LAW AND ORDER FOR ANAKIE: THE MINING (FOSSICKING) ACT 1985 (QLD.)

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Queensland's Mining (Fossicking) Act 1985 is a response to wars and rumours of wars upon the gem fields of Central Queensland. To some people who do not identify a holiday with days in the surf, a trip to those areas is, so they say, a tourist attraction. Some visitors were wont to fossick without authority and with scant regard for existing mining tenures. In the Parliamentary debate one holder of a poetic licence told fellow MLAs: 'This Bill is a belated effort to bring some degree of rationalization . . . at Anakie anarchy almost took over.' The Royal Assent conferred new dignity upon a piece of Australian slang: 'Fossick — to rummage or search about for gold *etc.* in abandoned workings' (*Concise Oxford*, 1976).

The Queensland Act is not unique. South Australia has its 'precious stones claim.' (Mining Act 1979 Part VII). Part X of the Mining Act 1980–1984 (NT) provides for 'fossicking areas' within which no exploration licence or mining tenement is to be granted. In New South Wales the Governor may declare fossicking areas under s. 25(1) of the Mining Act 1973. In that State a fossicking licence is available to individuals or to families for 12 months: s. 26B. Opal prospecting areas are especially provided for (s. 25A) but fossicking may not lawfully occur upon land subject to a mining tenement or exploration licence: s. 26C(3).

The new Queensland Act authorizes the Governor in Council to declare any area within a mining district a 'designated area': s. 5(1). Occupied Crown land, timber reserves and State forests, national parks and environmental parks are excepted: s.5(2). Normal mining operations are prohibited in a designated area: s. 6. Within such a zone a 'fossicking area' may be declared: s. 13. It is not lawful to search there for 'any mineral' or to carry on 'any operation for mining purposes' unless this is done pursuant to a fossicker's licence.

The key expression — 'fossicking' — is not explicitly defined. Compare the position in South Australia where it denotes the gathering of minerals for strictly non-commercial purposes without the disturbance of land, in which case it is not treated as 'mining' at all: Mining Act 1971 (SA) s. 6. It is clear that a licensed Queensland fossicker is not confined to rummaging about in abandoned workings. The Act contemplates that approved machinery may be used within a designated area: ss. 7, 9 and 10. Queensland does not expect the fraternity of fossickers to be strict amateurs. All gold and gem stones found by licensees vest in them (s. 25) subject to the payment of royalties at rates set under the Mining Act 1968–1983. It remains to be seen whether this provision will be more honoured in the breach or in the observance. The farmer, the cowhand and miner may now be friends at Anakie but a certain distaste for revenue laws may linger on.

A fossicking licence lasts for 2 months only and is non-transferable: ss. 21–22. It may be cancelled by notice in writing for any breaches of law and 'no appeal shall lie': s. 23. While extant it authorizes the holder to search for and to collect gem stones and gold (s. 24(1)), normally without any obligation to pay compensation: s. 24(2).

There are two types of fossicker's licence: (i) 'individual' and (ii) 'family'. The expression 'member of the family' covers the person in whose name a licence is issued, his or her spouse and persons under 18 years of age in their household: s. 4(1). In deference to the conditions of modern life on the frontier (and elsewhere) 'spouse' denotes unions with or without benefit of clergy. Persons who have previously fallen foul of the mining laws or guardians thereof are not encouraged to apply: s. 20.

The holder of a Miner's Right does not require the new type of licence. His time-honoured permit counts as a fossicker's licence within a designated area (s. 12) but he may not peg out a mining tenement therein: ss. 11(1), 14.

Caravan society is specifically catered for (ss. 27–28); the tourist potential of the Act received close attention in the parliamentary debates. The right to bear arms does not enjoy full constitutional status; the Warden may order firearms out of the designated area. If 'spear guns' find their way from the cool Pacific to the dusty outback he may do the same. Any fossicker who bears a 'crossbow' handed down from sire to son may also incur the Warden's displeasure: s. 36.

The fossicker's right may be the humblest of mining authorities but note ss. 11 and 14(2). The Mining Act notwithstanding, mining leases and mining claims are normally not permitted in a designated area. Existing titles, renewals and lease applications filed before the creation of a designated area are protected by s. 11(1) and (2).

The Mining (Fossicking) Act has overriding effect upon Authorities to Prospect granted under the Mining Act. These major exploration rights *whenever issued* are of 'no force and effect' to the extent that they cover land within a designated area: s. 11(3). If an Authority to Prospect has not given birth to a lease application by 'designation time' then *quoad* the designated area it can no longer do so. It is possible for a designating Order to make special allowance for leases (s. 11(1)) but it is difficult to see how an Authority which is of 'no force and effect' could support a lease application even in such a case. To the extent that it is ineffective an Authority could not confer the usual priority Mining Act s. 18(2) upon a lease application filed by the holder. It is also difficult to see how an ineffective Authority could authorize entry upon the land for the purposes of marking out (Mining Act s. 21(2A)) even when the designated area is open to leasing. These

problems can scarcely be overcome by taking out a concurrent Miner's Right because within a designated area that type of permit is reduced to the status of a fossicker's licence (ss. 14(2), 15) and there is no provision to the contrary where a designated area is left open, after all, to the operation of the Mining Act. Perhaps these anomalies can be sidestepped by a suitably generous declaration of 'substantial compliance' under the proviso to s. 21(1) of the Mining Act. The ambit of that remarkable provision is considered in the October 1985 issue of this *Bulletin* at page 67.

The overriding effect of the Queensland's new Act upon the Mining Act may be compared with s. 70 of the West Australian Mining Act 1978. That provision enables a prospecting licence to be obtained over land which is covered by an existing exploration licence (the equivalent of Queensland's Authority to Prospect) after the latter right has been in existence for 12 months. In this case however prior notice has to be given to the authority-holder and he may object. It then becomes a question whether the prospecting for gold and precious stones can be carried on 'without detriment to the exploration being carried on' by the holder of the exploration licence: s. 70(4). Under the Mining (Fossicking) Act (Qld) an overrider of normal Authority to Prospect entitlements automatically occurs when an unqualified declaration of a 'designated area' is made under s. 5.

Some nervousness is detectable in s. 11(3)(b): 'The Crown shall not be civilly liable by reason that . . . an authority to prospect has no force or effect to any extent.' However it is difficult to see how legal action would lie against the Crown for executing the express will or permission of the legislature.

On 5 May 1986 the Minister for Mines announced that another 93 square kilometres, including 31 square kilometres for fossicking, had been set aside on the gemfields in the Emerald Shire. His colleague the Minister for Industrial Relations foresaw a time, not far distant, when caravan villages would give way to a 250-bed international hotel in 'the world's biggest sapphire field'. Clearly the Mining (Fossicking) Act is no small matter.

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