

NORTHERN TERRITORY OF AUSTRALIA

MINING AMENDMENT ACT 1996

No. 10 of 1996

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NORTHERN TERRITORY OF AUSTRALIA

No. 10 of 1996

AN ACT

to amend the *Mining Act* in relation to fossicking

[Assented to 27 March 1996]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Mining Amendment Act 1996*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Mining Act* is, in this Act, referred to as the Principal Act.

4. INTERPRETATION

Section 4(1) of the Principal Act is amended -

(a) by omitting from the definition of "fossick" the words -

(i) ", in respect of a mineral which a miner may fossick for under this Act,";

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- (ii) "the mineral" and substituting "a mineral";
and
- (iii) "mechanical device" and substituting
"power-operated equipment";
- (b) by inserting after the definition of "fossick"
the following:

"fossicker' means a person who is authorised to
fossick -
 - (a) under section 130C(2); or
 - (b) on land the subject of a mineral claim by
the holder of the mineral claim (the holder
having complied with section 134B);
'fossicker's permit' means a fossicker's permit
granted under Part X;"; and
- (c) by inserting after the definition of "tailings or
other mining material" the following:

"tourist fossicking' means a commercial venture
(undertaken in respect of land the subject of a
mineral claim) whereby fossicking is offered as
an activity to be carried out by a person who
agrees to comply with the conditions of admission
on and access over the claim area;".

5. POWERS OF HOLDER OF MINER'S RIGHT

Section 11(1) of the Principal Act is amended -

- (a) by omitting from paragraph (d) "manner;" and
substituting "manner; and";
- (b) by omitting paragraph (e); and
- (c) by omitting from paragraph (f) "to (e)" and
substituting "to (d)".

6. OTHER MINING INTERESTS OVER LICENCE AREA

Section 25 of the Principal Act is amended by omitting
from paragraph (d) "any miner from fossicking for gemstones
or semi-precious stones within the meaning of Part X" and
substituting "subject to Part X (and in particular section
132), any fossicker from fossicking".

7. POWER OF HOLDER

Section 87 of the Principal Act is amended -

- (a) by omitting from paragraph (bb) "claim; and" and
substituting "claim;"; and

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(b) by inserting after paragraph (bb) the following:

"(bc) having complied with section 134B, engage in tourist fossicking; and".

8. HEADING

The heading to Part X of the Principal Act is amended by omitting "AREAS".

9. INTERPRETATION

Section 130 of the Principal Act is amended -

(a) by omitting "In this Part" and substituting "(1) In this Part";

(b) by inserting before the definition of "fossicking area" the following:

"'commercial tour' means a tour, involving fossicking, conducted as a business activity;

'commercial tour operator' means a corporation which, or a person who, in the course of business offers to conduct and conducts (or whose agent or employee conducts) commercial tours;"; and

(c) by omitting "'gemstone' and 'semi-precious stone' have the meanings respectively prescribed for them." and substituting the following:

"'member of a person's family' means -

(a) the person's spouse or de facto partner; or

(b) an infant, or a student who has not attained the age of 23 years, who is living with the person as a member of the person's household;

'person on a commercial tour' means -

(a) a person who is on the commercial tour; and

(b) the commercial tour operator or another person who has responsibilities for and on behalf of the commercial tour operator for the conduct of the tour (including a person who drives the vehicle transporting the persons on the commercial tour).

"(2) A reference to private land is a reference to private land as defined in section 4(1) and, in addition, is a reference to land that is the subject of a lease or concession for pastoral or timber purposes (including land leased for purposes referred to in section 4(5)).".

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10. NEW SECTIONS

The Principal Act is amended by inserting after section 130 the following:

"130A. NO FOSSICKING WITHOUT PERMIT

"(1) A corporation or person may not fossick unless authorised to do so under section 130C.

"(2) Subsection (1) does not apply to a person who, being permitted by the holder of a mineral claim which is subject to the condition specified in section 134B(2) to enter on to and fossick on the claim area, is fossicking on the claim area.

"130B. APPLICATION FOR FOSSICKER'S PERMIT

"(1) A corporation, or a person who has attained the age of 15 years, may apply to -

- (a) the Minister;
- (b) a warden;
- (c) a mining registrar; or
- (d) a person authorised in writing for that purpose by the Minister,

for the grant of a fossicker's permit to the corporation or the first-mentioned person.

"(2) An applicant under subsection (1) shall, on being requested to do so by the person to whom the application is made, provide the applicant's full name and address.

"130C. GRANT OF FOSSICKER'S PERMIT

"(1) Subject to subsection (2), the person to whom an application under section 130B is made shall, on the payment by the applicant of the prescribed fee, grant that application and issue to the applicant a fossicker's permit which shall be -

- (a) in the prescribed form; and
- (b) for the prescribed term.

"(2) Each fossicker's permit issued under subsection (1) may authorise only one of the following corporations or persons or classes of corporation or person (as specified on the fossicker's permit) to fossick:

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- (a) if issued to a person who is not a commercial tour operator, the person and a member of the person's family (but only if in the company of the person);
- (b) if issued to a commercial tour operator, a person who is on a commercial tour conducted by the tour operator;
- (c) any other corporation or person or class of corporation or person as prescribed.

"130D. POWERS OF HOLDER OF FOSSICKER'S PERMIT

"(1) Subject to this Act, a fossicker's permit authorises a fossicker to fossick for minerals on or within one metre below the line of the natural contour of the surface of land which has been declared a fossicking area under section 131 or within one metre below the line of the natural contour of the surface of land which has not been so declared where that land is -

- (a) Crown land;
- (b) private land, but only if the holder of the fossicker's permit has the consent in writing of the owner and, if not one and the same, the occupier of the private land;
- (c) land held for an estate in fee simple, or on lease from the Crown, by the Conservation Land Corporation established by section 27 of the *Conservation Commission Act*, but only if the holder of the fossicker's permit has the consent in writing of the Conservation Commission within the meaning of that Act;
- (d) the subject of an exploration retention licence, or an application for an exploration retention licence, but only if the holder of the fossicker's permit has the consent in writing of the holder of, or the applicant for, the exploration retention licence;
- (e) the subject of a mining tenement, or an application for a mining tenement, but only if the holder of the fossicker's permit has the consent in writing of the holder of, or the applicant for, the mining tenement; or
- (f) subject to section 132, the subject of an exploration licence,

and to remove from that land minerals discovered by the fossicker.

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"(2) A fossicker's permit does not authorise a fossicker to fossick -

- (a) for diamonds, fossils of vertebrate animals or meteorite fragments; or
- (b) as a profit-making venture so that the whole or a substantial part of the fossicker's income is derived from trading minerals discovered by the fossicker.

"(3) Notwithstanding subsection (2)(b), a fossicker may sell minerals, but only occasionally and if the income derived from such sales does not constitute the whole or a substantial part of the fossicker's livelihood.

"(4) Subsection (1) does not authorise the carrying out of an act which affects native title rights and interests within the meaning of the *Native Title Act 1993* of the Commonwealth, but nothing in this subsection prevents a corporation or a person who has attained the age of 15 years from applying for and being granted a fossicker's permit.

"130E. DUPLICATE FOSSICKER'S PERMIT

"Where the corporation or person to whom a fossicker's permit has been issued (and which has not expired) satisfies the mining registrar that the fossicker's permit issued to the corporation or person has been lost or has been destroyed, the mining registrar may issue a replacement fossicker's permit, endorsed with the date of the grant of the original, on the payment of the prescribed fee by the corporation or person."

11. FOSSICKING AREAS

Section 131 of the Principal Act is amended -

- (a) by omitting subsection (1) and substituting the following:

"(1) Subject to this section, the Minister may, by notice in the *Gazette*, declare an area of -

- (a) Crown land;
- (b) private land;
- (c) with the consent of the relevant Land Council within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth, Aboriginal land; or

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- (d) with the consent of the Conservation Land Corporation and the Conservation Commission within the meaning of the *Conservation Commission Act*, land held for an estate in fee simple, or on lease from the Crown, by the Conservation Land Corporation,

that is not the subject of, or of an application for, an exploration licence, exploration retention licence or mining tenement, as a fossicking area.";

- (b) by inserting after subsection (1) the following:

"(1A) The Minister shall not declare as a fossicking area an area of private land unless the owner and, if not one and the same, the occupier of the private land consents to the making of the declaration.

"(1B) Subsection (1A) does not apply to land to which subsection (3) applies."; and

- (c) by omitting subsection (2) and inserting the following:

"(2) Fossicking on a fossicking area is subject to such conditions, if any -

- (a) in the case of a fossicking area comprised of private land - as the owner or, if not one and the same, the occupier of the private land reasonably wishes to impose, to preserve his or her interest in the land, and the Minister publishes in the notice of declaration;
- (b) in the case of a fossicking area comprised of Aboriginal land - as the relevant Land Council within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth agrees and the Minister publishes in the notice of declaration;
- (c) in the case of a fossicking area comprised of land referred to in subsection (1)(d) as are specified in By-laws made in respect of that land under the *Territory Parks and Wildlife Conservation Act*; or
- (d) in any other case - as the Minister thinks fit and publishes in the notice of declaration, or as are from time to time determined by the Minister and notified in the *Gazette*."

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12. REPEAL AND SUBSTITUTION

Section 132 of the Principal Act is repealed and the following substituted:

"132. FOSSICKING ON LAND SUBJECT TO EXPLORATION LICENCE

"(1) A fossicker who intends to fossick for gold on land which is the subject of an exploration licence shall not do so unless the fossicker has first obtained the consent in writing of the holder of the exploration licence.

"(2) Where an exploration licence is granted in respect of land which has been declared to be a fossicking area, a fossicker may, notwithstanding the grant of the licence, enter on and have access over the part of that land comprised in the exploration licence area for the purposes of fossicking (including fossicking for gold)."

13. FOSSICKING

Section 133 of the Principal Act is amended -

- (a) by omitting "miner" and substituting "fossicker"; and
- (b) by omitting "gold, gemstones and semi-precious stones" and substituting "minerals".

14. MINISTER MAY PROHIBIT, &c., A PERSON

Section 134 of the Principal Act is amended -

- (a) by omitting from subsection (1)(a) "gold, gemstones or semi-precious stones" and substituting "minerals";
- (b) by omitting from subsection (1)(b) "miner's right" and substituting "fossicker's permit"; and
- (c) by omitting from subsection (2) "gold, gemstones, semi-precious stones or other mineral or" and substituting "minerals or other".

15. NEW SECTIONS

The Principal Act is amended by inserting after section 134 the following:

"134A. MINISTER MAY CANCEL FOSSICKER'S PERMIT

"The Minister may cancel a fossicker's permit where the corporation or person holding the fossicker's permit contravenes or fails to comply with -

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- (a) a condition to which the fossicker's permit is subject, if any; or
- (b) this Act or an instrument of a legislative or administrative character made under this Act.

"134B. FOSSICKING ON MINERAL CLAIM

"(1) The holder of a mineral claim may engage in tourist fossicking on the claim area, but only if the holder complies with this section.

"(2) The holder of a mineral claim who intends to engage in tourist fossicking on the claim area shall apply to the Minister for the endorsement on the holder's mineral claim of the condition that the holder may engage in tourist fossicking on the claim area, and while the endorsement remains on the mineral claim, the holder shall not carry out any activities on the claim area other than activities for the purpose of tourist fossicking.

"(3) Where an applicant for a mineral claim under section 82(1) intends to engage in tourist fossicking on the proposed claim area, the mineral claim granted to the applicant shall be granted subject to the condition specified in subsection (2).

"(4) Where -

- (a) a holder of a mineral claim referred to in subsection (2) makes an application under that subsection; or
- (b) an applicant referred to in subsection (3) makes an application under section 82(1),

and the application relates to private land, the application must be accompanied by the written consent to the making of the application of the owner and, if not one and the same, the occupier of that land."

16. JURISDICTION

Section 145(j) of the Principal Act is amended by omitting "or mining" and substituting ", or mining or fossicking, ".

17. NO EXPLORATION, &C., EXCEPT IN ACCORDANCE WITH LAW

Section 190 of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) A person shall not -

- (a) explore for minerals or extractive minerals;
- (b) mine for minerals or extractive minerals; or

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(c) fossick,

in the Territory otherwise than in accordance with the provisions of this Act or any other law in force in the Territory.

Penalty: \$40,000 or imprisonment for 12 months.

Default penalty: \$2,000."

18. NEW SECTION

The Principal Act is amended by inserting after section 191B the following:

"191C. FOSSICKING UNDER MINER'S RIGHT

"(1) A corporation or person who has a right to fossick under a miner's right in force immediately before the commencement of the *Mining Amendment Act 1996* shall be able to continue to exercise that right to fossick for not more than 18 months after the commencement of that Act (as if a right to fossick under the *Mining Act* as amended by that Act), and on the expiration of the 18 month period -

- (a) that right will cease to be enforceable; and
- (b) an exercise of that right will constitute a contravention of or a failure to comply with the provisions of or under the *Mining Act* as amended by the *Mining Amendment Act 1996*.

"(2) A corporation or person who is the holder of a right to fossick referred to in subsection (1) may, at any time before the expiration of the 18 month period referred to in that subsection, surrender his or her miner's right and apply to the mining registrar for the grant of a fossicker's permit, and the mining registrar shall thereupon, in its stead, issue the corporation or person a fossicker's permit within the meaning of the *Mining Act* as amended by the *Mining Amendment Act 1996*.

"(3) No fee is payable in respect of a fossicker's permit issued under subsection (2).

"(4) A fossicker's permit issued under subsection (2) shall -

- (a) be granted for the same term as the miner's right it replaces; and
 - (b) be non-transferable."
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