

FOSSICKING BILL 1994

EXPLANATORY NOTE

GENERAL OUTLINE

Objective of the Legislation

The main objective of the Bill is to provide a simple administrative framework for recreational and tourist fossickers searching for gemstones, minerals and ornamental stones throughout the State.

It clearly separates administration of such activities from the more complex regulation needed for commercial mining via the *Mineral Resources Act 1989*.

It also aims to assist in tourist promotion activities of regional authorities, particularly in rural and outback areas, by improving access to well known fossicking localities.

Reasons for the Bill

Following the proclamation of the *Mineral Resources Act 1989* in 1990, certain problems for recreational, tourist and educational mineral collectors became evident. The replacement for the old Miners Right, the Prospecting Permit, proved too cumbersome and costly for short-term enthusiasts and travelling tourists.

A simpler fossickers licence is currently available under the *Mining (Fossicking) Act 1985*, but only for specified Designated Areas and Fossicking Areas, which to date have been largely limited to the central Queensland gemfields west of Emerald.

In 1990 the Government gave an undertaking to gem and lapidary clubs that the situation would be reviewed at the end of twelve months. Possibilities for reform were examined in an Options Paper which was circulated to interested parties for comment.

A simple option was to remove such activities from legislation entirely and to permit them at the discretion of landowners, as is the case with shooting, or bushwalking. Other options were for regulation by other

agencies, such as the Departments of Environment and Heritage, Lands, or Primary Industries, or by Local Governments. If the Department of Minerals and Energy were to retain control, options ranged from only a simple State-wide fossickers licence, operating with landowners' permission, to more direct involvement through establishment of a major network of Fossicking Areas where permissions had been obtained in advance.

Consensus was reached that there was a need for continued State administration of fossicking to maintain standards and assist tourist promotion, and for continued involvement of the Department of Minerals and Energy because of its technical knowledge, the need to co-ordinate with administration of commercial mining, and public expectations.

Provision of separate legislation, a simple fossickers licence to operate State-wide (with landowner permission), and a modest programme of new Fossicking Areas where Local Governments are prepared to assist with costs, was the preferred option.

Amendment of the *Mining (Fossicking) Act 1985* to cover the whole of the State to achieve the above has been considered. However, as other substantial amendments are also needed to provide for greater control of Designated Areas and Fossicking Areas, particularly for environmental protection and camping, an entirely new Fossicking Act is more appropriate. This also allows the opportunity of including common fossicking materials not previously covered by the *Mining (Fossicking) Act 1985* or the *Mineral Resources Act 1989*, such as ornamental stones and fossil specimens.

Estimated Cost for Government Implementation

This is expected to be relatively minor, with licence and permit issue being handled by existing staff of the Department of Minerals and Energy. An expanded Fossicking Area network will create some additional administration and policing costs, but these should be able to be contained within existing Departmental allocations if agreement can be obtained for revenue retention of licences and camping permits.

Consultation

The contents of the Options Paper were discussed with gem and lapidary groups during its preparation. Preliminary drafting instructions for the Bill were circulated to affected Government agencies, landowner groups and scientific bodies, and their various comments and concerns were accommodated. Copies of a draft of the Bill and proposed Regulations were circulated on a confidential basis to all the above parties, and further minor comments were incorporated. Gem and lapidary interests are strongly supportive of the Bill and landowner groups have indicated general acceptance.

The Bill is compatible with the *Commonwealth Native Title Act 1993*, and native title holders are accorded the same status as owners of freehold or leasehold land. However, the complex notification and negotiation procedures required in the Commonwealth Act for any excavations (which could be held to include fossickers' diggings), are not feasible for recreational and tourist activities. Consequently it has been necessary to exclude native title lands from the operation of the Act, except for some exceptions (see below, Clause 11).

The Business Regulation Review Unit of the Department of Business, Industry and Regional Development oversaw a Cost Benefit Analysis of a review of the *Mining (Fossicking) Act 1985*.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Bill.

Clause 2 provides for the commencement on a certain date after all administrative arrangements are in place.

Clauses 3 to 8 provide for the interpretation of certain words and phrases used in the Bill.

Certain definitions warrant particular comment.

To "fossick" is defined as searching for or collecting fossicking materials from the surface or by digging with hand tools. "Fossicking materials" are gemstones, ornamental stones, mineral specimens, alluvial gold, fossils,

and any other substance prescribed by regulation. Meteorites and vertebrate fossils are specifically excluded. "Hand tools" exclude the use of any machinery. Elsewhere in the Bill (Clause 39), such digging is limited to a depth of 2m beneath the natural ground surface, to 0.5m in streams, or to a reduced depth as set by regulation if required by safety considerations in particular areas.

The definition of "owner" with respect to land is significant as the permission of all owners is required for entry on to all occupied land, and for declaration of Designated Fossicking Land (Clause 42) and Fossicking Areas (Clause 44) where fossicking is possible without permission. By using the definition in the Mineral Resources Act it includes freehold owners, lessees of State land and trustees of State Reserves. It also includes the holders of native title.

"Member" is defined to clarify who is entitled to fossick under a fossickers licence issued for a club, educational institution or commercial tour group under Clause 14. "Club" is defined to limit the use of club fossickers licences to properly constituted geological, gem, lapidary and natural history organisations, or organisations that normally include such pursuits in their activities. Thus for example a Scout Association group would be entitled to a licence, but not a touring yacht, golf or card club.

PART 2—LAND EXCLUDED FROM ACT'S APPLICATION

Clause 9 provides that the Act does not apply to National Park and Conservation tenures under the Nature Conservation Act. This is in line with similar provisions for mining under the Mineral Resources Act. Fossicking will be possible in other protected areas under the Nature Conservation Act such as Resources Reserves or Nature Refuges but only with the permission of the trustees or owners.

Clause 10 provides that the Act does not apply within State Forests or Timber Reserves, except in particular areas where prior general permission has been given by the Department of Primary Industries (Clause 28), or where Designated Fossicking Land or a Fossicking Area has been declared with that Department's permission (Clauses 42 and 44). That Department believes that most State Forests and Timber Reserves are unsuitable for

fossicking and hence it would have to routinely refuse permission to intending fossickers, to the frustration of both parties. However it recognises that investigation may show the suitability of some areas and is prepared to give permission for these under appropriate conditions.

Clause 11 provides that the Act generally does not apply on land where native title exists. Such land could include vacant State land, land held under Occupational Licence or Permit to Occupy under the Land Act, some public Reserves, State Forests and Timber Reserves, unless it is clear native title has been extinguished by previous land titles. An exception is made for land within Designated Areas and Fossicking Areas declared under the old Act before 1 January 1994, where the issue of fossicking licences will be a continuation of a validated past act.

This provision is made necessary by the *Commonwealth Native Title Act 1993* which requires complex notification and negotiation procedures before the issue of any entitlements for excavation (which could include fossickers' diggings) over potential native title land, rather than on entry. This is obviously impossible for the issue of a State-wide fossickers licence to casual tourists and the like, as negotiation would be needed with all the native title holders in the State each time a licence was applied for.

However, should the Commonwealth Minister make a determination under Section 26(3) of the Commonwealth Native Title Act in the future that fossicking is an act excluded from the right to negotiate under the Commonwealth Act, then the Act will apply to those native title lands where a native title body corporate has been registered by a Tribunal. For fossicking on those lands the permission of the body corporate will be required in the same manner as required from normal land owners. Those other native title lands where no owner has been recognised will still be excluded, as there are still stringent notification procedures in the Commonwealth Act which could not be met by casual visitors and tourists.

Where new Designated Fossicking Land or Fossicking Areas are proposed in areas where native title may exist but there are no registered native title bodies corporate, the Department may seek a determination from the Commonwealth Native Title Tribunal (or Queensland Native Title Tribunal when established) about whether native title has been extinguished.

Clause 12 provides for other areas to be excluded from operation of the Act if they are found to be unsuitable for fossicking. This parallels provisions in the Mineral Resources Act which allows mining to be limited or prohibited in certain areas.

Clause 13 makes it clear that a fossickers licence is not required by the Queensland Museum or other scientific bodies to carry out their normal collecting for scientific or research purposes. The Act is not a vehicle for controlling research and it is assumed that such bodies will behave responsibly in the extent and methods of their collecting.

PART 3—LICENCES

Division 1—Licences

Clause 14 provides for the issue of five types of fossickers licences. There has been considerable demand for licences for lapidary clubs and for educational institutions in addition to the individual and family licences currently available under the limited *Mining (Fossicking) Act 1985*. Increasing interest in Fossicking Areas by tour operators suggests that a commercial tour licence is also required, as is provided for in National Parks and State Forests. The clause also provides flexibility in that other classes of licences may be prescribed by regulation if circumstances warrant in the future.

Clause 15 deals with applications for licences. It is intended that applications may be made for licences for the whole of the State for the periods allowed by regulation, but also pertinent is Clause 71 which provides that some issuing officers may be allowed to issue only certain classes of licence, or licenses only for certain areas or certain periods.

Sub-Clause (3) contains a reserve power that licences for specific areas must be made to particular issuing officers. This is to allow for the possibility that the numbers of fossickers within certain heavily used Fossicking Areas may need to be controlled individually from a local centre in the future.

Clause 16 allows an issuing officer to grant a licence, with or without conditions, or refuse the licence. A licence must not be issued to a child (a

person under the age of 18 years), an authorised officer under the Act (to avoid conflicts of interest), or to a person who has had a previous licence cancelled within 2 years. The officer must only grant a licence for the area or period or for the type for which he or she is authorised (see Clause 71). If conditions are imposed or the licence is refused, the applicant has the right to appeal to the Wardens Court within 28 days. Part 7 deals with appeals.

Clause 17 provides a penalty for a breach of conditions imposed on a licence.

Clause 18 stipulates that a licence is not transferable.

Clause 19 provides for the term of licences to be specified by regulation but not for longer than 1 year.

Clause 20 allows for the replacement of a lost, stolen or destroyed licence.

Clause 21 allows for a licence to be suspended or cancelled if the Act or a condition of the licence have been breached. The latter gives security to landowners who give permission for fossicking on their land. Appeal provisions against suspension or cancellation are included in Part 7.

Clause 22 sets out the procedures to be followed for the suspension or cancellation of licences.

Clause 23 provides that a cancelled or suspended licence must be returned to the mining registrar taking the action within 7 days.

Division 2—Licensees' entitlements and duties

Clause 24 clarifies that the term "licensee" includes members of a club, educational institution, commercial tour group or the licensee's family as the case may be.

Clause 25 makes it clear that fossicking for fossicking materials requires a fossicking licence, and establishes a penalty for non-compliance. However, Sub-Clause (2) exempts persons fossicking on a mining lease or mining claim after paying an admission fee or obtaining the written permission of the holder of the lease or claim. The State has leased the minerals on such leases and claims to the holders and cannot require further permits for their lawful removal by persons authorised by the holders.

Clause 26 allows a holder of a fossickers licence to enter and fossick in unoccupied land. It also emphasises again that fossicking is not permitted on land which is excluded under Part 2 of the Act.

Clause 27 is a key provision, setting out the requirements for fossicking on occupied land and mining tenures. It provides that the written permission of any landowner must be obtained before a licensee enters or fossicks on such land. Exceptions are Designated Fossicking Land and Fossicking Areas declared under Clauses 42 and 44, where landowners' permission has been obtained in advance, and road reserves (where collection but not digging is allowed- see Clause 39).

If any mining lease or mining claim, or permit for quarry materials under the Forestry Act or Water Resources Act is involved, the written permission of the holder is also required in addition to that of the landowner. Where two landowners are involved, such as within a Special Lease over a State Forest, the permission of all owners is required. The relevant permission is required to be endorsed on or attached to the licence to avoid any later disputes over authorisation. The licence will provide space and standard wording for a number of such endorsements. Permission may be conditional on any matter, including the payment of a fee for entry. Permission may be withdrawn at any time on any grounds, but reasonable notice must be given to allow removal of equipment.

Such permission requirements may be criticised as onerous, but they parallel and extend the provisions of the old Miners Right previously available under the old *Mining Act 1968*. Access to occupied land without permission would not be tolerated by landowners and would lead to unworkable relationships between the parties.

Clause 28 provides that the permission for fossicking required under *Clause 27* and for camping under Clauses 66, 67 and 68 may be given in advance by landowners or holders of mining leases or mining claims to the Mining Registrar for the local Mining District. In reasonably popular fossicking localities in outback areas landowners may prefer to give such general permission (under conditions if desired) so that they are not pestered by a succession of fossickers seeking their individual written permission. Fossickers will be advised to consult the local Mining Registrar as to where areas with such general permission may have been given; *Clause 33* provides that the Mining Registrar is to keep records of such areas.

The intention is to allow for an intermediate situation between the general case and the Designated Fossicking Land and Fossicking Areas specifically set aside by the Government under Clauses 42 and 44.

Clause 29 is a protection to landowners by giving force to the conditions that they may attach to any permission granted. It makes it clear that should conditions be breached, the right of a fossicker to remain on the land ends, and that an offence is committed if the fossicker does not leave when requested. Any other remedies the landowner may have against the fossicker are unaffected.

Clause 30 provides that a commercial tour operator's fossickers licence does not replace the need for any other licences that may be required, such as within State Forests.

Clauses 31 and 32 make clear that clubs, educational institutions and commercial tour operators must not allow fossicking under their fossickers licences at more than one locality at a time, or to allow more than 50 members to fossick at a time. This is needed to prevent abuse of such group licences.

They also provide that a commercial tour operators fossickers licence does not authorise the collection of fossils. Scientific authorities are concerned that repeated semi-commercial collecting of fossils from well known sites would soon lead to their degradation and exhaustion.

Clause 33 provides that a Mining Registrar is to keep records of areas of general permission given under Clause 28 so as to provide a service to the public.

Division 3—General

Clause 34 clarifies when fossicking materials the property of the State become the property of the licensee. Some materials such as ornamental stones and fossils are not minerals under the *Mineral Resources Act 1989*, and fall into the category of quarry materials under the *Forestry Act 1959* and the *Water Resources Act 1989*. Reference to these Acts is consequently required.

Clause 35 requires that royalty be paid on any fossicking materials the property of the State collected under a fossickers licence according to the provisions of the Mineral Resources Act, the Forestry Act and the Water Resources Act. However, exemptions for small operations in the Mineral

Resources Act and exemptions provided for in amendments to the Forestry Act and Water Resources Act proposed in this Bill (see schedule of Acts amended), will mean that no royalty is payable except in exceptional circumstances. The provision is necessary to guard against commercial miners from claiming that substantial amounts of mineral or quarry materials produced under the Mineral Resources Act etc were obtained under the Fossicking Act and hence exempt from the normal royalty.

Clause 36 is a key provision, stating that fossicking materials collected under a fossickers licence must not be used in trade or commerce. This sets apart the activities authorised under this Act from the commercial activities administered under the Mineral Resources Act.

It is envisaged that the occasional sale of a "lucky find" of a fossicker, or the sale or swap of specimens by hobbyists at lapidary shows or fairs could not be considered trade or commerce. Repeated sale of material from the same locality by the same persons, from shops or elsewhere, would be commercial and require tenure under the *Mineral Resources Act 1989*. Similarly a person who makes a regular living or part of a living from selling materials would be considered a commercial operator. A substantial penalty is provided to deter such activity.

Clause 37 is a reserve power to limit removal of material from limited or sensitive sites, particularly fossil localities, if discovered to be necessary. It is not intended to be used routinely as experience under other jurisdictions has shown that policing is very difficult.

Clause 38 reinforces the definitions of fossicking and hand digging by prohibiting the use of machinery during fossicking. Such clarity is necessary to reassure landowners that only very small-scale hand diggings are likely on their properties.

Clause 39 provides for the safety of fossickers' diggings by limiting their depth and prohibiting tunnelling and overhangs. It also limits the disturbance that might be caused in watercourses and on road reserves.

Clause 40 clarifies that the holder of a fossickers licence has no right to any discovery of mineral for purposes of commercial mining under the Mineral Resources Act. If commercial mining is desired, application for tenure under the Mineral Resources Act must be made in the normal manner.

PART 4—DESIGNATED FOSSICKING LAND AND FOSSICKING AREAS

This Part continues and up-dates the provisions for Designated Areas and Fossicking Areas included in the current Mining (Fossicking) Act. Such areas are places where fossicking is possible without landowner permission, and hence are useful in popular fossicking localities and for tourist promotion. They are established after prior negotiation by the Government with landowners and Local Governments. Areas are currently established in the central Queensland sapphire fields, at Gympie, at Yowah near Cunnamulla and Thanes Creek near Warwick.

Division 1—Designated Fossicking Land

This is equivalent to the current Designated Areas, but a more descriptive name is introduced. On such land fossicking is possible without landowner permission, but commercial mining under tenures of the Mineral Resources Act is also still allowed.

Clause 41 sets out the procedures for negotiation with landowners and Local Governments for the establishment of Designated Fossicking Land. It is also intended that administrative procedures will ensure that all interested Government agencies, particularly the Department of Lands, are consulted at this stage.

Clause 42 provides for the declaration and naming of Designated Fossicking Land. It is similar to Section 5 of the current *Mining (Fossicking) Act 1985*. Such declaration cannot be made without the written agreement of landowners, (including holders of native title). A declaration over a fossil site is not permitted as it is considered inappropriate to focus tourist fossicking on such sites which are usually easily exhausted. Sub-*Clause (4)* clarifies that the declaration does not affect the rights of holders of any commercial exploration and mining tenures or applications for these within the area.

Division 2—Fossicking Areas

These are areas set aside from commercial mining specifically for fossicking. Amendments to the *Mineral Resources Act 1989* in this Bill provide that no further tenures under that Act will be permitted, except those

proceeding from applications current at the time of declaration. This continues the situation in the current *Mining (Fossicking) Act 1985*.

Clause 43 sets out the procedures for negotiation with landowners and Local Governments for the creation of Fossicking Areas. In this case holders of, and applicants for, exploration and mining tenures must also be consulted. Again interested Government agencies will also be consulted.

Clause 44 provides for the declaration and naming of Fossicking Areas. It is similar to Section 13 of the existing Act, but the requirement that an area be first declared a Designated Area is no longer required. It is similar to Clause 42 above, but also provides that a Fossicking Area cannot be declared over exploration and mining tenures issued under the *Mineral Resources Act 1989* without the holders permission, or applications for these tenures without the applicants' permission, to ensure that their rights are not jeopardised. In practice to date such tenures have been excluded from Fossicking Areas while they continue to exist.

Division 3—General

These provisions are mainly to clarify procedures and to control activities on Designated Fossicking Land and Fossicking Areas.

Clause 45 clarifies that declaration of such areas does not affect a landowner's title in land, except for the situation outlined in Clause 48 below.

Clause 46 makes it clear that a landowner may no longer charge a fee for entry and fossicking once the land becomes Designated Fossicking Land or a Fossicking Area.

Clause 47 limits the alienation, leasing or occupation of State land in Designated Fossicking Land or Fossicking Areas. This is similar to Section 49 of the current Act. It is necessary to ensure that, after the Government has gone to the trouble of establishing the area, the area available for fossicking is not diminished. However it is intended that permission for such alienation or leasing will be given readily if the area is to remain under a land use that still allows fossicking, and the intending owner or lessee agrees that the area remains in the Designated Fossicking Land or Fossicking Area.

Clause 48 provides that the State and an owner may be bound by an agreement for the establishment of Designated Fossicking Land or a

Fossicking Area. It also provides that such an agreement may be binding on the owner's successors in title, that is, may be noted on the title deed. This is only likely to be required if the Government invests in infrastructure, such as toilets or other camping facilities, and it is important that any future owner does not repudiate the agreement.

Clauses 49 and 50 provide for the termination or amendment of agreements. These can occur on the request of either party.

Clause 51 clarifies that a new agreement is not needed when a new declaration is made over an area that is already Designated Fossicking Land or a Fossicking Area, such as may occur when an area is expanded. This is included in Section 5 (3) of the current Act.

Clause 52 provides powers to the chief executive to undertake works, such as the construction of toilet facilities, on Designated Fossicking Land or Fossicking Areas. The permission of the landowner is required (except for signs) and any signs erected must not interfere with the rights of landowners.

Clause 53 provides for the preparation of management plans for Designated Fossicking Land and Fossicking Areas. These could be required in the future for areas experiencing high levels of use where it is necessary to outline management policy for the information of the public and guidance of Departmental staff.

Clause 54 allows the appointment of a manager to care for and administer Designated Fossicking Land or a Fossicking Area. Some such areas are in remote localities and may be difficult to control from the limited number of district offices of the Department of Minerals and Energy; control by local managers such as Local Governments, land owners or other Government agencies may be more appropriate. An expansion of the Fossicking Area network will only be possible financially if there is a contribution from Local Governments. A manager must not be appointed without agreement or agreement of the landowner.

Clause 55 prohibits commercial activities on Designated Fossicking Land and Fossicking Areas, with the exception of activities of landowners, holders of mining tenures and the holders of commercial tour operators fossicking licences. This is necessary to control situations where persons may be tempted to set up facilities to service fossickers and to by-pass normal land tenure and Local Government requirements. Problems have been experienced on the central Queensland gemfields with gem cutters

setting up temporary shops on designated areas in competition with those in the towns.

Clause 56 is similar in that it prohibits persons from establishing residences to subvert the requirements of the Department of Lands and Local Governments. This is included as Section 28 of the current Act. Exemptions are given to landowners and holders of mining tenures and their agents and guests. Exemptions will also be given to persons residing on the land at the time of declaration; undertakings in this regard were given in central Queensland on introduction of the Mining (Fossicking) Act in 1985.

Clause 57 provides for control of behaviour on Designated Fossicking Land and Fossicking Areas, continuing Section 30 of the current Act. More detailed controls will be set out in the regulation.

PART 5—CAMPING

A separate Part is required as camping can be a major, integral part of fossicking and there is commonly confusion as to entitlements. Arrangements for camping on Designated Fossicking Land and Fossicking Areas also need to be tightened, as the current two months free camping on the central Queensland gemfields, with options for renewal, has led to abuses and maintenance costs to the Government.

Division 1—Permits

A fossickers camping permit is a new initiative to control potential abuses or overcrowding, and to raise some funds for day-to-day maintenance, on those Designated Fossicking Lands and Fossicking Areas where camping is to be under the control of the Department of Minerals and Energy.

Clauses 58 and 59 provide for the issue of fossickers camping permits in the same categories as fossickers licences. It also allows for the possibility for issue from self-registration booths on site (as in National Parks and State Forests) but there are no immediate plans for these.

Clause 60 provides that a fossickers camping permit may be granted, with or without conditions, or refused. A permit cannot be issued if it

would mean that the applicant would be camping on the same regulated camping area for more than a prescribed period (which will be one month). This is to prevent fossickers setting up seasonal residences, as has occurred in central Queensland.

Clause 61 provides that any conditions of a fossickers camping permit must be complied with.

Clause 62 stipulates that a permit is not transferable.

Clause 63 provides for the term of fossickers camping permits to be prescribed by regulation (intended to be 1 month).

Division 2—Camping

This establishes the rights of fossickers to camp, and in what situations camping is controlled under this Act.

Clause 64 exempts owners of land or holders of mining tenures or their agents from these camping provisions.

Clause 65 provides for camping to be prohibited on specified Designated Fossicking Land or Fossicking Areas. This is necessary on some smaller areas or on those in or near towns where camping is available elsewhere. There are similar provisions in the current Act.

Clause 66 allows specified Designated Fossicking Land or a Fossicking Area to be declared as regulated camping land, which means that camping there is regulated under this Act.

The declaration may be applied only to fossickers (allowing others such as horse riders to camp under other arrangements), or to all persons, so that non-fossickers do not take advantage of free camping to the detriment of the areas.

The declaration must not be made without the agreement of the owner, Local Government or any other agency regulating camping (for example the Department of Primary Industries Forest Service on State Forests). Once made, the declaration replaces any previous arrangements for camping, including the payment of fees to owners.

Clause 67 requires a person to have a fossickers camping permit to camp on regulated camping land (if he or she is a person declared under Clause 66). To camp on any mining claim or mining lease within the area, the permission of the holder is also required, unless general permission for camping has been given to the Mining Registrar under Clause 28.

Clause 68 applies to other Designated Fossicking Land or Fossicking Areas where camping is not regulated under this Act. It provides that a fossicker must not camp except with the permission of landowners and mining tenure holders. Although not stated, the normal requirements of Local Governments or other Government agencies will also have to be complied with. However a landowner or mining tenure holder may give general permission to the Mining Registrar under Clause 28 for camping to avoid the situation of numerous fossickers seeking individual permission.

Clause 69 clarifies that camping on any land outside Designated Fossicking Land or Fossicking Areas must not occur except with the permission of landowners and mining tenure holders. Again this will also have to be in compliance with the normal requirements of Local Governments and other Government agencies. Again also a landowner or mining tenure holder may give general permission to the Mining Registrar under Clause 28 for camping to avoid the situation of numerous fossickers seeking individual permission.

Clause 70 is similar to Clause 29 in that it provides that the right to remain on the land ends if there is any breach of conditions, and that any refusal to leave is an offence against the Act. It gives landowners some confidence in allowing camping, in that it allows Departmental staff to act in lieu of private legal action should trouble arise.

PART 6—ADMINISTRATION AND ENFORCEMENT

Division 1—Administration

Clause 71 allows the appointment of officers to issue fossickers licences and camping permits. These would include Departmental personnel at district offices, staff of Local Governments, and private persons operating shops or accommodation on or near popular fossicking localities. There is

flexibility to allow these to be appointed only for a local area, or to issue only short term licences, or only certain classes of licences, if warranted in a particular situation. There is also provision for such private agents to charge a commission to recompense them for their time, as current agents in central Queensland are concerned at the level of involvement without any reward. It also allows employees of the appointed officer to issue licences and permits, to cater for the situation applying in shops.

Clause 72 allows for the appointment of authorised officers in addition to the mining registrars and field officers included in the definition (*Clause 3*). They are most likely to be restricted to other Departmental staff and staff of Local Governments appointed to assist in the management of Designated Fossicking Land and Fossicking Areas. Staff of other Departments and Government owned corporations may also be appropriate in some circumstances.

Clauses 73 and 74 provide for the powers and conditions of appointment of authorised officers to be limited if necessary.

Clauses 75 and 76 provide for identity cards for authorised officers and the production of such cards before the exercise of any authority.

Clause 77 provides that authorised officers have the powers given under this Act (as well as powers under any other Act that they administer).

Division 2—General powers of authorised officer

Clause 78 gives the powers needed to authorised officers to act on any infringement of the Act, including a direction to leave the land for a period of up to 7 days. This is a continuation of Section 35 of the current Act. If a person is requested to leave an area any camping permit is automatically cancelled.

Clause 79 gives powers to direct a fossicker to make safe any dangerous diggings.

Clause 80 gives authorised officers the power to temporarily close Designated Fossicking Land and Fossicking Areas or parts of them for reasons of safety, hygiene, rehabilitation or inconvenience to users or owners, by erection of a notice. This is to give local flexibility of control to meet day to day situations.

Clause 81 gives powers to authorised officers to demand the production of a fossickers licence or fossickers camping permit.

Clause 82 provides for entry of authorised officers on to places to ensure compliance with the Act and to gather evidence if necessary. This is a key provision to reassure landowners that operations of fossickers on their land will be scrutinised from time to time by Departmental officers. Because of the remote rural locations of many fossicking sites, relatively free access to land for inspections without elaborate procedures for permission from landowners is required to allow the necessary surveillance on a district basis. Such access is already provided to the same officers under the Mineral Resources Act, and similar provisions are needed here to avoid confusion.

Clauses 83 and 84 provide standard procedures for the issue of warrants to enter a place (chiefly residences or offices) for searching for evidence of an offence and for warrants to be applied for by telephone, fax or radio; this is necessary because of the remote localities where fossicking offences might occur.

Clause 85 allows vehicles to be stopped and entered if it is suspected that they have been used in contravention of certain important sections of the Act, where a vehicle is used itself or may be used to conceal evidence.

Clause 86 provides standard powers to authorised officers to search, take samples and require help when they enter a place, but it also includes certain safeguards for the owners involved.

Clauses 87 and 88 provide standard powers to seize items from places and vehicles which are evidence of an offence or which may be used in committing, continuing or repeating an offence, both when a warrant is issued and otherwise. This would include seizing vehicles or machinery used illegally.

Clause 89 provides procedures for dealing with and returning seized items.

Clause 90 provides standard powers to require the name and addresses of persons and to require the answers to questions for the enforcement of the Act.

Clause 91 provides powers to require the removal or surrender of weapons on Designated Fossicking Land and Fossicking Areas. Weapons are considered incompatible with the spread-out nature of fossicking and camping in these areas.

Division 3—Offences

Clause 92 is a standard provision against obstruction of authorised officers, and provides penalties for failure to do so.

Clause 93 makes it an offence to re-enter land after being requested to leave by an authorised officer under *Clause 78*.

Clause 94 provides for proceedings for offences to be started in a Wardens Court, which is established under the Mineral Resources Act. It is intended that proceedings will also be able to be started by way of infringement notices, as provided for in recent amendments to the regulations of the Justice Act.

Division 4—Proceedings

Clauses 95 to 97 are standard provisions on the forfeiture of property seized in the commission of an offence, taking possession of abandoned property, and the disposal of unclaimed property found on designated fossicking land or a fossicking area.

Clause 98 establishes that certain statements made in connection with a proceeding are evidence of the facts stated.

PART 7—APPEALS

Clauses 99 to 104 establish which decisions under the Act may be appealed, how such appeals are to be conducted in the Wardens Court, the powers of the Court, and the limits of further appeal rights.

PART 8—GENERAL

Clause 105 provides procedures for the noting of landowners' agreements for Designated Fossicking Land or a Fossicking Area on Certificates of Title, where it is desired to bind the successors in title so as to protect any financial investments. This is likely to be required only rarely.

Clause 106 provides a standard power of delegation from the chief executive to another officer of the public service.

Clause 107 provides protection against liability for Departmental officers, and landowners and mining tenure holders who have given permission for fossicking or camping. Landowner groups requested this point of clarification.

Clause 108 is a standard provision allowing regulations to be made. These may include controls on fossicking generally and on activities within Designated Fossicking Land and Fossicking Areas.

PART 9—REPEAL AND TRANSITIONAL PROVISIONS

Clauses 109 and 110 provide for the repeal of the existing *Mining (Fossicking) Act 1985*, and amendment of other Acts as set out in the Schedule (the *Mineral Resources Act 1989*, the *Water Resources Act 1989* and the *Forestry Act 1959*).

Clause 111 provides for the continuation of the Miners Common on the central Queensland gemfields. A provision for miners commons is included in Section 48 of the current Act, being continued from earlier mining legislation, but as no additional miners commons are intended, it is not appropriate to continue the provision further. However, it is necessary to clarify that the existing Common continues.

The Clause also provides that the Rules made for the Common under the current Act continue in force for one year after proclamation of this new Act. It is intended that they will then be incorporated in the Regulation, after consultation with the Emerald Shire Council and the local community.

Clause 112 provides for the continuation of existing Designated Areas under the *Mining (Fossicking) Act 1985* as Designated Fossicking Land under the new Act.

However, parts of the designated areas that are currently also Fossicking Areas are not included, as the new Act will abolish such dual status to avoid confusion. The Fossicking Areas will continue as Fossicking Areas in their own right.

Areas held under miners homestead leases etc, where the permission of the owners was not obtained when the designated areas were declared in 1985, and where permission to fossick is currently required, are also excluded, as Designated Fossicking Land is by definition land where no permission for fossicking is required. Such areas are mainly residential blocks where fossicking is in any case inappropriate.

Clause 113 provides for the continuation of existing Fossicking Areas under the *Mining (Fossicking) Act 1985* as Fossicking Areas under the new Act. Again however areas within any miners homestead leases etc, where the permission of the owners was not obtained in 1985, are excluded (see *Clause 111* above).

Clause 114 provides for existing issuing officers to continue without re-appointment.

Clause 115 provides that current fossickers licences and prospecting permits applicable to the existing Designated Areas and Fossicking Areas remain valid until their expiry.

Clause 116 continues any current prohibitions on camping in designated areas and Fossicking Areas.

Clause 117 makes it clear that until the *Native Title (Queensland) Act 1993* commences, native title is not affected by the Act. This is because the *Native Title (Queensland) Act 1993* will enable native title land in Queensland to be dealt with in a manner that is consistent with the *Commonwealth Native Title Act 1993*.

Clauses 118 and 119 preserve the effect of actions taken under the repealed Act and saved under this Part 9 of the new Act, and references to the repealed Act in other legislation.

Clause 120 provides a sunset provision for the transitional arrangements.

SCHEDULE
ACTS AMENDED

FORESTRY ACT 1959

MINERAL RESOURCES ACT 1989

WATER RESOURCES ACT 1989

The Mineral Resources Act 1989 is amended to provide that exploration and mining tenures must not be granted over a Fossicking Area (except where there are pre-existing applications for such tenures and future entitlements under such tenures). This provision is in the *Mining (Fossicking) Act 1985* at present but it is considered more appropriate in the Mineral Resources Act where such grants are made.

The Forestry Act 1959 and the *Water Resources Act 1989* are amended to provide that the collection of fossicking materials which are not minerals (such as fossils or ornamental stones), is a sale for the purposes of those Acts, and for royalties to be waived on quantities of less than 1 m³.