

South Australia

Opal Mining Regulations 1997

under the *Opal Mining Act 1995*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Opal Mining Regulations 1997*.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *Opal Mining Act 1995*;

extra large precious stones claim means a precious stones claim with an area exceeding 5 000 square metres (but not exceeding 20 000 square metres);

holder of a precious stones tenement includes a person who has pegged out an area for a precious stones tenement;

large precious stones claim means a precious stones claim with an area exceeding 2 500 square metres but not exceeding 5 000 square metres;

small precious stones claim means a precious stones claim with an area of 2 500 square metres or less;

working day means a day other than Saturday, Sunday or a public holiday.

4—Exempt land

- (1) Pursuant to section 6(1)(h)(i) and (ii) of the Act, the following purposes are prescribed:
 - (a) sewerage treatment;
 - (b) waterworks.
- (2) For the purposes of subsection (9) of section 6 of the Act, a copy of an agreement by which an exemption is waived under that section must be lodged with the Mining Registrar before application is made to the Mining Registrar for the registration of a precious stones tenement on account of the existence of the agreement¹ but in any event within 21 days after the agreement is made.

Note—

- 1 The agreement could be lodged immediately before the relevant application is made.

5—Major working area—Coober Pedy

- (1) Pursuant to subsection (1) of section 13 of the Act, the area within the Coober Pedy Precious Stones Field defined by Filed Plan FP 37814 lodged in the Lands Titles Office in Adelaide is identified as a major working area for the purposes of that section.
- (2) The major working area is—
 - (a) marked on the ground with 1.5 metre wooden pegs set in concrete; and
 - (b) depicted (for reference purposes) by the plan in Schedule 1.

Part 2—Plates and permits

6—Identification plates

- (1) A mining registrar who issues or renews a precious stones prospecting permit may issue to the holder of the permit up to three sets of identification plates (two sets for precious stones claims and one set for an opal development lease).
- (2) For the purposes of these regulations, four plates constitute a set.
- (3) The number of sets issued to the holder of a precious stones prospecting permit at a particular time will be determined according to the application of the holder of the permit.
- (4) The holder of a precious stones prospecting permit who does not hold three sets of plates may apply for an additional set or sets at any time, subject to the qualification that a person must not hold more than three sets of identification plates (two sets for precious stones claims and one set for an opal development lease).
- (5) Each identification plate must bear the relevant permit number and date of expiry.
- (6) If a precious stones prospecting permit is renewed, the holder of the permit must ensure that new identification plates are securely fixed to the posts marking out any area for a tenement within 14 days after the renewal.
- (7) If the holder of a permit loses an identification plate, the person may apply to a mining registrar for the issue of a replacement.

- (8) The application—
 - (a) must be made in a manner and form determined by the Director; and
 - (b) must be accompanied by the fee specified in Schedule 2.
- (9) A mining registrar may issue a replacement plate or plates to the holder of a permit who has made due application under subregulation (8) and paid the appropriate fee.
- (10) If a precious stones prospecting permit is cancelled or surrendered, the holder of the permit must immediately surrender to a mining registrar all identification plates issued in respect of that permit.

7—Replacement or surrender of permit

- (1) If—
 - (a) a person loses a precious stones prospecting permit; or
 - (b) a precious stones prospecting permit is destroyed or becomes illegible in a particular,the holder of the permit may apply to a mining registrar for the issue of a replacement.
- (2) The application—
 - (a) must be made in a manner and form determined by the Director; and
 - (b) if the applicant has possession of the original permit—must be accompanied by that original; and
 - (c) must be accompanied by the fee specified in Schedule 2.
- (3) A mining registrar may issue a duplicate permit to the holder of the permit who has made due application under subregulation (2) and paid the appropriate fee.
- (4) A person who is surrendering a precious stones prospecting permit must furnish the Mining Registrar with a notice in a form determined by the Director.

Part 3—Size, shape and dimensions of areas

8—Size

- (1) The maximum permissible area that can be pegged out for a precious stones claim within a precious stones field is 5 000 square metres, unless the land is within an opal development lease within a designated area.
- (2) The maximum permissible area that can be pegged out for a precious stones claim—
 - (a) within an opal development lease within a designated area; or
 - (b) outside a precious stones field,is 20 000 square metres.
- (3) The maximum permissible area that can be pegged out for an opal development lease is 40 000 square metres.

- (4) If the area for a precious stones claim is partly within a precious stones field and partly outside a precious stones field—
 - (a) the maximum permissible area that can be pegged out within the field is 5 000 square metres (unless the land is within an opal development lease within a designated area); and
 - (b) the maximum permissible area for the whole claim is 20 000 square metres in any event.

9—Shape, dimensions and availability

- (1) Subject to this regulation, the shape of an area pegged out for—
 - (a) a small precious stones claim—must approximate a square, with no side exceeding 50 metres in length;
 - (b) a large precious stones claim—must approximate a rectangle, with a breadth not exceeding 50 metres and a length not exceeding 100 metres;
 - (c) an extra large precious stones claim—must approximate a rectangle, with a breadth not exceeding 100 metres and a length not exceeding 200 metres;
 - (d) an opal development lease—must approximate a square, with no side exceeding 200 metres in length.
- (2) If it is impracticable to comply with subregulation (1) because of the position of adjoining boundaries for other areas, an intervening or irregularly shaped piece of land may be pegged out for a tenement but, in this case, an application to approve the pegging must be immediately made to a mining registrar, or to a person authorised by the Mining Registrar for the purposes of this regulation.
- (3) However, the sides of an area pegged out under subregulation (2) for an opal development lease must in all cases be between 100 and 200 metres, subject to the qualification that a mining registrar may specifically approve a side that is less than 100 metres in a particular case.
- (4) Subject to subregulation (5), a person who has pegged out an intervening or irregularly shaped area under subregulation (2) will be taken to have effected a valid pegging (at least until the matter is determined by application under that subregulation).
- (5) A person who has pegged out an intervening or irregularly shaped area under subregulation (2) must not conduct mining operations on the land unless or until a written approval is given on application under that subregulation.

Part 4—Mode of taking possession etc

10—Mode of taking possession

- (1) This regulation sets out the requirements for a valid pegging under the Act.
- (2) A post must be securely placed in the ground at each corner of the relevant area.
- (3) The post must—
 - (a) be devoid of marks or writing that refers to a previous pegging; and
 - (b) have a cross-sectional dimension equal to or exceeding 7 centimetres; and

- (c) project at least 75 centimetres above the ground; and
 - (d) in the case of a post for an opal development lease—be completely white.
- (4) The following provisions will then apply:
- (a) an identification plate issued to the holder of the precious stones prospecting permit that is appropriate to the particular form of tenement must be securely attached to the post as near to the top as practicable;
 - (b) the date of pegging must then be shown on the post in clear legible characters immediately below the identification plate;
 - (c) the following letter or letters must then be shown on the post immediately below the date of pegging:
 - (i) in the case of an area for a small precious stones claim—"S";
 - (ii) in the case of an area for a large precious stones claim—"L";
 - (iii) in the case of an area for an extra large precious stones claim—"X";
 - (iv) in the case of an area for an opal development lease—"ODL".
- (5) The direction of the boundaries of an area pegged out for a tenement must be clearly indicated by substantial indicator markers fixed to each post.
- (6) If it is impracticable to comply with a preceding subregulation, a person may peg out an area for a tenement in some other manner but, in such a case, the person must lodge a notice of the manner of pegging at the nearest office of the Mining Registrar to the area that has been pegged out.
- (7) A notice under subregulation (6)—
- (a) must be in a form determined by the Director; and
 - (b) must be given within seven days after the pegging.
- (8) If a mining registrar, or a person authorised by the Mining Registrar for the purposes of this regulation, considers that the method of pegging out an area is unsatisfactory, he or she may order that a different method be used.
- (9) A person to whom an order is directed under subregulation (8) must immediately comply with the order.

11—Notification of pegging

- (1) The holder of a precious stones prospecting permit who has pegged out an area for a precious stones claim within (or partly within) a precious stones field must give notice of the pegging to the Mining Registrar in accordance with this regulation.
- (2) The notice—
- (a) must be in a form determined by the Director and include information and diagrams showing the location and shape of the relevant area, including bearings from the nearest Departmental survey peg; and
 - (b) subject to subregulation (3), must be lodged personally by the permit holder at the nearest office of the Mining Registrar to the field no later than 5 p.m. on the working day next following the day of pegging.

- (3) However, if the nearest office of the Mining Registrar to the field is closed—
- (a) the notice may be lodged at the nearest office that is open; or
 - (b) if the closure is for a period of more than five working days and a notice to that effect is prominently displayed at the office—the notice may be lodged personally or by pre-paid post at the Adelaide office of the Mining Registrar during the period of closure; or
 - (c) if the closure is during a period when the office would normally be open (as indicated by a notice displayed at the office)—the notice may be personally lodged at the office on the first day that it reopens, or otherwise given in a manner approved or directed by the Mining Registrar.

12—Application for registration or renewal of tenement—access to office of Mining Registrar

If a person wants to lodge an application to register or renew a precious stones tenement for an area within (or partly within) a precious stones field and the nearest office of the Mining Registrar to the field is closed—

- (a) the application may be lodged at the nearest office that is open; or
- (b) if the closure is for a period of more than five working days and a notice to that effect is prominently displayed at the office—the application may be lodged personally or by pre-paid post at the Adelaide office of the Mining Registrar during the period of closure; or
- (c) if the closure is during a period when the office would normally be open (as indicated by a notice displayed at the office)—the application may be personally lodged at the office on the first day that it reopens, or otherwise made in a manner approved or directed by the Mining Registrar.

13—Display of registration number

The holder of a registered tenement must ensure that the registration number for the tenement is clearly displayed on each post marking out the area of the tenement—

- (a) in the case of a precious stones claim—within seven days after registration; and
- (b) in the case of an opal development lease—within 14 days after registration.

Part 5—Working conditions—precious stones claims

Note—

There are no working conditions for opal development leases.

14—Working conditions

- (1) Unless otherwise determined by the Warden's Court, a precious stones claim must, after 14 days from registration or, if the claim is over native title land, after 14 days from registration of an agreement or determination under Part 7 of the Act—
- (a) in the case of a claim within a major working area under section 13 of the Act—be diligently worked by the holder of the claim personally on the basis of at least 20 hours of work per week;

- (b) in any other case—be diligently worked by or on behalf of the holder of the claim on the basis of at least 20 hours of work per week.
- (2) The following will be taken to be within the concept of diligently working a claim:
 - (a) the performance of mining operations on the claim; and
 - (b) work associated with the extraction of, or making merchantable, precious stones located within, or recovered from, the claim where that work is carried out on the claim; and
 - (c) the preparation, erection or maintenance of machinery or equipment used in connection with mining operations where that work is carried out on the claim.
- (3) The requirements of this regulation do not apply between 15 December in each year and 14 March in the following year (both dates inclusive).

15—Amalgamation of working conditions

- (1) Subject to this regulation, the working conditions of contiguous precious stones claims may be amalgamated for a period not exceeding one year at any one time under the authority of an order of the Warden's Court.
- (2) However—
 - (a) precious stones claims can only be amalgamated if they are within a precious stones field; and
 - (b) the total area of amalgamated precious stones claims cannot exceed 10 000 square metres.
- (3) A person may object to an application to amalgamate working conditions and the objection will be heard and determined by the Warden's Court.
- (4) The Warden's Court may during the currency of an amalgamation, if satisfied that it is appropriate to do so, on application, cancel an amalgamation.
- (5) The Warden's Court may determine that an order of the court under this regulation will be taken to have had effect from the date on which the relevant application was received by the court.
- (6) If the working conditions of two or more precious stones claims are amalgamated, the total working conditions of those claims will be taken to be complied with if the total number of hours required to be worked on the individual claims are worked anywhere within the boundaries of the amalgamated claims.

16—Suspension of working conditions

- (1) The holder of a precious stones claim may apply to the Warden's Court for the suspension of working conditions on the claim.
- (2) A person may object to an application under subregulation (1) and the objection will be heard and determined in the Warden's Court.
- (3) The Warden's Court may, after considering the application and any objection under subregulation (2)—
 - (a) by order, approve the suspension of working conditions on a claim; or
 - (b) reject the application.

- (4) An order under subregulation (3)(a)—
 - (a) may be given subject to conditions determined by the Warden's Court and specified in the order; and
 - (b) will operate for a period, not exceeding six months at any one time, specified in the order.
- (5) The Warden's Court may determine that the order will be taken to have had effect from the date on which the relevant application was received by the court.
- (6) If—
 - (a) an order under subregulation (3)(a) is given subject to conditions; and
 - (b) the person who obtained the order contravenes, or fails to comply with, a condition,the order will be taken to have been revoked.
- (7) This regulation does not affect the exemption from the requirement to work the claim between 15 December in each year and 14 March in the following year but an application for the suspension of working conditions will (insofar as is relevant to the particular time of the year) be taken to include the period running between those two dates (inclusive).

17—Exemptions

- (1) The holder of a precious stones claim will not be liable to a penalty, or to the forfeiture of the claim, on account of a failure to comply with the requirements of these regulations relating to working conditions if—
 - (a) the failure is due to illness, or absence on urgent work in the public interest; or
 - (b) the failure is due to flood, drought or other act of nature; or
 - (c) the failure is due to an order of a court that specifically prevents the holder of the claim working the claim.
- (2) However—
 - (a) subregulation (1)(a) or (b) will only apply for two months in respect of a particular event or circumstance; and
 - (b) subregulation (1)(a) and (b) do not apply in respect of a particular event or circumstance that occurred or existed before the area for the precious stones claim was pegged out.

Part 6—General provisions for tenements

18—Removal of posts

- (1) If a post is in a place that interferes with the working of a precious stones tenement, the holder of the tenement may apply to—
 - (a) a mining registrar; or
 - (b) an authorised person; or

- (c) a person authorised by the Mining Registrar for the purposes of this subregulation,
for approval to remove the post.
- (2) A person to whom an application is made under subregulation (1) may, if satisfied that it is appropriate to do so, authorise the removal of the post.
- (3) An authorisation under subregulation (2)—
 - (a) must be in a form determined by the Director; and
 - (b) may include directions to ensure the proper definition of the boundaries of the tenement while the post is removed; and
 - (c) may be given on conditions specified in the authorisation.
- (4) A person who has the benefit of an authorisation under subregulation (2) must comply with any directions or conditions under subregulation (3).
- (5) A person (other than the holder of the relevant tenement) must not remove a post placed in the ground in order to mark a precious stones tenement (or an area for a precious stones tenement).
- (6) Subregulation (5) does not apply to—
 - (a) a person acting with the written permission of the holder of the tenement; or
 - (b) a mining registrar, an authorised person, or a person authorised by the Mining Registrar for the purposes of this subregulation, removing a post from a tenement (or the area for a tenement) if—
 - (i) it appears that there has been a failure to comply with a requirement of the Act or these regulations; or
 - (ii) it appears that the tenement (or any pegging) may have lapsed, or been surrendered or cancelled.
- (7) A post removed under subregulation (6)(b) must be stored at the nearest office of the Mining Registrar to the tenement.
- (8) The owner of a post stored under subregulation (7) may, within one month after the post was removed under subregulation (6)(b), on payment of the appropriate fee, recover the post (and, if appropriate, any identification plate or marker attached to the post).
- (9) If a post is not recovered under subregulation (8)—
 - (a) the post becomes the property of the Crown; and
 - (b) the Minister may dispose of the post as the Minister thinks fit.

19—Insufficiently defined tenements

- (1) If a precious stones tenement is not defined by posts and boundary markers in accordance with the requirements of these regulations, a person authorised by the Director for the purposes of this regulation may, by notice in writing to the holder of the tenement, require the holder to rectify the situation within a specified period (of at least seven days).

- (2) If a notice under subregulation (1) is not complied with within the time specified by the notice, the Director may apply to the Warden's Court for an order cancelling the tenement and for appropriate consequential orders (and the Warden's Court has jurisdiction to make those orders).

20—Rectification of tenement boundary

- (1) If—
 - (a) the holder of a precious stones tenement discovers that the area, shape or dimensions of the tenement do not conform with these regulations; or
 - (b) the holder of a precious stones tenement discovers that a portion of another tenement (including a tenement under the *Mining Act*) has been included within the boundaries of the tenement,the person may apply to the Warden's Court for an order rectifying the error.
- (2) The Warden's Court may, on application under subregulation (1), if satisfied that it is appropriate to do so—
 - (a) make the orders necessary to rectify the error;
 - (b) determine, or realign, the boundaries of the tenement, and determine the manner in which those boundaries are to be delineated.
- (3) However, an application cannot be made under this regulation if proceedings for forfeiture of the tenement or otherwise concerning the validity of the tenement have already been commenced (and have not been determined).

21—Action to comply

- (1) A liability to the forfeiture of a precious stones tenement on account of failure to comply with a requirement of these regulations will cease on subsequent compliance by the holder of the tenement.
- (2) However, subregulation (1) does not apply if proceedings for forfeiture of the tenement are commenced under the Act within one month after the liability to forfeiture arises and before the holder of the tenement takes steps to rectify the non-compliance.
- (3) If—
 - (a) a person applies to the Warden's Court for an order—
 - (i) cancelling a pegging; or
 - (ii) for the forfeiture of a tenement,on the ground that a requirement of the Act or these regulations has not been complied with; and
 - (b) the Warden's Court finds that there has been non-compliance with the Act or these regulations but that in the circumstances an order for cancellation or forfeiture should not be made,the court may nevertheless order the person in default to take steps to rectify the non-compliance.
- (4) A person to whom an order is directed under subregulation (3) must comply with the terms of the order.

22—Reduction in area of a tenement

- (1) The holder of a precious stones tenement may, with the approval of a mining registrar, reduce the area of the tenement.
- (2) An approval under subregulation (1) may be given subject to conditions specified by the mining registrar (and the holder of the tenement must, if the area of the tenement is reduced, comply with those conditions).
- (3) The requirements of these regulations relating to the shape of a tenement do not apply if the area of a tenement is reduced under this regulation.

23—Time for renewal of tenement

Pursuant to section 22(3)(a) of the Act, an application for the renewal of a precious stones claim must be made within 60 days before the registration of the tenement is due to expire.

24—Roads and pipelines across tenements

- (1) The Warden's Court may, on application under this regulation, approve the making, laying or use of a road or pipeline on or over a precious stones tenement if—
 - (a) the tenement is located outside a precious stones field; and
 - (b) the Warden's Court is satisfied that the road or pipeline is necessary for the efficient working of another tenement, or for use by the public.
- (2) An approval under subregulation (1) may be given subject to directions or conditions specified by the Warden's Court (which may include provision for the payment of compensation to the holder of the tenement that will be affected by the making, laying or use of the road or pipeline).
- (3) A person must not breach, or fail to comply with, a direction or condition under subregulation (2).

Part 7—Opal mining co-operation agreements

25—Prescribed requirements

- (1) For the purposes of section 42(3) of the Act, an opal mining co-operation agreement must comply with the following requirements:
 - (a) the agreement must be in printed form; and
 - (b) the agreement must—
 - (i) identify the parties to the agreement; and
 - (ii) specify the term of the agreement; and
 - (iii) clearly identify the land affected by the agreement; and
 - (iv) be signed or executed by all parties to the agreement.
- (2) For the purposes of section 44 of the Act, an agreement to vary or revoke a registered opal mining co-operation agreement must comply with the following requirements:
 - (a) the agreement must be in printed form; and
 - (b) the agreement must—

- (i) clearly identify the opal mining co-operation agreement that is being varied or revoked; and
- (ii) in the case of a variation—clearly specify the variation; and
- (iii) be signed or executed by all parties to the opal mining co-operation agreement.

Part 8—Miscellaneous

26—Verification of membership of association

An applicant for the registration of a precious stones tenement outside (or partly outside) a precious stones field who states in the application that he or she is a member of an approved association must verify that membership to the satisfaction of a mining registrar.

27—Amendments to Mining Register

Subject to the provisions of the Act, the Warden's Court may order—

- (a) that an entry in the Mining Register be made, amended or cancelled; or
- (b) that an instrument be registered or that the registration of an instrument be cancelled.

28—Offices of Mining Registrar

For the purposes of the Act, the Adelaide head office of the administrative unit that is, under the Minister, responsible for the administration of the Act and each of the offices of that unit at Andamooka, Coober Pedy and Marla are offices of the Mining Registrar.

29—Change of address

The holder of a precious stones prospecting permit or precious stones tenement must notify the Mining Registrar in writing of a change in address within 30 days of the change.

30—Forms

- (1) Unless otherwise provided, a form under the Act must be signed personally or, in the case of a body corporate, executed under seal, by a duly authorised attorney, or by an officer of the body corporate acting under the authority of the body corporate.
- (2) A form under these regulations may be varied or modified according to the exigencies of a particular case.

31—Application for native title declaration

An application under section 52 of the Act for a declaration that land is not subject to native title is to be made as an application for a native title declaration under the *Native Title (South Australia) Act 1994*.

32—Approved associations for umbrella authorisations

For the purposes of section 54 of the Act, the following associations are approved as associations that may be proponents of native title mining agreements conferring umbrella authorisations:

- (a) South Australian Opal Miner's Association Inc.;
- (b) Coober Pedy Miner's Association Inc.;
- (c) Andamooka Progress and Opal Miners Association Inc.;
- (d) Mintabie Miners and Progress Association Inc.

33—Notice initiating negotiations with native title parties

A notice under section 55 of the Act given by a proponent initiating negotiations for a native title mining agreement under Part 7 of the Act must be in the form of Schedule 3.

34—Service of documents

A notice or document required or authorised by or under the Act or these regulations to be given to or served on a person (other than a person who holds or may hold native title in land¹) may—

- (a) be served on the person personally; or
- (b) be posted in an envelope addressed to the person—
 - (i) at the person's last known address; or
 - (ii) if the person has an address for service—at that address; or
- (c) be transmitted by facsimile transmission to a facsimile number provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

Note—

- 1 Part 5 *Native Title (South Australia) Act 1994* sets out the method of service on all who hold or may hold native title in land.

35—Fees

- (1) The fees set out in Schedule 2 are payable as specified in that Schedule.
- (2) The Director may, on application, in his or her discretion, waive payment of the whole or a part of a fee, or refund a fee (in whole or in part).

36—Operations near certain residences

The holder of a tenement is not authorised to conduct mining operations within 400 metres of a building or structure used as a place of residence situated within a part of a precious stones field comprised of a pastoral lease under the *Pastoral Land Management and Conservation Act 1989* except as authorised by a mining registrar or a person authorised by the Mining Registrar for the purposes of this regulation.

37—Validation of notice of entry

The sole purpose of a validation of a notice of entry by an authorised person under the Act is to indicate that the authorised person has seen the notice and is aware of the proposed entry on to land (and a validation does not constitute an approval or other form of official recognition related to the validity of the notice).

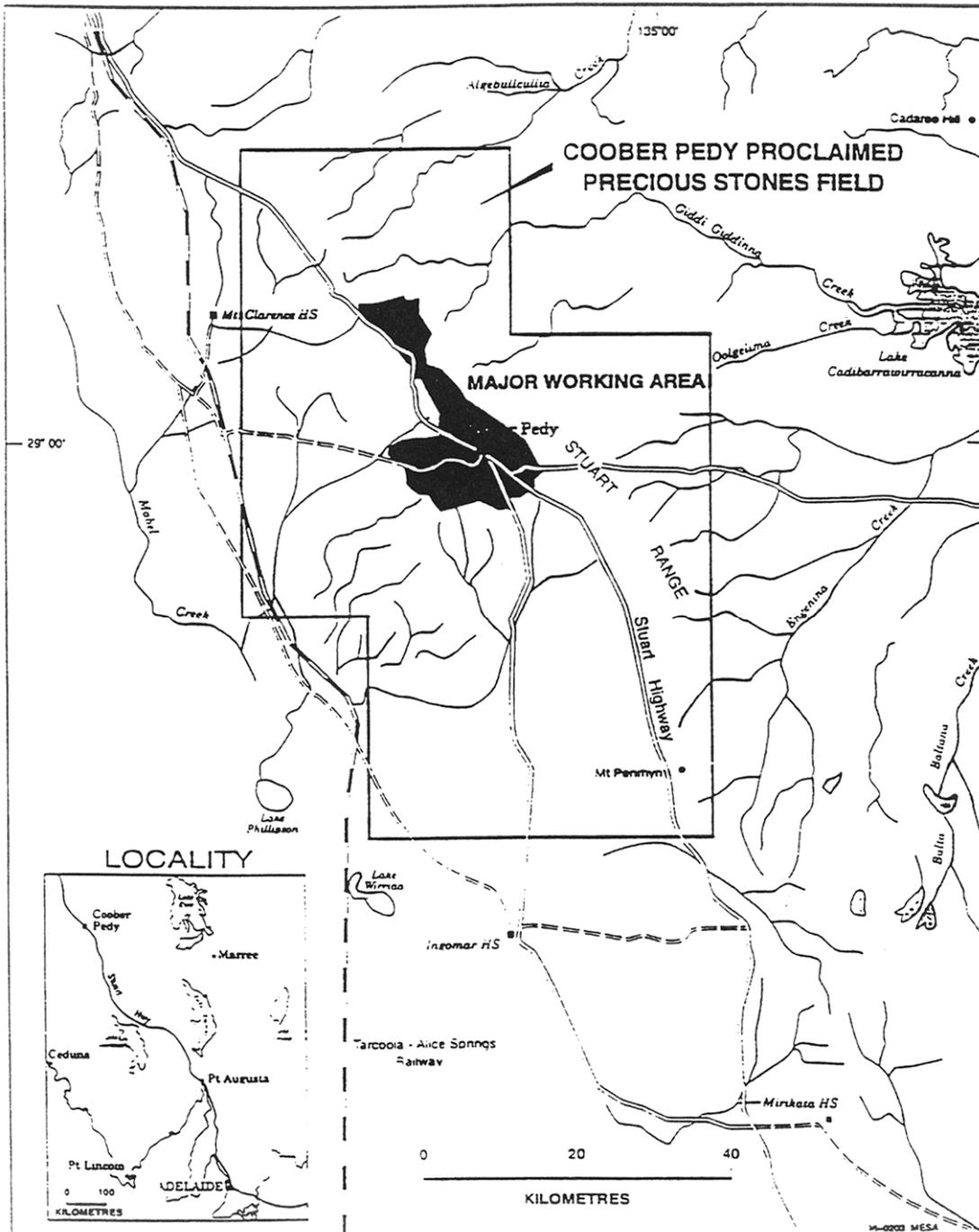
38—Warden's Court—costs

The Warden's Court is vested with jurisdiction to award reasonable costs.

39—Offences

- (1) A person who contravenes or fails to comply with a provision of these regulations is guilty of an offence.
- (2) A person who is guilty of an offence against these regulations for which no penalty is specifically prescribed is liable to a fine not exceeding \$2 500.

Schedule 1—Major working area—Coober Pedy



Schedule 2—Fees

1	Application for the issue or renewal of a precious stones prospecting permit	\$60.50
2	Application for the issue of a duplicate precious stones prospecting permit	\$13.40

3	Application for the issue of—	
	(a) a set of identification plates (other than the first set of plates)	\$7.25
	(b) a replacement identification plate	\$5.70
4	Application for the registration of—	
	(a) a small precious stones claim	\$25.10
	(b) a large precious stones claim	\$51.00
	(c) an extra large precious stones claim	\$72.50
	(d) an opal development lease	\$80.50
5	Application for the renewal of the registration of—	
	(a) a small precious stones claim	\$93.50
	(b) a large precious stones claim	\$188.00
	(c) an extra large precious stones claim	\$255.00
6	Lodgment or withdrawal of a caveat	\$60.50
7	Lodgment of a bond	\$13.50
8	Submission for registration of an opal mining cooperation agreement	\$75.50
9	Lodgment for registration of—	
	(a) a native title mining agreement	\$160.00
	(b) a native title mining determination	\$160.00
10	Inspection of the Mining Register	\$36.75
11	Extraction of a precious stones claim	\$5.80
12	Application for an exemption from the obligation to comply with a provision of the Act	\$80.50
13	Recovery of a post stored at an office of the Mining Registrar	\$19.50
14	Application for an exemption from the requirement to remove posts	\$9.30
15	Application for an authorisation under the Act	\$13.50
16	Registration of any other document	\$13.50

Schedule 3—Form of notice initiating negotiations with native title parties

(Section 55 of Act)

(Please use BLOCK LETTERS)

To: Native title parties
Environment, Resources and Development Court
Minister for Mines

1 I,
(Full name (please underline surname) or company name)
of.....
(Full address or company registered address)
.....
.....

propose to carry out mining operations on the following land:

Section
Hundred
Pastoral Block.....
Other

2 The general nature of the proposed mining operations that are to be carried out on the land is as follows:
.....

3 The proposed operations are or will be authorised by the following exploration authorities and/or tenements under the *Opal Mining Act 1995*:
.....

[Give details and indicate whether the authority or tenement is currently held, applied for or proposed to be applied for.]

4 I—

seek to negotiate a native title mining agreement under Part 7 of the *Opal Mining Act 1995*.

Note: If, two months after this notice is given as required by the *Opal Mining Act 1995*, there are no persons registered under the law of the State or the Commonwealth as the holders of, or claimants to, native title in the land, I may apply *ex parte* to the Environment, Resources and Development Court for a summary determination authorising entry to the land for the purpose of carrying out mining operations on the land, and the conduct of mining operations on the land.

propose to rely on section 57 of the *Opal Mining Act 1995* (**Expedited procedure where impact of operations is minimal**) on the grounds that the mining operations—

- will not directly interfere with the community life of the holders of native title in the land on which the operations are to be carried out; and
- will not interfere with areas or sites of particular significance, in accordance with their traditions, to the holders of native title in the land on which the operations are to be carried out; and
- will not involve major disturbance to the land on which the operations are to be carried out.

Note: I may apply *ex parte* to the Environment, Resources and Development Court for a summary determination authorising mining operations in accordance with the proposals made in this notice. If, within two months after this notice is given, a written objection to my reliance on section 57 is given by the Minister, or a person who holds, or claims to hold, native title in the land, the Court must not make the determination unless satisfied, after giving the objectors an opportunity to be heard, that the operations are in fact operations to which section 57 applies.

Additional information:

- 1 Contact telephone number:
- 2 Contact facsimile number (if available):
- 3 If a company:
 - (1) A.C.N. No:
 - (2) Contact person:

DATE:

SIGNATURE:

or

COMPANY SEAL¹

.....
(Director)

.....
(Director/Secretary)

¹ If a company, the notice must bear the company's seal and be witnessed by appropriate officers.

The following information about service on native title holders is provided for the convenience of the mining operator and need not be included in the notice given under section 55.

If a native title declaration establishes who are the holders of native title in the land—the notice must be given to the registered representative of the native title holders and the relevant representative Aboriginal body for the land.

If there is no native title declaration establishing who are the holders of native title in the land—the notice must be given to all who hold or may hold native title in the land in accordance with the method set out in Part 5 of the *Native Title (South Australia) Act 1994* as follows:

- the notice must be given personally or by post to—
 - all registered representatives of holders of native title in the land (see the State Native Title Register kept by the Registrar of the ERD Court); and
 - all registered representatives of persons who are registered under the law of the Commonwealth or the State as claimants to native title in the land (see the State Native Title Register kept by the Registrar of the ERD Court and the Commonwealth Register of Native Title Claims); and
 - the relevant representative Aboriginal body (under the regulations this is the Aboriginal Legal Rights Movement Inc. except on lands of the Maralinga Tjarutja or Anangu Pitjantjatjara); and
 - the Commonwealth Minister; and
 - the State Minister (the Attorney-General); and
- notice of the nature and effect of the notice (including a description of the land concerned) must be given—
 - by publishing a notice (at least 4cm x 4cm) in each of the following:
 - a newspaper circulating generally throughout the State;
 - if there is a local or regional newspaper that is published at least weekly and circulated generally in the area in which the land, or part of the land, concerned is situated—that newspaper; and
 - if there is a newspaper or magazine that caters mainly or exclusively to the interests of Aboriginal people and is published at least monthly and circulated generally in the area in which the land, or part of the land, concerned is situated—that newspaper or magazine; and
 - by informing each of the following broadcasting services of the fact that the notice has been published and where it has been published:
 - a general broadcasting service that serves the area within which the land, or part of the land, is situated;
 - if there is a broadcasting service that caters mainly or exclusively to the interests of Aboriginal people and serves the area within which the land, or part of the land, is situated—that broadcasting service.

Subject to Part 7 of the Act, a person may carry out mining operations under this Act on native title land if authorised by an agreement (a "native title mining agreement") under Part 7. The agreement is negotiated with the native title parties. **A person initiates negotiations by use of this form.**

If an agreement is not sought, or if agreement cannot be reached in accordance with Part 7 of the Act, mining operations cannot proceed on native title land unless—

- (a) in the case of prospecting—the operations do not affect native title; or
- (b) a declaration is made by a court to the effect that the land is not subject to native title; or
- (c) a determination is made by a court that the mining operations can proceed.

You cannot proceed to carry out mining operations on native title land unless you comply with the requirements of Part 7.

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
1997	43	<i>Gazette 3.4.1997 p1410</i>	21.4.1997: r 2
1997	89	<i>Gazette 13.5.1997 p1884</i>	1.7.1997: r 2
1998	110	<i>Gazette 28.5.1998 p2427</i>	1.7.1998: r 2
1999	45	<i>Gazette 27.5.1999 p2783</i>	1.7.1999: r 2
1999	148	<i>Gazette 1.7.1999 p96</i>	1.7.1999: r 2
2000	45	<i>Gazette 25.5.2000 p2681</i>	1.7.2000: r 2
2001	116	<i>Gazette 31.5.2001 p2094</i>	1.7.2001: r 2
2002	106	<i>Gazette 20.6.2002 p2622</i>	1.7.2002: r 2
2003	65	<i>Gazette 29.5.2003 p2176</i>	1.7.2003: r 2
2003	147	<i>Gazette 12.6.2003 p2500</i>	12.6.2003: r 2
2004	39	<i>Gazette 27.5.2004 p1416</i>	1.7.2004: r 2
2005	51	<i>Gazette 26.5.2005 p1397</i>	1.7.2005: r 2
2006	165	<i>Gazette 15.6.2006 p1963</i>	1.7.2006: r 2
2007	70	<i>Gazette 7.6.2007 p2290</i>	1.7.2007: r 2
2008	138	<i>Gazette 5.6.2008 p2153</i>	1.7.2008: r 2
2009	77	<i>Gazette 4.6.2009 p2390</i>	1.7.2009: r 2
2010	11	<i>Gazette 28.1.2010 p356</i>	Pt 11 (r 13)—1.2.2010: r 2
2010	103	<i>Gazette 10.6.2010 p2874</i>	1.7.2010: r 2
2011	152	<i>Gazette 9.6.2011 p2413</i>	1.7.2011: r 2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		

r 2	<i>omitted under the Legislation Revision and Publication Act 2002</i>	1.7.2004
Pt 8		
r 28	varied by 148/1999 r 3	1.7.1999
	substituted by 11/2010 r 13	1.2.2010
Sch 2	substituted by 89/1997 r 3	1.7.1997
	substituted by 110/1998 r 3	1.7.1998
	substituted by 45/1999 r 3	1.7.1999
	substituted by 45/2000 r 3	1.7.2000
	substituted by 116/2001 r 3	1.7.2001
	substituted by 106/2002 r 3	1.7.2002
	substituted by 65/2003 r 4	1.7.2003
	substituted by 39/2004 r 4	1.7.2004
	substituted by 51/2005 r 4	1.7.2005
	substituted by 165/2006 r 4	1.7.2006
	substituted by 70/2007 r 4	1.7.2007
	substituted by 138/2008 r 4	1.7.2008
	substituted by 77/2009 r 4	1.7.2009
	substituted by 103/2010 r 4	1.7.2010
Sch 3	heading substituted by 147/2003 Sch 1	12.6.2003

Historical versions

1.7.2004
1.7.2005
1.7.2006
1.7.2007
1.7.2008
1.7.2009
1.2.2010