

Queensland



ANNO TRICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE



No. 67 of 1985

An Act to provide for the declaration of areas in the State in which fossicking for gemstones and gold is to be permitted, to provide for the issue of fossickers' licences, to regulate fossicking activities within those areas and for other purposes

[ASSENTED TO 11TH OCTOBER, 1985]

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 (Fossicking) Act 1985*.

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

PART I—PRELIMINARY (ss. 1-4);

PART II—DESIGNATED AREAS (ss. 5-12);

PART III—FOSSICKING AREAS (ss. 13-15);

PART IV—FOSSICKER'S LICENCE (ss. 16-29);

Division 1—Issue of Licence (ss. 16-23);

Division 2—Entitlements and Duties of Holder of Fossicker's Licence (ss. 24-29);

PART V—CONDUCT WITHIN DESIGNATED AREAS (s. 30);

PART VI—POWERS OF WARDEN (ss. 31-36);

PART VII—MISCELLANEOUS (ss. 37-47).

3. Application of Act. Save where the contrary is in this Act expressed, this Act is in addition to and not in derogation of the provisions of the *Mining Act 1968-1983* or any other Act relating to mining.

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

“authority to prospect” has the same meaning that it has in the *Mining Act 1968-1983*;

“Crown Land” means land other than land—

(a) which has been alienated by the Crown in fee-simple;

(b) in respect of which a right to a grant by the Crown in fee-simple—

(i) has accrued to any person;

or

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

(c) in which an estate in fee-simple is being purchased from the Crown;

(d) which is a reserve;

-
- “designated area” means an area declared pursuant to Part II to be a designated area including any fossicking area within that designated area;
- “fossicker’s licence” means a current licence issued pursuant to Part IV;
- “fossicking area” in relation to a designated area, means an area, within the designated area, declared pursuant to Part III to be a fossicking area;
- “gemstone” means a precious stone or a semi-precious stone and includes any substance that is from time to time declared by Order in Council to be a gemstone for the purposes of this Act;
- “hand mining” means mining using only picks, shovels, hammers, gads, sieves, windlasses and other like tools which are used manually;
- “holder of a fossicker’s licence” includes a person who is a member of a family in respect of which family a family fossicker’s licence is current;
- “member of the family” in relation to a family fossicker’s licence, means any of the following:—
- (a) the person in whose name the licence is issued;
 - (b) the spouse of the person referred to in provision (a);
 - (c) a person who is living with the person referred to in provision (a) as the spouse of that person;
 - (d) a person under the age of 18 years who for the time being resides with the person referred to in provision (a) as a member of that person’s household;
- “mineral” means a mineral within the meaning of the *Mining Act 1968-1983*;
- “miner’s right” has the same meaning that it has in the *Mining Act 1968-1983*;
- “mining claim” has the same meaning that it has in the *Mining Act 1968-1983*;
- “mining district” means a mining district constituted under the *Mining Act 1968-1983*;
- “mining lease” has the same meaning that it has in the *Mining Act 1968-1983*;
- “mining purpose” has the same meaning that it has in the *Mining Act 1968-1983*;
- “Minister” means the Minister for Mines and Energy or other Minister of the Crown for the time being charged with the administration of this Act. The term includes any Minister of the Crown who is temporarily performing the duties of the Minister;

“occupied Crown land” means land that is occupied Crown land within the meaning of the *Mining Act 1968-1983* other than land the subject of a permit to occupy issued pursuant to the *Land Act 1962-1985*;

“reserve” means a reserve within the meaning of the *Mining Act 1968-1983*;

“unoccupied Crown land” means Crown land which for the time being—

(a) is not the subject of a lease or licence (other than a permit to occupy issued pursuant to the *Land Act 1962-1985*) granted by the Crown;

(b) is not the subject of an authority to prospect;

(c) is not the subject of a mining claim or an application therefor;

“warden” means a warden within the meaning of the *Mining Act 1968-1983* and includes a person appointed under that Act to act as warden;

“Wardens Court” means a Wardens Court constituted under the *Mining Act 1968-1983*.

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

PART II—DESIGNATED AREAS

5. Declaration of designated area. (1) The Governor in Council may by Order in Council declare any area within a mining district to be a designated area.

(2) Notwithstanding the declaration of a designated area pursuant to subsection (1), a designated area shall comprise all Crown land and reserve land situated within the designated area other than any land—

(a) that is occupied Crown land, not being land occupied pursuant to any Act relating to mining or to the *Miners' Homestead Leases Act 1913-1982*, where the holder of that land has not given his consent in writing to the inclusion of that land in the designated area;

(b) that is a Timber Reserve or State Forest within the meaning of the *Forestry Act 1959-1984*;

(c) that is a National Park within the meaning of the *National Parks and Wildlife Act 1975-1984*;

(d) that has been reserved and set apart under the *Land Act 1962-1985* as environmental park;

or

(e) that is land excluded from the designated area specifically in the Order in Council declaring the designated area or in another Order in Council.

(3) Where, immediately prior to the making of an Order in Council declaring a designated area, any occupied Crown land was or was part of a designated area, for the purpose of subsection (1), the holder of that land shall be taken to have given his consent to the inclusion of that land in the designated area.

6. Mining operations in designated area. A person shall not search for or collect any mineral or carry on any operation for mining purposes upon land within a designated area unless he does so in compliance with and under the authority of—

- (a) a current fossicker's licence issued in respect of that designated area;
- or
- (b) the provisions of any Act relating to mining to the extent that those provisions apply in the designated area.

7. Use of machinery in designated area. (1) The Governor in Council may, from time to time as he thinks fit, by Proclamation proclaim, with respect to one or more than one designated area or a part of a designated area—

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

(2) A person who searches for or collects any mineral or carries on any operation for mining purposes upon land within a designated area (whether his entitlement so to do becomes effective before or after the passing of this Act) shall comply with any Proclamation made pursuant to subsection (1) with respect to that land.

(3) The Crown shall not be civilly liable on account of the effect of any Proclamation made pursuant to this section or section 8.

8. Prohibition of use of certain machinery in designated area. The Governor in Council may, from time to time as he thinks fit, by Proclamation, with respect to one or more than one designated area or a part of a designated area, declare that certain types of machinery, mechanical devices or other equipment may not be used in the designated area or part thereof specified in the Proclamation.

9. Prohibited machinery etc. in designated area. A person shall not, without the prior written consent of the warden, have or use any machinery, mechanical device or other equipment the use of which has been prohibited in a Proclamation made pursuant to section 8 in a designated area specified in the Proclamation.

Penalty: for a first offence, \$10 000;
for a second offence, \$20 000;
for a third or subsequent offence, \$50 000.

10. Forfeiture etc., of machinery etc. (1) A Wardens Court which convicts a person of an offence against section 9, in addition to imposing a penalty prescribed in that section, may order—

(a) the forfeiture to the Crown;

or

(b) the detention by the warden for a period specified in the order,

of any machinery, mechanical device or other equipment seized and detained by a warden and used in the commission of the offence.

(2) An order for the forfeiture of any machinery, mechanical device or other equipment pursuant to subsection (1) shall take effect after the expiration of the time allowed for lodging an appeal or, where an appeal is lodged and the order is not upset upon appeal, after the determination of the appeal.

(3) Upon an order of forfeiture of any machinery, mechanical device or other equipment to the Crown taking effect, the machinery, mechanical device or other equipment shall become the property of the Crown and shall be disposed of in such manner as the Minister directs.

(4) Any machinery, mechanical device or other equipment, the subject of an order of forfeiture to the Crown pursuant to subsection (1), shall, until the order becomes effective, be detained by the warden.

(5) The Crown, a warden and any person acting under the authority of a warden shall not be civilly liable on account of—

(a) anything done by the Crown, a warden or any person acting under the authority of a warden pursuant to this section;

or

(b) any loss or deterioration of or any damage to any machinery, mechanical device or other equipment occasioned or suffered whilst any machinery, mechanical device or, as the case may be, other equipment is detained or in the custody of the Crown or the warden or any other person for the purposes of this section.

11. Effect of declaration of designated area upon authorities to prospect and mining leases. (1) Notwithstanding the provisions of the *Mining Act 1968-1983* and subject to subsection (2), on and from the declaration of a designated area taking effect, the provisions of that Act with respect to—

(a) the application for mining leases;

(b) the granting and issuing of mining leases,

do not apply with respect to land within the designated area other than land that is specified in the Order in Council declaring the area to be a designated area as being land to which those provisions apply:

Provided that where, prior to the declaration taking effect, an application for a mining lease had been made, those provisions shall continue to apply until the application is determined.

(2) Subsection (1) does not affect the provisions of the *Mining Act 1968-1983* with respect to the renewal, transfer, amalgamation, surrender and variation of the terms and conditions of mining leases to the extent that those provisions apply regarding mining leases in existence in a designated area immediately prior to the declaration of the designated area taking effect or issued or granted after that declaration took effect in accordance with the proviso to subsection (1).

(3) (a) Notwithstanding the provisions of the *Mining Act 1968-1983*, on and from the declaration of a designated area taking effect, any authority to prospect, whether granted before or after the passing of this Act, to the extent that it relates to land within the designated area, shall have no force or effect.

(b) The Crown shall not be civilly liable by reason that, by the operation of paragraph (a), an authority to prospect has no force or effect to any extent.

12. Entitlements of holder of miner's right in designated area. In respect of a designated area, the holder of a miner's right shall have, in addition to his rights and entitlements, duties and responsibilities under the provisions of the *Mining Act 1968-1983* as modified by this Act, the same rights and entitlements and be subject to the same duties and responsibilities that the holder of a fossicker's licence has and is subject.

PART III—FOSSICKING AREAS

13. Declaration of fossicking area. The Governor in Council may by Order in Council declare any land within a designated area to be a fossicking area.

14. Restriction of mining operations in fossicking area. (1) A person shall not search for or collect any mineral or carry on any operation for mining purposes upon land within a fossicking area unless he does so in compliance with and under the authority of the provisions of this Act and—

(a) a fossicker's licence of which he is the holder issued in respect of the designated area of which the fossicking area forms a part;

or

(b) a miner's right.

(2) Notwithstanding subsection (1) and the provisions of the *Mining Act 1968-1983*, no person shall be entitled to mark out or apply for registration of a mining claim over land within a fossicking area.

15. Activities of holder of miner's right in fossicking area. Notwithstanding the provisions of the *Mining Act 1968-1983*, those provisions relating to the rights, entitlements, duties and responsibilities of the holder of a miner's right do not apply in respect of a fossicking area but in respect of a fossicking area the holder of a miner's right

shall have the same rights and entitlements and be subject to the same duties and responsibilities as the holder of a fossicker's licence issued in respect of the designated area of which the fossicking area forms a part has and is subject.

PART IV—FOSSICKER'S LICENCE

Division I—Issue of Licence

16. Two types of licence. A licence issued pursuant to this Act shall be—

- (a) an individual fossicker's licence issued in the name of a natural person;
- or
- (b) a family fossicker's licence issued in respect of the members of a family of a person named in the licence.

17. Licence to be only in respect of designated area. A licence shall be issued in respect of the designated area or areas specified in the licence.

18. Application for licence. An application for a licence shall be—

- (a) in or to the effect of the prescribed form;
- (b) made to the warden for the mining district in which is situated the designated area in respect of which the licence is to be issued or to any other person authorized by the Minister to issue licences in respect of that designated area (which person is in this division referred to as the "issuing officer");
- and
- (c) accompanied by the prescribed fee.

19. Issue of licence. (1) A warden or issuing officer who is satisfied that the requirements of section 18 have been complied with and that the applicant for the licence has attained the age of 18 years shall, unless he refuses the licence pursuant to section 20, issue an individual fossicker's licence or, as the case may be, a family fossicker's licence in the name of the applicant.

(2) A licence shall be in the form prescribed for that type of licence.

20. Refusal to grant a licence. (1) A warden or issuing officer, who is of the opinion that an applicant for a licence or in the case of an application for a family fossicker's licence, a member of the family had previously contravened or failed to comply with any provisions of this Act, the *Mining Act 1968-1983* or any other Act relating to mining, may, whether or not that person or member had been charged or convicted of any offence in respect of that contravention or failure to comply, refuse to issue the licence and shall refund any moneys that accompanied the application.

(2) No appeal shall lie from the refusal of the warden or issuing officer to grant a licence.

21. Term of licence. A licence issued pursuant to this Act shall, unless sooner surrendered or cancelled, be in force for a period of two months from the date specified in the licence (being a date not earlier than the date of issue of the licence).

22. Licence not transferable. A licence is not transferable.

23. Cancellation of licence. (1) A warden or issuing officer may, if he is of the opinion that the holder of a licence or, in the case of a family fossicker's licence, any member of the family has contravened or failed to comply with the provisions of this Act or of the *Mining Act 1968-1983* or any other Act relating to mining may, whether or not that holder or member is charged with any offence and whether or not any notice is served upon him pursuant to section 40, by notice in or to the effect of the prescribed form served on the holder or, as the case may be, any member of the family, cancel the licence effective upon receipt of the notice.

(2) No appeal shall lie against the cancellation of a licence by the warden or the issuing officer.

Division 2—Entitlements and Duties of Holder of Fossicker's Licence

24. Fossicking in designated area. (1) Notwithstanding any Act under which any lease or licence may have been granted or issued over any land within a designated area, the holder of a fossicker's licence issued in respect of that designated area—

(a) in respect of land that is—

- (i) within the designated area;
 - (ii) outside any fossicking area;
- and

(iii) the subject of a miners' homestead perpetual lease (or an application therefor), a miners' homestead lease, a mining lease (or an application therefor), a mining claim (or an application for registration therefor) or an area marked out pursuant to the *Mining Act 1968-1983* by the holder of a miner's right,

with the consent of the lessee or applicant for the lease, the holder or applicant for registration of the claim or the person who marked out the area, as the case may be, may enter and be upon that land;

and

(b) in respect of all other land within the designated area, may enter and be upon that land,

for the purpose of searching for and collecting gemstones and gold.

(2) A holder of a fossicker's licence shall not be required to pay any amount by reason of his lawfully entering or being upon any land

referred to in subsection (1) (b) or for his reasonable disturbance of the soil for the purpose of searching for and collecting gemstones or gold.

25. Gemstones and gold vest in holder of fossicker's licence. Notwithstanding section 110 of the *Mining Act 1968-1983*, all gemstones and gold found on or in the land within a designated area by the holder of a fossicker's licence issued in respect of that area ceases to be the property of the Crown and becomes the property of the holder subject however to the rights of any other person (other than the Crown) in the gemstones or, as the case may be, gold.

26. Obligation to make land safe. (1) The holder of a fossicker's licence shall upon the conclusion of his activities of searching and collecting do all things, which may include the filling in of excavations, necessary to ensure that the land is not unsafe as a result of his activities.

(2) A warden or an inspector within the meaning of the *Mines Regulation Act 1964-1983* may at any time direct a person within a designated area to do such things as the warden or inspector considers necessary to make safe the land in or upon which that person is searching and collecting or has searched and collected and that person shall comply with the direction in the time specified in the direction.

27. Permanent residences restricted in designated area. Unless he has the consent in writing of the warden or is otherwise entitled under the authority of section 28 or of any Act, a person shall not reside upon any unoccupied Crown land in a designated area.

28. Camping in designated areas. (1) Subject to his complying with any applicable laws relating to camping and to the directions of a warden made pursuant to this Act, the holder of a fossicker's licence may camp on any unoccupied Crown land within the designated Area to which the licence applies other than any land declared by Order in Council to be land upon which camping is prohibited.

For the purposes of this subsection, a law (other than this Act) that prohibits camping or requires any approval, authority, permit or licence to so camp shall have no force or effect in respect of unoccupied Crown land within a designated area.

(2) A person shall not camp on any land within a designated area unless he is the holder of a fossicker's licence and complies with subsection (1).

(3) A person who camps within a designated area shall ensure that—

(a) he causes the minimum of inconvenience to;
and

(b) he does not endanger the health and well being of,
other persons lawfully within the designated area.

(4) A person who, under the authority of a fossicker's licence camps upon land as provided in subsection (1), shall, if he has not earlier done

so, before the expiration or surrender of the licence or, forthwith upon the cancellation of the licence vacate the site upon which he camps.

(5) A person who vacates a site upon which he has camped, whether pursuant to subsection (1) or otherwise, shall—

- (a) remove all structures erected by him or on his behalf;
- (b) fill in such excavations made by him or on his behalf as are necessary (or as directed by the warden) to ensure the land is safe;
and
- (c) do all things necessary (including such things as the warden directs) to ensure that the site is in a sanitary condition and is not unsafe as a result of his camping or using the site.

(6) A person who camps within a designated area shall dispose of all refuse (including human waste) and rubbish in a safe and sanitary manner or as directed by the warden.

(7) A warden who considers that a camp site is not being maintained in a safe and sanitary condition may direct any person who appears to him to be in charge of the camp site to do such things as the warden considers necessary to ensure that the site is maintained in a safe and sanitary condition and that person shall comply with that direction.

If the directions of the warden are not carried out within the time specified in the direction the warden may direct the occupant of the camp site to vacate the site forthwith and the occupant and the members of the family (if any) shall comply with the direction and shall comply with subsection (5).

(8) For the purpose of this section a person who stays overnight at a site on land (whether or not he occupies a tent, caravan or other vehicle or any structure of a temporary nature), camps upon that land.

29. Liability to pay royalties. The person in whose name a licence is issued shall pay to the Crown in respect of all gemstones and gold won by all persons under the authority of that licence, the royalty prescribed for the time being under the *Mining Act 1968-1983* in respect of the gemstones or, as the case may be, gold won as if he were the holder of a mining tenement:

Provided that that person shall not be required to lodge any royalty return prescribed under that Act if no amount as royalty is payable by him to the Crown.

PART V—CONDUCT WITHIN DESIGNATED AREAS

30. Conduct of persons in designated area. (1) Unless he has reasonable excuse for so doing, a person shall not within or within the

vicinity of a designated area do any act or make any omission or have in his possession any thing for the purpose of doing any act, that may—

- (a) endanger, obstruct, hinder or otherwise interfere with any person lawfully within that area;
- (b) disrupt the peaceful existence of any person lawfully within that area.

(2) If a warden suspects on reasonable grounds that a person has contravened or is about to or intends to contravene any of the provisions of subsection (1), the warden may—

- (a) direct that person to do such things as he considers necessary to prevent a contravention or a further contravention of subsection (1);
- (b) direct that person to leave the area and, if that person fails to comply within the time specified by the warden, remove that person from the area;

or

- (c) prevent the entry into the area of that person.

If the warden is of the opinion that the contravention or proposed contravention of subsection (1) by a person is of a serious nature, the warden may, notwithstanding that he does not give a direction referred to in provision (b), remove that person from the area.

PART VI—POWERS OF WARDEN

31. Power to demand production of licence. (1) A warden, who is of the opinion that a person is or has been searching for or collecting gemstones or gold or carrying on any operation for mining purposes or camping within a designated area, may at any time require that person to forthwith produce and deliver to him for his inspection the authority under which he acts.

(2) A person shall not fail to produce the authority required by a warden, pursuant to subsection (1), unless he has reasonable excuse for that failure.

32. Power to enter places. (1) A warden who suspects on reasonable grounds that an offence against this Act has been, is being or is about to be committed may within a designated area—

- (a) search any place and inspect any articles found therein;
- (b) make such inquiry as he considers necessary to establish whether the provisions of this Act are being complied with; and
- (c) for the purpose of provisions (a) or (b) enter any place.

(2) A person shall not obstruct, prevent or delay the entry of a warden onto any place within a designated area.

(3) Before entry is made pursuant to subsection (1) by any person who is not a warden to any part of a place that consists of premises

used exclusively as a dwelling-house at the time entry is to be made, that person shall, save where he has the permission of the occupier to his entry, obtain from a justice a warrant to enter.

A justice who is satisfied on the complaint of a person other than a warden that there is reasonable cause to suspect that there is or is likely to be any thing that was obtained or is kept there in contravention of this Act may issue his warrant directed to that person to enter the place specified in the warrant for the purpose of exercising in that place the powers conferred on him by this Act.

A warrant shall be for a period of one month from the date of its issue sufficient authority for the person to whom it is directed and for all persons acting in aid of him—

- (a) to enter the place specified in the warrant;
- and
- (b) to exercise in that place the powers conferred on him by this Act.

In this subsection premises that are used as a dwelling-house do not include the curtilage of those premises.

For the purposes of this subsection, the expression “warden” does not include a person acting as a warden unless that person is also acting as a stipendiary magistrate.

33. Seizing and detention of suspected property. (1) A warden may at any time seize and detain any property found in a designated area and which he suspects on reasonable grounds to have been used to contravene or to facilitate the contravention of any provision of this Act whereupon the seized property shall be taken to be in the custody of the warden.

(2) Subject to section 10, the provisions of the *Mining Act 1968-1983* shall apply with respect to the property seized and detained under subsection (1) and to the disposal of the property as if it were property, a vehicle, machinery, equipment or thing seized pursuant to section 98A of that Act.

(3) A person who takes delivery, or obtains possession of or removes or attempts to remove from or interferes in any way with seized property which is in the custody of a warden pursuant to this Act except in accordance with the provisions of this Act commits an offence against this Act.

Penalty: \$10 000.

34. Acting in aid of warden. Whenever a warden is empowered or required by this Act to do any act or to cause any act to be performed it shall be lawful for any person to do or perform that act under the oral authority of the warden where the act is performed in his presence or under the written authority of the warden where the act is performed in his absence.

All members of the Police Force of Queensland shall, when required by a warden, act in aid of the warden in the discharge by him of his duties and in the exercise by him of his powers under this Act.

35. Warden may prevent breach of Act. A warden may without further authority than this Act—

- (a) intervene to prevent the commission or further commission of an offence against this Act;
- (b) eject from a designated area a person committing or whom he suspects on reasonable grounds to be committing or to be about to commit an offence against this Act,

and for those purposes may use and authorize the use of reasonable force.

36. Warden may direct removal of guns etc. from designated area.

(1) A warden may require any person using, about to use or in possession of a firearm, air-gun, spring gun, cross-bow, spear gun or other weapon or any explosive—

- (a) to remove the same from and leave the same outside the designated area;
- or
- (b) to surrender the same to him to be retained by him until the person concerned departs the area.

(2) Notwithstanding the provisions of the *Firearms and Offensive Weapons Act 1979-1984*, a warden who takes possession of a firearm, air-gun, spring gun, cross-bow, spear gun or other weapon or explosive surrendered to him pursuant to subsection (1) does not contravene any provision of that Act:

Provided that he shall, as soon as practicable after that surrender, notify a member of the Police Force and if requested by a member of the Police Force shall deliver the firearm, air-gun, spring gun, cross-bow, spear gun, other weapon or, as the case may be, explosive to that member to be dealt with as provided in that Act.

PART VII—MISCELLANEOUS

37. Offences generally and penalty. (1) A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act.

(2) Except where a specific penalty is otherwise prescribed, a person who commits an offence against this Act is liable to a penalty of \$5 000 or to imprisonment for six months or to both such penalty and imprisonment.

38. Liability for offence by body corporate. (1) Where a body corporate commits an offence against this Act then, without derogating from section 7 of *The Criminal Code*, each of the following persons shall be deemed to have committed the offence and, notwithstanding

section 23 of *The Criminal Code* or any other rule of law or practice, to be criminally responsible for the act or omission concerned therein and may be charged with the offence and punished accordingly—

- (a) the person who at the time the offence is committed was the chairman of directors, managing director or other governing officer by whatever name called or other member of the governing body thereof by whatever name called; and
- (b) every person who at the time the offence is committed manages or acts or takes part in the management, administration or government of the business in Queensland thereof.

(2) This section applies so as not to limit or affect in any way the liability of a body corporate to be proceeded against and punished for an offence against this Act committed by it.

(3) It is a defence to a charge for an offence against this Act brought against a person specified in subsection (1) (a) or (1) (b) to prove that the offence was committed without that person's consent or connivance and that he exercised due diligence to prevent the commission of the offence.

39. Proceedings for offences. (1) Subject to this Act, all offences against this Act may be prosecuted in a summary way before a Wardens Court under and in accordance with the *Justices Act 1886-1985* and shall be brought within 12 months after the offence is committed or within six months after the offence comes to the knowledge of the complainant whichever is the later period.

(2) A prosecution for an offence against this Act may be instituted by a warden or by a person authorized in writing in that behalf by the Minister.

(3) For the purposes of a proceeding taken before it in a summary way under the *Justices Act 1886-1985*, a Wardens Court shall have and may exercise all the powers of a Magistrates Court subject to and in accordance with that Act.

The provisions of the *Justices Act 1886-1985* apply in respect of any decision or order made by a Wardens Court in proceedings taken for an offence against this Act as if the decision or order had been made by a Magistrates Court in proceedings taken under that Act.

(4) A warden who seizes or authorizes the seizure of any property upon the grounds that the property is being or has been used in contravention of this Act shall be disqualified from hearing any complaint laid in respect of that contravention.

(5) A warden who lays a complaint alleging that a person has contravened any provision of this Act shall be disqualified from hearing the complaint.

40. Giving of notices of penalties for certain offences. (1) Where an authorized person finds a person contravening or failing to comply with the provisions of this Act (other than any provision of section 9), the authorized person may—

- (a) require that person to state his full name and usual place of residence;
- (b) upon ascertaining that person's full name and usual place of residence, give to him the notice specified in this section.

(2) The notice—

- (a) shall be identified by a serial number;
- (b) shall identify the person to whom it is given by his full name and usual place of residence;
- (c) shall state in general terms the offence which the person is alleged to have committed;
- (d) shall inform the person in general terms that if he does not desire the matter to be determined in a court hearing he may complete the form attached to or appearing upon the notice and may forward or deliver that form together with a sum prescribed by regulation by way of penalty to the Director-General, Department of Mines, Brisbane within the time appointed in the notice (which shall be not less than 10 days from the date of the giving of the notice) whereupon he will not be liable to further penalty or costs in the matter;
- (e) shall inform the person in general terms that he has the right to decline to proceed in the manner described in paragraph (d) and to allow the matter to be determined in a court hearing—
 - (i) if he desires to contest the question whether the offence alleged was in fact committed;
 - (ii) if he wishes to submit to the court matters in extenuation of penalty;
 - or
 - (iii) for any other reason,in which event he need not reply or take further action in respect of the notice and that in such case court process will issue against him in due course.

(3) Where a person to whom a notice is given pursuant to subsection (1) proceeds in the manner described in subsection (2) (d) within the time appointed in the notice, a proceeding against him by way of prosecution for the offence alleged in the notice shall not be competent but otherwise such a proceeding may be commenced as if the notice had not been given.

(4) A person shall not assault or use insulting or abusive language to an authorized person who is exercising any of his powers under this section or is attempting so to do.

Penalty: \$200.

(5) A person shall not fail to comply with a requisition directed to him under this section by an authorized person or, in response to such a requisition, give any information that is false or misleading.

Penalty: \$200.

(6) An authorized person shall not incur any liability on account of anything done bona fide and without negligence for the purposes of or purportedly for the purposes of this section.

(7) In any proceedings for an offence referred to in this section a statement in the complaint—

- (a) that the offence which the person is alleged to have committed is an offence against this Act (other than section 9);
and
- (b) that the defendant named therein has not proceeded in the manner described in subsection (2) (d) within the time appointed in a notice given to him pursuant to subsection (1),

is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the statement.

(8) For the purposes of this section “authorized person” includes—

- (a) a warden;
and
- (b) a person appointed by the Minister in writing an authorized person for the purposes of this section.

41. Offences regarding warden and others. A person shall not—

- (a) assault, resist or wilfully obstruct a warden or other person assisting a warden in executing his duty or exercising his powers for the purposes of this Act;
- (b) without the prior approval of a warden enter upon any land within a designated area after having been directed by a warden pursuant to this Act to leave or having been removed from the area;
- (c) fail to comply with a direction by a warden directed to him, in the exercise of a power conferred upon the warden by this Act.

42. Disposal of abandoned property. (1) Where on land situated within a designated area there is any thing (including but without in any way limiting its meaning, structures and vehicles) (in this section referred to as “abandoned property”) in respect of which there are reasonable grounds for suspecting that the same has been abandoned by the person who last used it, the warden may—

- (a) in a case where the abandoned property has no value or a value that does not exceed the cost of proceeding as prescribed

regarding abandoned property referred to in provision (b), remove or dispose of the abandoned property or cause the abandoned property to be removed or disposed of in such manner as he thinks proper;

- (b) in any other case, remove and detain the abandoned property or cause the abandoned property to be removed and detained at a place of safe keeping and deal with the abandoned property or cause the abandoned property to be dealt with in the manner provided by this section.

(2) (a) As soon as practicable after removal and detention of the abandoned property pursuant to subsection (1) (b), the warden shall cause to be given to the owner thereof, if he can be ascertained, notice in writing of the removal and of the place at which the abandoned property is then detained.

The notice shall, if practicable, be served upon the owner, but if it is not so served within 14 days from the date of the removal it may be given by public advertisement in a newspaper circulating in the locality in which the abandoned property was found.

(b) If, within one month from the date of service or advertisement of the notice, the owner of the abandoned property or a person acting on his behalf or claiming a right to the possession of the abandoned property has not obtained possession of the abandoned property, in accordance with the provisions of this subsection, the warden may—

- (i) by notice published in a newspaper circulating in the locality in which the abandoned property was found, advertise that he will offer the abandoned property for sale by public auction at the place and time stated in the advertisement;
- (ii) at the time on the day stated in the advertisement (which day shall be not earlier than 14 days after the date when the advertisement was first published) and at the place stated in the advertisement, cause the abandoned property to be offered for sale by public auction unless the owner thereof or a person acting on his behalf or claiming a right to possession thereof has sooner obtained possession of the abandoned property in accordance with the provisions of this subsection;
- (iii) if no offer for the abandoned property is received at the auction, dispose of it in such manner and on such terms as the warden may determine.

(c) The proceeds of the sale or disposal of the abandoned property shall be applied as follows:—

- (i) firstly, in payment of the expenses of the sale or disposal;
- (ii) secondly, in payment of the cost of removal and detention of the abandoned property and the service and advertisement of any notice served or advertised under this subsection;
- (iii) thirdly, in payment of the balance of the proceeds to the owner of the abandoned property or, if after reasonable

inquiry, he cannot be ascertained, into the Consolidated Revenue Fund.

(d) A warden who has caused abandoned property to be removed and detained under this subsection may deal with any goods, equipment or thing contained in, on or about the abandoned property at the time of its removal in the same manner as he may deal with the abandoned property pursuant to this subsection:

Provided that any abandoned property that comprises perishable goods or any perishable goods contained in the abandoned property at the time of its removal may be disposed of in such manner as the warden directs and the proceeds, if any, of the disposal of the perishable goods shall be applied in accordance with the provisions of paragraph (c) of this subsection.

(e) Abandoned property which a warden has removed and detained or caused so to be, pursuant to this section shall not be delivered to the owner thereof, or to another person acting on his behalf or claiming a right to the possession thereof unless the following provisions have been complied with:—

- (i) the owner or person acting on his behalf or claiming a right to possession of the abandoned property has applied in writing signed by him to the warden for the release of the abandoned property;
- (ii) the applicant has furnished proof to the satisfaction of the warden of his ownership or his right to possession of the abandoned property and, in the case of the applicant being a person acting on behalf of the owner, has furnished proof to the satisfaction of the warden, of his authority to so act;
- (iii) the applicant has paid all expenses incurred by the warden concerned in connexion with the removal and detention of the abandoned property and the service or advertisement of any notice served or advertised by the warden in relation to the removal and detention or intended sale of the abandoned property;
- (iv) the applicant has signed a receipt for the delivery of the abandoned property to him.

A person who takes delivery, or obtains possession of or removes or attempts to remove from the detention of a warden abandoned property removed and detained pursuant to the provisions of this subsection except in accordance with the provisions of this paragraph (e) commits an offence against this Act.

(f) Without limiting the provisions of section 43, in the case of the sale of abandoned property pursuant to this subsection, the liability of a warden to—

- (i) the owner of the property;
- (ii) any other person claiming an interest in, or to have had an interest in the property;
- or
- (iii) two or more of the persons referred to in provisions (i) and (ii),

shall be limited to an aggregate amount not exceeding the proceeds received by the warden from the sale less the expenses of the warden in connexion with the removal or sale of the property.

(g) Without limiting the provisions of section 43, the disposal otherwise than by sale of abandoned property pursuant to this subsection, shall not in respect thereof render the warden liable, in any way whatever, to—

- (i) the owner of the property;
or
- (ii) any other person claiming an interest in, or to have had an interest in, that property.

(h) In this section the term “abandoned property” includes any part of the abandoned property.

(3) This section is in addition to and not in derogation of the provisions of the *Land Act 1962-1985*.

43. Fees and penalties. All fees paid and all penalties recovered and costs incurred in relation to proceedings under this Act shall be payable to the Consolidated Revenue Fund.

44. Protection against liability. No act, matter, thing or decision done or made in good faith and without negligence by—

- (a) a warden;
- (b) a person (including a member of the Police Force of Queensland) acting under the authority or direction of a warden,

for the purposes or purporting to be for the purposes of giving effect to any provision of this Act shall subject them or any of them or the Crown to any action, liability, claim or demand.

45. Evidentiary provisions. In any proceedings in respect of an offence against this Act—

- (a) a certificate purporting to have been made by or on behalf of the secretary of the Land Administration Commission or a mining registrar that in relation to the land therein identified there exist or do not exist factors that are material to classifying that land as unoccupied Crown land shall, upon its production, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the certificate;
- (b) a certificate purporting to be made by the Chief Government Geologist that a substance is a precious stone or semi-precious stone or is gold shall, upon its production, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the certificate,
- (c) an averment or statement in a complaint commencing the proceedings that at a time specified therein a person specified

therein was or was not the holder of a miner's right shall be evidence and, until the contrary is proved, shall be conclusive evidence of that fact;

- (d) a document or writing purporting to be a copy of a direction, notice, order or licence given, issued or served by or on behalf of the warden or by an inspector within the meaning of the *Mines Regulation Act 1964-1983* 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;
- (e) a certificate purporting to be made by the warden that a person specified therein was or was not at a time or during a period specified in the certificate the holder of a fossicker's licence in respect of a specified designated area shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the certificate;
- (f) it is not necessary to prove the appointment of a warden, an inspector within the meaning of the *Mines Regulation Act 1964-1983* or a member of the Police Force of Queensland or, in any case, his authority to do an act, take a proceeding or give any direction or order;
- (g) it is not necessary to prove the authority of the complainant to initiate the proceedings;
- (h) an allegation or averment in a complaint of the date on which the commission of an offence against this Act came to the knowledge of the complainant shall be evidence and in the absence of evidence to the contrary, conclusive evidence of that allegation or averment.

46. Regulations. (1) The Governor in Council may make regulations not inconsistent with this Act for or with respect to—

- (a) the forms to be used for the purposes of this Act and the purposes for which those forms shall be used;
- (b) the fees to be paid under this Act;
- (c) the prevention, mitigation and remedying of pollution of any land or water in designated areas by persons within those areas;
- (d) the regulation of the conduct of persons camping upon unoccupied Crown land pursuant to the authority of this Act;
- (e) penalties for a contravention or failure to comply with any regulation;
- (f) all other matters required or permitted by this Act to be prescribed and no other manner of prescription is specified;
- (g) all matters that may be convenient for the administration of this Act or that may be necessary or expedient for carrying out or giving effect to this Act.

(2) A regulation may be made to apply generally or in a particular case or to apply throughout the State or in respect of one or more than one mining district, designated area, fossicking area or other part of the State.

(3) Different fees may be prescribed for different types of licence.

47. Orders in Council. Section 28A of the *Acts Interpretation Act 1954-1971* (Tabling of regulations) shall apply with respect to Orders in Council made for the purposes of this Act and, for the purposes of such application, that section shall be read and construed as if references to regulations were references to Orders in Council made for the purposes of this Act.