

# ACTS AMENDMENT (MINING).

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No. 69 of 1981.

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AN ACT to amend the Mining Act 1978, the Petroleum Act 1967-1972 and the Petroleum (Registration Fees) Act 1967.

[Assented to 30 October 1981.]

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

## PART I.—PRELIMINARY.

1. This Act may be cited as the *Acts Amendment (Mining) Act 1981*. Short title.

## PART II.—MINING ACT 1978.

2. (1) In this Part the Mining Act 1978 is referred to as the principal Act. Citation. Act No. 107 of 1978.
- (2) The principal Act as amended by this Act may be cited as the Mining Act 1978-1981.

Section 3  
amended.

3. Section 3 of the principal Act is amended by—

- (a) deleting the subsection designation “(1)”;  
and
- (b) repealing subsection (2).

Section 4  
amended.

4. Section 4 of the principal Act is amended by deleting “clauses 1 and 2 of”.

Section 5  
amended.

5. Section 5 of the principal Act is amended—

- (a) by repealing subsection (2) and substituting the following subsection—

“ (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- (b) to whom an existing right of occupancy has been granted under section 276 of the repealed Act or that agreement, or under both section 276 of the repealed Act and that agreement, as the case requires, may continue, subject to that agreement, to exercise that right of occupancy,

as though the repealed Act had not been repealed. ” ;

(b) in subsection (3) by deleting—

(i) “Subject to such agreement” and substituting the following—

“ Subject to the relevant agreement referred to in subsection (1) of this section ” ; and

(ii) “with such agreement” and substituting the following—

“ with that agreement ” .

6. Section 8 of the principal Act is amended— Section 8 amended.

(a) in the definition of “expenditure conditions” in subsection (1) by deleting “the employment of men or”;

(b) in the definition of “minerals” in subsection (1) by inserting—

(i) after “includes gravel, shale”, the following—

“ (including oil shale) ” ;

and

(ii) after “shale” in paragraph (b), the following—

“ (not being oil shale) ” ;

(c) by inserting, after the definition of “occupier” in subsection (1), the following definition—

“ “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; ” ;

(d) in the definition of “the repealed Act” in subsection (1) by deleting “—1978”; and

(e) by inserting, after subsection (1), the following subsections—

“ (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. ” .

Section 8A  
inserted.

7. The principal Act is amended by inserting, after section 8, the following section—

Rights in  
respect of  
oil shale  
or coal.

“ 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. ” .

8. Section 19 of the principal Act is amended by Section 19  
amended.  
repealing—

(a) subsection (1) and substituting the following subsection—

“ (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. ”; and

(b) subsections (4), (5) and (6) and substituting the following subsections—

“ (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. ” .

Section 29  
repealed and  
substituted.

9. Section 29 of the principal Act is repealed and the following section is substituted—

Granting of  
mining  
tenements  
in respect  
of private  
land.

“ 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. ” .

Section 30  
repealed and  
substituted.

10. Section 30 of the principal Act is repealed and the following section is substituted—

Granting of  
permits in  
respect of  
private land.

“ 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.

(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. ” .

11. Section 32 of the principal Act is amended— Section 32  
amended.

(a) in subsection (1) by deleting “mining operations” and substituting the following—

“ mining ” ; and

(b) in subsection (2) by deleting—

(i) “section 29” and substituting the following—

“ section 30 ” ; and

(ii) “under subsection (2)” and substituting the following—

“ under subsection (4) ” .

Section 34  
repealed.

12. Section 34 of the principal Act is repealed.

Section 35  
amended.

13. Section 35 (1) of the principal Act is amended by deleting “mining operations” and substituting the following—

“ mining ” .

Section 36  
repealed.

14. Section 36 of the principal Act is repealed.

Section 38  
amended.

15. Section 38 (1) of the principal Act is amended by deleting “for specified minerals”.

Section 46  
amended.

16. Section 46 of the principal Act is amended by deleting paragraph (b) and substituting the following paragraph—

“ (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; ” .

17. Section 57 of the principal Act is amended by repealing subsection (2) and substituting the following subsection—

Section 57  
amended.

“ (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. ” .

18. Section 63 of the principal Act is amended by—

Section 63  
amended.

(a) inserting in paragraph (a), before “promptly report”, the following—

“ will ” ; and

(b) deleting paragraph (b) and substituting the following paragraph—

“ (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 ” .

19. The principal Act is amended by inserting, after section 63, the following section—

Section 63A  
inserted.

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

When  
exploration  
licence  
liable to  
forfeiture.

(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. " .

Section 65  
amended.

20. Section 65 of the principal Act is amended—

(a) in subsection (1) by deleting—

- (i) "The holder of an exploration licence" and substituting the following—

" Subject to subsection (1a) of this section, the holder of an exploration licence " ; and

- (ii) the portion of that subsection which begins with "rectangular (without any restriction as to the ratio of length to breadth)," and ends with "as the circumstances permit." and substituting the following—

" of the prescribed shape. " ;

and

(b) by inserting, after subsection (1), the following subsection—

" (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. " .

21. Section 96 of the principal Act is amended by inserting, after subsection (7), the following subsections—

Section 96  
amended.

“ (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. ” .

22. The principal Act is amended by inserting, after section 96, the following section—

Section 96A  
inserted.

“ 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.

(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 thinks 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. ” .

Section 102  
amended.

23. Section 102 of the principal Act is amended—

(a) in subsection (1) by deleting “for any period not exceeding twelve months.” and substituting the following—

“ in an amount not exceeding the amount required to be expended in any one year in respect of that mining tenement. ” ; and

(b) in subsection (5) by deleting “for a longer period than one month” and substituting the following—

“ 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 ” .

Section 105A  
inserted.

24. The principal Act is amended by inserting, after section 105, the following section—

Priorities  
between  
applicants  
for certain  
tenements.

“ 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.

(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. ” .

25. The principal Act is amended by inserting, Section 111A inserted.  
after section 111, the following section—

“ 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.

(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. ” .

Section 112  
amended.

26. Section 112 of the principal Act is amended by—

(a) deleting “Every prospecting licence” and substituting the following—

“ (1) Subject to subsection (2) of this section, every prospecting licence ” ;

and

(b) inserting, after the existing section, the following subsection—

“ (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. ” .

Section 123  
amended.

27. Section 123 of the principal Act is amended by—

(a) repealing subsection (7) and substituting the following subsections—

“ (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. ” ;

and

(b) inserting, after subsection (8), the following subsection—

“ (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. " .

Section 124  
amended.

28. Section 124 of the principal Act is amended by inserting, after subsection (3), the following subsection—

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

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

Second  
Schedule  
repealed and  
substituted.

29. The Second Schedule to the principal Act is repealed and the following Schedule is substituted—

“                                      SECOND SCHEDULE                                      (Section 4)  
TRANSITIONAL PROVISIONS.

Continua-  
tion of  
certain  
temporary  
reserves  
and rights  
of occupancy.

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.

(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.

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—

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

(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.

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

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—

- (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.

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—

Disposal  
of pending  
applications  
for mining  
tenements.

- (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.

(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.

Officers.

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.

Wardens' courts and wardens' offices.

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.

Lodging of certain applications.

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.

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.

References  
to repealed  
Act.

15. If any difficulty arises with respect to the foregoing transitional provisions in this Schedule the Governor may by Order in Council—

Prevention  
of anomalies  
during  
transitional  
period.

(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. " .

### PART III.—PETROLEUM ACT 1967-1972.

30. (1) In this Part the Petroleum Act 1967-1972 is referred to as the principal Act.

Citation.  
Act No. 72 of  
1967 as  
amended by  
Act No. 94  
of 1972.

(2) The principal Act as amended by this Act may be cited as the Petroleum Act 1967-1981.

31. Section 5 of the principal Act is amended—

Section 5  
amended.

(a) by inserting, after the definition of "location" in subsection (1), the following definition—

" "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; " ;

- (b) in the definition of "petroleum" in subsection (1) by inserting, after "a natural reservoir", the following—

" , but excludes oil shale " ; and

- (c) by inserting, after subsection (6), the following subsection—

" (7) Notwithstanding anything in subsection (1) of this section, the Minister for the time being charged with the administration of the Mining Act 1978 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 Mining Act 1978 and his decision in the matter shall be final. " .

Sections 152A  
and 152B  
inserted.

32. The principal Act is amended by inserting, after section 152, the following sections—

Transitional  
provisions  
consequential  
on Acts  
Amendment  
(Mining)  
Act 1981.

- " 152A. (1) Notwithstanding anything in the Acts Amendment (Mining) Act 1981, a permit referred to in the Schedule to this Act which was in force immediately before the commencing date shall, subject to this section, continue in force until it is determined under this Act as this Act existed immediately before its amendment by the Acts Amendment (Mining) Act 1981.

(2) A permit continued in force by subsection (1) of this section shall not be renewed under this Act as this Act existed immediately before its amendment by the Acts Amendment (Mining) Act 1981.

(3) A permittee holding a permit referred to in the Schedule to this Act on or after the commencing date may—

- (a) if oil shale is discovered in the permit area concerned while that permit continues in force by virtue of subsec-

tion (1) of this section, forthwith apply for one or more mining leases under the Mining Act 1978—

- (i) if there are no mining tenements in force in the land which is the subject of that application, in respect of all minerals; or
- (ii) if there are mining tenements in force in the land which is the subject of that application, in respect of oil shale and coal only;

or

- (b) if oil shale is not discovered in the permit area concerned while that permit continues in force by virtue of subsection (1) of this section, apply while that permit so continues in force for one or more exploration licences under the Mining Act 1978 in respect of oil shale only,

for the whole or part of that permit area.

(4) An application referred to in—

- (a) subsection (3) (a) of this section shall be made to the Minister by lodging it with the mining registrar and the Minister may grant that application under the Mining Act 1978 subject to such terms and conditions as he thinks fit; or
- (b) subsection (3) (b) of this section shall be made to the Minister by lodging it with the mining registrar and the Minister shall grant that application under the Mining Act 1978 subject to such terms and conditions as he thinks fit.

(5) In this section—

“the commencing date” means the day on which those provisions of the Mining Act 1978 referred to in section 2 (2) of that Act came into operation.

Disputes  
between  
holders of  
certain  
mining  
leases and  
exploration  
licences  
and other  
holders of  
mining  
tenements  
under  
Mining Act  
1978 or  
Mining Act  
1904.

152B. (1) If a dispute arises between the holder of a mining lease or an exploration licence granted under the Mining Act 1978 in respect of oil shale and coal or oil shale only by virtue of section 152A of this Act (in this section called the “new holder”) and the holder of any other mining tenement granted under the Mining Act 1978 or the Mining Act 1904 (in this section called the “existing holder”) concerning any operations carried out or proposed to be carried out by the new holder or the existing holder on any land within the boundaries of the area in respect of which that mining lease or exploration licence was granted to the new holder, the new holder or the existing holder or both of them may refer the matter to the warden for inquiry and report, and the warden shall, as soon as is practicable after that reference, inquire into the dispute and report thereon to the Minister.

(2) On receiving a report made by a warden under subsection (1) of this section, the Minister may make such order and give such directions to the new holder or the existing holder or to both of them as in the public interest and in the circumstances of the case seem to the Minister to be just and equitable and by that order may direct the payment by the new holder or the existing holder or both of them of any costs and expenses incidental to the conduct of the inquiry concerned.

(3) If the new holder or the existing holder does not comply with any order or directions given under subsection (2) of this section, the Minister may cancel the mining lease or



exploration licence held by the new holder or the mining tenement held by the existing holder. " .

33. The principal Act is amended by inserting, Schedule inserted.  
after section 153, the following Schedule—

" SCHEDULE. (Section 152A)		
<i>Permit No.</i>	<i>Permittee.</i>	<i>Expiry Date.</i>
EP 144	Magnum Minerals Pty Limited Openpit Mining & Exploration Pty Ltd	8.2.85
EP 146	Magnum Minerals Pty Limited Openpit Mining & Exploration Pty Ltd	8.2.85
EP 147	Dampier Mining Company Limited	8.2.85
EP 158	C S R Limited	8.2.85
EP 181	C R A Exploration Pty Limited	15.8.86
EP 182	C R A Exploration Pty Limited Eagle Corporation Limited Swan Resources Limited	28.5.85
EP 183	C R A Exploration Pty Limited Eagle Corporation Limited Swan Resources Limited	28.5.85
		" .

34. (1) Each section of the principal Act specified in the first column of the Schedule to this Part is amended by deleting the matter specified opposite thereto in the second column of that Schedule and substituting the matter specified opposite thereto in the third column of that Schedule. Amendment of fees.

(2) The amendments made by this section to section 137 of the principal Act do not apply in respect of a year of the term of a permit that commenced before the date on which this Act came into operation.

(3) The amendment made by this section to section 138 of the principal Act does not apply in respect of a year of the term of a licence that commenced before the date on which this Act came into operation.

## SCHEDULE.      (Section 34)

## AMENDMENT OF FEES.

<i>Section.</i>	<i>Matter deleted.</i>	<i>Matter substituted.</i>
31 (1) (f)	"One thousand dollars"	"\$3 000"
31 (5)	"the sum of Nine hundred dollars"	"an amount equal to nine-tenths of the fee paid in accordance with subsection (1) of this section"
34 (1) (a)	"One thousand dollars"	"\$3 000"
34 (2) (a)	"the sum of Nine hundred dollars"	"an amount equal to nine-tenths of the fee paid in accordance with subsection (1) of this section"
40 (2) (c)	"One hundred dollars"	"\$300"
51 (1) (e)	"Two hundred dollars"	"\$600"
58 (1) (a)	"One thousand dollars"	"\$3 000"
58 (2) (a)	"the sum of Nine hundred dollars"	"an amount equal to nine-tenths of the fee paid in accordance with subsection (1) of this section"
61 (2) (e)	"One hundred dollars"	"\$300"
64 (2) (d)	"Two hundred dollars"	"\$600"
73 (2)	"Ten dollars"	"\$30"
80 (1)	"Two dollars"	"\$6"
81 (2)	"Fifty cents"	"\$1.50"
81 (3)	"Five dollars"	"\$15"
103 (1)	"specified rate"	"rate that is the specified rate from time to time"
103 (2)	"six per centum"	"10 per centum"
108 (1) (a) (i)	"Five thousand dollars"	"\$15 000"
108 (1) (a) (ii)	"Fifty thousand dollars"	"\$150 000"
112 (2) (b)	"Five dollars"	"\$15"
112 (3) (b)	"Five dollars"	"\$15"
112 (5) (c)	"Five dollars"	"\$15"
112 (5) (d)	"Five dollars"	"\$15"
133 (3) (b)	"One hundred dollars"	"\$300"
137 (a)	"One hundred dollars"	"\$300"
137 (b)	"Five dollars"	"\$15"
138	"Three thousand dollars"	"\$9 000".

PART IV.—PETROLEUM (REGISTRATION FEES)  
ACT 1967.

35. (1) In this Part the Petroleum (Registration Fees) Act 1967 is referred to as the principal Act. Citation.  
Act No. 77  
of 1967.

(2) The principal Act as amended by this Act may be cited as the Petroleum (Registration Fees) Act 1967-1981.

36. (1) Section 4 of the principal Act is amended Section 4  
amended. in—

(a) subsection (2) by deleting “One hundred dollars”, wherever it occurs, and substituting in each case the following—

“ \$300 ” ;

(b) subsection (4) by deleting “One thousand dollars” and substituting the following—

“ \$3 000 ” ; and

(c) subsection (5) by deleting “One thousand dollars” and substituting the following—

“ \$3 000 ” .

(2) The amendments made by subsection (1) of this section do not apply in respect of a memorandum of transfer in respect of which an application for approval was made before the date on which this Act came into operation or a memorandum of approval of an instrument in respect of which the application for approval was made before that date.

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