

9 Edw. VII. No. 15, 1909. *Mining on Private Land.*

## MINING.

**An Act to Regulate Mining on Private Land, and for other purposes.**

9 Edw. VII.  
No. 15.  
THE  
MINING ON  
PRIVATE  
LAND ACT  
OF 1909.

[ASSENTED TO 29TH DECEMBER, 1909.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as "*The Mining on Private Land Act of 1909*," and shall be read as one with the Mining Acts. "*The Mining Act of 1898*"\* is herein referred to as the Principal Act.

Short title  
and construction.

2. This Act shall commence and take effect on and from the first day of March, one thousand nine hundred and ten.

Commence-  
ment of Act.

3. (1.) Sections fifty-eight to sixty-one, inclusive, and sixty-three to seventy, inclusive, of the Principal Act are repealed.

Repeal of  
certain  
sections of  
Principal Act.

(2.) In section forty-six of the Principal Act, after the words "business area," where they first occur, the words "or in any lease or special lease granted under section one hundred and eighty-eight of '*The Land Act, 1897*,'† as amended by section twenty-one of '*The Land Acts Amendment Act of 1905*,'‡ or under any similar provision of any prior or other Crown Lands Act" are inserted.

Consequential  
amendments.

In subsection three of the said section, after the word "road," the words "and in the case of land comprised within a lease or special lease as aforesaid" are inserted; also after the word "reserve," where it subsequently twice occurs, the words "or land" are inserted.

In section forty-eight of the Principal Act, after the words "business area," the words "or land comprised in a lease or special lease as aforesaid" are inserted.

4. In this Act, unless the context otherwise indicates, the following terms have the meanings set against them respectively, that is to say,—

Interpre-  
tation.

"Improved Land"—The site or curtilage of any building, or any garden, lawn, yard, nursery for trees, orchard, vineyard, cultivated field

Improved  
land.

\* 62 Vic. No. 24, *supra*, page 6609. † 61 Vic. No. 25, *supra*, page 6228.

‡ 5 Edw. VII. No. 28, *supra*, page 8891.

(not being mere pasture land), sports ground, recreation ground, rifle range, reservoir, natural or artificial storage or accumulation of water, spring, dam, bore, artesian well, cemetery, burial-place, or place of worship, or any land on which a railway, tramway, bridge, or culvert is constructed, or any land used for stacking or storing or depositing mining material, or mining requisites, or residues, mullock, slag, tailings, or mining *débris*;

- Mineral.** “Mineral,” as distinguished from gold—Antimony, bismuth, copper, iron, lead, manganese, mercury, molybdenum, platinum, silver, tin, titanium, and tungsten, and the ores and earths of these metals; also, opal, sapphires, corundum, zircons, and other precious stones; also, coal, limestone, graphite, mineral oil, and monazite; also, any other substance which the Governor in Council may from time to time by Proclamation declare to be a mineral under this Act;
- Mining Acts.** “Mining Acts”—“*The Mining Act of 1898*”\* and all Acts amending or in substitution for the same, including this Act;
- Occupier.** “Occupier”—The person in actual occupation of any private land; or, if there is no person in actual occupation, the person entitled to possession thereof;
- Owner.** “Owner”—The owner or registered proprietor in fee-simple of any private land, or the person who for the time being is entitled to receive the rent of any private land, or who, if the same were let to a tenant at a rack-rent, would be entitled to receive the rent thereof: the term includes the person who is the licensee or lessee of land held under any Act relating to Crown land with the right of acquiring the fee-simple thereof: the term also includes every trust, corporation, or body having lawful control of the land in question;
- Private land.** “Private Land”—Land which has been alienated from the Crown for an estate in fee-simple or which is lawfully contracted to be so alienated; also, land held under any Act relating to Crown land of which an estate in fee-simple may be

\* 62 Vic. No. 24, *supra*, page 6600.

1909.

*Mining on Private Land.*

acquired by the occupier or any other person immediately or at a future time with or without performance of any conditions ;

The term does not include a reserve ;

So far as relates to mining for silver, the term does not include land alienated in fee-simple in pursuance of section twenty-two of "*The Crown Lands Alienation Act of 1860*,"\* or section thirty-two of "*The Crown Lands Alienation Act of 1868*,"† or section twenty-one of "*The Mineral Lands Act of 1872*"‡ :

So far as relates to mining for copper, tin, opal, and antimony, the term does not include land situated within the limits of a gold field or mineral field and alienated in fee-simple before the first day of March, one thousand eight hundred and ninety-nine, or land situated elsewhere and so alienated before the commencement of this Act :

So far as relates to mining for all other minerals, except coal on or below the surface of land subject to "*The Agricultural Lands Special Purchase Act of 1901*,"§ and except gold, the term does not include land alienated in fee-simple before the commencement of this Act ;

"This Act"—This Act and all Proclamations and Regulations issued or made thereunder. This Act.

5. In every case where, for the purposes of the Mining Acts, it is necessary to decide whether any mine on any land is or would be a gold mine or mine of other specified mineral, the question shall be determined by the fact whether gold or other specified mineral is or is not the most profitable metallic product of the ore obtained from the mine. Nature of mine.

6. (1.) Subject to this Act—

(i.) Gold on or below the surface of all land in Queensland, whether alienated in fee-simple or not so alienated from the Crown, and if so alienated whensoever alienated, is the property of the Crown ; Gold is the property of Crown.

\* 24 Vic. No. 15, Pr., page 399. † 31 Vic. No. 46, H., page 548.

‡ 36 Vic. No. 15, Cr., page 730.

§ 1 Edw. VII. No. 23, *supra*, page 8136.

*Mining on Private Land.* 9 EDW. VII. No. 15,

Silver when  
the property  
of the Crown.

(ii.) Silver on or below the surface of all land in Queensland, whether alienated in fee-simple or not so alienated from the Crown, and if so alienated whensoever alienated, other than land alienated in pursuance of section twenty-two of "*The Crown Lands Alienation Act of 1860*,"\* or section thirty-two of "*The Crown Lands Alienation Act of 1868*,"† or section twenty-one of "*The Mineral Lands Act of 1872*,"‡ is the property of the Crown ;

Copper, &c.,  
since 1st  
March, 1899.

(iii.) Copper, tin, opal, and antimony on or below the surface of all land which is situated within the limits of a gold field or mineral field, and has been alienated in fee-simple from the Crown or lawfully contracted to be so alienated since the first day of March, one thousand eight hundred and ninety-nine, and also on or below the surface of all land wheresoever situated which is not alienated in fee-simple from the Crown at the commencement of this Act, are the property of the Crown ;

Coal on  
certain lands.

(iv.) Coal on or below the surface of land subject to "*The Agricultural Lands Special Purchase Act of 1901*,"§ whether alienated in fee-simple from the Crown at the commencement of this Act or not, is the property of the Crown ;

Other  
minerals on  
lands not yet  
alienated.

(v.) All other minerals on or below the surface of all land which is not alienated in fee-simple from the Crown at the commencement of this Act are the property of the Crown.

Reservations  
in Crown  
grants.

(2.) All Crown grants and leases under any Act relating to Crown land issued after the commencement of this Act shall contain a reservation of all gold and minerals on and below the surface of the land comprised therein, and also a reservation of the right of access for the purpose of searching for or working any mines of gold or minerals in any part of the land.

Private lands  
may be  
exempted by  
proclamation.

7. The Governor in Council may from time to time by Proclamation exempt from the operation of the Mining Acts, either wholly or for such period as he thinks fit, private lands in any specified locality or any specified portions of private lands.

\* 24 Vic. No. 15, Pr., page 399.

† 31 Vic. No. 46, H., page 548.

‡ 36 Vic. No. 15, Cr., page 730.

§ 1 Edw. VII. No. 23, *supra*, page 8136.

1909.

*Mining on Private Land.*

8. (1.) The Governor in Council may from time to time, under and subject to "The Public Works Land Resumption Act of 1906,"\* resume on behalf of the Crown any land which, in his opinion, ought to be resumed for any of the purposes of this Act, and for the purpose of any such proposed resumption may cause the land to be inspected and reported upon by such officers and workmen as he directs, all of whom may thereupon enter upon the land and carry out all necessary operations.

Upon any such resumption, the owner shall be entitled to compensation, and the amount of such compensation shall be determined in the manner prescribed by the above-mentioned Act.

In assessing the amount of such compensation, no allowance shall be made for any gold or mineral known or supposed to be on or under the land resumed, except in cases where such land is by this Act expressly excepted from the definition of private land so far as relates to mining for mineral or a certain class of mineral, and in all such cases an allowance shall be made for the mineral known or supposed to be on or under the land resumed.

(2.) Upon any such resumption, the land so resumed shall belong absolutely to the Crown, and be Crown land subject to the Mining Acts :

Provided that every mining tenement granted in respect of or occupied upon any such land shall, notwithstanding any provision of the Mining Acts to the contrary, be subject to such rent or other payment to the Crown as may be fixed by the Governor in Council.

9. (1.) Subject to the Mining Acts, but only after application duly made under this Act, a mining tenement comprising private land may be granted or registered.

(2.) Subject to the Mining Acts, the whole or part of two or more parcels of private land which adjoin each other may be included in one mining tenement under this Act.

(3.) Subject to the Mining Acts, private land, together with Crown land or land which is a reserve, or is held as a residence area or business area, or as a lease or special lease granted under section one hundred and eighty-eight of "The Land Act, 1897,"† as amended by section twenty-one of "The Land Acts Amendment Act of 1905,"‡ or under any similar provision of any prior or other Crown

\* 6 Edw. VII. No. 14. *supra*, page 9135.

† 61 Vic. No. 25, *supra*, page 6228.

‡ 5 Edw. VII. No. 28, *supra*, page 8891.

Lands Act, may be included in one mining tenement, provided that the whole of the land so included is one block.

Where the right to mine on private land has been acquired before the commencement of this Act, an existing gold-mining leasehold adjoining such land may be enlarged so as to include such private land, notwithstanding that the area of the whole tenement thereby exceeds fifty acres, provided it does not exceed one hundred acres.

Exemption of  
certain private  
lands.

**10.** No mining tenement shall be granted or registered in respect of private land if such land is—

- (i.) Improved land; or
- (ii.) Of less extent than half an acre within the limits of any city or town or township; or
- (iii.) Within one hundred and fifty yards or other less distance to be decided by the warden's court, but not in any case less than fifty yards laterally, from any improved land;

unless in each of the above-mentioned cases—

- (a) The consent in writing of every owner of the land in question has been first obtained; or
- (b) Such grant or registration is limited to such depth from the lowest part of the surface of the land as the warden's court may in any case decide:

Provided that where private land is being mined and the warden's court determines that the whole of or a specified part of such private land is or is likely to be required for the purpose of the mining operations in connection with the mine on the land, no other mining tenement, except such as may be applied for by the owner of such mine, shall be granted or registered in respect of such private land or specified part thereof, as the case may be.

Unlawful  
entry.

**11.** It is unlawful to enter or remain upon the surface of any private land for any of the purposes of the Mining Acts, except by virtue of a permit issued by the warden or by virtue of the grant or registration of a mining tenement.

Permit to  
enter.

**12.** (1.) Any person who desires to enter upon private land for the purposes of the Mining Acts shall make an application or applications in writing to the warden for a permit or permits to enter upon the land. A permit may be issued so as to include any number of persons not exceeding five.

1909.

*Mining on Private Land.*

Every such application shall be in the prescribed form shall be for an area not exceeding six hundred and forty acres, and shall contain such description of the land as will enable the boundaries to be properly defined.

Applications for permits shall take priority in the order in which they are lodged.

(2.) The warden, upon being satisfied that the application is made in good faith, may grant a permit in writing limited to such period not exceeding thirty days as he thinks proper. He shall at the same time fix a sum of money not exceeding twenty shillings and require the same to be paid to him before the issue of the permit as and by way of security to compensate the owner and occupier of the land for any damage likely to be caused by the holder of the permit during the currency thereof.

The warden shall pay such sum either wholly or in part to the owner and occupier in satisfaction of the damage (if any) severally sustained by them, or shall return the same to the holder of the permit at the expiration thereof if he does no damage.

During the currency of a permit no other permit shall be granted for the same land.

(3.) Such permit shall, upon demand, be produced to the owner and occupier respectively of the private land or his agent.

(4.) By virtue of such permit the holder thereof may enter upon the land and search for gold or mineral.

(5.) If in any case the warden refuses to grant any such permit, the applicant may, within fourteen days, apply to the Minister for such permit.

**13.** (1.) Application for a mining tenement situated on private land shall be made in the manner prescribed. Applications.

(2.) Every applicant shall state and describe in his application the area of surface, if any, for which he applies; and, further, the purpose for which he requires such area, if any. He shall also describe any right of way applied for on the proposed tenement and therefrom through any other land to the nearest practicable point of a street or road. But, unless with the consent of the owner, no such right of way shall be applied for through any improved land.

(3.) Notice of such application shall be given by the applicant as prescribed to the actual occupant of the land, or, if the land is vacant, shall be affixed in some conspicuous place on the land; notice of the application

shall also be sent by registered letter through the post office to every person who appears, by the rate book then in force of the Local Authority within whose Area the land is situated, to be the owner or occupier of the land or of any other land in respect of which any right of way is applied for. And every such owner and occupier shall be entitled to be heard before the application is granted.

(4.) When the applicant does not apply for any area of surface, it shall not be necessary to mark out the tenement applied for on the surface.

(5.) When his title confers upon the owner of the mining tenement a right to occupy a portion only of the surface thereof, he may at any time make application for an extension of the surface area. Every such application shall be made and dealt with in the same manner as the original application.

Cases where  
no surface  
applied for.

**14.** When any person other than the owner of the land applies for a mining tenement in respect of private land and does not apply for any portion of the surface, then, if the consent of such owner has not been obtained, before any such application is granted, the applicant shall prove to the satisfaction of the warden that he possesses—

- (a) Adjoining the land applied for, a mining tenement occupied for the purpose of seeking for gold or mineral, or land held in fee-simple not being private land within the meaning of this Act; or
- (b) A mining tenement with such way-leaves and other rights through intermediate lands as will enable him to mine in the land applied for.

Rights of  
owners and  
their assigns.

**15.** (1.) The owner of any private land may acquire a mining tenement comprising such land, or of so much thereof as is not already the subject of a mining tenement.

And if, before the first day of September, one thousand nine hundred and ten, the owner or any assignee of the owner makes application for a mining tenement comprising the whole or part of such land, his application, save as hereinafter provided, shall have priority over all others.

Private  
agreements.

(2.) Notwithstanding anything hereinbefore or in any other Act to the contrary contained, where, at the commencement of this Act, any person is, by virtue of any conveyance, lease, license, or other private agreement as against the owner of any private land, entitled to mine for gold or mineral on or under such land, then, if before the



1909.

*Mining on Private Land.*

first day of September, one thousand nine hundred and ten, such person makes application for a mining lease or claim, his application shall have priority over all others, including that of the owner of the land, and notwithstanding any neglect or refusal on the part of such owner to consent to the application.

(3.) In any case where any parcel of private land is so small in area or is so situated that any gold or other mineral under the land cannot be profitably worked or won from the surface of the land or otherwise than from some neighbouring land, the owner of such private land or the person entitled to mine thereunder by virtue of any conveyance, lease, license, or other private agreement as against the owner of such land may, at any time before the first day of January, one thousand nine hundred and eleven, in lieu of acquiring a mining tenement consisting of such land, upon a plaint in that behalf, have the value of the gold or other mineral under or supposed to be under the land assessed by the warden's court. Notice of such plaint shall be published as prescribed, and upon the hearing thereof the owner or person entitled to mine as aforesaid, and all other persons claiming to be interested as holders of neighbouring mining tenements from which such gold or other mineral could be profitably worked or won, shall be entitled to be heard and to examine and cross-examine witnesses.

The warden's court shall assess the value of such gold or mineral, and thereafter any person who acquires a mining tenement comprising such private land shall not be entitled to mine for such gold or mineral until he has paid to the warden on behalf of the owner of the private land the amount of such assessment.

And the warden shall pay over to such owner the said amount after deducting such sum on account of the costs and expenses of the proceedings as the warden's court shall fix.

**16.** The grant or registration of a mining tenement for the purpose of seeking for gold or mineral on private land shall confer upon the owner—

(i.) Where the tenement comprises an area of surface—

(a) The right to mine on or under so much of the surface or extended surface as is stated and described in the lease or certificate of registration, as the case may be ; and

Saving of  
certain  
mining rights.

Right to  
mine, &c.

- (b) The right to mine under the remainder, if any, of the tenement at such depth from the lowest part of the surface as the warden's court may in any case decide, which depth shall be stated in the lease or certificate of registration, as the case may be; and
- (c) A right of ingress and egress to and from the tenement by a right of way to be stated and described in the lease or certificate of registration, as the case may be;
- (ii.) Where the tenement does not comprise any area of surface, the right to mine under the whole of the tenement at such depth from the lowest part of such surface as the warden's court may in any case decide, which depth shall be stated in the lease or certificate of registration, as the case may be.

Compensation.

17. (1.) Compensation under this Act for the right to occupy and work a mining tenement or for any right of way shall not be payable where the tenement does not comprise any portion of the surface of the private land.

To be paid or agreed upon before mining.

(2.) So far as regards any private land in respect of which compensation under this Act is payable, the grant or registration of a mining tenement shall not confer any rights unless or until the owner thereof has paid or tendered to the persons severally entitled the amount of compensation, if any, determined in the manner prescribed, or made an agreement in writing with every such person as to the payment of compensation, if any.

(3.) Such payment, tender, or agreement shall be certified on the lease by an officer of the Department of Mines authorised by the Minister in that behalf, or on the certificate of registration by the warden.

(4.) If no compensation is payable, that fact shall be so certified.

(5.) If any doubt exists as to who are the persons entitled to compensation, or if they or any of them cannot be found, the Minister shall be deemed to represent them, and any such payment may be made to the Minister in trust for all persons entitled.

Power to agree as to compensation.

18. (1.) The applicant for any mining tenement situated on private land may agree with the persons severally entitled to compensation as to the amount of such compensation.

1909.

*Mining on Private Land.*

No such agreement shall be valid unless the same is in writing and signed by the parties thereto or their agents, and filed at the warden's office.

(2.) If within such time as may be prescribed the parties are unable to agree upon the amount of compensation to be paid, then either party may, upon a plaint in that behalf, have the amount determined in the warden's court. Either party shall have the right to require that such plaint shall be heard before the warden sitting with three assessors, and in that case the provisions of the Principal Act relating to assessors shall be applicable.

Where no agreement warden to determine compensation.

**19.** (1.) The compensation to be made under this Act shall be compensation for—

Measure of compensation.

- (i.) Deprivation of the possession of the surface or of any part of the surface; and
- (ii.) Damage to the surface or any part thereof, and to any improvements thereon, which may arise from the carrying on of mining operations thereon or thereunder; and
- (iii.) Severance of the land from other land of the owner or occupier; and
- (iv.) Surface rights of way; and
- (v.) All consequential damages:

Provided that in determining the amount of compensation no allowance shall be made for any gold or mineral known or supposed to be on or under the land.

(2.) In determining the amount of compensation, the warden's court shall take into consideration the amount of any compensation which the owner and occupier or either of them have or has already received for or in respect of the damage for which compensation is being determined, and shall deduct the amount already so received from the amount which they would otherwise be entitled to for such damage.

**20.** Nothing in this Act shall be construed to take away or prejudicially affect any right of action which any person may have for any loss or damage sustained by him by reason of any mining operations carried on pursuant to the Mining Acts upon private land, other than for loss or damage for which compensation is payable under this Act.

Other rights of action not affected.

**21.** Save as by this Act is otherwise provided, all the provisions of the Mining Acts shall apply to mining tenements situated upon private land and applications

Application of general provisions.

*Mining on Private Land.* 9 EDW. VII. No. 15, 1909.

therefor as if they were situated upon Crown land; and all the powers, authority, and jurisdiction of the warden and of the warden's court, and of every other court having jurisdiction under the Mining Acts with respect to mining on Crown land, shall extend and apply to private land and to mining on or under such land:

Provided that—

- (i.) No prospecting area, and no business area, and no market garden area, and no miner's home-stead lease shall be registered or granted in respect of private land;

Moreover, a mining tenement other than a gold-mining lease or mineral lease or claim shall only be registered, granted, and held in respect of private land under the following conditions:—

- (a) Such tenement shall be occupied and used solely in connection with a gold-mining lease or mineral lease or claim situated on such private land; and
- (b) The private land shall exceed one thousand two hundred and eighty acres in area.
- (ii.) An owner of a mining tenement shall not, without the consent of the owner and occupier of the private land whereon the tenement is situated, be entitled to use water artificially conserved by such owner or occupier, or to fell trees, strip bark, or cut timber on such land.
- (iii.) An owner of a mining tenement shall not have the right to impound any stock belonging to or being the property of, or being in the custody or under the control of, the owner or occupier of any land comprising or adjoining such tenement, or to disturb or molest any such stock in any way whatever, or to prevent any such stock from depasturing on or over any such tenement, unless the land comprised therein is enclosed by a substantial fence.

Regulations.

**22.** The Governor in Council may from time to time make Regulations for carrying this Act into effect.

The provisions of the Principal Act relating to Regulations shall apply to Regulations made under this Act.