

Queensland



ANNO TRICESIMO PRIMO

ELIZABETHAE SECUNDAE REGINAE

No. 23 of 1982

**An Act to amend the Mining Act 1968–1980, the Forestry
Act 1959–1981 and the Petroleum Act 1923–1981
each in certain particulars**

[ASSENTED TO 29TH APRIL, 1982]

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

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Mining Act and Other Acts Amendment Act 1982*.

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

(2) Except as provided by subsection (1), this Act shall commence on a day appointed by Proclamation.

3. Arrangement of Act. This Act is arranged as follows:—

PART I—PRELIMINARY;

PART II—AMENDMENTS OF MINING ACT 1968–1980;

PART III—AMENDMENTS OF FORESTRY ACT 1959–1981;

PART IV—AMENDMENTS OF PETROLEUM ACT 1923–1981.

PART II—AMENDMENTS OF MINING ACT 1968–1980

4. Citation. (1) In this Part, the *Mining Act 1968–1980* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Mining Act 1968–1982*.

5. Amendment of s. 3. Arrangement of Act. Section 3 of the Principal Act is amended by—

(a) omitting the reference “*Division IV—Compensation for Damage to Improvements on Mining Tenements*,” and substituting the reference “*Division IV—Compensation for Damage Caused by Mining on Crown Land*,”;

(b) inserting after the reference “PART XII—MINING ON PRIVATE LAND;” the reference “PART XIII—RIGHTS INDEPENDENT OF THIS ACT PRESERVED;”.

6. Amendment of s. 5. Savings. The Principal Act is amended in subsection (5) by designating the existing provision as paragraph (a) and at the end thereof inserting the following paragraph:—

“(b) The holder of a business area or residence area to which paragraph (a) applies who ceases whether before or after the commencement of the *Mining Act and Other Acts Amendment Act 1982* for a period, not exceeding three months, to be the holder of a miner's

right shall, for the purposes of section 16 of the *Mining Act* 1968-1976, be deemed to have continued to be the holder of a miner's right during that period."

7. Amendment of s. 7. Definitions. Section 7 of the Principal Act is amended in subsection (1) by—

(a) omitting the definition "mineral" and substituting the following definition:—

““mineral” means any substance which occurs naturally as part of the earth's crust and any substance which may be extracted from such a substance: Save where otherwise expressly included the term does not include—

- (a) living matter;
- (b) petroleum within the meaning of the *Petroleum Act* 1923-1982;
- (c) soil, sand, gravel, rock or water to be used or to be supplied for use as such, whether intact or in a broken form;
- (d) to the extent it is so declared, any other substance for the time being declared by Order in Council not to be a mineral for the purposes of this Act either generally or in the circumstances so declared.

The term includes and, in the case of substances referred to in provisions (e), (f) or (g), it is declared always did include—

- (e) shale from which mineral oil may be extracted or produced;
- (f) mineral oil extracted or produced from shale or coal or other rock by some chemical or thermal process;
- (g) hydrocarbons and other substances or matter occurring in association with shale or coal and necessarily mined, extracted, produced or released by or in connexion with mining for shale or coal or the extraction or production of mineral oil therefrom;
- (h) to the extent it is so declared, any substance (including any substance referred to in provisions (a), (b) or (c) of this definition) for the time being declared by Order in Council to be a mineral for the purposes of this Act either generally or in the circumstances so declared;"

(b) in the definition "mining claim" inserting after the word "registered" the words "or the registration of which is renewed".

8. Amendment of s. 16B. Land over which mining claims may be registered. Section 16B of the Principal Act is amended in subsection (2) by omitting the word "A" and substituting the words "Subject to section 102AA, a".

9. Amendment of s. 16H. Application for registration of a mining claim. Section 16H of the Principal Act is amended by—

(a) inserting after subsection (1) the following subsections:—

“(1A) A person who, on or after the commencement of the *Mining Act and Other Acts Amendment Act 1982*, applies for registration of a mining claim shall—

(a) in his application—

- (i) describe the boundaries of the Crown land for which he applies and specify the minerals to be mined under the authority of the proposed mining claim;
- (ii) describe the boundaries of any surface area for which he applies, being within the land described pursuant to provision (i), and the purpose for which that area is to be used; and
- (iii) describe any right of way for which he applies (including the boundaries of the land to be subjected thereto) over, through or in any Crown land from land described pursuant to provision (i) or (ii) to a practicable point acceptable to the warden on any road, river, waterway or railway station or siding for gaining access to that land for the purposes specified in the application; and

(b) include with or in his application a sketch plan taken from or being part of a map approved for the time being for use in the relevant mining district by the warden and setting out the boundaries of the land applied for and of the land in respect of which a right of way is applied for in the application.

Boundaries of land and of surface areas of land shall be described by—

- (a) accurately measured distances and compass bearings on the ground; or
- (b) a survey method acceptable to the warden.

The description of the boundaries of land described pursuant to provision (a) (i) shall in like manner accurately relate the commencement point of that description to a survey corner, well marked tree or other fixed or well defined object.

(1B) A person whose application for registration of a mining claim made prior to the date of commencement of the *Mining Act and Other Acts Amendment Act 1982* has not been determined prior to that date shall within 60 days from that date lodge with the warden—

- (a) a document setting out the descriptions that he would have been required pursuant to subsection (1A) (a) (ii) and (iii) to describe in his application; and
- (b) a sketch plan that he would have been required pursuant to subsection (1A) (b) to include with or in his application,

had the application been made after that date:

Provided that the applicant shall be deemed to have complied with this subsection to the extent that this subsection has been complied with in his application.

Until this subsection has been complied with, an application to which this subsection applies shall be deemed to have not been duly made under this Act:

Provided however that the application shall retain the priority which it had immediately prior to the date of commencement of the *Mining Act and Other Acts Amendment Act 1982.*”;

(b) in subsection (4), omitting all words from and including the words “to be posted” to and including the words “receipt of objections:” and substituting the following words:—

“to be—

(a) posted—

(i) in some conspicuous part of the land the subject of the application; and

(ii) at the warden’s office,

and shall keep copies posted in those places at all times until the last day for the receipt of objections;

(b) given to any owner of the Crown land to which his application relates:”;

(c) omitting from subsection (8) all words from and including the words “thereof and ” to and including the words “not be so imposed.” and substituting the words “thereof and shall impose the conditions prescribed in that regard.”;

(d) after subsection (8) inserting the following subsections:—

“(8A) (a) Conditions that shall be imposed pursuant to subsection (8) in regard to a mining claim shall be—

(i) a condition that the holder, his executors, administrators and assigns shall pay the rental as prescribed;

(ii) a condition that the holder, his executors, administrators and assigns shall furnish as prescribed all prescribed returns (including royalty returns), documents and statements;

(iii) a condition that the holder, his executors, administrators and assigns shall maintain the surface area of the land subject to the mining claim to such condition as the warden may from time to time determine during the term of the mining claim;

(iv) a condition that the holder, his executors, administrators and assigns shall restore the surface area of the land subject to the mining claim as nearly as may be to its state prior to the

commencement of mining operations or to the satisfaction of the warden upon the cessation of mining operations or termination of the mining claim;

- (v) the conditions referred to in section 60 (2) which section shall be construed as if references therein to the Minister were references to the warden; and
- (vi) such other conditions as the warden considers desirable in the circumstances:

Provided that, in respect of any particular mining claim, any of the conditions referred to in provisions (iii), (iv), (v) and (vi) that the applicant for the mining claim satisfies the warden should not be imposed shall be deemed not to be so imposed.

(b) With regard to a mining claim registered prior to the commencement of the *Mining Act and Other Acts Amendment Act 1982*, the warden shall be deemed to have imposed the conditions specified in paragraph (a) (i) and (ii) and those conditions shall be effective from the time of registration of that mining claim.

(8B) (a) Upon a failure to comply with or a contravention of any of the provisions of this Act, including any condition imposed or deemed to be imposed pursuant to subsection (8) or (8A), on the part of the holder of a mining claim, his executors, administrator or assigns, whether occurring before or after the commencement of the *Mining Act and Other Acts Amendment Act 1982*, the warden may, subject to this Act—

- (i) cancel the registration of the mining claim; or
- (ii) impose on the holder or, where the mining claim has been terminated, the person who was last registered as the holder, a penalty not exceeding \$1 000.

Where a penalty imposed pursuant to provision (ii) is not paid within the time allowed by the warden therefor he may cancel the registration of the mining claim.

(b) The warden shall not—

- (i) cancel the registration of a mining claim pursuant to paragraph (a) (i); or
- (ii) impose a penalty pursuant to paragraph (a) (ii),

for failure to comply with conditions imposed pursuant to subsection (8) or (8A), other than a condition to pay rental as prescribed, until the holder of the mining claim has first been given the opportunity to show cause to the satisfaction of the warden why the registration of the mining claim should not be cancelled or, as the case may be, why the penalty should not be imposed.”

10. New s. 16HA. The Principal Act is amended by inserting after section 16H the following section:—

“**16HA. Certain mining claims include surface.** Save where otherwise provided therein a mining claim registered prior to the commencement of the *Mining Act and Other Acts Amendment Act 1982*, includes and it is hereby declared always did include the whole of the surface of the Crown land to which it relates.”

11. New s. 16HB. The Principal Act is amended by inserting after section 16HA the following section:—

“**16HB. Matter to be proved where no surface applied for.** Where an application for the registration of a mining claim does not relate to any portion of the surface of the Crown land applied for, the mining claim shall not be registered unless the applicant proves to the warden that—

- (a) he is the holder of a registered or granted mining tenement adjoining the land to which the application relates;
- (b) he is the proprietor of an estate in fee-simple in land adjoining the land to which the application relates; or
- (c) he is the holder of a registered or granted mining tenement with such way-leaves and other rights through land situated between the tenement and the Crown land to which the application relates as will enable him to mine in the land to which the application relates.”

12. New s. 16HC. The Principal Act is amended by inserting after section 16HB the following section:—

“**16HC. Application for surface by holder of mining claim.** (1) The holder of a mining claim which includes a portion only of the surface of the Crown land to which the mining claim relates may at any time apply for an additional area of surface of that land to be included in the mining claim.

(2) The holder of a mining claim which does not include any portion of the surface of the Crown land to which the mining claim relates may at any time apply for an area of surface of that land to be included in the mining claim.

(3) An application made under this section shall be made and dealt with in the same manner as if it were an application for registration of a mining claim.”

13. Amendment of s. 16J. Term of mining claim. Section 16J of the Principal Act is amended by inserting at the end thereof the following paragraph:—

“The term of a mining claim shall be renewable from time to time for a further term not exceeding ten years.”

14. New s. 16JA. The Principal Act is amended by inserting after section 16J the following section:—

“ 16JA. **Renewal of mining claims.** (1) A holder of a mining claim seeking to renew the registration thereof shall make application for renewal to the warden at least six months (or such shorter period as the warden in the particular case, permits) but not more than 12 months prior to the expiration of the term of the mining claim then current.

(2) A holder, in respect of his first application after the commencement of the *Mining Act and Other Acts Amendment Act 1982*, for the renewal of registration of a mining claim registered prior to that commencement shall—

- (a) in his application, set out the descriptions that he would have been required pursuant to section 16H (1A) (a) (ii) and (iii) to describe in his application; and
- (b) include in or with his application a sketch plan that he would have been required pursuant to section 16H (1A) (b) to include in his application,

if that application were an application for registration of a mining claim.

(3) If the warden is satisfied that—

- (a) the holder has observed and performed all the conditions contained in the mining claim and on his part to be observed and performed;
- (b) the holder has complied with all the provisions of this Act applicable to him in respect of the mining claim in question;
- (c) the holder or a person whose title to the mining claim in question is legally dependent on the continuance of the mining claim is in lawful possession of the mining claim; and
- (d) the land, the subject of the mining claim still contains mineral or mineral bearing ore,

then he may register a renewal of the mining claim in the name of the holder for such further term (but not exceeding 10 years) as he thinks fit subject to the conditions commonly included in mining claims at that date:

Provided that the renewed mining claim may also contain such further conditions as the warden considers desirable in the circumstances.

(4) If the warden refuses an application for renewal of a mining claim (before or after the date of expiry) he shall inform the applicant of the reason for the refusal.

(5) Where an application for renewal of registration of a mining claim is made by the holder before the date on which the term of the mining claim then current would, but for this subsection, have expired (which date is in this section called the date of expiry) and the application has not been disposed of by the warden before the date of expiry the mining claim the registration of which is sought to be

renewed shall, subject to this section, be deemed to continue until such application is disposed of by the warden who may grant a renewal of the registration of the mining claim as prescribed notwithstanding that the date of expiry has passed.

The provisions of this Act applicable to and in respect of the mining claim and the holder thereunder shall apply to and in respect of the mining claim and the holder during the period the mining claim is deemed under this subsection to continue.

(6) Where the warden terminates the period for which the term of a mining claim is deemed to be extended under subsection (5) by granting a renewal of the registration of the mining claim the term of such renewed mining claim shall commence on the date following the date of expiry and all adjustments (called for by reason of the conditions of the renewed mining claim) in the rights of the Crown and the holder in respect of the period for which the expired mining claim was so deemed to continue shall be made accordingly.

(7) Where a transfer of a mining claim is registered under this Act after the date on which an application for a renewal of the registration of the mining claim is made and before the application is disposed of by the warden any renewal registered upon the application shall be registered in the name of the transferee under the transfer last so registered before the registration of that renewal.”.

15. Amendment of s. 16K. Rental of mining claim. Section 16K of the Principal Act is amended by—

(a) after subsection (1), inserting the following subsection:—

“(1A) (a) Notwithstanding subsection (1), a warden who considers it desirable so to do, at any time prior to the prescribed date in any year, may determine that the yearly rental payable in respect of mining claims in a district on or before the prescribed date may be paid on or before a later date being not later than the thirty-first day of March next following the prescribed date.

(b) The holder of a mining claim in a mining district in respect of which a warden has made a determination pursuant to paragraph (a) who fails to pay the yearly rental on or before the prescribed date but pays the amount of that rental together with an amount equal to 15 per centum of the amount of the rental on or before the later date determined by the warden shall be deemed to have paid the yearly rental as prescribed in subsection (1).

(c) For the purposes of this subsection, the “ prescribed date ” means thirty-first day of December in any year.”;

(b) after subsection (2), inserting the following subsection:—

“(3) The warden shall cancel the registration of a mining claim if the yearly rental payable in respect thereof is not paid in accordance with subsection (1) or is not deemed to be so paid pursuant to subsection (1A).”

16. Amendment of s. 16O. Termination of mining claim. Section 16O of the Principal Act is amended by—

(a) omitting subsection (1);

(b) in subsection (2)—

(i) in paragraph (e), omitting the word “may” and substituting the word “shall”;

(ii) in paragraph (f), inserting after the word “Court” the words “and may cancel the registration of the mining claim or reject the application as to him appears just”;

(c) in subsection (4), in the second paragraph, omitting the word “may” and substituting the word “shall”.

17. New s. 16R. The Principal Act is amended by inserting after section 16Q the following section:—

“**16R. Warden may correct errors.** (1) If at any time a warden is satisfied that the registration of a mining claim has been cancelled in error he shall certify to that effect and the registration shall be deemed not to have been so cancelled.

(2) If at any time a warden is satisfied that an error has been made in the registration of a mining claim or in any dealing therewith he shall correct the registration and the certificate of registration issued in respect of that registration (if available).”.

18. Amendment of s. 17. Issue of authority to prospect. Section 17 of the Principal Act is amended by—

(a) after subsection (1A), inserting the following subsection:—

“(1AA) Upon the termination for whatever reason of a subsisting authority to prospect in whole or in part, it shall not be competent for any person, other than the holder of the terminated authority to prospect which is surrendered for the purpose of the holder being granted a new authority to prospect, to apply for an authority to prospect in respect of any of the land that was the subject of the terminated authority to prospect until the expiration of three calendar months following the end of the month in which such termination occurs.”;

(b) in subsection (1E), inserting after the expression “(1A)” the expression “, (1AA)”.

19. Amendment of s. 18. Entitlement of holder of authority. Section 18 of the Principal Act is amended by—

(a) in subsection (2), omitting the words “and 39A” and substituting the words “, 39A and 102AA”;

(b) in subsection (2A), omitting the words “and 39A” and substituting the words “, 39A and 102AA”.

20. New s. 19A. The Principal Act is amended by inserting after section 19 the following section:—

“ 19A. Surrender of authority to prospect. (1) The holder of an authority to prospect may at any time surrender his interest in the authority to prospect or any part of the land comprising the authority to prospect:

Provided that a surrender in respect of part of the land comprising an authority to prospect may only be surrendered if that part can be identified from the land comprising the balance of the authority to prospect—

- (a) by reference to a survey plan made or registered; or
- (b) if the Minister so approves by the same or similar means whereby the land comprising the authority to prospect is described and identified by the authority to prospect.

(2) Where an authority to prospect is surrendered in respect of part only of the land comprising the authority to prospect, the authority to prospect shall be amended by excising that part and otherwise as may be required to conform with this Act and the authority to prospect shall continue in respect of the balance of the area.

(3) In the case of any surrender of an authority to prospect (in whole or in part) all adjustments between the Crown and the holder in respect of the payment of rental, fees or other moneys shall be in the discretion of the Minister who, for this purpose, may demand of the holder such sums as the Minister specifies and recover the same by action in the Wardens Court as a debt due to the Crown.

(4) Where the purpose of the holder's surrender of his interest in the whole or part of the land comprising an authority to prospect is that he may be granted a new authority to prospect over land that includes or is included in the authority to prospect or part surrendered he may continue to carry on prospecting operations on or in the land included in the authority to prospect or part surrendered subject to and in accordance with his authority to prospect, as if that authority to prospect continued to relate to that land or part thereof until his application for a new authority to prospect is granted or refused by the Minister (whichever event is the first to occur) and in the event of his application being so refused the surrender shall be taken to be void and the authority to prospect, which but for this provision would have been affected thereby, shall revive in respect of the authority to prospect or part purportedly surrendered and shall continue for the balance of its term then outstanding as if the surrender had never been effected.

The provisions of sections 17 (1AA) and (1B) and 102A do not apply to that part of an application for a new authority to prospect referred to in this subsection that refers to land which was included in the authority to prospect or part surrendered.”

21. Amendment of s. 21. Application for and issue of mining lease.
Section 21 of the Principal Act is amended by—

(a) in subsection (2A), in paragraph (b), in provision (ii) omitting the word “occupier” and substituting the word “owner”;

(b) inserting after subsection (2A) the following subsections:—

“(2AA) A person who, on or after the commencement of the *Mining Act and Other Acts Amendment Act 1982*, applies for a mining lease shall—

(a) in his application—

(i) describe the boundaries of the land for which he applies and specify—

(a) the minerals to be won (if any) under the authority of the proposed lease; and

(b) the purposes for which the land is intended to be used;

(ii) describe the boundaries of any surface area for which he applies, being within the land described pursuant to provision (i), and the purpose for which that area is to be used; and

(iii) describe any right of way for which he applies (including the boundaries of the land to be subjected thereto) over, through or in any land from land described pursuant to provision (i) or (ii) to a practicable point acceptable to the Minister on any road, river, waterway or railway station or siding for gaining access to that land for the purposes specified in the application; and

(b) include with or in his application a sketch plan taken from or being part of a map approved for the time being for use in the relevant mining district by the warden and setting out the boundaries of the land applied for and of the land in respect of which a right of way is applied for in the application.

Boundaries of land and of surface areas of land shall be described by—

(c) accurately measured distances and compass bearings on the ground; or

(d) a survey method acceptable to the Director-General, Department of Mines.

The description of the boundaries of land described pursuant to provision (a) (i) shall in like manner accurately relate the commencement point of the description to a survey corner, a well marked tree or other fixed or well defined object.

(2AB) A person whose application for a mining lease made prior to the date of commencement of the *Mining Act and Other Acts Amendment Act 1982*, has not been determined prior to that date shall within 60 days from that date lodge with the warden—

(a) a document setting out the descriptions that he would have been required pursuant to subsection (2AA) (a) (ii) and (iii) to describe in his application; and

(b) a sketch plan that he would have been required pursuant to subsection (2AA) (b) to include in his application, had the application been made after that date:

Provided that the applicant shall be deemed to have complied with this subsection to the extent that this subsection has been complied with in his application.

Until this subsection has been complied with, an application for a mining lease to which this section applies shall be deemed to have not been duly made under this Act:

Provided however that the application shall retain the priority which it had immediately prior to the date of commencement of the *Mining Act and Other Acts Amendment Act 1982*.

(2AC) Where an application for a mining lease is in respect of Crown land—

- (a) the whole of which is other than surface land, then, notwithstanding any other provision of this Act, the applicant is not required to mark out or cause to be marked out on the surface of the land;
- (b) part of which is other than surface land, then, notwithstanding any other provision of this Act, the applicant is not required to mark out or cause to be marked out on the surface of the land above that part,

the land to which the application relates.”;

(c) in subsection (6)—

(i) in paragraph (a), in provision (ii), omitting the word “ occupier ” and substituting the word “ owner ”;

(ii) in paragraph (c), in provision (i), omitting the expression “ paragraph (a) (i) ” and substituting the words “ paragraph (a) for compliance with provision (ii) thereof ”.

22. New s. 21AA. The Principal Act is amended by inserting after section 21 the following section:—

“ **21AA. Certain mining leases include surface.** Save where otherwise provided in the mining lease every mining lease (other than a mining lease granted for the purpose of mining for coal) granted prior to the commencement of the *Mining Act and Other Acts Amendment Act 1982*, includes and it is hereby declared always did include the whole of the surface of the Crown land to which it relates.”.

23. New s. 21BA. The Principal Act is amended by inserting after section 21AA the following section:—

“ **21BA. Matter to be proved where no surface applied for.** Where an application for a mining lease does not relate to any portion of the surface of the Crown land applied for, the applicant shall not be entitled to a grant of the mining lease unless he proves to the warden that—

- (a) he is the holder of a registered or granted mining tenement adjoining the land to which the application relates;

- (b) he is the proprietor of an estate in fee-simple in land adjoining the land to which the application relates; or
- (c) he is the holder of a registered or granted mining tenement with such way-leaves and other rights through land situated between the tenement and the land to which the application relates as will enable him to mine in the land to which the application relates.”.

24. New s. 21CA. The Principal Act is amended by inserting after section 21BA the following section:—

“ **21CA. Application for surface by holder of mining lease.** (1) The lessee of a mining lease which includes a portion only of the surface of the Crown land to which the mining lease relates may at any time apply for an additional area of surface of that land to be included in the mining lease.

(2) The lessee of a mining lease which does not include any portion of the surface of the Crown land to which the mining lease relates may at any time apply for an area of surface of that land to be included in the mining lease.

(3) An application made under this section shall be made and dealt with in the same manner as if it were an application for a mining lease.”.

25. Amendment of s. 21A. Effect of mining lease upon Local Authority town planning provisions. Section 21A of the Principal Act is amended by—

(a) in subsection (1), in provision (b), omitting all words occurring after the expression “ 1976 ” and substituting the words “, the use of the land the subject of the lease for mining purposes in accordance with the lease shall, during the term of the lease, be deemed to be a permitted use of that land.”;

(b) inserting after subsection (1) the following subsection:—

“(1A) A Local Authority and the Director of Local Government shall by notation in the prescribed form on town planning scheme maps for the Local Authority Area or part of the Area indicate that the use of land the subject of a mining lease pursuant to this Act for mining purposes in accordance with the lease is deemed by this Act to be a permitted use of the land and that interested persons may obtain particulars of mining leases granted in the Area by contacting the Head Office of the Department of Mines in Brisbane.”;

(c) in subsection (2), inserting after the words “ In this section— ” the following term and meaning:—

“ “ Area ” has the meaning it has under the *Local Government Act 1936-1981*.”;

(d) in subsection (3), omitting the expression “ (i) ”.

26. Amendment of s. 24A. Proclamations restricting grant of, area of and interest in mining leases. Section 24A of the Principal Act is amended by—

(a) in subsection (1), inserting after provision (c) the following expression and words:—

“ ;

(d) the maximum aggregate area of land which may be included in mining leases in which any person may at any time concurrently have an interest as lessee ”;

(b) after subsection (2), inserting the following subsection:—

“ (3) Differing maximum aggregate areas of land may be proclaimed under subsection (1) (d) in respect of mining leases granted for different purposes.”.

27. Amendment of s. 26. Renewal of mining leases. Section 26 of the Principal Act is amended by—

(a) inserting after subsection (1) the following subsection:—

“ (1A) The provisions of section 21 (2AB) or, as the case may be, 123 (1A) shall apply to a lessee whose application for renewal of a mining lease made prior to the commencement of the *Mining Act and Other Acts Amendment Act 1982*, has not been determined prior to that commencement as if the application were an application for a mining lease to which that section applies.

(1B) A lessee in respect of his first application, on or after the commencement of the *Mining Act and Other Acts Amendment Act 1982*, for the renewal of a mining lease granted prior to that commencement shall—

(a) in his application, set out the descriptions that he would have been required pursuant to section 21 (2AA) (a) (ii) and (iii) or 123 (1) (a) (ii) and (iii) to describe in his application; and

(b) include in or with his application a sketch plan that he would have been required pursuant to section 21 (2AA) (b) or section 123 (1A) (b) to include in his application,

if that application were an application for a mining lease.”;

(b) in subsection (2), omitting the words “ equal to ” and substituting the words “ not exceeding 21 years and, unless the lessee applies for and consents to a shorter term, not less than ”.

28. Repeal of and new s. 27. Rental of mining lease. The Principal Act is amended by omitting section 27 and substituting the following section:—

“ **27. Rental of mining lease and moneys payable on application for mining lease.** (1) The yearly rental payable in respect of a mining lease shall be prescribed and shall be payable in advance firstly not later than the thirty-first day of December of the year in which the lease is granted and thereafter not later than the thirty-first day of December of each year of the balance of the term thereof.

(2) (a) Notwithstanding subsection (1), the Minister if he considers it desirable so to do, at any time prior to the prescribed date in any year, may determine that the yearly rental payable in respect of mining leases in a mining district on or before the prescribed date may be paid on or before a later date.

(b) The holder of a mining lease in a mining district in respect of which the Minister has made a determination pursuant to paragraph (a) who fails to pay the yearly rental on or before the prescribed date but pays the amount of that rental together with an amount equal to 15 per centum of the amount of the rental on or before the later date determined by the Minister shall be deemed to have paid the yearly rental as prescribed in subsection (1).

(3) The applicant for a mining lease shall deposit with his application an amount that bears to the yearly rental that would be payable in respect of a mining lease granted in respect of that land the same proportion that the period commencing on the first day of the month immediately following the date of the making of the application until the thirty-first day of December next following bears to 12 months and shall thereafter until the mining lease is granted or the application is rejected pay in advance not later than the thirty-first day of December of each year an amount equal to the yearly rental that would be payable in respect of a mining lease granted in respect of that land.

(4) (a) Notwithstanding subsection (3) the Minister if he considers it desirable so to do, at any time prior to the prescribed date in any year, may determine that the amount payable in respect of applications for mining leases in a mining district on or before the prescribed date may be paid on or before a later date.

(b) The applicant for a mining lease in a mining district in respect of which the Minister has made a determination pursuant to paragraph (a) who fails to pay the amount payable on or before the prescribed date but pays that amount together with an amount equal to 15 per centum of that amount on or before the later date determined by the Minister shall be deemed to have paid the amount as prescribed in subsection (3).

(5) The Minister may forfeit a mining lease or reject an application therefor if the yearly rental or other amount payable in respect thereof under this section is not paid in accordance with subsection (1) or (3) or is not deemed to be so paid pursuant to subsection (2) or (4).

(6) For the purposes of this section, the "prescribed date" means the thirty-first day of December in any year."

29. Amendment of s. 28. Covenants and conditions of mining lease. Section 28 of the Principal Act is amended in subsection (1), in paragraph (a), in provision (vii), by inserting after the word "returns" the words "(including royalty returns), documents and statements".

30. Amendment of s. 29. Security by applicant for observance of covenants. Section 29 of the Principal Act is amended in subsection (1A) by omitting the expression "10" and substituting the expression "7".

31. Amendment of s. 30. Labour conditions attaching to mining leases. Section 30 of the Principal Act is amended by, in subsection (2B)—

(a) inserting in provision (a), after the word “during” the words “each of”;

(b) inserting in provision (b), after the word “during” the words “each year of”.

32. Amendment of s. 31. Exemption from labour conditions. Section 31 of the Principal Act is amended by—

(a) in the note appearing in and at the beginning of the section, inserting after the word “labour” the words “and other related”;

(b) in subsection (1), omitting the words “be granted” and substituting the words “upon application therefor and payment of the prescribed fee be granted from time to time”;

(c) omitting subsection (2) and substituting the following subsection:—

“(2) Upon application therefor and payment of the prescribed fee by the lessee of a mining lease in respect of which the Governor in Council has, pursuant to section 30 (4) varied labour conditions or varied the provisions of section 30 (2) or (2B) that apply in lieu of labour conditions, the Minister may upon such terms and conditions as he thinks fit grant total or partial exemption from compliance with those labour conditions or those provisions as so varied for any year of the term of that mining lease.”;

(d) omitting subsection (3).

33. Repeal of and new s. 35. Mining for other minerals. The Principal Act is amended by omitting section 35 and substituting the following section:—

“**35. Mining for other minerals, etc.** (1) The lessee of a mining lease who desires—

(a) to mine for a mineral not specified in his lease; or

(b) to use the land comprised in his lease for any purpose in respect of which a mining lease may be granted pursuant to section 21 (1) (b) but not specified in his lease,

may apply to the Minister for approval to mine for that mineral or, as the case may be, use the land comprised in his lease for that purpose.

Upon the recommendation of the Minister the Governor in Council may vary the conditions of the lease in such manner as he thinks fit to enable the lessee to mine for that mineral or use the land comprised in the lease for that purpose in accordance with this Act.

(2) A lessee of a mining lease shall not mine for any mineral not specified in his lease or use the land comprised in the lease for any purpose not specified in his lease unless he has first obtained the approval of the Minister.

A person who contravenes the provisions of this subsection commits a continuing offence and is liable to a penalty of \$100 for each day on which the mining is conducted or the land comprised in the lease is used in

contravention of these provisions and all minerals won in such contravention shall, without further authority than this subsection, be forfeited to the Crown.”.

34. Amendment of s. 37. Transfer, etc., of mining lease or application therefor. Section 37 of the Principal Act is amended in subsection (2) by—

(a) in the second paragraph, in provision (a) omitting the words “, if the Minister thinks fit, lodged within a time (not exceeding three months) specified by him ” and substituting the words “ lodged within a time specified by him or, if not specified, within three months from the date of informing the applicant ”;

(b) inserting after the second paragraph the following paragraph:—
 “ Without in any way limiting the conditions that the Minister may impose under this subsection, the Minister may require the lessee of a mining lease desiring to sub-let the same or any portion thereof to have a survey thereof carried out by a licensed surveyor and to lodge the plan of survey and field notes at the Department of Mines, Brisbane.”.

35. Amendment of s. 43AA. Prospective assessment of damage. Section 43AA of the Principal Act is amended by—

(a) in subsection (1)—

(i) omitting the word “ therefor ” where it first occurs and substituting the words “ for registration of a mining claim ”;

(ii) omitting the word “ therefor ” where it secondly occurs and substituting the words “ for a mining lease ”;

(iii) inserting after the word “ prospecting ” the words “ under the authority of that miner’s right, mining claim, application for registration, mining lease, application for a mining lease or, as the case may be, authority to prospect ”;

(b) inserting after subsection (1) the following subsection:—

“(1A) The provisions of this section do not apply in respect of Crown land included in—

(a) a mining claim registered or the registration of which is renewed;
 or

(b) a mining lease granted or renewed,

on or after the commencement of the *Mining Act and Other Acts Amendment Act 1982*.”.

36. Repeal of s. 43FA. Common law rights not affected. The Principal Act is amended by repealing section 43FA.

37. New ss. 43GA–43JA. The Principal Act is amended by inserting after section 43EA the following sections:—

“**43GA. Compensation payable, etc., before registration of mining claim or grant of mining lease on Crown land.** On and after the commencement of the *Mining Act and Other Acts Amendment Act 1982*—

(a) a mining claim;

(b) a mining lease,
that relates to Crown land shall not be registered (and the registration thereof shall not be renewed) or granted or renewed unless the applicant therefor has paid or tendered to each person who is a lessee or owner the amount of compensation agreed upon or determined under section 43IA or 43JA or has otherwise made an agreement in writing with that person as to the payment of that compensation.

There shall be certified on the registration of the mining claim or of its renewal or, as the case may be, on the mining lease granted or renewed—

- (a) where compensation is payable, the making of the payment or, as the case may be, the agreement required by this section;
- (b) where no compensation is payable under this section, that fact.

43HA. Measure of compensation payable in respect of mining claims and mining leases on Crown land. (1) Compensation is not payable under section 43GA for the right to take up and occupy or work a mining claim or mining lease situated on Crown land where the mining claim or mining lease does not include an area of surface of the land concerned.

(2) Subject to subsection (1), compensation is payable under section 43GA in respect of all or any of the matters referred to in section 43IA.

(3) In no case shall allowance be made, in the assessment of compensation, for any minerals that are or may be on or under the surface of the land concerned.

43IA. Determination of compensation payable under section 43GA. (1) The applicant for a registration of a mining claim or renewal thereof or for the grant or renewal of a mining lease in respect of Crown land may agree with a lessee or owner as to the payment of compensation payable under section 43GA.

(2) An agreement made pursuant to subsection (1) shall be of no force and effect as an agreement for the payment of compensation payable under section 43GA unless—

- (a) it is in writing signed by or on behalf of all the parties thereof;
- (b) it is approved by the warden; and
- (c) it is filed in the warden's office.

(3) A regulation may prescribe a period of time within which an agreement shall be made.

(4) If the applicant and the person or persons entitled to compensation payable under section 43GA are unable to agree as to the amount of compensation or are unable to agree within the time prescribed, the applicant or any of the persons entitled may apply to the Wardens Court to have the amount determined by that court.

(5) Subject to section 43HA, the Wardens Court in making a determination pursuant to subsection (4) may inform itself in such manner as it thinks fit and shall take into consideration—

- (a) deprivation of possession of the surface of the land or any part thereof;
- (b) diminution of the value of the lands of the lessee or any improvements thereon;
- (c) diminution of the use made or which may be made of the lands of the lessee or any improvements thereon;
- (d) damage caused or likely to be caused to any improvements thereon or thereunder;
- (e) severance of any part of the land from other parts thereof or from other lands of the lessee;
- (f) surface rights of way;
- (g) all damage, loss or expense that arises or is likely to arise as a consequence of any matter referred to in provision (a), (b), (c), (d), (e) or (f); and
- (h) if the court is satisfied that it will be necessary for the lessee or owner to obtain replacement land of a similar nature and area or to resettle himself or relocate his improvements, livestock or other chattels on other parts of his land or on the replacement land, all reasonable costs (including legal costs) likely to be incurred by the lessee or owner in obtaining replacement land and his resettlement or relocation of improvements, livestock or other chattels as at the date of the court's determination.

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

(6) Where there is doubt as to the persons entitled to compensation payable under section 43GA or any of them or those persons or any of them cannot be found or, for any reason, compensation payable under that section cannot be paid to the persons entitled thereto or any of them the Minister shall be deemed to represent all those persons for the purpose of any negotiation or proceeding referred to in this section and payment of the amount of compensation to the Minister shall be sufficient payment for the purposes of section 43GA.

43JA. Appeal against determination. (1) If any party is aggrieved by a determination of a Wardens Court made pursuant to section 43IA he may, within 28 days of the date of that determination or within such further period as the Land Court, on the application of that party in that behalf prior to the lodgement of the appeal, deems appropriate in any particular circumstances, appeal against the determination to the Land Court.

The appeal shall be instituted by lodging in the Land Court registry written notice of his grounds of appeal and serving copies of that notice on the mining registrar and each other party.

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

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

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

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

(4) Every appeal under subsection (1) shall be by way of a rehearing. The determination of the Land Court on appeal shall be final and conclusive.”.

38. Amendment of s. 44. Mining leases and authorities to prospect over reserves, etc. Section 44 of the Principal Act is amended by—

(a) in subsection (1)—

(i) omitting all words from and including the words “(other than” to and including the expression “1962–1973”;

(ii) after the first paragraph, inserting the following paragraph:—

“A mining lease or authority to prospect shall not be granted or issued over or on land that is within—

- (c) a National Park within the meaning of the *Forestry Act* 1959–1982; or
- (d) an Environmental Park reserved and set apart under the *Land Act* 1962–1981.”;

(b) omitting subsection (6).

39. New s. 45A. The Principal Act is amended by inserting after section 45 the following section:—

“**45A. Entry upon State Forests by holders of miner’s right.** (1) The Governor in Council may by Order in Council declare that on and after a date appointed therein the whole or part of land comprised in a State Forest within the meaning of the *Forestry Act* 1959–1982 will be available as land in respect of which a holder of a miner’s right may search for and collect minerals subject to the provisions of subsection (2) and on and after the date so appointed the land shall be available accordingly.

(2) A holder of a miner’s right may search for and collect minerals on State Forest land the subject of a declaration pursuant to subsection (1) only if—

- (a) he is the holder of a permit to search for and collect minerals granted by the Conservator of Forests under section 35 (1) of the *Forestry Act* 1959–1982;
- (b) in searching for and collecting minerals he uses only hand mining; and
- (c) he complies in all respects with the provisions, reservations and conditions to which the Conservator of Forests subjects the permit held by him.”.

40. Amendment of s. 48. Objection to grant of licence. Section 48 of the Principal Act is amended by—

(a) in subsection (2)—

- (i) in the first paragraph, omitting the words “ and to the occupier ”;
- (ii) in the second paragraph, omitting the words “ or occupier ”;
- (b) after subsection (2), inserting the following subsection:—

“(2A) On the date of hearing of the application, the Wardens Court shall hear and determine the application, other than an application which has been abandoned in respect of the whole area thereof, together with any and every objection lodged in the manner prescribed on or before the date fixed pursuant to subsection (2) (b) in respect of the application.

The Wardens Court may adjourn such hearing from time to time.”;

(c) in subsection (3), omitting the words “ of the application ” and substituting the words “ of an application ”.

41. Amendment of s. 49. Grant of licence. Section 49 of the Principal Act is amended in subsection (1) by—

(a) in the first paragraph, inserting after the words “ a licence ” the words “, other than an application which has been abandoned in respect of the whole area thereof,”;

(b) in the second paragraph, omitting the words “ and occupiers ”.

42. Amendment of s. 57. Compensation for damage caused by or to licensee. Section 57 of the Principal Act is amended by omitting the last paragraph.

43. Amendment of s. 58A. Access over alien land to mining tenement. Section 58A of the Principal Act is amended by—

(a) in subsection (1)—

(i) omitting the words “ and the applicant for a mining tenement ” and substituting the words “ registered or granted prior to the commencement of the *Mining Act and Other Acts Amendment Act 1982* ”;

(ii) inserting at the end thereof the following paragraph:—

“ Upon the renewal of the registration of a mining claim or of a mining tenement after the commencement of the *Mining Act and Other Acts Amendment Act 1982*, the provisions of this subsection do not apply to that mining tenement.”;

(b) in subsection (6), in provision (i) inserting after the words “ who is the ” the words “ owner or ”.

44. Repeal of and new s. 71B. The Principal Act is amended by omitting section 71B and substituting the following section:—

“ **71B. Proof of authority to be upon land.** (1) Any officer of the Department of Mines authorized by the Minister in that behalf and any warden may require a person who, in his opinion—

(a) is or has entered upon land for mining purposes;

(b) is in possession of or occupying land for mining purposes; or

(c) is in possession of or occupying Crown land as a place of residence apparently in association with mining operations,

to produce evidence to the satisfaction of the officer or warden of his authority so to be, enter, be in possession or occupy and that person shall not fail to comply with the requirement within the time (being a

time within which in the circumstances it is reasonably practicable to produce that evidence) and at the place specified by that officer or warden therefor.

(2) In any proceeding for an offence against this Act evidence that a person failed to produce evidence requested pursuant to subsection (1) within the time and at the place specified in the request is evidence and, in the absence of evidence to the contrary, conclusive evidence that the person did not have authority to be, enter, be in possession or, as the case may be, occupy that land.”.

45. Amendment of s. 80. Substantive jurisdiction of Wardens Court. Section 80 of the Principal Act is amended by—

(a) in subsection (1), in the first paragraph, omitting the word “A” and substituting the words “ Subject to section 80A, a ”;

(b) in subsection (3)—

(i) omitting the words “, and award costs and an order duly made by a Wardens Court” and substituting the words “. The costs of all proceedings under this Act before the warden (whether in the Wardens Court or otherwise) 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. An order (including an order as to costs), duly made by a warden or the Wardens Court under this subsection”;

(ii) in the proviso, omitting the words “upon the expiration of thirty days after” and substituting the words “forthwith upon”.

46. New s. 80A. The Principal Act is amended by inserting after section 80 the following section:—

“**80A. Jurisdiction of Supreme Court.** (1) The Supreme Court has jurisdiction to hear and determine any proceeding challenging or otherwise relating to the validity of—

(a) a mining claim registered or purportedly registered;

(b) a mining lease granted or purportedly granted;

(c) an authority to prospect issued or purportedly issued;

(d) any other Crown grant made or purportedly made,

whether before or after the commencement of the *Mining Act and Other Acts Amendment Act 1982*, pursuant to this Act or any other Act relating to mining and, notwithstanding any other Act or law, any such proceeding shall be heard and determined in that Court only.

(2) It is immaterial that the Crown is not a party to the proceeding.

(3) Any such proceeding pending at the commencement of the *Mining Act and Other Acts Amendment Act 1982* in a court other than the Supreme Court shall not proceed in that court after that commencement.

(4) If the—

(a) mining claim;

(b) mining lease;

(c) authority to prospect;

(d) other Crown grant,

in question is declared by the Supreme Court to be invalid, the declaration binds the Crown and a copy of the judgment or order of the Court in

respect thereof shall be served by the party benefitting from the declaration on the Director-General, Department of Mines, within 21 days from the date of the judgment or order.”.

47. Amendment of s. 98. Offences with respect to unauthorized mining. Section 98 of the Principal Act is amended in subsection (1) by inserting at the end of paragraph (f) the following expression and words:—

- “ ;
- (g) occupy or erect any structure on any land for use for mining purposes unless he is duly authorized thereunto;
 - (h) occupy or erect any structure on any land for use as a residence whilst he carries on mining operations unless he is duly authorized thereunto;
 - (i) carry on mining operations on or occupy and use any land for mining purposes unless he is duly authorized thereunto ”.

48. New s. 102AA. The Principal Act is amended by inserting after section 102A the following section:—

“ **102AA. Permits to enter, mining claims and mining tenements concurrent with authorities to prospect.** Notwithstanding that the holder of or applicant for an authority to prospect has not consented as required pursuant to sections 16B (2) (ii), 18 (2) or (2A), 22 (b), 118 (4A) or 122 (6)—

- (a) a permit to enter private land;
- (b) a mining claim;
- (c) a mining tenement,

may subject to the other sections of this Act be issued, registered or, as the case may be, granted in respect of land included in that authority to prospect or application therefor if the authority to prospect or the application therefor does not relate to any mineral proposed to be sought or mined under the authority of that permit to enter, mining claim or as the case may be, mining tenement.”.

49. Amendment of s. 103A. Evidentiary provisions. Section 103A of the Principal Act is amended in subsection (1) by omitting provision (b) and substituting the following provisions:—

- “ (b) a certificate purporting to be made by a mining registrar that in relation to the land therein identified there is no record in the warden’s office of—
- (i) the registration of a mining tenement; or
 - (ii) an application for a mining tenement,
- shall, upon its production, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;
- (c) a certificate purporting to be made by a mining registrar that at a specified time or during a specified period a specified person was or was not the owner or holder of a mining lease or a mining tenement in respect of any or any specified land or mineral shall, upon its production, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;

- (d) a certificate purporting to be made by a mining registrar that any or a particular return prescribed to be furnished in respect of a specified mining tenement has not at any time or during a specified period been furnished at the warden's office by or on behalf of any specified person shall, upon its production, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;
- (e) a certificate purporting to be made by or on behalf of the Director-General, Department of Mines that any or a particular return prescribed to be furnished in respect of a specified mining tenement has not at any time or during a specified period been furnished at the Department of Mines by or on behalf of any specified person shall, upon its production, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;
- (f) a document or writing purporting to be a copy of a direction, notice or order given or served by or on behalf of the Minister, warden or other duly authorized officer under this Act, shall, upon its production, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the direction, notice or, as the case may be, order and of the matters contained therein."

50. New s. 103D. The Principal Act is amended by inserting after section 103C the following section:—

" 103D. Mode of service of documents. A direction, notice, order or other document required or authorized by this Act to be given to or served upon any person by the Minister, warden, duly authorized officer or other person shall be duly given or served if—

- (a) it is served personally upon the person to whom it is directed;
- (b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives or serves it;
- (c) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives or serves it."

51. Amendment of s. 106. Power to make regulations. Section 106 of the Principal Act is amended in subsection (2) by—

(a) in provision (xxi), omitting all words from and including the words " and any premises " to and including the words " such documents " and substituting the words " , any premises and any other place, not being a dwelling-house, wherein or whereon any such person so appointed suspects on reasonable grounds that there are documents, accounts or records pertaining to the conduct of a mine and to search for and require production at the tenement, premises or place or at the warden's office or other place specified by such person of documents, accounts or records pertaining to the conduct of a mine or to examine, copy and make extracts from such documents, accounts and records " ;

(b) after provision (xxi) as amended, inserting the following provision:—

“(xxiA) the manner of making and lodging royalty returns, documents and statements and the keeping of records and books of accounts;”.

52. Amendment of s. 108. Definitions. Section 108 of the Principal Act is amended by—

(a) in the definition “improved land” omitting the words “(not being mere pasture land)” and substituting the words “, improved pasture land”;

(b) in the definition “mining title” by omitting the words “, and” and substituting the word “or”.

53. Amendment of s. 109. This Act applicable to private land. Section 109 of the Principal Act is amended in subsection (1) by inserting after the words “mining titles” the words “and authorities to prospect”.

54. Amendment of s. 113. Mining titles and permits to enter not to include land declared exempt. Section 113 of the Principal Act is amended by—

(a) in the note appearing in and at the beginning thereof inserting after the word “titles” the words “, authorities to prospect”;

(b) in subsection (2) inserting after the words “mining title” the words “, authority to prospect”.

55. Repeal of s. 116. Exercise of power in contravention, etc., of Act null and void. The Principal Act is amended by repealing section 116.

56. Amendment of s. 117. One mining title may include several lands. Section 117 of the Principal Act is amended by—

(a) in the note appearing in and at the beginning thereof inserting after the word “title” the words “etc.”;

(b) after the words “a mining title” inserting the words “or an authority to prospect”;

(c) after the words “one mining title” inserting the words “, in one authority to prospect”.

57. Amendment of s. 118. Permit to enter private land. Section 118 of the Principal Act is amended by—

(a) in subsection (2)—

(i) in provision (c), omitting the words “contiguous and” where they twice occur;

(ii) omitting provision (d);

(b) in subsection (3), in the first paragraph, omitting the words “of this section” and substituting the words “and those applications are for the purpose of searching for the same mineral or minerals”;

(c) in subsection (4), omitting the second and third paragraphs and substituting the following paragraphs:—

“Where the warden determines that a permit to enter should be granted upon an application made by a person other than the owner or occupier of the private land in question he shall fix an amount—

- (i) where the applicant is the holder of an authority to prospect which includes the subject private land not less than \$1 000;
- (ii) in all other cases not less than \$100,

and shall require the applicant to deposit that amount or a bond in that amount with him as security for compensation to the owner or occupier of the private land that the applicant would be authorized by the permit to enter for any damage caused by the applicant to the property of such owner or occupier during the currency of the permit.

The warden may accept a guarantee or indemnity by a bank or insurance company approved by the warden as the whole or part of the security to be deposited under this subsection.

If the applicant fails to deposit the security required by the warden the applicant shall not be granted the permit to enter in question.

If, at any time during the term of the permit to enter the warden is satisfied that any damage has been caused by the holder thereof to the property of the owner or occupier during the currency of the permit the warden may utilize the whole or part of the amount of any security deposited pursuant to this subsection to compensate the owner or occupier for that damage and thereupon the warden may require the permit holder, within such time as the warden determines, to deposit with the warden such further security (being of a kind specified in this subsection) and in such sum of money or amount as the warden thinks proper for the purposes of this subsection.

Such further security together with any balance of the security previously deposited shall be deemed to be the security originally deposited.

If the warden is satisfied at the expiration or termination of a permit to enter that no compensation or no further compensation is payable to the owner or occupier under this subsection the warden shall refund any security deposited by way of a sum of money or the balance not utilized by him pursuant to this subsection to the holder or as the holder directs.”;

(d) in subsection (4A) in the first paragraph, omitting the word “The” and substituting the words “Subject to section 102AA, the”;

(e) in subsection (6), in provision (b), omitting the words “thirty days” and substituting the words “three months”.

58. Amendment of s. 119. Right to apply for permit to enter during currency of permit. Section 119 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:—

“(2) It shall not be competent to any person to make application for a permit to enter private land during the period for which a permit to enter that includes that land is effective save—

- (a) as is prescribed by subsection (1); or

- (b) where each mineral to be sought under the permit to enter applied for is different to the mineral or minerals specified in the effective permit to enter,

and no warden shall at any time consider such an application made during that period.”.

59. Amendment of s. 121. Payment of compensation for damage. Section 121 of the Principal Act is amended in subsection (2) by omitting the word “subsection” and substituting the word “section”.

60. Amendment of s. 123. Requirements of application for mining tenements in private land. Section 123 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:—

“(1) A person who, on or after the commencement of the *Mining Act and Other Acts Amendment Act 1982*, applies for a mining tenement in private land shall—

(a) in his application—

(i) describe the boundaries of the land for which he applies and specify—

(a) the minerals to be won (if any) under the authority of the proposed tenement; and

(b) the purposes for which the land is intended to be used;

(ii) describe the boundaries of any surface area for which he applies, being within the land described pursuant to provision (i), and the purpose for which that area is to be used; and

(iii) describe any right of way for which he applies (including the boundaries of the land to be subject thereto) over, through or in any land from land described pursuant to provision (i) or (ii) to a practicable point acceptable to the Minister on any road, river, waterway or railway station or siding for gaining access to or from that land for the purposes specified in the application; and

(b) include with or in his application a sketch plan taken from or being part of a map approved for the time being for use in the relevant mining district by the warden and setting out the boundaries of the land applied for and of the land in respect of which a right of way is applied for in the application.

Boundaries of land and of surface areas of land shall be described by—

(a) accurately measured distances and compass bearings on the ground; or

(b) a survey method acceptable to the Director-General, Department of Mines.

The description of the boundaries of land described pursuant to provision (a) (i) shall in like manner accurately relate the commencement point of that description to a survey corner, well marked tree or other fixed or well defined object.

(1A) A person whose application for a mining tenement made prior to the date of commencement of the *Mining Act and Other Acts Amendment*

Act 1982 has not been determined prior to that date shall within 60 days from that date lodge with the warden—

- (a) a document setting out the descriptions that he would have been required pursuant to subsection (1) (a) (ii) and (iii) to describe in his application; and
- (b) a sketch plan that he would have been required pursuant to subsection (1) (b) to include in his application,

had the application been made after that date:

Provided that the applicant shall be deemed to have complied with this subsection to the extent that this subsection has been complied with in his application.

Until this subsection has been complied with, an application to which this subsection applies shall be deemed to have not been duly made under this Act:

Provided however that the application shall retain the priority which it had immediately prior to the date of commencement of the *Mining Act and Other Acts Amendment Act 1982*.”

61. Amendment of s. 124. Further application by holder of mining tenement. Section 124 of the Principal Act is amended in subsection (3) by omitting the words “ the holder’s original application for his title to the ” and substituting the words “ if it were an application for title to a ”.

62. Amendment of s. 125. Matter to be proved when no surface applied for. Section 125 of the Principal Act is amended by—

(a) omitting the words “ a title ” and substituting the words “ a mining title ”;

(b) omitting the words “ and the consent of the owner of the private land has not been obtained, the applicant (if he is not the owner of the private land) ” and substituting the words “, the applicant ”.

63. Amendment of s. 128. Measure of compensation payable in respect of mining on private land. Section 128 of the Principal Act is amended by—

(a) omitting subsection (2) and substituting the following subsection:—

“(2) Subject to subsection (1), compensation is payable under this Part in respect of all or any of the matters referred to in section 129 (4A).”;

(b) in subsection (3), inserting after the word “under” the words “ the surface of ”.

64. Amendment of s. 129. Determination of compensation payable under this Part. Section 129 of the Principal Act is amended by—

(a) in subsection (4), omitting the second paragraph;

(b) after subsection (4), inserting the following subsection:—

“(4A) Subject to section 128 the Wardens Court in making a determination pursuant to subsection (4) may inform itself in such manner as it thinks fit and shall take into consideration—

- (a) deprivation of possession of the surface of the land or any part thereof;

- (b) diminution of the value of the lands of the owner or occupier or any improvements thereon;
- (c) diminution of the use made or which may be made of the lands of the owner or occupier or any improvements thereon;
- (d) severance of any part of the private land from other parts thereof, or from other lands of the owner or occupier;
- (e) surface rights of way;
- (f) all damage, loss or expense that arises or is likely to arise as a consequence of any matter referred to in provision (a), (b), (c), (d) or (e); and
- (g) if the court is satisfied that it will be necessary for the owner or occupier to obtain replacement land of a similar nature and area or resettle himself or relocate his livestock and other chattels on other parts of his land or on the replacement land, all reasonable costs (including legal costs) likely to be incurred by the owner or occupier in obtaining replacement land, his resettlement and the relocation of his livestock or other chattels as at the date of the court's determination.

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

65. New s. 129A. The Principal Act is amended by inserting after section 129 the following section:—

“**129A. Appeal against determination.** (1) If any party is aggrieved by a determination of a Wardens Court made pursuant to section 129 he may, within 28 days of the date of that determination or within such further period as the Land Court, on the application of that party in that behalf prior to the lodgement of the appeal, deems appropriate in any particular circumstances, appeal against the determination to the Land Court.

The appeal shall be instituted by lodging in the Land Court registry written notice of his grounds of appeal and serving copies of that notice on the mining registrar and each other party.

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

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

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

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

(4) Every appeal under subsection (1) shall be by way of a rehearing. The determination of the Land Court on appeal shall be final and conclusive.”.

66. Amendment of s. 130. Compensation to be paid before mining commences. Section 130 of the Principal Act is amended by omitting the words “ of this Act ” and substituting the words “ or 129A ”.

67. Repeal of s. 131. Rights independent of this Act preserved. The Principal Act is amended by repealing section 131.

68. New Part XIII. The Principal Act is amended by inserting after section 130 the following heading and section:—

“ PART XIII—RIGHTS INDEPENDENT OF THIS ACT PRESERVED

131. Rights independent of this Act preserved. Save in relation to damage for which compensation is expressed to be payable by this Act, the provisions of this Act shall not be construed to abrogate or prejudice any right had by any person independently of this Act to recover damages or obtain any other remedy in respect of damage or injury suffered or loss incurred by him by reason of mining or prospecting on or in any land.”.

PART III—AMENDMENTS OF FORESTRY ACT 1959–1981

69. Citation. (1) In this Part, the *Forestry Act 1959–1981* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Forestry Act 1959–1982*.

70. Amendment of s. 35. Power of the Conservator of Forests to grant permits with respect to land within State Forests. Section 35 of the Principal Act is amended in subsection (1), by—

(a) omitting the word “ or ” occurring between provisions (ii) and (iii);

(b) inserting after provision (iii) the following provision:—

“ ; or

(iv) Permits to search for and collect minerals ”;

(c) inserting at the end of the subsection, after the words “ prejudiced or opposed ”, the words “, and no permit to search for and collect minerals shall be granted unless the land comprised in the State Forest or part thereof in question is the subject of a subsisting declaration under section 45A (1) of the *Mining Act 1968–1982* ”.

71. Amendment of s. 73. Unlawfully using State Forests, etc. Section 73 of the Principal Act is amended by inserting after provision (iii) the following provision:—

“(iia) Searches for or collects minerals; or”.

PART IV—AMENDMENTS OF PETROLEUM ACT 1923–1981

72. Citation. (1) In this Part, the *Petroleum Act 1923–1981* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Petroleum Act 1923–1982*.

73. Amendment of s. 3. Interpretation. Section 3 of the Principal Act is amended in the definition "Petroleum" by inserting after the words "natural reservoir" the following expression and words:—

“ :

The term does not include, and is hereby declared never did include—

- (d) shale from which mineral oil may be extracted or produced;
- (e) mineral oil extracted or produced from shale or coal or other rock by some chemical or thermal process;
- (f) hydrocarbons and other substances or matter occurring in association with shale or coal and necessarily mined, extracted, produced or released by or in connexion with mining for shale or coal or the extraction or production of mineral oil therefrom”.

74. Amendment of s. 4. Application of Act. Section 4 of the Principal Act is amended by omitting the first paragraph commencing with the words "This Act does not”.

75. Amendment of s. 32. Rent. Section 32 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

“(1) (a) The lessee of a lease the application for which is made on or after 1 January 1982 shall pay in advance, beginning with the date of the application, an annual rental at the rate of \$20 for every square kilometre or part thereof for and in respect of the land demised.

(b) The provisions of paragraph (a) do not affect the rental payable by the lessee of a lease the application for which was made before 1 January 1982 and determined under any enactment prior to the *Mining Act and Other Acts Amendment Act 1982*.”.

76. Amendment of s. 56. Right to mine for other minerals. Section 56 of the Principal Act is amended in the first paragraph by omitting the words "from shale or other rock by some industrial" and substituting the words "or produce from shale, coal or other rock by some chemical or thermal”.