

MINING ORDINANCE 1972

1339

No. 59 of 1972

An Ordinance to amend the *Mining Ordinance* 1939 as amended

[Reserved 20 September, 1972]

[Assented to 9 November, 1972]*

BE it ordained by the Legislative Council for the Northern Territory of Australia as follows:—

1.—(1.) This Ordinance may be cited as the *Mining Ordinance* 1972. Short title and citation

(2.) The *Mining Ordinance* 1939 as amended is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance as amended by this Ordinance may be cited as the *Mining Ordinance* 1939-1972.

2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice published in the *Gazette*.† Commencement

3. Section 7 of the Principal Ordinance is amended— Definitions

(a) by omitting the definition of “claim” and inserting in its stead the following definition:—

“‘claim’ means a portion of land lawfully held, occupied or used as a claim by a miner in pursuance of paragraph (b) of sub-section (1.) of section 23 of this Ordinance, but does not include land comprised in a prospecting area, mining lease or special mineral lease or an application for such a lease;”;

(b) by inserting in the definition of “mining lease”, after the word “granted”, the words “or approved”;

(c) by omitting from the definition of “minerals” the words “and all precious stones” and inserting in their stead the words “and includes all precious

* Notified in the *Northern Territory Government Gazette* No. 46 of 15 November, 1972, page 410.

† The date fixed was 22 November, 1972 (see *Northern Territory Government Gazette* No. 47 of 22 November, 1972, page 421).

stones and such other naturally occurring inorganic or fossil substances or aggregate of substances as the Administrator, by notice published in the *Gazette*, declares to be minerals for the purpose of this definition”;

(d) by inserting after the definition of “mining lease” the following definition:—

“‘mining purpose’ means a purpose of prospecting for or obtaining gold or minerals;”;

(e) by omitting the definition of “mining tenement” and inserting in its stead the following definition:—

“‘mining tenement’ means—

(a) land lawfully held, occupied or used under a lease or an application for a lease; and

(b) land or water, or a right in respect of land or water, lawfully held, occupied or used as provided by section 23; and

(f) by inserting after the definition of “Principal Registrar” the following definition:—

“‘prospecting area’ means an area of land lawfully held, occupied or used for the purpose of prospecting only (including the taking of such quantity of earth as is prescribed), but does not include land held, occupied or used under a lease or application for a lease or as a claim;”.

Rights
conferred by
miner's right

4. Section 23 of the Principal Ordinance is repealed and the following section inserted in its stead:—

“23.—(1.) The holder of a miner’s right may, by virtue of the miner’s right, but subject to this Ordinance, the *Control of Waters Ordinance*, the *Soil Conservation and Control Ordinance* and the regulations—

(a) take possession of, mark off, occupy and use an area of Crown land or private land as a prospecting area;

(b) take possession of, mark off, occupy and use any Crown land, private land or aboriginal reserve as a claim for a mining purpose included in a prescribed class of mining purposes;

- (c) take possession of, mark off, occupy and use an area of any Crown land as an area for the erection of machinery for the extraction of gold or minerals, as an area for the stacking and treating of tailings or earth containing gold or minerals, or as an area for the washing of earth containing gold or minerals;
- (d) exercise as prescribed a right to take, use, sell or dispose of water on any Crown land for a purpose connected with mining or his own domestic purposes, being a right included in a prescribed class of such rights, and take possession of, mark off, occupy and use any Crown land for that purpose and so exercise that right;
- (e) take possession of, hold, and use on any land a stack or accumulation of earth or other substance containing gold or minerals, being a stack or accumulation that is the property of the Crown;
- (f) subject to sub-section (2.), take possession of, mark off, occupy and use the surface of any Crown land for the purpose of residence, market garden or business, being a purpose connected with mining;
- (g) cut, construct and use races, pipes, dams, tanks, reservoirs, drains, wells, roads, tramways, electricity lines, telephone lines and telegraph lines through or on any Crown land for a purpose connected with mining;
- (h) remove from any Crown land not exempted under section 28, any stone, clay or gravel for his personal use for a purpose connected with mining;
- (i) erect a building, structure or machinery on any land so possessed, marked off, occupied or used and remove any such building, structure or machinery at any time during that occupation of that land; and
- (j) exercise a right of access over any Crown land to any land so possessed, marked off, occupied or used.

“(2.) The holder of a miner’s right shall not, by virtue of this section—

- (a) use any Crown land for the purpose of residence, market garden or business, being a purpose connected with mining, unless the locality of the

land to be used has first been approved in writing by a warden;

- (b) use any Crown land located within one mile of a town or town site for the purpose of residence or market garden, being a purpose connected with mining, except with the consent in writing of the Administrator; or
- (c) use any Crown land located within three miles of a town or town site for the purpose of business, being a purpose connected with mining, except with the consent in writing of the Administrator.”.

Repeal

5. Section 26 of the Principal Ordinance is repealed.

Repeal

6. Section 30 of the Principal Ordinance is repealed.

7.—(1.) Section 37 of the Principal Ordinance is repealed and the following sections are inserted in its stead:—

Mining tenement to be registered before exercising miner's right

“37. The holder of a miner's right shall not exercise a right under a mining tenement held by him, not being a right under a lease or application for a lease or a right to mark off land or of access over Crown land under section 23, unless the mining tenement is registered under section 37A.

Register of certain mining tenements

“37A.—(1.) There shall be kept in the warden's office for each gold-field a register book called ‘The Register of Mining Tenements other than Leases’ for that gold-field in which shall be registered—

- (a) mining tenements other than leases for which application for registration has been made in accordance with the regulations; and
- (b) transfers of, sub-tenancies of, mortgages of, charges over, and other dealings and transactions with, those mining tenements.

“(2.) There shall be kept at the Mines Branch in Darwin a register book called ‘The Register of Mining Tenements other than Leases for Land that is not within a Proclaimed Gold-field’ in which shall be registered—

- (a) mining tenements other than leases in respect of land that is not situated within a proclaimed gold-field; and
- (b) transfers of, sub-tenancies of, mortgages of, charges over, and other dealings and transactions with, those mining tenements.

“(3.) Where the holder of a miner's right takes possession of, marks off, occupies or uses Crown land under this Part. or

private land under Part VII., as a mining tenement other than a lease, or the holder of an exploration licence takes possession of, marks off or obtains a mining tenement other than a lease under Part IVB., over land that is or is included in an aboriginal reserve, he may apply as prescribed to the warden for the registration of that mining tenement.

“(4.) Subject to this Ordinance, an application for registration of a mining tenement under this section shall be made in accordance with the regulations and shall be accompanied by the prescribed fees.

“(5.) A mining tenement in respect of land held under a pastoral lease granted under the *Crown Lands Ordinance* shall not be registered under this section unless the applicant serves a copy of his application for registration on the lessee of the pastoral lease within ten days after the date on which he lodges the application with the warden.

“(6.) A person may, in accordance with the regulations, lodge an objection to the registration of a mining tenement under this section with the warden to whom the application for registration was made.

“(7.) An objection shall be heard by the warden as provided by the regulations.

“(8.) In any proceedings before a court, a document purporting to be a certificate of the warden stating that the person named in the certificate was, at a specified date, registered under this section as the holder of a mining tenement described in the document is evidence of the matters so stated.

“(9.) The registers and all registered instruments shall be open for inspection by the public during ordinary hours of business on payment of the prescribed fee.”.

(2.) Section 37 of the Principal Ordinance as amended by this Ordinance does not apply to or in relation to a miner who—

- (a) is, at the date of commencement of this Ordinance, the holder of a mining tenement within the meaning of the Principal Ordinance as so amended, being a mining tenement that is not either registered or to be deemed to be registered under the Principal Ordinance as so amended; and
- (b) within the period of twenty-eight days after that date, lodges an application for registration of the mining tenement under section 37A of the Principal Ordinance as so amended,

during the period commencing on that date and ending on the date on which the application is granted or refused under that section 37A.

Granting of mining lease is to be in absolute discretion of Administrator

8. Section 70 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:—

“(3.) A mining lease shall not be granted or approved in respect of land held under a pastoral lease granted or approved under the *Crown Lands Ordinance* unless the applicant for the mining lease serves a copy of his application on the lessee of the pastoral lease within ten days after the date on which he lodges the application with the warden.”.

Application by miner for forfeiture of lease

9. Section 88 of the Principal Ordinance is amended by omitting sub-section (1.) and inserting in its stead the following sub-sections:—

“(1.) A person may apply to a warden for the forfeiture of a mining lease if he has reason to believe that any land held under the mining lease—

(a) is not being worked in accordance with the regulations; or

(b) was not being worked in accordance with the regulations at a time specified in the application, being a time not earlier than one month before the date of the application.

“(1A.) The proceedings on the application shall be commenced by plaint in the same manner as that prescribed for civil proceedings in the warden’s court.”.

Licences to remove or treat tailings

10. Section 99 of the Principal Ordinance is amended by omitting sub-section (1A.).

11. After section 99 of the Principal Ordinance the following sections are inserted:—

Term and conditions of licence to remove or treat tailings

“99A.—(1.) A licence to remove or treat tailings or other mining material remains in force for such period, not exceeding twelve months, as the Administrator determines and specifies in the licence.

“(2.) The licensee may, from time to time, apply to the Administrator for the renewal of the licence.

“(3.) The Administrator may grant the renewal of the licence for such period, not exceeding twelve months from the expiration of the licence or of the last preceding period of renewal of the licence, as the Administrator determines and specifies in the renewed licence.

“(4.) The Administrator may, subject to this Ordinance and the regulations, grant such a licence or renew such a licence either absolutely or subject to conditions.

“99B.—(1.) A miner who has reason to believe that the holder of a licence to remove or treat tailings or other mining material has failed to comply with or has contravened a condition of his licence may apply to a warden requesting—

Forfeiture of
licences to
remove or
treat tailings

- (a) the forfeiture of the licence; and
- (b) the grant to him of such a licence in respect of the tailings or other mining material the subject of the licence that he requests be forfeited.

“(2.) The proceedings on the application shall be commenced by plaint in the same manner as that prescribed for civil proceedings in the warden’s court.”

“(3.) The warden shall cause a copy of the application and of the time and place appointed for the hearing to be served on the holder of the licence.

“(4.) If the holder of the licence files an answer, the warden shall, by notice in writing served on the plaintiff, require the plaintiff to deposit the sum of Twenty dollars within seven days.

“(5.) If the sum is not so deposited, the warden may dismiss the application without proceeding to a hearing.

“(6.) The application shall be heard in open court and the warden shall take such evidence on oath as is tendered by or on behalf of the plaintiff and the holder of the licence or of any other person he thinks fit to examine and may recommend the forfeiture of the licence or the imposition of a fine in lieu of forfeiture, or may dismiss the application.

“(7.) On dismissal of an application, the warden may award the whole or any part of the sum deposited under subsection (4.) of this section to the holder of the licence and on a recommendation for forfeiture or fine in lieu of forfeiture, the warden shall return the sum so deposited to the plaintiff.

“(8.) Within the period of seven days after the hearing, the warden shall forward to the Administrator the notes of evidence, with his report and his decision.

“(9.) Where the warden makes a recommendation, the Administrator may, before acting on it, require the warden to take further evidence or rehear the application.

“(10.) The Administrator, after considering the report and recommendation of a warden, may in his discretion—

- (a) declare the licence forfeited;

- (b) impose a fine not exceeding One thousand dollars in lieu of forfeiture, and award the whole or any part of the fine to the plaintiff; or
- (c) determine not to forfeit the licence or impose any fine.

“(11.) On forfeiture of a licence to remove or treat tailings or other mining material, the Administrator may, in his discretion, grant or reject the application by the plaintiff for the grant to him of such a licence in respect of the tailings or other mining material the subject of the licence that was forfeited.

“(12.) The decision of the Administrator under either of the last two preceding sub-sections shall be published in the *Gazette*.”.

Mining of sand
&c., on private
land

12. Section 109A of the Principal Ordinance is amended by omitting the words “mineral lease” (wherever occurring) and inserting in their stead the words “mining tenement”.

13. After section 146 of the Principal Ordinance the following section is inserted:—

Forfeiture of
mining tenement
other than lease

“146A.—(1.) Where a warden has reason to believe that the holder of a mining tenement other than a lease—

- (a) has failed to comply with or has contravened a condition on which the mining tenement is held; or
 - (b) is not efficiently working the land held under the mining tenement as provided by the regulations.
- the warden may forfeit the mining tenement.

“(2.) A person who has reason to believe that the holder of a mining tenement other than a lease—

- (a) has failed to comply with or has contravened a condition on which the mining tenement is held, not being a condition relating to the payment of rent; or
 - (b) is not efficiently working the land held under the mining tenement as provided by the regulations,
- may apply to the warden for the forfeiture of the mining tenement.

“(3.) Where a miner applies to a warden for the forfeiture of a mining tenement under this section, the applicant may also apply for the registration as a mining tenement to him of the land, or part of the land, held under the forfeited mining tenement.

“(4.) The proceedings on an application by a person under this section shall be commenced in the same manner as that prescribed for civil proceedings in the warden’s court.

“(5.) The application shall be heard in open court and the warden shall take such evidence on oath as is tendered by or on behalf of the plaintiff and the holder of the mining tenement, or of any other person whom he thinks fit to examine, and may order the forfeiture of the mining tenement or the imposition of a fine not exceeding One hundred dollars in lieu of forfeiture, or may dismiss the application.

“(6.) In such an order the warden may, in his discretion, award the whole or any part of a fine so imposed to the plaintiff.

“(7.) On forfeiture of a mining tenement on an application by a miner under this section, the warden may, in his discretion, grant or reject the application by the miner for the grant to him of the land or part of the land as a mining tenement.

“(8.) The warden may, on forfeiture of a mining tenement under this section, order the disposal, as prescribed, on behalf of the former holder, of any building or other improvement on the land held under the forfeited mining tenement.

“(9.) The former holder of the forfeited mining tenement may, within ten days after the forfeiture, apply as prescribed to the warden to be registered as the owner of any earth or other substance containing gold or mineral that had been raised by him before the forfeiture, and the warden shall register the earth or other substance accordingly, for such period, not exceeding twelve months, as the warden thinks fit.

“(10.) A person shall not, without the permission of the registered owner, remove any such earth or other substance, identified as prescribed, during the period of the registration.”.

14. After section 172 of the Principal Ordinance the following section is inserted:—

“172A. At a hearing or other proceedings before a warden under this Ordinance, the warden is not bound to act in a formal manner, and any such hearing or proceedings shall not be affected or invalidated by reason only of an informality, or alleged defect or misdescription.”.

Warden not
bound by
formalities

15. Section 215 of the Principal Ordinance is amended:—

Regulations

(a) by inserting in paragraphs (1), (2), (6), (7), (8.) and (31), after the words “mining tenements” (wherever occurring), the words “or licence to treat or remove tailings or other mining material”;

(b) by omitting paragraph (4) and inserting in its stead the following paragraph:—

“(4.) For regulating the granting of reward claims or reward leases and the conditions on

which reward claims and reward leases may be granted:";

- (c) by omitting paragraph (8);
- (d) by omitting from paragraph (10) the word "tenement" and inserting in its stead the words "mining tenement or licence to treat or remove tailings"; and
- (e) by omitting from paragraph (11) the words "and dams" and inserting in their stead the words "pipes, dams, tanks, reservoirs, drains, wells, roads, tramways, electricity lines, telephone lines and telegraph lines".

Validation

16.—(1.) All regulations purporting to have been made under the Principal Ordinance and to be in force immediately before the commencement of this Ordinance continue in force so far as they are not inconsistent with the Principal Ordinance as amended by this Ordinance as if the Principal Ordinance as so amended was in force when the regulations were so made, but any such regulation may be amended or repealed by regulations under the Principal Ordinance as amended by this Ordinance.

(2.) Where, before the commencement of this Ordinance, a warden has purported under the provisions of regulations purporting to be then in force under the *Mining Ordinance 1939* or that Ordinance as amended to register land held, occupied or used under or by virtue of a miner's right as a mining tenement other than a lease as described in those regulations, and that registration purported to be in force immediately before that commencement—

- (a) that land shall be deemed to have been and to be so held, occupied or used as a mining tenement of that description for a purpose in connexion with mining; and
- (b) that registration shall continue in force,

as if made under the Principal Ordinance as amended by this Ordinance and the regulations referred to in the last preceding sub-section.

(3.) Where a miner purported to have applied in accordance with the provisions of regulations purporting to be in force at the time under the *Mining Ordinance 1939* or that Ordinance as amended before the commencement of this Ordinance for the registration of land held, occupied or used, under or by virtue of a miner's right as a mining tenement other than a lease as described in those regulations that application shall be dealt

with as provided by the provisions of those regulations, and on registration—

- (a) that land shall be deemed to be so held, occupied or used as a mining tenement of that description for a purpose in connexion with mining; and
- (b) that registration shall be deemed to have been made,

under the Principal Ordinance as amended by this Ordinance and the regulations referred to in sub-section (1.) of this section.

(4.) A mining tenement or licence to treat tailings or other mining material that purported to be forfeited before the commencement of this Ordinance under the *Mining Ordinance* 1939 or that Ordinance as amended and under regulations purporting to be in force at the time under that Ordinance or that Ordinance as amended continues to be so forfeited after that commencement.

(5.) Any proceedings for such a forfeiture of a mining tenement or licence to treat tailings or other mining material purporting to have been commenced before, and to be pending at, the commencement of this Ordinance may be continued and dealt with as if they had been commenced in accordance with the Principal Ordinance as amended by this Ordinance and the regulations referred to in sub-section (1.) of this section.

(6.) An expression in this section that is defined in the Principal Ordinance as amended by this Ordinance has the same meaning for the purposes of this section as it has in the Principal Ordinance as so amended.
