declaring by notice under his hand published in the *Government Gazette* that the exploration licence is forfeited.

Forfeiture of
exploration
licence.
Inserted by No.
69 of 1981,
s. 22.

(2) The Minister may, for any cause that he deems sufficient and subject to subsection (3) of this section, by notice under his hand published in the *Government Gazette*—

- (a) cancel a declaration made under subsection (1); and
- (b) restore the exploration licence to which the declaration referred to in paragraph (a) of this subsection relates to the holder thereof.

(3) The Minister may, in effecting the cancellation and restoration referred to in subsection (2) of this section, impose on the holder of the exploration licence restored under that subsection such conditions as he things fit.

(4) The production of a copy of the *Government Gazette* containing a notice published therein under subsection (1) or (2) of this section is evidence that the exploration licence concerned has been forfeited or restored, as the case requires.

97. (1) Where a mining lease or general purpose lease is liable to forfeiture for a breach of the lessee's covenant to pay rent or royalty or for breach of a covenant inserted in the lease under subsection (1) of

Forfeiture of
mining lease or
general
purpose lease
on ground of
non-payment
of rent.

section 82, the Minister may declare, by notice under his hand published in the *Government Gazette*, such lease forfeited.

(2) The production of a copy of the *Government Gazette* containing a notice published therein pursuant to subsection (1) of this section, is evidence that a breach of such a covenant has been committed by the lessee, and that the estate and interest of the lessee in such lease has been lawfully determined.

(3) The Minister, for any cause that he deems sufficient, may cancel the forfeiture of any such lease and by subsequent notice under his hand published in the *Government Gazette*, reinstate the lessee as of his former estate in respect of the forfeited lease.

(4) The Minister, upon such cancellation and reinstatement as is referred to in subsection (3) of this section, may impose upon the lessee such conditions as he thinks fit.

Application for
forfeiture on
other grounds.

98. (1) Where the requirements of this Act are not being complied with in respect of the expenditure conditions applicable to an exploration licence, a mining lease or general purpose lease, any person may apply to the warden for the forfeiture of such licence or lease as provided in this section.

(2) An application for forfeiture under this section shall be made in such form and manner as may be prescribed and shall be accompanied by the prescribed fee.

(3) The application for forfeiture shall be heard in open court by the warden.

(4) (a) When the warden finds that the holder of an exploration licence or lessee of the mining lease or general purpose lease has failed to comply with such requirements as are mentioned in subsection (1) of this section, the warden may recommend the forfeiture of such licence or lease, or impose a fine not exceeding five hundred dollars in lieu of the forfeiture or dismiss the application.

(b) Where a fine is imposed under this section the warden may award the whole amount of the fine or any part thereof to the applicant.

(5) A recommendation shall not be made under subsection (4) of this section unless the warden is satisfied that the non-compliance with such requirements is, in the circumstances of the case, of sufficient gravity to justify the forfeiture.

(6) As soon as practicable after the hearing of the application the warden shall forward to the Minister the notes of evidence, with a report and the warden's recommendation, if any, on the application and the Minister may, before acting on the recommendation, require the warden to take such further evidence or rehear the application as the Minister directs.

(7) No exploration licence, mining lease or general purpose lease shall be forfeited for non-compliance by the holder or lessee thereof with the expenditure conditions, if the holder or lessee satisfies the warden or the Minister that the non-compliance therewith has been occasioned by a strike.

(8) If the applicant fails to proceed with his forfeiture application, the warden may award the holder or lessee such sum for costs and expenses as he thinks fit.

99. (1) The Minister, after receiving the recommendation of the warden as provided in section 98, may, as the Minister thinks fit—

Proceedings by
Minister on
recom-
mendation.

- (a) declare the exploration licence or the lease to which the recommendation relates, forfeited;
- (b) impose a fine not exceeding one thousand dollars as an alternative to forfeiture and award the whole amount of the fine or any part thereof to the applicant who applied for forfeiture;
- (c) determine not to forfeit such licence or lease or impose any fine.

(2) Where the Minister decides to forfeit such licence or lease he shall forthwith give written notice thereof to the applicant and shall publish notice of his determination in the *Government Gazette* and on the publication of the notice the licence or lease shall become forfeited.

(3) Where any fine imposed in lieu of forfeiture under paragraph (b) of subsection (1) of this section is not paid within the time specified by the Minister or within thirty days of the Minister's decision to impose a fine in lieu of forfeiture if no time is specified by the Minister, the exploration licence or lease shall thereupon be forfeited and notice thereof shall be published in the *Government Gazette*, and the rights conferred on the applicant for forfeiture under section 100 shall apply as if the Minister had declared the licence or lease forfeited.

Applicant to have prior right to mark out and apply for forfeited lease.

100. Where an exploration licence, a mining lease or general purpose lease is forfeited pursuant to section 99, the applicant on whose application such licence or lease was forfeited shall have, for a period of fourteen days after the date of the publication of the notice of forfeiture of the licence or lease in the *Government Gazette*, a right in priority to any other person to mark out or apply for, or both, a mining tenement upon the whole or part of the land that was the subject of such forfeited licence or lease.

Application for forfeiture of mining tenement while holder is a company in process of winding up.

101. An application under section 96 or 98 for the forfeiture of a mining tenement for breach of the prescribed expenditure conditions applicable thereto while the holder thereof is a company in respect of which a winding up order has been made or a provisional liquidator has been appointed under the Companies Act 1961, shall not be an action or proceeding for the purposes of subsection (3) of section 230 of that Act, and notwithstanding anything contained in that Act to the contrary, the application may be commenced and proceeded with without the leave of the Supreme Court, and the mining tenement is liable to forfeiture accordingly.

Division 7.—Exemption from Expenditure Conditions.

Exemption from expenditure conditions. Amended by No. 69 of 1981, s. 23.

102. (1) Subject to this Act, on an application made, as prescribed, by the holder of a mining tenement, such holder may be granted a certificate of exemption in the prescribed form totally or partially exempting the mining tenement to which the application relates, from the prescribed expenditure conditions relating thereto, in an amount not

exceeding the amount required to be expended in any one year in respect of that mining tenement.

(2) A certificate of exemption may be granted for any of the following reasons—

- (a) that the title to the mining tenement is in dispute;
- (b) that time is required to evaluate work done on the mining tenement, to plan future exploration or mining or raise capital therefor;
- (c) that time is required to purchase and erect plant and machinery;
- (d) that the ground the subject of the mining tenement is for any sufficient reason unworkable;
- (e) that the ground the subject of the mining tenement contains a mineral deposit which is uneconomic but which may reasonably be expected to become economic in the future;
- (f) that the ground the subject of the mining tenement contains mineral ore which is required to sustain the future operations of an existing or proposed mining operation.

(3) Notwithstanding the provisions of paragraphs (a), (b), (c), (d), (e) and (f) of subsection (2) of this section, a certificate of exemption may also be granted for any other reason which may be prescribed or which in the opinion of the Minister is sufficient to justify such exemption.

(4) When consideration is given to an application for exemption for the reasons specified in paragraphs (b) and (e) of subsection (2) of this section or in subsection (3) of this section regard shall be had to the work done and the money spent on the mining tenement by the holder thereof.

(5) Any application for a certificate of exemption in an amount exceeding one-twelfth of the amount required to be expended in any one year in respect of the mining tenement to which that application relates shall be heard by the warden in open court.

103. Upon the granting of a certificate of exemption pursuant to section 102 the holder of a

Effect of exemption.

mining tenement to whom it is granted shall be deemed to be relieved, to the extent, and subject to the conditions specified in the certificate, from his obligations under the prescribed expenditure conditions relating to the mining tenement.

PART V.—GENERAL PROVISIONS RELATING TO
MINING AND MINING TENEMENTS.

Entry on land
for purpose of
marking out,
etc.

104. (1) Subject to this Act, for the purpose of marking out any land and posting notices on any land in connection with an application for a mining tenement, any person or his servant or agent may—

- (a) enter and re-enter from time to time on any land with such assistants as he thinks fit;
- (b) affix and set up on the land pegs, marks, posts, cairns of stones and poles, inspect and repair any peg, mark, post, cairn of stones or pole; and
- (c) do all such things as may be necessary for the purpose of marking out the land, and posting notices thereon.

(2) Subject to subsections (3) to (5) of this section, for the purposes of surveying any land in connection with a mining tenement, any surveyor authorized in that behalf may—

- (a) enter and re-enter from time to time on any land, with such assistants as he thinks fit;
- (b) affix and set up on the land survey pegs, marks and poles; and
- (c) do all such things as may be necessary for the purposes of the survey.

(3) A person shall not enter on any private land for any purpose referred to in subsection (1) of this section unless he does so pursuant to a permit issued under section 30.

(4) A person shall not, for the purposes specified in subsection (1) or (2) of this section, enter on any land referred to in sections 24 or 25 except as provided in section 26.

(5) In carrying out any marking out, posting of notices or survey of any land, every person entering

on the land under this section shall ensure that no damage is done that with reasonable diligence could be avoided.

105. Before making an application for a mining tenement other than an exploration licence, the applicant shall mark out in the prescribed manner and in the prescribed shape the land in respect of which the mining tenement is sought.

Marking out of mining tenement.

105A. (1) If 2 or more applications are made for a mining tenement (other than a miscellaneous licence) in respect of the same land or any part thereof, the applicant who first complies with the initial requirement in relation to his application has, subject to this Act, the right in priority over every other applicant to have granted to him in respect of that land or part the mining tenement to which his application relates.

Priorities between applicants for certain tenements.
Inserted by No. 69 of 1981, s. 24.

(2) In this section—

“complies with the initial requirement” means—

- (a) in the case of an application for an exploration licence, lodges that application with the mining registrar; or
- (b) in the case of an application for a prospecting licence, mining lease or general purpose lease, marks out the land or part concerned in the prescribed manner.

106. A person shall not—

- (a) without lawful authority remove, destroy or alter the position of, any peg, notice, survey peg, mark, post, cairn of stones or pole used for the purposes of any marking out or survey made or being made under section 104.
- (b) wilfully damage or destroy or otherwise interfere with any peg, survey peg, mark, post, cairn of stones, pole erected or notice posted for the purposes of this Act; or
- (c) wilfully obstruct, hinder, or interfere with any person lawfully engaged in marking out or surveying any land under that section.

Offence of destroying marks or obstructing surveyor, etc.

Areas covered
by water not
required to be
marked out.

107. Notwithstanding anything to the contrary in this Act, if any area in respect of which an application for a mining tenement is to be made is wholly or partly covered by the sea or the waters of any lake, pond, river or stream, it shall not be necessary to mark out the area or part of the area so covered.

Rent payable
for mining
tenement.

108. In respect of each mining tenement there shall be payable by the holder thereof at the times respectively prescribed, such rent as may be respectively prescribed.

Royalties.

109. Without prejudice to the power to make regulations under section 162, the Governor may by regulation—

- (a) prescribe how, by whom, and at what rate, or differentiating rates, royalties shall be paid in respect of minerals or any class of minerals, obtained from land that is the subject of a mining lease or other mining tenement granted under this Act, or that is the subject of an application for the grant of a mining lease or other mining tenement under this Act;
- (b) exempt, subject to conditions or unconditionally, any person or class of persons from payment either generally, or in any class of case, or in any particular case, from payment of royalty so prescribed.

Mining lease
restricted to
certain
mineral.

110. Notwithstanding anything to the contrary in this Act, the Minister may, having regard to the locality wherein the land the subject of an application for a mining lease, is, and if the Minister considers it is in the public interest to do so, grant the applicant a mining lease that authorizes the holder thereof to mine on or under or both, and remove from the land the subject of the mining lease, only such mineral as is specified in the lease.

Power of
Minister to
exclude mining
for iron from
mining
tenements.

111. Notwithstanding the provisions of sections 48, 66 and 85—

- (a) a prospecting licence does not authorize the holder thereof to prospect for iron on the land the subject of the prospecting licence;

- (b) an exploration licence does not authorize the holder thereof to explore for iron on the land the subject of the exploration licence;
- (c) a mining lease does not authorize the holder thereof to work and mine the land in respect of which the lease was granted for iron,

unless the Minister, by instrument in writing under his hand, authorizes such holder so to do and endorses the prospecting licence, exploration licence or mining lease, as the case requires, accordingly.

111A. (1) If the Minister is satisfied on reasonable grounds that an area to which an application for a mining tenement relates should not, in the public interest, be disturbed, he may by notice served on the warden to whom that application has been made refuse that application, whether or not that application has been heard by that warden.

Minister may summarily refuse certain applications.
Inserted by No. 69 of 1981, s. 25.

(2) Notwithstanding anything in this Act, an application to which a notice referred to in subsection (1) of this section applies ceases to have any effect for the purposes of this Act when that notice is served.

112. (1) Subject to subsection (2) of this section, every prospecting licence and exploration licence is subject to a reservation in favour of the Crown and any person authorized thereby of the right to enter thereon and remove therefrom any rock, stone, clay, sand or gravel for use for any public purpose or for use in any prescribed work or undertaking.

Reservation in favour of the Crown on prospecting licence or exploration licence to take rock, etc.
Amended by No. 69 of 1981, s. 26.

(2) A prospecting licence or exploration licence granted—

- (a) wholly in respect of private land is not subject to the reservation referred to in subsection (1) of this section; or
- (b) partly in respect of any private land and partly in respect of land other than private land is not subject to the reservation referred to in subsection (1) of this section in relation to that private land.

113. When a mining tenement expires or is surrendered or forfeited, the owner of the land to which the mining tenement related may take possession of the land forthwith, subject to any estate

Repossession of land on expiry, etc. of mining tenement.

or interest held by any other person other than under that mining tenement.

Removal of
buildings etc.
on expiry etc.
of mining
tenement.

114. (1) In this section—

“mining plant” means any building, plant, machinery, equipment, tools or any other property of any kind whether affixed to land or not so affixed;

“prescribed period” means a period of three months after a mining tenement expires or is surrendered or forfeited or such longer period thereafter as the Minister from time to time or in any particular case determines and is hereby authorized to determine.

(2) When a mining tenement expires or is surrendered in whole or in part or forfeited—

(a) the person who was the holder of the mining tenement immediately prior to such expiry, surrender or forfeiture; or

(b) any other person,

who is entitled to any mining plant lawfully erected or brought onto the land or the part of the land to which the mining tenement related by a former holder thereof or any predecessor in title, may, within the prescribed period, remove any such mining plant.

(3) Where any such mining plant is not so removed within the prescribed period, the Minister may, at any time thereafter, call upon such holder or other person as is referred to in subsection (2) of this section to show cause, within such period as the Minister may determine, why any mining plant that has not been so removed should not be sold and removed.

(4) Where such holder or person does not, within the period determined by the Minister, show cause to the satisfaction of the Minister why any such mining plant should not be sold and removed, the Minister may direct the mining plant to be sold by public auction and be removed.

(5) The proceeds of the sale of any mining plant pursuant to subsection (4) of this section, after deducting the cost of and incidental to the sale or the

sale and the removal of the mining plant, shall be paid to such holder of the mining tenement or other person as is referred to in subsection (2) of this section, of whose claim thereto the Minister has had notice in writing prior to the payment of the proceeds.

(6) The Minister shall determine whether or not any mining plant shall be allowed to remain on the land that was the subject of the mining tenement and if so, the period for which it may so remain and the amount of rent that shall be paid for the use and occupation of the land on which the mining plant is allowed to remain and to whom the rent shall be due and payable.

(7) Where at the time a mining tenement expires or is surrendered in whole or in part or forfeited the person who was the holder thereof immediately prior to the expiry, surrender or forfeiture leaves upon the land or part of the land that was the subject of the mining tenement, any tailings or other mining product, if such person does not within the prescribed period either remove or *bona fide* treat and thereafter with all reasonable dispatch, continue to treat the tailings or other mining product, then at the expiration of the prescribed time the tailings or other mining product shall become the absolute property of the Crown.

(8) The Minister shall determine the amount of rent that shall be paid for the use and occupation of the land on which the tailings or other mining product are allowed to remain and the land used in relation to the treatment of the tailings or other mining product and to whom the rent shall be due and payable.

(9) Nothing in this section affects any valid agreement made by the holder of a mining tenement with the owner or occupier of any land to which the tenement relates in respect of mining plant or tailings or other mining product left on such land after the prescribed period, and this section shall be construed subject to such an agreement.

(10) Notwithstanding the foregoing provisions of this section, no timber or other material used and applied in the construction or support of any shaft,

drive, gallery, adit, terrace, race, dam or other mining work shall be removed without the consent in writing of the Minister.

Power to enter
on land for
geological etc.
surveys.

115. (1) When and as often as the Director, Geological Survey or any other officer of the Department or any person working in conjunction with that Department and acting under the Director's instructions considers it necessary to enter upon any land for the purpose of making any aerial, geological, geophysical or geochemical surveys of the land and drilling thereon in the course of his official duties he may—

- (a) enter and re-enter on the land, with such assistants as he considers necessary for the purpose of making the survey thereon;
- (b) extract and remove from the land any geological specimens or samples that in his opinion are necessary to the survey;
- (c) affix to or set up on the land such pegs, marks, poles or other equipment as may be required for the purposes of the survey; and
- (d) do all such things as he considers necessary for the purposes of the survey or for any inspection or alteration of it.

(2) Before a person enters on any land pursuant to this section, he shall if practicable, give reasonable notice to the owner and occupier of the land of his intention to do so, and shall, if required by the owner or occupier of the land, produce the authority under which he claims to enter or to have entered the land.

(3) (a) The owner and occupier of the land are entitled to compensation according to their respective interests, for any damage caused by a survey under this section.

(b) In default of agreement as to the amount of compensation to be paid, the amount shall be assessed and settled by the warden under Part VII of this Act.

(4) A person who—

- (a) wilfully obstructs, hinders, or interferes with any person lawfully engaged in connection with a survey that is being made under this section;

- (b) without lawful authority removes, destroys or alters the position of, any peg, mark, pole or other equipment used for the purposes of any such survey; or
- (c) wilfully damages or destroys or otherwise interferes with any peg, mark, pole or other equipment so used,

is guilty of an offence against this Act.

116. (1) The holder of a mining tenement granted pursuant to this Act shall be entitled to receive an instrument of licence or lease as the case may be in such form as may be prescribed.

Instrument of licence or lease.

(2) Except in the case of fraud no person dealing with a registered holder of a mining tenement shall be required or in any way concerned to inquire into or ascertain the circumstances under which the registered applicant, or holder or any previous holder was registered, or to see to the application of any purchase or consideration money, or be affected by notice, actual or constructive, of any unregistered trust or interest any rule of law or equity to the contrary notwithstanding, and the knowledge that any such unregistered trust or interest is in existence shall not of itself be imputed as fraud.

117. (1) No Crown grant or conveyance nor the grant of any mining tenement has the effect of revoking or injuriously affecting any existing mining tenement acquired and held under this or the repealed Act, whether or not any reservation or exception of that existing mining tenement is contained in the Crown grant or conveyance or the grant of the mining tenement.

Mining tenements protected.

(2) Each such Crown grant or conveyance and each such grant of a mining tenement shall be deemed to contain an express reservation of the rights to which the holder of the existing mining tenement is entitled.

118. Where any land comprised in an application for a mining tenement is held under a pastoral lease under any Act or regulation relating to Crown lands, the applicant shall within seven days of the lodging of the application, post a copy of the application by

Notice of application to be given to lessee of pastoral lease. Vide s. 31 (4) Act No. 30 of 1918.

registered post or certified mail to the lessee of the pastoral lease at his usual or last known place of abode or business.

Mining
tenement may
be sold, etc.

119. (1) Subject to this Act a mining tenement may be sold, encumbered, transmitted, seized under a warrant or writ of execution, or otherwise disposed of.

Interests not to
be created etc.
except by
instruments in
writing.

(2) A legal or equitable interest in or affecting a mining tenement is not capable of being created, assigned, affected or dealt with, whether directly or indirectly, except by an instrument in writing signed by the person creating, assigning or otherwise dealing with the interest.

(3) In the succeeding provisions of this section, a reference to a country includes a reference to the Commonwealth and to a State or Territory of the Commonwealth.

(4) An instrument by which a legal or equitable interest in or affecting a mining tenement is or may be created, assigned, affected or dealt with, whether directly or indirectly, so as to confer any beneficial interest in the mining tenement upon a country is of no force or effect until the instrument has been approved by the Minister.

(5) Where the holder of a mining tenement is a corporation the Minister may cancel the mining tenement if in his opinion the control of the corporation has passed to any country and the Minister has not consented to the control so passing.

(6) For the purposes of this section, a country is deemed to have control of a corporation if it has an interest or interests in one or more voting shares in the corporation and the nominal amount of that share, or the aggregate of the nominal amounts of those shares, is not less than fifteen per centum of the aggregate of the nominal amounts of all the voting shares in the corporation.

(7) For the purposes of this section, a country is deemed to have control of a corporation, being a corporation the share capital of which is divided into

two or more classes of shares if it has an interest or interests in one or more voting shares included in one of those classes and the nominal amount of that share, or the aggregate of the nominal amounts of those shares, is not less than fifteen per centum of the aggregate of the nominal amounts of all the voting shares included in that class.

(8) For the purposes of this section, where a share or an interest in a share in a corporation is held by or on behalf of a country or a public statutory body, whether corporate or unincorporate, constituted under a law of that country, all of the shares so held or in which an interest is so held shall be deemed to be held by that country.

(9) Section 6A of the Companies Act 1961 has effect for the purposes of this section and so has effect as if a reference in that section to a person included a reference to a country.

120. (1) In considering any application for the grant of a mining tenement the Minister or warden, as the case requires, shall take into account the provisions of any town planning scheme in force under the Town Planning and Development Act 1928 or by-laws in force under section 248 of the Local Government Act 1960 affecting the use of the land concerned, but the provisions of any such scheme or by-laws shall not operate to prohibit or affect the granting of a mining tenement or the carrying out of any mining operations authorized by this Act.

Town planning schemes and by-laws to be considered but not to derogate from this Act.

(2) Without affecting subsection (1) of this section, where—

- (a) an application has been made for a mining lease or a general purpose lease; and
- (b) the council of the municipality has, in writing, informed the Minister and the Minister for the time being administering the Town Planning and Development Act 1928, that the mining lease or general purpose lease would, if granted, authorize the carrying on of mining operations contrary to the provisions of a town planning scheme or by-laws referred to in subsection (1) of this section,

the Minister shall not dispose of the application until he has first consulted the Minister for the time being administering the Town Planning and Development Act 1928 and obtained his recommendation thereon.

PART VI.—CAVEATS.

Lodging of
caveats.

121. (1) Any person claiming any interest in a mining tenement may lodge in the Department at Perth or in the office of the warden for the mineral field or district thereof where the mining tenement is, a caveat that complies with this section forbidding the registration of any transfer or other instrument affecting the mining tenement or interest.

(2) A caveat lodged under this section—

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

(3) Upon the lodging of the caveat—

- (a) there shall be entered a memorial or copy of the caveat in the register kept in accordance with the regulations; and
- (b) there shall be sent by registered post or certified mail to the holder of the mining tenement affected by the caveat, notice that the caveat has been so lodged.

Vide s. 31(4)
Act No. 30 of
1918.

(4) Successive caveats shall not be so lodged by, or on behalf of, the same person in respect of the same subject matter except by leave of the warden.

Duration and
effect of
caveat.

122. (1) Except as provided in this section, a caveat shall lapse and cease to have effect upon—

- (a) the order of a warden for the removal thereof;
- (b) the withdrawal thereof by the caveator or his agent;

- (c) the expiration of a period of fourteen days after notification that application has been made for the registration of a transfer or other instrument affecting the subject matter of the caveat, has been sent by or on behalf of the Minister by registered post or certified mail to the caveator at the address for service given in the caveat, unless within that period the warden otherwise orders.

(2) Where the holder of any mining tenement has entered into an agreement with any person relating to the sale of his interest therein, if the agreement so provides, either party to the agreement may lodge a caveat in accordance with this Part, together with a copy of the agreement, and the caveat shall remain in force for such term as may be specified in the agreement, unless sooner withdrawn by consent of the parties to the agreement, or removed by order of a court of competent jurisdiction.

(3) No transfer or other instrument affecting the subject matter of a caveat shall be registered while the caveat remains in force, except upon the order of a court of competent jurisdiction.

(4) When a caveat lapses and ceases to have effect under this section there shall be entered in the register kept in accordance with the regulations a memorial of the fact.

PART VII.—COMPENSATION.

123. (1) Compensation is not payable in any case in respect of the value of any mineral known or supposed to be in, on or under the surface of any land to which a claim for compensation under this Act relates.

Compensation
not payable for
minerals.
Amended by
No. 69 of 1981,
s. 27.

(2) The owner and occupier of any land in respect of which a mining tenement has been granted are entitled according to their respective interests to compensation for all loss and damage suffered or likely to be suffered by them as a result of the grant of the mining tenement or the exercise of the rights conferred thereby.

Compensation
as to private
land.

(3) The amount of compensation payable to the owner and occupier shall be determined by agreement between the holder of the mining tenement and the owner and occupier, or in default of agreement, an amount determined by the warden's court upon the application of the owner, the occupier or the holder of the mining tenement.

(4) Subject to subsection (1) of this section and section 124, where the land concerned is private land, the compensation to be made to the owner and occupier thereof shall be compensation for being deprived of the possession of the surface or any part of the surface of the private land, and for damage to the surface or the part, and to any improvements thereon, that may arise from the exercise of the rights conferred by the mining tenement thereon or thereunder, and for the severance of such land from other land of the owner and occupier, and for rights of way and for all consequential damages.

(5) If any private land or improvement thereon adjoining or in the vicinity of the land the subject of a mining tenement is injured or depreciated in value by the exercise of any rights conferred thereby or by reason of the occupation of any portion of the surface or enjoyment by the holder of the mining tenement of any right of way, the owner and occupier of the private land or improvements thereon are entitled severally to compensation for all loss and damage thereby sustained and the amount of compensation shall be determined in the manner provided in this section.

(6) If while in occupation of any land that is the subject of a mining tenement, the holder of the mining tenement causes any damage to the surface or part of the surface of any private land comprised within the boundaries of the land the subject of the mining tenement belonging to the same or another owner, or to any improvement on any such private land, not being damage already determined under this Part, the owner and occupier of the private land or improvement is entitled severally to compensation for the damages sustained by each of them, and the amount of the compensation shall be determined in the manner provided by this section.

- (7) Subject to section 124, the lessee of any land—
- (a) which is leased to him for pastoral purposes under the Land Act 1933; and
 - (b) in respect of which a mining tenement has been granted,

(in this section called “the pastoral lessee”) is entitled to be compensated by the holder of the mining tenement referred to in paragraph (b) of this subsection (in this subsection and in subsection (7a) of this section called “the holder”) for—

- (c) subject to section 125, any damage to improvements on that land caused by the holder and for any loss—
 - (i) suffered by the pastoral lessee; and
 - (ii) resulting from that damage;

and

- (d) notwithstanding anything in section 125, any substantial loss of earnings—
 - (i) suffered by the pastoral lessee; and
 - (ii) resulting or arising from mining by the holder.

(7a) The amount of any compensation payable to a pastoral lessee under subsection (7) of this section shall be determined—

- (a) by agreement between the holder and the pastoral lessee; or
- (b) in default of agreement referred to in paragraph (a) of this subsection, by the warden’s court on the application of the holder or of the pastoral lessee.

(8) In an action in the warden’s court for compensation pursuant to this Act, if the warden’s court considers it impracticable or inexpedient to determine the amount of compensation to be paid in full satisfaction the warden’s court may on the application of a party to the claim for compensation or of its own motion give judgment or make a determination as to the compensation payable in respect of any specified period and in respect of the whole or part of the total claim for compensation.

(9) A determination made by the warden's court under subsection (3) or (7a) of this section is, for the purposes of section 147 (1), a final determination of the warden's court.

Powers of and matters to be considered and excepted by Warden's court in determining compensation. Amended by No. 69 of 1981, s. 28.

124. (1) Without limiting or otherwise affecting the powers conferred on a warden's court by this Act, the warden's court, in determining compensation under this Act, shall take into consideration—

- (a) any work that the person has carried out or undertakes to carry out to make good injury to the surface of the land or injury to anything on the surface of the land;
- (b) the amount of any compensation that the owner and occupier or either of them have or has already received in respect of the damage for which compensation is being assessed, and shall deduct the amount already so received from the amount that they would otherwise be entitled to for such damage.

(2) Upon the hearing of an application for compensation under section 123, the warden's court may order the holder of the mining tenement by or on whose behalf the rights conferred thereby as referred to in that section were exercised, to restore, so far as is reasonably practicable, the surface of the land that was damaged thereby.

(3) Before making an order under subsection (2) of this section the warden's court shall give consideration to the following matters—

- (a) the geographical location of the land to which the application for compensation relates and its environment;
- (b) the purpose for which such land was used before the mining operations commenced and the purpose for which such land is likely to be used after the mining operations have ceased;
- (c) the cost to restore the surface of the land relative to the whole of the cost of and in relation to such mining operations and the profitability thereof;

- (d) the practicability of restoring the surface of the land after such mining operations have ceased.

(4) In subsection (1) (b) of this section—

“damage” includes substantial loss of earnings referred to in section 123 (7) (d).

125. Except where and then only to the extent agreed upon by the parties concerned or authorized by the warden's court, compensation is not payable under this Part to the lessee of land leased for pastoral purposes under the Land Act 1933—

Limitation on compensation.

- (a) for deprivation of the possession of the surface or any part of the surface of the land;
- (b) for damage to the surface of the land;
- (c) where the lessee is deprived of the possession of the surface of any land, for severance of the land from any other land of the lessee;
- (d) for surface rights of way and easements.

126. (1) A security referred to in section 26, 52 or 60—

Securities.

- (a) shall be a prescribed sum or such other sum as the Minister in any case approves;
- (b) shall be in the prescribed form or such other form as the Minister in any case approves;
- (c) may, subject to the approval of the Minister, be by cash deposit or such other method as the Minister allows, or partly by cash deposit and partly by such other method as the Minister allows.

(2) A security given in accordance with the prescribed form or a form approved by the Minister, although it is not sealed, binds the person subscribing it as if it were sealed.

(3) Whenever a security under this section is put in suit the production of the security, without further proof, entitles the Minister to judgment against the person appearing to have executed the security for the amount of his stated liability or for such lesser amount as is claimed, unless that person proves

compliance with the conditions of the security or that the security was not executed by him or release or satisfaction.

(4) If it appears to the court before which the security is in suit that a non-compliance with a condition of a security under this section has occurred, the security shall not be deemed to have been discharged or invalidated, and the subscriber shall not be deemed to have been released or discharged from liability, by reason of—

- (a) any extension of time or other concession;
- (b) any consent to, or acquiescence in, a previous non-compliance with a condition; or
- (c) any failure to bring suit against the subscriber upon the occurrence of a previous non-compliance with the condition.

(5) If there are several subscribers to the security they are bound, unless the security otherwise provides, jointly and severally and for the full amount.

(6) A security given under this section shall not be enforced except with the written approval of the Minister.

PART VIII.—ADMINISTRATION OF JUSTICE.

Establish-
ment of
wardens'
courts.

127. (1) The Governor may, by order in council—

- (a) establish wardens' courts at such places in the State as he thinks necessary;
- (b) assign to any warden's court such mineral field or district thereof, as he thinks fit;
- (c) alter the place at which a warden's court is established;
- (d) discontinue the holding of a warden's court at any place;
- (e) cancel the assignment of a mineral field or district thereof to a warden's court and assign it to another warden's court.

(2) When the holding of a warden's court is discontinued, or any mineral field or district thereof

is no longer assigned to that court, all proceedings pending in that court and all the records thereof, or such of the proceedings and such of the records as relate to the mineral field or district thereof, as the case requires, shall be transferred to and be continued in such other warden's court as the Governor by order in council directs.

128. Each warden's court shall be a court of record, and shall have an official seal which shall be judicially noticed.

Warden's court to be court of record.

129. All summonses, judgment orders, warrants and other process issued out of a warden's court shall be signed by the warden or the mining registrar.

Signing of process.

130. A warden's court may be held before the warden at such times as the warden, from time to time, appoints.

Times for holding warden's court.

131. Where the warden who usually presides in a warden's court is for any reason unable to do so, any other warden may act in his place and while so acting has all the powers, duties and authorities of the warden for whom he is acting.

Power of a warden to act in absence of warden usually presiding.

132. (1) A warden's court has jurisdiction to hear and determine all such actions, suits and other proceedings cognizable by any court of civil jurisdiction as arise in respect of—

Jurisdiction of warden's court.

- (a) the area, dimensions, or boundaries of mining tenements;
- (b) the title to, and ownership or possession of, mining tenements or mining products;
- (c) water to be used for mining and any questions or disputes relating thereto;
- (d) trespass or encroachment upon, or injuries to, mining tenements;
- (e) specific performance of contracts relating to mining tenements or mining;
- (f) transfers and other dispositions of, and charges upon, mining tenements;
- (g) trusts relating to mining tenements or mining;

- (h) partnerships relating to mining tenements or mining, the existence, formation, and dissolution thereof, the taking of accounts connected therewith, the contribution of the partners as between themselves and the determination of all questions arising between the partners;
- (i) contribution by or between persons holding joint or several interests in mining tenements towards rent or other expenses in relation thereto;
- (j) encroachment or trespass upon, or injury to, land by reason of mining, whether the land is held under this Act or otherwise;
- (k) encroachments upon, injuries to, and matters affecting roads, tramways, railroads or other property of whatever kind constructed, held or occupied under this Act;
- (l) the partition, sale, disposal, or division of any mining property, or the proceeds thereof, held by two or more persons having conflicting interests therein,

and generally all rights claimed in, under or in relation to any mining tenement or purported mining tenement, or relating to any matter in respect of which jurisdiction is under any provision of this Act conferred upon either the warden's court or the warden.

(2) Every warden's court has jurisdiction throughout the State but all proceedings under this Act in respect of, or in relation to, any mining tenement shall be brought in the warden's court for the mineral field or the district thereof assigned to the court and in which the mining tenement is.

(3) Where a warden is satisfied that any action, suit or other proceeding pending in his court has been erroneously brought before his court, or could more conveniently be dealt with in another warden's court, he may, notwithstanding subsection (2) of this section, order the mining registrar of his court—

- (a) to transmit a copy of the record of the proceedings to the mining registrar of such other court; and
- (b) to give notice thereof to the parties to the action, suit or proceeding.

(4) When the mining registrar receives a copy of the record transmitted to him pursuant to subsection (3) of this section—

- (a) he shall appoint a day for the hearing or further hearing or other consideration of the action, suit or proceeding so transmitted; and
- (b) he shall give notice thereof to the parties thereto,

and the action, suit or proceeding shall be heard or considered accordingly.

133. (1) Every conviction or order of a warden's court in proceedings other than civil proceedings shall be carried out and endorsed in like manner in all respects as if it had been obtained in, or made by, a court of summary jurisdiction.

Convictions and recovery of penalties.

(2) Any penalty imposed for a breach of this Act (not being a penalty instead of the forfeiture of a mining tenement) may be recovered in a summary way in a warden's court under the Justices Act 1902, as though the warden's court were a court of summary jurisdiction.

"This Act" includes regulations. See s. 4, Act No. 30 of 1918.

134. (1) A warden's court has power to make orders on all matters within its jurisdiction, for—

Powers of warden's court.

- (a) the enforcement of contracts;
- (b) the awarding of damages or compensation;
- (c) the appointment of receivers;
- (d) the determination of objections to applications;
- (e) the determination of the area, extent, dimensions or boundaries of any mining tenement;
- (f) the declaration or enforcement of any trust relating to mining tenements or mining operations and the product thereof;

Mining.

- (g) the declaration of any partnership proved to exist between any persons, the taking of accounts relating thereto, the determination of contributions between the partners therein, and the settlement of all questions arising in relation thereto;
- (h) the dissolution of mining partnerships and the division of the property thereof between the parties entitled thereto either by sale, partition or otherwise, as may be agreed between the parties or as the warden's court, in case of dispute, may order;
- (i) the partition, sale, disposal, or division of any mining property, or the proceeds thereof, held by two or more persons having conflicting interests therein;
- (j) the cessation or suspension by any party of any mining operations or works in connection therewith causing or likely to cause, injury to any other party,

and generally for the determination and settlement of all actions, claims, questions and disputes properly brought before the warden's court, and for the enforcement and carrying out of any order previously made, and for awarding or apportioning costs in any such proceedings.

(2) The costs of all proceedings in the warden's court under this Act shall be in the discretion of the warden and the amount thereof may be determined by the warden or taxed, as the warden may direct.

(3) A warden's court at any stage of any proceedings pending therein may, of its own motion, or on the application of any party to those proceedings, order—

- (a) the adding, joining, substituting, or striking out of any party in, to, for or from those proceedings;

- (b) any person having the possession, custody, or control of any minerals or other chattels to which those proceedings relate, to deposit the minerals or chattels with such person at such time and place as is specified in the order pending any further order with respect thereto;
- (c) the valuation, sale or other disposal of any such mineral or such chattels of any person;
- (d) the appropriation and delivery of any such minerals or chattels or any portion or part thereof or proceeds thereof, to any person in or towards the satisfaction of any order made against the owner thereof for the payment of any sum of money;
- (e) the seizure of any such minerals or chattels by any bailiff or other person specified in the order and the detention thereof pending any further order with respect thereto;
- (f) the cessation or suspension at any time and from time to time of any mining operations or works, or the carrying on thereof under the direction or control of some person appointed by the warden's court, for such period as seems necessary to the court;
- (g) that any person shall do, or refrain from doing, as the case may require, any such act or thing upon or in relation to any mining tenement or property the subject matter of any proceeding as the court thinks fit;
- (h) the measurement or survey of any land or mining tenement or part thereof, and the making of plans and drawings thereof by any person duly qualified for the particular purpose;
- (i) the inspection of any land, mine or works by any specified person, and the taking of samples of any mineral;
- (j) the taking of accounts by any specified person in relation to any mining partnership or to the respective shares or interests of any person interested in any mining property, mining tenement or mineral;

- (k) the payment to any person or into court of any sum of money, or the giving of security therefor, for or towards the expenses of carrying out or giving effect to any such order, or for the payment of costs,

and any such order may be made upon such terms or conditions as to costs, compensation, security or otherwise, as the court thinks fit.

(4) Without affecting the exercise by the court of its other powers, the power conferred by paragraph (g) of subsection (3) of this section may be exercised by the court of its own motion or on the application of any person prior to the commencement of an action or other proceeding in the court, if the court is satisfied that the applicant has sufficient grounds for making the application.

(5) Subject to this Act and without affecting the jurisdiction of a warden's court, a warden's court or the warden, as the case may require, has and may exercise in relation to all matters relating to any civil proceeding under this Act the like powers and authorities as are conferred upon the Supreme Court or a Judge thereof.

(6) In all respects, except as expressly provided by or under this Act, the practice and procedure of a warden's court as a court of civil jurisdiction shall be the same as the practice and procedure of a Local Court established under the Local Courts Act 1904, in like matters.

Summary
determina-
tion by warden
by consent.

135. (1) Upon the request in writing of all parties to a dispute arising under this Act the warden, or in his absence the mining registrar if the parties so agree, may hear and determine the question in dispute, forthwith or at any time or place which he may appoint without requiring any formal proceedings to be taken.

(2) An order made by the warden or mining registrar in a case to which subsection (1) of this section refers has the same force and effect as if made upon formal proceedings by a warden in a warden's court, and the order is final and conclusive, and not subject to appeal.

(3) The warden or the mining registrar, as the case requires, shall keep a record, in a register kept for the purpose, of every matter determined under this section by him and of his decision thereon.

136. (1) Subject to this Act the practice and procedure of a warden's court shall be governed by the rules of court made by the Governor and until provision is made by rules of court, or where no provision, or insufficient provision is made by this Act or the rules of court in relation to any act, matter or thing, the rules of court of a Local Court established under the Local Courts Act 1904, for the time being in force, so far as applicable, apply to the warden's court, but without limiting the jurisdiction conferred by this Act on a warden's court.

Practice and procedure in warden's court.

(2) The rules of court may provide in particular that the appropriate provisions of the Justices Act 1902, and of the Local Courts Act 1904, with such modifications as may be necessary or desirable and specified in the rules of court, apply in respect of judgments and orders of the warden's court.

137. (1) Where any party to any proceedings under this Act requests the warden so to do, the warden shall cause the evidence of all witnesses examined in the proceedings to be committed to writing as the evidence is taken.

Records of evidence.

(2) The evidence shall be read over to the witness at the conclusion of his examination, and the record of the evidence shall be signed by the warden and the witness.

(3) When a request is made under subsection (1) of this section, after the hearing of the proceedings has commenced, the request shall apply only to the evidence taken after the request has been made.

(4) Any party to any proceedings wherein the evidence of a witness has been recorded in accordance with this section, is entitled to obtain a copy thereof upon payment of the prescribed fee.

(5) Each order and decision of a warden's court shall be reduced to writing, and signed by the warden who made the order or gave the decision, and shall be recorded in a register kept for the purpose.

(6) Any person may obtain a copy of the order or decision referred to in subsection (5) of this section, upon payment of the prescribed fee.

Mode of trial.

138. (1) The hearing of all proceedings in a warden's court shall be in open court, at the time and place appointed therefor, and all evidence shall be taken on oath, for which purpose a warden, the mining registrar or other person acting as the clerk of the warden's court is empowered to administer an oath.

(2) Where a warden's court, for any reason cannot be held at the time and place so appointed, the warden or in his place the mining registrar, may adjourn it to such time and place as the warden or the mining registrar, as the case may be, appoints.

(3) A warden's court at any time may adjourn the hearing of any proceedings in such manner and upon such terms as to costs or otherwise, as the court thinks fit.

(4) A warden may, of his own motion, at any time during the hearing of any proceedings in the warden's court, call any expert witness to give evidence in relation to any technical matter arising in the course of those proceedings, but before doing so the warden shall give to each party to the proceedings reasonable notice of his intention so to do.

Contempt of Court.

139. (1) Where a person in or during the course of any proceedings in a warden's court insults or threatens the warden or any officer of the court, or interrupts or obstructs the proceedings of the court, or in any other manner is guilty of any contempt in the face of the court, the warden may direct any officer of the court, or any police officer to take such person into custody and to detain him until the rising of the court or until further order.

(2) At any time before the rising of the court the warden may direct such person to be brought before the court, and may impose upon him a fine not exceeding one hundred dollars or a sentence of imprisonment not exceeding fourteen days or both the fine and the imprisonment.

(3) When a person fails to pay any fine imposed under subsection (2) of this section the warden may

order that person to be imprisoned for a term not exceeding fourteen days.

(4) At any time before or after the making of any order under this section, the warden may accept an apology from the offender and may discharge the order, if any, previously made and release the offender.

140. (1) Every order made by a warden's court under this Act for the payment of money by any person may be enforced by execution in the prescribed manner upon any property of that person.

Enforce-
ment of orders
for payment,
etc.

(2) Upon the oath of any party to any proceedings in a warden's court that any person has disobeyed any order lawfully made in those proceedings (not being an order for the payment of money only) the warden may summon that person to show cause why he should not be punished for disobeying the order.

(3) Upon the return of the summons the warden may impose on the person so summoned a penalty not exceeding two hundred dollars, and a further penalty not exceeding twenty-five dollars for each day during which he fails to obey the order, unless the person satisfies the warden that his disobedience of the order was due to a cause beyond his control.

(4) Where upon the hearing of the summons to which subsection (2) of this section refers it appears to the warden that any party to the proceedings has suffered damage on account of the failure of the person to comply with the firstmentioned order, the warden may order that the whole or any part of any penalty imposed under subsection (3) of this section shall be paid to that party.

(5) A penalty imposed under subsection (3) of this section is recoverable by execution upon the property of the person ordered to pay the penalty and warrants of execution may be issued by the warden or the mining registrar for that purpose.

141. (1) Where in any proceedings in a warden's court under this Act, an order is made for the delivery to any person of possession of any land, mining tenement, minerals or chattels, and the person required by that order to deliver up possession thereof refuses or neglects so to do, the

Warrant for
recovery of
possession.

warden or the mining registrar, by warrant in the prescribed form, may authorize any bailiff of any warden's court or Local Court established under the Local Courts Act 1904, or any police officer or other person specified, to eject that person from the land or mining tenement, or to seize and take the minerals or chattels, and to put such bailiff, police officer or other person in possession.

(2) The costs of and incidental to the warrant and the proceedings thereon shall be recoverable as costs in the cause or matter in relation to which the costs and expenses are incurred.

Informality
and
amendment.

142. (1) No misnomer or inaccurate description of any person or place or any process or document in any proceedings in a warden's court vitiates the process or document or the proceedings if the person or place is named or described therein so as to be commonly known.

(2) No proceedings in a warden's court shall be dismissed or vitiated by any informality, but the warden's court has power at any time to amend all defects and errors in any proceedings, whether there is anything in writing to amend or not.

(3) The power to amend as provided in subsection (2) of this section, may be exercised with or without an order as to costs being made as the court thinks fit.

(4) Upon due application in that behalf being made, the court shall allow all such amendments as may be necessary for determining in the existing proceedings in the court the real question in issue between the parties thereto.

(5) Any amendments referred to in subsections (2) and (4) of this section may be allowed upon such terms and conditions as to an adjournment of the proceedings or otherwise, as the court thinks just.

Notice of
injunction
affecting
mining
tenement to be
notified.

143. Where a warden grants any injunction with respect to any mining tenement, the warden shall notify forthwith the Under Secretary of the fact that the injunction has been granted and of the particulars thereof, and on receipt of such notification an entry of the particulars shall be made in the register kept in accordance with the

regulations against the mining tenement to which the injunction relates.

144. Any affidavit to be used in a warden's court or before a warden may be sworn before any commissioner for taking affidavits in the Supreme Court, any warden, mining registrar or justice of the peace.

By whom affidavits may be taken.

145. A document purporting to be a copy of a judgment, order or decision of a warden, or any document filed by, or any entry in a register kept in accordance with the regulations and certified by the Minister, the warden or the mining registrar, as the case requires, as a true copy thereof shall be admitted in all courts as evidence of the judgment, order, decision, document or entry and the signature of the Minister, warden and every mining registrar shall be judicially noticed.

Proof of judgment, order or decision of warden.

146. (1) The warden may reserve, at any stage of any proceedings under this Act, any question of law for the opinion of the Supreme Court thereon.

Reservation of questions of law: hearing and determination thereof.

(2) The question of law shall be submitted to the Supreme Court in the form of a special case stated by the warden and transmitted by him to the Registrar of the Supreme Court.

(3) The Registrar of the Supreme Court shall set down the case for consideration by a Judge, and shall forthwith notify the warden of the time and place appointed therefor.

(4) The warden shall give notice of the time when, and the place where the Judge shall consider the case to each of the parties concerned who is entitled to be heard by the Judge.

(5) The Judge, at any stage of the matter, may—

- (a) remit the case to the warden for amendment;
- (b) direct that the case be set down for argument before the Full Court of the Supreme Court; or
- (c) proceed to hear and determine the question so submitted,

and the Full Court or Judge, as the case may be, may give such direction or opinion as to the question so submitted, as the Full Court or the Judge thinks proper.

(6) Every such direction or opinion of the Full Court or the Judge, shall be transmitted by the registrar of the Supreme Court to the warden who shall act in accordance therewith.

(7) When reserving any question of law pursuant to this section or at any time before acting in accordance with the direction or opinion of the Full Court or the Judge as provided in this section, the warden, on the application of any party to the proceedings in relation to which the question of law is to be or was so submitted, may make such order for—

- (a) an injunction;
- (b) the appointment of a receiver;
- (c) the payment of money into court; or
- (d) giving security for damages and costs or otherwise,

as he thinks fit and on such terms or conditions as he thinks fit.

Appeal to the
Supreme
Court.

147. (1) Except as provided in section 151, any party aggrieved by any final judgment, determination or decision of a warden's court may appeal therefrom to the Supreme Court.

(2) Every appeal shall be commenced by notice in the prescribed form, filed in the warden's court within twenty-one days after the judgment, determination or decision appealed against was given.

(3) The notice of appeal shall be served within the period referred to in subsection (2) of this section upon the warden and upon the respondent or his solicitor and shall set forth the grounds upon which the appeal is made.

(4) The appellant shall when filing the notice of appeal, lodge with the warden a sum of one hundred and fifty dollars as security for or towards the costs of the appeal.

(5) The sum lodged pursuant to subsection (4) of this section—

- (a) shall be held by the warden until the appeal is determined, withdrawn or abandoned; and
- (b) shall be applied by the warden in or towards payment of any costs to which the respondent may be entitled,

and if any balance of the sum remains in his hands it shall be refunded to the appellant.

(6) A notice of appeal filed under this section does not operate as a stay of proceedings, but the warden, on the application of any party to the proceedings, may make such order for the stay of proceedings, for an injunction or for the appointment of a receiver, and for the giving of security as he thinks necessary in the circumstances.

(7) When an appeal is withdrawn or abandoned an order staying proceedings lapses.

148. (1) Where the grounds of appeal include any matter of fact, the Supreme Court may order, or the parties to the appeal may agree, that the appeal shall be by way of rehearing before a Judge.

Procedure on appeal.

(2) Except as provided in subsection (1) of this section, every appeal shall be heard and determined upon the proceedings in the warden's court.

(3) Upon the hearing of an appeal the notes, depositions, minutes of evidence, exhibits and other documents taken or filed in the warden's court or copies thereof certified to be correct by the warden or mining registrar, may be used by the Supreme Court or any party to the appeal.

(4) All or any of the documents and things referred to in subsection (3) of this section shall be transmitted by the warden to the Registrar of the Supreme Court if and when they are required by the appellant for the purpose of the appeal.

(5) The appellant shall, within fourteen days after filing notice of appeal, set down the appeal for hearing by filing in the Central Office of the Supreme Court at Perth a copy of the notice of appeal, the notes of evidence, depositions and exhibits in the

original proceedings and the judgment, determination or decision appealed from, certified as correct by the warden.

(6) The Registrar of the Supreme Court shall notify forthwith the result of each appeal to the warden and the warden—

- (a) shall cause the result of the appeal to be recorded; and
- (b) shall give effect where necessary to any order or direction made or given by the appellate court thereon.

Power of
Supreme Court
on appeal.

149. Upon the hearing of any appeal under this Act the Supreme Court—

- (a) may allow for any reason that it thinks sufficient, an appellant on such terms as to costs, postponement, or otherwise as it thinks fit, to rely upon a ground of appeal not set forth in the notice of appeal;
- (b) may confirm the order, determination or decision in respect of which the appeal is made and may dismiss the appeal;
- (c) may reverse, modify or vary such order, determination, or decision and may make such order in lieu thereof as it may think just;
- (d) may direct any issue to be tried in such manner, and at such time and place as it may think fit;
- (e) may remit any case to the warden's court to be reheard;
- (f) may make any order or give any direction consequential upon or necessitated by the order that it may think necessary; and
- (g) may make such order as to costs of the appeal or of the proceedings in the warden's court to which the appeal relates, as it thinks fit,

and may impose in respect of any order made pursuant to this section such terms and conditions as it thinks just.

150. Where an appellant withdraws his appeal or fails to prosecute it as provided by this Act, the respondent may apply to a Judge on summons for the dismissal of the appeal and the Judge—

Withdrawal or failure to prosecute appeal.

- (a) may dismiss the appeal; or
- (b) may, on the application of the appellant, permit him to prosecute the appeal within such period and on such terms and conditions as the Judge thinks fit,

and in either case the Judge may make an order for the payment by the appellant of the costs of and incidental to the summons.

151. There shall be no right of appeal under this Part—

Limitation of right of appeal.

- (a) where at or before the hearing of any proceedings in the warden's court the parties thereto have agreed by a memorandum in writing lodged in the warden's office, that the decision of the warden's court therein shall be final;
- (b) in respect of any decision, order or recommendation of the warden or of the Minister upon any application for a mining tenement, the forfeiture thereof, or exemption from expenditure or other conditions;
- (c) in respect of any matter in which it is provided by this Act that the determination of a warden or mining registrar is final and conclusive and not subject to appeal.

PART IX.—MISCELLANEOUS AND REGULATIONS.

152. All members of the Police Force of the State shall, when required by the warden so to do, act in aid of the warden in the exercise and discharge by him of his powers, functions and duties under this Act.

Police to assist warden.

153. Any person who has not attained the age of eighteen years may sue and be sued in a warden's court in respect of any matter within the jurisdiction of that court as if he were of full age and any mining

Minor capable of being sued and of suing.

tenement held by him may be taken in execution and sold under legal process.

General
penalty.

154. (1) A person who acts in contravention of or fails to comply in any respect with any provision of this Act commits an offence against this Act.

(2) A person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable to a fine of five hundred dollars or to imprisonment for a period of three months or to both the penalty and imprisonment and if the offence is a continuing one, to a fine not exceeding one hundred dollars for every day or part of a day during which the offence has continued.

(3) Where a body corporate is convicted of an offence against this Act, every director and every other officer of the body corporate concerned in the management thereof is guilty of the offence if it is proved that the act or omission that constituted the offence took place with his authority, permission or consent.

(4) Where any offence is committed by a person by reason of his failure to comply with any provisions of this Act by or under which he is required or directed to do anything within a particular period, that offence, for the purposes of subsection (2) of this section, shall be deemed to continue so long as the thing so required or so directed to be done by him remains undone, notwithstanding that the period has elapsed.

Offence of
mining without
authority.

155. (1) Subject to subsection (2) of this section, a person shall not carry on mining operations on any land unless he is duly authorized under this or any other Act to do so.

Penalty: One thousand dollars and if the offence is a continuing one, to a further fine of two hundred dollars for every day or part of a day during which the offence has continued.

(2) Subsection (1) of this section does not apply in respect of mining operations carried on on any private land with the consent of the owner of the land if he is the owner of the mineral being mined on the land.

(3) A person who is convicted of an offence under this section is not thereby relieved from any other obligation or liability that he may have incurred by reason of having carried on unauthorized mining operations.

(4) A person who owns minerals in their natural state may take proceedings in any court of competent jurisdiction for the recovery of those minerals or their value from any person who unlawfully mines the minerals.

156. (1) A person who—

Offences.

- (a) takes or removes from the mining tenement of any other person any mineral or other mining product without the authority of that other person;
- (b) assaults, insults, obstructs or resists—
 - (i) any warden or other officer; or
 - (ii) any person duly authorized under this Act to perform any act in the performance of any duty under this Act, or in the performance of the Act so authorized;
- (c) when lawfully evicted or removed under this Act from any mining tenement, re-enters the mining tenement or retakes possession thereof; or
- (d) prevents, resists or obstructs the taking or diverting of any water or the doing of any other act by any person acting in pursuance of an order of the warden's court,

commits an offence against this Act.

157. A person shall not, without lawful excuse, obstruct or hinder the holder of a mining tenement in the reasonable execution of any right conferred on him thereby.

Obstruction of persons authorized to mine under this Act.

Penalty: Two hundred dollars.

158. Any member of the Police Force or any person authorized for the purpose by a warden may remove from any mining tenement any person found mining thereon or taking or removing any mineral or other mining product therefrom without the

Removal of persons unlawfully mining.

authority in either case of the holder of the mining tenement or other lawful authority under this Act, and may use such force as is reasonably required for the purpose.

Disputes
between
licensees and
other persons.

159. (1) Where a dispute arises between a licensee or permittee under the Petroleum Act 1967 and any person duly authorized to mine or search for minerals by virtue of a mining tenement or other authority under this Act or the repealed Act concerning any operations carried out or proposed to be carried out by the licensee or permittee or such person on any land within the boundaries of the area in respect of which the licence or permit was granted to the licensee or permittee, the licensee or the permittee or such person or both of them may refer the matter to the warden for inquiry and report, and the warden shall, as soon as practicable after such reference, inquire into the dispute and report thereon to the Minister.

(2) Upon receipt of the warden's report the Minister may make such order and give such directions to the licensee or the permittee or such person or to both of them as in the public interest and in the circumstances of the case may seem to him to be just and equitable and by such order may direct the payment by the licensee or the permittee or such person or both of them of any costs and expenses incidental to the conduct of the inquiry.

(3) If the licensee or the permittee or such person fails or neglects to comply with any such order or directions, the Minister may cancel the licence, the permit or the mining tenement or other authority (if any) held by such person.

Saving of civil
remedies.

160. (1) Nothing in this Act shall prejudice, abridge or take away any right of action that any person may have in respect of any act or omission of another unless that act or omission occurs in pursuance of any authority lawfully given under this Act.

(2) The recovery of any penalty under this Act does not affect any such right of action as is referred to in subsection (1) of this section.

161. (1) In any proceedings for an offence against this Act, an averment in the complaint that any land referred to therein is land— Evidentiary provisions.

- (a) open for mining under this Act;
- (b) exempt from mining operations in pursuance of this Act;
- (c) to which sections 23, 24, 25, or 26 apply,

shall be deemed to be proved in the absence of evidence to the contrary.

(2) In any proceedings a document purporting to be a mining tenement shall be accepted as such in the absence of evidence to the contrary.

162. (1) The Governor may make such regulations as are contemplated by this Act, or as he deems necessary or expedient for the purposes of this Act and any such regulations may confer upon a prescribed person or body specified in the regulations a discretionary authority. Regulations.

(2) Without limiting the generality of the powers conferred by subsection (1) of this section, those regulations may—

- (a) prescribe and regulate the powers, functions and duties of wardens, mining registrars and of any officer or other person appointed under this Act or employed or acting in the administration of this Act;
- (b) prescribe and provide for the payment of fees under this Act and the purposes for which they are to be paid;
- (c) prescribe any forms for the purposes of this Act and prescribe the manner in which any of those forms are to be executed;
- (d) prescribe the manner in which land is to be marked out for the purposes of making applications for mining tenements;
- (e) prescribe the rent payable in respect of any mining tenement or class of mining tenement;
- (f) prescribe the times at which rent and royalties shall be paid under this Act and the manner in which they are to be paid;

- (g) prescribe the manner in which, and the terms and conditions subject to which, mining tenements may be surrendered;
- (h) prescribe the expenditure conditions subject to which a mining tenement or any class of mining tenement shall be held, and the conditions on which exemption therefrom may be applied for, and granted;
- (i) prescribe the persons or class of persons on whom copies of applications for mining tenements or any other documents relating thereto are to be served;
- (j) provide for the compilation of mining statistics and for that purpose require holders of mining tenements to supply the Under Secretary with such particulars as may be prescribed;
- (k) provide for the furnishing of returns and records for the purposes and by the persons specified in the regulations;
- (l) provide for any matter relating to the surveying of mining tenements, the registration of mining tenements and documents affecting them, the keeping by prescribed persons of a register of mining tenements and any register to be kept by a mining registrar or other prescribed persons;
- (m) provide for such information to be supplied to the Under Secretary by holders of mining tenements in respect of boring operations for water or water obtained while boring for other purposes as may be prescribed;
- (n) provide for the protection of land upon which mining operations are conducted and require the rehabilitation to the satisfaction of the Minister of land disturbed by the mining operations;
- (o) prescribe the covenants and conditions that may be included in mining tenements and the exemption from the performance of those covenants or the operation of those conditions;

- (p) prescribe the entitlements of holders of mining tenements to water or any other thing, the order of priority thereto among those holders and the regulation of available supplies to those holders; and the cutting, construction, use and maintenance of races and dams upon Crown land;
- (q) prescribe the mode of assigning, transferring, sub-letting, encumbrancing or otherwise dealing with mining tenements, the enforcement or discharge of any encumbrance thereon, the rights and obligations of an encumbrancer and an encumbrancee thereof or of an assignee, transferee or sub-lessee thereof; and the order of priority of two or more encumbrances;
- (r) regulate the practice and procedure in warden's courts, the sittings of those courts, the duties of the officers thereof; the fees and costs of the proceedings therein and of appeals therefrom and the allowances to witnesses in those courts;
- (s) regulate matters in connection with partnerships in mining;
- (t) provide for a refund of fees paid under this Act.

(3) The regulations may prescribe a fine not exceeding five hundred dollars for an offence against any regulation and if the offence is a continuing one, a fine not exceeding one hundred dollars for each day or part thereof during which the offence has continued.

(4) Any regulation may be of general or limited application according to time, place or circumstances and may require a matter affected by it to be as approved by, or to the satisfaction of, a person or body specified in the regulations or a class of person or body so specified.

(5) A regulation may require any matter or thing to be verified by statutory declaration.

FIRST SCHEDULE.

Part I.

Mining Act, 1904.	(No. 15 of 1904).
Mining Act Amendment Act, 1919.	(No. 27 of 1919).
Mining Act Amendment Act, 1920.	(No. 50 of 1920).
Mining Act Amendment Act, 1921.	(No. 22 of 1921).
Mining Act Amendment Act, 1922.	(No. 12 of 1923).
Mining Act Amendment Act, 1932.	(No. 38 of 1932).
Mining Act Amendment Act (No. 2), 1932.	(No. 45 of 1932).
Mining Act Amendment Act, 1933.	(No. 7 of 1933).
Mining Act Amendment Act, 1937.	(No. 29 of 1937).
Mining Act Amendment Act, 1937.	(No. 56 of 1937).
Mining Act Amendment Act, 1945.	(No. 48 of 1945).
Mining Act Amendment Act, 1948.	(No. 84 of 1948).
Mining Act Amendment Act, 1950.	(No. 26 of 1950).
Mining Act Amendment Act (No. 2), 1952.	(No. 22 of 1952).
Mining Act Amendment Act, 1952.	(No. 33 of 1952).
Mining Act Amendment Act, 1955.	(No. 16 of 1955).
Mining Act Amendment Act, 1957.	(No. 60 of 1957).
Mining Act Amendment Act, 1961.	(No. 23 of 1961).
Mining Act Amendment Act, 1963.	(No. 82 of 1963).
Mining Act Amendment Act (No. 2), 1963.	(No. 83 of 1963).
Mining Act Amendment Act (No. 3), 1963.	(No. 84 of 1963).
Mining Act Amendment Act (No. 2), 1964.	(No. 45 of 1964).
Mining Act Amendment Act, 1965.	(No. 13 of 1965).
Mining Act Amendment Act, 1968.	(No. 53 of 1968).
Mining Act Amendment Act, 1969.	(No. 17 of 1969).
Mining Act Amendment Act, 1970.	(No. 33 of 1970).
Mining Act Amendment Act, 1971.	(No. 2 of 1971).
Mining Act Amendment Act (No. 2), 1971.	(No. 56 of 1971).
Mining Act Amendment Act, 1973.	(No. 1 of 1973).
Sluicing and Dredging for Gold Act, 1899.	(No. 43 of 1899).
Mining Tenements (Wartime Exemptions) Act, 1942.	(No. 4 of 1942).

Part II.

Local Government Act 1960-1978.	By substituting for the passage "section four of the Mining Act, 1904" in line six of paragraph (e) of the definition of "owner" in section 6, the passage "section 8 of the Mining Act, 1978".
Town Planning and Development Act 1928-1978.	By adding after paragraph (b) of subsection (1) of section 20 a paragraph as follows— (c) This subsection does not apply to the grant of a mining tenement according to the interpretation given to that expression by section 8 of the Mining Act, 1978.
Land Act 1933-1972.	1. By deleting paragraphs (c) and (d) of subsection (1) of section 106.

2. By deleting paragraph (2) of section 116.

3. By repealing section 118.

SECOND SCHEDULE (Section 4)

TRANSITIONAL PROVISIONS.

1. (1) Any land that is temporarily reserved from occupation under the repealed Act immediately before the commencing date shall continue to be so reserved on and after that date until the reservation of the land or portion thereof is cancelled by the Minister by instrument in writing under his hand, and while the land is so reserved (whether or not any authority to occupy, or right of occupancy of, the land granted under the repealed Act and in force in relation to the land immediately before the commencing date is in force by virtue of subclause (2) of this clause) a mining tenement shall not be granted under this Act in respect of the land without the consent in writing of the Minister.

Continuation of certain temporary reserves and rights of occupancy.

Substituted by No. 69 of 1981, s. 29.

(2) Any authority to occupy or right of occupancy of any land to which subclause (1) of this clause refers granted pursuant to the repealed Act and in force in relation to such land immediately before the commencing date, shall continue, subject to the terms and conditions upon which the authority or right was granted, to be in force on and after that date until—

- (a) the date on which such authority or right would have expired under the terms and conditions upon which it was granted; or
- (b) 6 months after the commencing date,

whichever date is the later.

(3) At any time before an authority to occupy or right of occupancy expires as provided in subclause (2) of this clause the holder thereof may, if he has not then failed to comply with the terms and conditions upon which the authority or right was granted, mark out in accordance with this Act, and/or make application to the Minister for, a prospecting licence or exploration licence over the land or any portion thereof to which the authority or right relates.

(4) Notwithstanding anything in this Act, the Minister shall, on receiving an application made under subclause (3) or (5) of this clause and on being satisfied that the applicant has complied with the terms and conditions referred to in subclause (3) of this clause, grant that application on such terms and conditions as he thinks fit.

(5) An application for the renewal of an authority to occupy or right of occupancy of any land—

- (a) to which subclause (1) of this clause refers; and
- (b) which expired before the commencing date,

which application was pending immediately before the commencing date, shall be dealt with as if the repealed Act had

not been repealed and the holder of any such authority to occupy or right of occupancy renewed as a result of that application may while that renewed authority or right is in force mark out in accordance with this Act the land the subject of that renewed authority or right, or apply to the Minister for a prospecting licence or exploration licence, or both so mark out and apply, in respect of the whole or part of the land to which that renewed authority or right relates.

Certain gold mining leases, coal mining leases and mineral leases to become mining leases.

2. Every gold mining lease, coal mining lease, or mineral lease granted under section 42 or 48 of the repealed Act and in force immediately before the commencing date, shall be deemed to be a mining lease granted under this Act, and shall, subject to this Act and, insofar as those terms and conditions and encumbrances are not inconsistent with this Act, subject to—

(a) the terms and conditions on which it was granted under section 42 or 48 of the repealed Act (other than a term or condition restricting the scope of the gold mining lease, coal mining lease or mineral lease concerned to certain minerals) and which were in force immediately before the commencing date; and

(b) any encumbrances to which it was subject under the repealed Act and which were in force immediately before the commencing date,

remain in force for the unexpired period for which it was granted or renewed under the repealed Act, and shall then expire, and while any such lease is in force the holder thereof has the right in priority to any other person to mark out in accordance with this Act and/or apply for a mining tenement under and in accordance with this Act in respect of the land or any part thereof which is the subject of such lease.

Rights conferred on holders of certain mineral claims and dredging claims.

3. (1) A mineral claim or dredging claim granted under the repealed Act and in force immediately before the commencing date shall remain in force, subject to that Act and as though that Act had not been repealed, for a period of 2 years after that date, and shall then expire.

(2) The holder of any such mineral claim or any such dredging claim as is referred to in subclause (1) of this clause may at any time while the claim is in force mark out as and/or make application under this Act for a prospecting licence or an exploration licence or a mining lease in respect of a single area that is constituted by all the land the subject of each mineral claim or mineral claims or dredging claim or dredging claims, and such licence or such lease shall, subject to this Act, be granted to him.

(3) Notwithstanding anything in subclause (1) of this clause, if an application for a prospecting licence, exploration licence or mining lease made under subclause (2) of this clause is pending immediately before the mineral claim or dredging claim held by the applicant expires under subclause (1) of this clause, that mineral claim or dredging claim continues in force until that application is finally disposed of under this Act.

4. Every miner's homestead lease, residential lease, residence area, business area or garden area granted under the repealed Act and in force immediately before the commencing date shall remain in force subject to that Act, and as though that Act had not been repealed, for a period of 5 years after that date and shall then expire, but if within that period an application is made therefor to the Minister for Mines and on the Minister for Mines being satisfied that the applicant is the due holder of a miner's homestead lease, residential lease, residence area, business area or garden area, as the case may be, and that such mining tenement is not at the date of the application liable to forfeiture under the repealed Act, and on the Minister for Mines issuing a certificate to that effect to the Minister for Lands, the Governor may grant under the Land Act 1933 to the applicant a fee simple or lease of the whole or any portion of the land comprising the miner's homestead lease, residential lease, residence area, business area, or garden area, as the case may be, as the Governor determines and on such terms and conditions as he determines, but he shall not grant a fee simple of such land unless in his opinion the land is substantially developed and improved; and, to give full effect to the object of this clause and the powers hereby conferred, the Land Act 1933 shall be read and construed with such modifications as are necessary and, without limiting the generality thereof, shall be read and construed with the following particular modifications—

Rights conferred on holders of certain miners' homestead leases, residential leases, residence areas, business areas and garden areas.

- (a) the substitution for subsection (2) of section 45A of the following subsection—

“ (2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may, subject to this section, be sold or leased. ” ;

- (b) the deletion of the proviso to section 116;
- (c) the deletion of section 135;
- (d) a power to dispose of land under Division (1) of Part V of the Land Act 1933 notwithstanding the land has not been declared open for selection under that Part.

5. A person holding a mining tenement immediately before the commencing date by virtue of the provisions of the repealed Act relating to miners' rights as then in force may continue to hold the mining tenement under and subject to this Schedule notwithstanding the repeal of those provisions.

Continuation of mining tenements held by virtue of miners' rights.

6. (1) Every machinery area, tailings area, quarrying area or water right granted under the repealed Act and in force immediately before the commencing date shall remain in force, subject to that Act and as though that Act had not been repealed, for a period of 3 years after that date or shall expire on a date on which it would have expired under the repealed Act, whichever happens first.

Temporary continuation of certain machinery areas, tailings areas, quarrying areas and water rights.

(2) The holder of—

- (a) a machinery area or tailings area in force by virtue of subclause (1) of this clause may, while the machinery area or tailings area is so in force, apply to the Minister for a general purpose lease in respect of all of the land to which the machinery area or tailings area relates;
- (b) a quarrying area in force by virtue of subclause (1) of this clause may, while the quarrying area is so in force, apply to the Minister for a mining lease in respect of all of the land to which the quarrying area relates; or
- (c) a water right in force by virtue of subclause (1) of this clause may, while the water right is so in force, apply to the Minister for a miscellaneous licence in respect of all of the land to which the water right relates.

(3) On receiving an application made under subclause (2) of this clause, the Minister shall grant to the applicant on such terms and conditions as the Minister may determine the general purpose lease, mining lease or miscellaneous licence applied for or, after consultation with the applicant, such other mining tenement as is in the opinion of the Minister most appropriate.

(4) Notwithstanding anything in subclause (1) of this clause, if an application for a general purpose lease, mining lease or miscellaneous licence made under subclause (2) of this clause is pending immediately before the machinery area, tailings area, quarrying area or water right, as the case requires, held by the applicant expires under subclause (1) of this clause, that machinery area, tailings area, quarrying area or water right continues in force until that application is finally disposed of under this Act.

Continuation of certain licences to treat tailings.

7. (1) A licence to treat tailings which was granted under the repealed Act and in force immediately before the commencing date remains in force, and may, subject to subclause (2) of this clause, be renewed from time to time under the repealed Act as if that Act had not been repealed.

(2) An application for the renewal under subclause (1) of this clause of a licence to treat tailings shall be made to the Minister and the Minister may exercise in relation to that application the powers conferred on the Governor by the repealed Act in relation to applications for the renewal of licences to treat tailings.

(3) An application for a licence to treat tailings or for the renewal of such a licence, which application was pending immediately before the commencing date, shall be disposed of, notwithstanding anything in subclause (2) of this clause, as if the repealed Act had not been repealed.

Disposal of pending applications for mining tenements.

8. (1) Where an application for a mining tenement under the repealed Act or the regulations made thereunder (not being an application in connection with section 276 of the repealed Act or an application for—

- (a) a miner's homestead lease;

- (b) a residential lease;
- (c) a residence area;
- (d) a business area; or
- (e) a garden area),

is pending on the commencing date, that application shall be disposed of as if the repealed Act had not been repealed.

(2) Until an application referred to in subclause (1) of this clause has been finally disposed of, the land to which that application relates is not open for mining by any person other than the applicant.

(3) When a mining tenement is granted under the repealed Act by virtue of subclause (1) of this clause as a result of an application referred to in that subclause—

- (a) the mining tenement is, subject to paragraph (b) of this subclause, deemed for the purposes of this Schedule to have been granted under the repealed Act; and
- (b) the holder of the mining tenement may, before the mining tenement expires or within a period of 2 years from the date on which the mining tenement was so granted, whichever is the sooner, apply for a mining tenement of the kind for which he would have been entitled to apply had the first-mentioned mining tenement been granted under the repealed Act.

(4) Notwithstanding anything in this clause, if an application under paragraph (b) of subclause (3) of this clause is pending immediately before the expiry of the mining tenement held by the applicant or of the period of 2 years from the date on which that mining tenement was granted under that paragraph, as the case requires, that mining tenement continues in force until that application is finally disposed of under this Act.

(5) A person who—

- (a) has marked out a mining tenement under the repealed Act not more than 10 days; but
- (b) has not lodged an application for the mining tenement referred to in paragraph (a) of this subclause,

before the commencing date is for the purposes of this Act deemed, if he lodges that application not more than 10 days after the commencing date, to have lodged that application immediately before the commencing date.

(6) An application for a miner's homestead lease, a residential lease, a residence area, a business area or a garden area, which application was pending immediately before the commencing date, lapses on the commencing date and any fees paid in respect of that application shall be refunded to the applicant.

Rights of
holders of
certain
prospecting
areas.

9. (1) A prospecting area that is in existence immediately before the commencing date shall continue in existence for the period for which it would have remained in force if the repealed Act had not been repealed, and shall then cease to be in force.

(2) The holder of a prospecting area which continues in existence by virtue of subclause (1) of this clause may, before the expiry of the prospecting area, apply for a mining lease under this Act in respect of the land subject to that prospecting area.

(3) Regulation 55 (15) of the Regulations made under the repealed Act*, as amended, applies with necessary modifications to an application made under subclause (2) of this clause as if that application were an application referred to in that regulation.

Transitional
provisions
relating to
mortgages.

10. (1) Subject to subclause (2) of this clause, if—

- (a) a mining tenement (in this subclause and in subclause (2) of this clause referred to as the “new mining tenement”) is granted under this Schedule or section 5 (3) in place of one or more mining tenements (in this subclause and in subclause (2) of this clause referred to as the “old mining tenement” or the “old mining tenements”, as the case requires) granted under the repealed Act or in accordance with an agreement referred to in section 5 (3); and
- (b) the old mining tenement or any interest therein was, immediately prior to its expiry, the subject of a mortgage or mortgages or the old mining tenements or any interests therein were, immediately prior to their expiry, the subject of the same mortgage or mortgages, as the case requires,

the new mining tenement shall be deemed to be the subject of the mortgage or mortgages referred to in paragraph (b) of this subclause as if the new mining tenement had been referred to therein, and a memorandum of that mortgage or those mortgages shall be made and endorsed on the documents of title to the new mining tenement and noted in the appropriate registers of the Department of Mines and there shall be endorsed on the original or originals of that mortgage or those mortgages the fact of it or their having been registered as an encumbrance or encumbrances against the new mining tenement.

(2) If 2 or more mortgages were registered against the old mining tenement or the old mining tenements, as the case requires, the memorandum thereof shall be made and endorsed on the documents of title to the new mining tenement, and noted in the appropriate registers of the Department of Mines, in the order in which they appeared so registered immediately before their expiry and they shall have priority accordingly.

*Reprinted in the *Government Gazette* on 29 January 1969 at pages 293-400.

(3) The holder of a mining tenement under the repealed Act (in this subclause called "the old mining tenement") who is empowered by this Schedule or by section 5 (3) to apply for a mining tenement under this Act (in this subclause called "the new mining tenement") in substitution for the old mining tenement shall, if the old mining tenement is the subject of an existing mortgage and that holder lodges an application for the new mining tenement, forthwith notify the mortgagee concerned of that lodging.

(4) An application for a mining tenement under this Act in substitution for a mining tenement held by the applicant under the repealed Act, the holding of which second-mentioned mining tenement entitles the applicant to apply under this Schedule or section 5 (3) for the first-mentioned mining tenement, shall be deemed for the purposes of Part VI of this Act to be an interest in a mining tenement.

(5) An encumbrance, not being a mortgage, on a mineral claim or dredging claim—

- (a) granted under the repealed Act, whether before or after the commencing date; and
- (b) the holder of which is entitled to apply, and does apply, under this Schedule or section 5 (3) for a mining tenement under this Act in substitution for that mineral claim or dredging claim,

lapses on the determination of that mineral claim or dredging claim, but the person who has the benefit of that encumbrance may apply for the registration of that encumbrance against the application for the mining tenement under this Act referred to in paragraph (b) of this subclause and the application for the registration of that encumbrance against that application shall be granted.

(6) When the mining tenement referred to in paragraph (b) of subclause (5) is granted, an encumbrance registered against the application for that mining tenement shall by virtue of this subclause be registered against that mining tenement without any further application by the person who has the benefit of that encumbrance.

11. A person holding office under the repealed Act immediately before the commencing date shall be deemed to have been appointed to the corresponding office under this Act, except that the Under Secretary shall cease to be a warden.

Officers.

12. Each warden's court and warden's office in existence immediately before the commencing date shall be continued under this Act as though it had been established thereunder and with the mineral field or district of a mineral field then assigned thereto, but where a goldfield or a district of a goldfield is assigned thereto at that time, that goldfield or that district shall be deemed to be a mineral field or district of a mineral field.

Wardens' courts and warden's offices.

13. A person making an application for a mining tenement to the Minister under this Schedule or section 5 (3) shall lodge that application with the mining registrar.

Lodging of certain applications.

References to
repealed Act.

14. A reference in any Act, regulation, rule, by-law, instrument or document to the repealed Act, or any provision thereof, shall, unless the contrary intention appears, be read and construed as a reference to this Act, or the corresponding provision, if any, of this Act.

Prevention of
anomalies
during
transitional
period.

15. If any difficulty arises with respect to the foregoing transitional provisions in this Schedule the Governor may by Order in Council—

- (a) make such modifications in those provisions as may appear to him necessary for preventing anomalies during the period affected by the transition to the provisions of this Act from the provisions of the repealed Act; and
- (b) make such incidental, consequential and supplementary provisions as may be necessary or expedient for the purpose of giving full effect to those transitional provisions,

and any such modifications or provisions made by the Governor have the same force and effect as though they were enacted in this Act.

S. 27.

THIRD SCHEDULE.

East Locations 36, 41, 48, 51, 53, 55, 57, 59, 32, 35, 39, 40, 42, 44, 45, 50, 37, 61, 62.