

TASMANIA.

THE MINING ACT 1944.

ANALYSIS.

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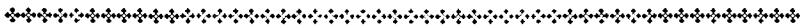


1944.

ANNO OCTAVO ET NONO

GEORGII VI. REGIS.

No. 24.



AN ACT to amend the *Mining Act 1929*.
 [14 December, 1944.]

A.D.
 1944.
 —

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Mining Act 1944*.

(2) The *Mining Act 1929**, as subsequently amended, is in this Act referred to as the Principal Act.

Short title and
 citation.

* 20 Geo. V. No. 71, as amended by 21 Geo. V. No. 56, 22 Geo. V. No. 31, 4 Geo. VI. No. 20, and by Statute Law Revision (See Reprint of Statutes, Vol. V. page 494).

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Interpretation.

2 Section two of the Principal Act is amended—

(a) by inserting at the end of the definition of “Crown land” the words “, not being land which has been contracted to be sold to any person”;

(b) by omitting the definition of “Earth” and substituting therefor the following definition:—

“‘Earth’ means any rock, stone, quartz, clay, sand, soil, or gravel, and includes the alluvial and residual of any rock, stone, or quartz:”;

(c) by inserting after the definition of “Lessee” the following definition:—

“‘Machinery’ includes engines and machines of every description, boilers, furnaces, compressors, air receivers, winding and pumping gear, whims, windlasses, chains, trucks, cages, tramways, tackle, blocks, ropes, tools, stamper batteries, and milling, crushing, and concentrating equipment of every description, and electric motors, transformers, transmission lines and other electrical machines and equipment, and pipes, flumes, syphons, sluices, and launders, and appliances of every description used, or capable of being used, in or about any mine or for mining purposes:”;

(d) by omitting the definition of “Mineral” and substituting therefor the following definition:—

“‘Mineral’ means any metal or the ore of any metal, and includes any inorganic substance and any combination of inorganic elements and any mineral aggregate (not being of animal or vegetable origin), but does not include coal, shale, stone, oil, or precious stones:”;

(e) by omitting the definition of “Mining tenement” and substituting therefor the following definition:—

“‘Mining tenement’ means any area of land held under this Act or in respect of which any lease or licence has been granted under this Act, and includes any land held or occupied under or by virtue of any permit under section seventy or any consent under section seventy-one:”;

(f) by inserting after the definition of “Oil” the following definitions:—

“‘Owner’ includes the holder of any Crown land under a contract for sale and purchase thereof:”;

“‘Private land’ means all land other than Crown land (as defined in this section):”.

*Mining.***3** Section six of the Principal Act is amended—

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(a) by inserting after the word “land” in paragraph II. of subsection (1) the words “or any mineral, coal, oil, or stone”; and

(b) by inserting after the word “land” in subsection (2) the words “mineral, coal, oil, or stone”.

Power to apply provisions to reserves, &c., or to exempt lands from Act.

4 After section six of the Principal Act the following section is inserted:—

“6A—(1) The Governor may, by proclamation, declare that any mining product specified in the proclamation shall not be taken or removed from any land specified therein during the period to which the proclamation applies, or that any mining product so specified shall not be taken or removed from any land during that period except in accordance with such terms and conditions as the Minister determines.

Power to prohibit taking of mining products.

“(2) No person shall, during the period to which a proclamation under subsection (1) applies, take or remove any mining product from any land in contravention of the proclamation or of any terms or conditions determined by the Minister.

Penalty: Fifty pounds and a daily penalty of five pounds.”.

5 Subsection (3) of section thirteen of the Principal Act is amended by adding at the end thereof the following paragraph:—

“vi. Except as provided by section seventeen, be issued in the name of one person only.”.

Issue of prospectors' licences and miners' rights, and renewals thereof.

6 Subsection (5) of section fourteen of the Principal Act is amended by adding at the end thereof the words “, and shall employ in or in connection with those operations the prescribed number of men.”.

Special provision for coal and oil licence.

7 Section fifteen of the Principal Act is amended by omitting subsections (3) and (4) and substituting therefor the following subsections:—

Effect of, and provision as to, prospector's licence.

“(3) Upon the recommendation of the warden and upon being satisfied as to the ability of the applicant to prospect the claim effectively and to employ in connection therewith the prescribed number of men, the Minister may grant to the applicant a special prospector's licence in respect of such area of land, in excess of the area prescribed in ordinary cases, as the Minister may think fit.

“(4) A special prospector's licence shall continue in force for such term as may be prescribed, and shall be subject to such conditions, if any, as the Minister may determine, and shall be liable to forfeiture if the holder makes default in compliance with any condition to which the licence is made subject.

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A.D. 1944. — “(4A) Upon application being made in that behalf in accordance with the regulations prior to the expiration thereof by the holder of a special prospector’s licence, the Minister may extend the licence for such period, in such manner and subject to such conditions, as may be prescribed, but so that the aggregate period for which the licence and all extensions thereof are granted does not exceed twelve months.

“(4B) There shall be payable in respect of the issue of every special prospector’s licence a fee of one pound and a further fee of ten shillings in respect of every extension thereof.”

Claims deemed abandoned in certain cases.

8 Section twenty of the Principal Act is amended by adding at the end thereof the following subsection:—

“(5) The provisions of section sixty-three shall apply to and in respect of all buildings, machinery, and mining products left by the holder thereof on any claim which has been unworked for a longer period than is prescribed in that behalf in the same manner and to the same extent in all respects as if that claim were land held under a lease under Part V.”

Leases of lands other than unoccupied lands.

9 Section twenty-six of the Principal Act is amended by omitting subsections (4) and (5) and substituting therefor the following subsections:—

“(4) No owner of any land shall engage in mining operations thereon unless he has first made application for a mining lease in respect of that land and has paid the fee prescribed in respect of such application; but, upon the granting of a mining lease under this subsection, no rent shall be payable by the owner in respect of any mining product included in the original grant of the land from the Crown so long as such owner remains the lessee thereof, but where a survey is required by the Secretary survey fees shall be paid when so required.

“(5) If the owner of any land transfers to any other person any lease granted to the owner in accordance with subsection (4), rent shall be payable by the lessee in respect of the lease as provided in this Part.”

Covenants and conditions of leases.

10 Subsection (1) of section forty-six of the Principal Act is amended by deleting the word “two” in paragraph IV. and substituting therefor the word “three”.

Power to grant exemptions from expenditure covenant.

11 Section fifty-three of the Principal Act is amended by adding at the end thereof the following subsection:—

“(7) Every application for exemption under this section shall be made and advertised in such form and manner as may be prescribed.”

Effect of exemption.

12 Section fifty-four of the Principal Act is amended by adding at the end thereof the following subsection:—

“(3) A certificate of exemption under section fifty-three shall cease to have effect upon the lessee to whom the certificate is granted transferring his mining tenement to any other person.”

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13 Section fifty-six of the Principal Act is amended by A.D. 1944.
omitting subsection (3) and substituting therefor the fol-
lowing subsection:—

“(3) With every application under this section the appli-
cant shall lodge an application for a lease of the land com-
prised in the lease for the forfeiture of which he applies,
together with the prescribed fee therefor and a year’s rent at
the rate payable under the lease.”

Application
for forfeiture
of lease.

14 Subsection (4) of section fifty-seven of the Principal
Act is amended by deleting the words “, and may direct in
what manner the deposit lodged by the applicant shall be
applied”.

Hearing of
applications.

15 Section sixty-one of the Principal Act is amended by
omitting subsections (2) to (8) thereof and substituting
therefor the following subsections:—

Conditions of
application.

“(2) Within the time mentioned in subsection (1) or such
further time, not exceeding seven days, as the Minister for
special cause may allow, the applicant shall enter into an
agreement with the Secretary that he will expend in relation
to the land comprised in the forfeited lease, during the period
of twelve months after taking possession of that land, an
amount equal to a year’s expenditure in accordance with the
expenditure covenant required to be included in the lease for
which he applies.

“(3) If, at the expiration of twelve months after the appli-
cant has taken possession of the land comprised in the for-
feited lease, the Secretary is satisfied that the applicant has
expended, or substantially expended, in relation to that land
the amount specified in the agreement entered into by the
applicant in pursuance of subsection (2), the Minister may,
on the recommendation of the Secretary and with the consent
of the Governor, grant the applicant a lease of the land for
which he has applied.

“(4) During the period of twelve months after he has taken
possession of the land comprised in the forfeited lease, the
applicant shall have the right to work and mine the land in
the same manner and subject to the same conditions and obli-
gations as if the lease for which he has applied had been
granted.

“(5) No lease shall be granted under this section unless the
Secretary has first recommended the granting of the lease.”

16 Section sixty-six of the Principal Act is amended by
adding at the end thereof the following subsection:—

Licences
generally.

“(8) If the holder of any water licence or easement licence
fails, during any period of twelve months, to use the licence for
the purposes for which it is granted, the warden’s court may,
on application being made in that behalf by any person,
declare the licence to be forfeited, or may impose a penalty on

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A.D. 1944. the holder thereof in the same manner in all respects as if the application were an application made under section fifty-six for the forfeiture of a lease.”

17 After section sixty-eight of the Principal Act the following section is inserted:—

Permit to divert and use water.

“68A—(1) Subject to subsection (2), where the holder of a water licence (in this section referred to as ‘the first licence’) carries on mining operations in the vicinity of any land occupied by the holder of another water licence, issued either before or after the commencement of this section (in this section referred to as ‘the second licence’), and the Secretary is satisfied that it is necessary so to do for the purpose of enabling the holder of the first licence to carry on those operations effectively, the Minister may, on the recommendation of the Secretary, grant to the holder of the first licence a permit in writing to divert and use so much of the water in respect of which the second licence was granted as the Minister may determine.

“(2) No permit shall be granted to any person under subsection (1) unless the Secretary is satisfied that—

- (a) the rights conferred by the second licence on the holder thereof will not be prejudicially affected by the granting of the permit; and
- (b) the granting of the permit will not cause any loss of water to the holder of the second licence.

“(3) A permit under this section, unless sooner revoked, shall continue in force for such period as the Minister may, in each case, determine.

“(4) If the Secretary is satisfied that it is necessary or desirable so to do, the Minister may, on the recommendation of the Secretary, at any time revoke any permit granted under this section, and thereupon that permit shall cease and determine.

“(5) Every person to whom a permit is granted in pursuance of subsection (1) shall pay compensation to the holder of the water licence affected thereby.

“(6) All compensation payable under this section shall be in the form of a royalty at such rate as the Minister, on the recommendation of the Secretary, may determine, but not exceeding, in any case, two and one-half per centum of the amount received by the holder of the permit from the sale of all mining products won from the mining tenement to which the permit relates.

“(7) All royalty payable under subsection (4) shall be paid to the Secretary quarterly during the currency of the permit, and every payment shall be accompanied by a statutory declaration, made by the holder of the permit or his agent, specifying the quantity and value of all mining products won from the mining tenement held by the holder of the permit during the quarter in respect of which the payment is made.

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“(8) Upon receipt of any royalty paid to him under this section the Secretary shall, after deducting therefrom one-twentieth part thereof, pay the balance thereof to the holder of the water licence in relation to which the royalty was paid.”. A.D. 1944.

18 Section seventy of the Principal Act is amended—

- (a) by inserting after the word “thereon” in subsection (1) the words “, upon and subject to such conditions as may be prescribed,”;
- (b) by deleting the words “five shillings” in subsection (3) and substituting therefor the words “one pound, and a further fee of one pound in respect of any extension thereof.”;
- (c) by omitting subsection (5) and substituting therefor the following subsection—

Warden may issue permit to enter and prospect, &c., on private land.

“(5) A permit under this section shall continue in force for six months from the date of the issue thereof and no longer, but upon the certificate of the Secretary that prospecting operations have been carried on by the holder of the permit in good faith and in accordance with the prescribed conditions, the warden may extend the permit for any period not exceeding six months, but so that the aggregate period for which the permit and all extensions thereof are issued does not exceed twelve months.”; and

- (d) by adding at the end thereof the following subsections:—

“(8) Every warden shall, within seven days after issuing any permit under this section, forward to the Secretary a notice, in writing, specifying the period for which, and the conditions under which, the permit has been issued.

“(9) The provisions of this section shall apply to any lands held under lease or licence under any Act relating to Crown lands in the same manner and to the same extent in all respects as if such lands were private lands.

“(10) In this section, ‘owner’ includes the lessee of any Crown land.”.

19 Section seventy-one of the Principal Act is amended—

- (a) by inserting after the word “consent” in subsection (1) the words “in writing” and by inserting after the word “may” (first occurring) in that subsection the words “, subject to the prescribed conditions”;

Entry, search, and possession.

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- (b) by inserting after the words "agreed upon" in paragraph I. of subsection (1) the words "in writing";
- (c) by inserting after the word "lease" in paragraph III. of subsection (1) the words ", or a licence under Part VI.";
- (d) by inserting after subsection (1) the following subsections:—

"(1A) Within seven days after the grant of any consent under subsection (1), the owner and occupier of the land affected thereby and the person to whom the consent is granted shall each notify the Secretary, in writing, of the grant of the consent.

"(1B) Every notice under subsection (1A) shall specify the period for which, and the conditions under which, the consent is granted."; and

- (e) by inserting after subsection (6) the following subsections:—

"(7) The Secretary, or any officer of the Department of Mines authorised in writing by the Secretary so to do, may, upon serving in the manner prescribed upon the owner and occupier of any private land a notice in the prescribed form, enter upon that land to the exclusion of all other persons and prospect therein and thereon during such period as may be specified in the notice, and may remove therefrom such quantities of any mining product as may be required for the purposes of assay and testing.

"(8) Any person to whom a permit under section seventy or a consent under subsection (1) of this section has been granted may remove from the land to which the permit or consent relates such quantity of mining products for the purposes of assay and testing as may be prescribed."

Power of warden to cancel permit or consent in certain cases.

20 After section seventy-one of the Principal Act the following sections are inserted:—

"71A The warden may, upon being satisfied that the holder of any permit under section seventy or of any consent under section seventy-one has failed to comply with any of the conditions prescribed in respect of the permit or consent, cancel such permit or consent, and thereupon the permit or consent shall cease and determine.

Maximum areas of leases in certain cases.

"71B No lease shall be granted in pursuance of any application under paragraph III. of subsection (1) of section seventy-one in respect of any area exceeding the area prescribed in subsection (2) of section twenty-five in relation to the appropriate kind of lease."

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21 Section seventy-seven of the Principal Act is repealed. A.D. 1944.

22 Section eighty-six of the Principal Act is amended by adding at the end thereof the following subsection:—

Owner entitled to royalty in certain cases.

“(8) The holder of every mining tenement who exercises the right conferred by this section to cut, remove, or use any timber shall forward to the Secretary, as prescribed, returns showing the nature and quantity of timber taken for the purposes specified in this section upon which no royalty has been paid under the *Forestry Act 1920**.”

Timber rights.

23 After section one hundred and thirty-one of the Principal Act the following sections are inserted:—

Power to acquire land for mining purposes.

“131A—(1) Subject to this section, where, in the opinion of the Minister, it is necessary or desirable to acquire any private land for any of the purposes of this Act, the Governor may authorise the Minister to purchase, acquire, or take that land or any part thereof in accordance with the provisions of the *Lands Resumption Act 1910†*, and any purpose for which land may be so purchased, acquired, or taken shall be deemed to be a public purpose within the meaning of that Act.

“(2) Notwithstanding anything contained in the *Lands Resumption Act 1910†*, any compensation payable in respect of any land purchased, acquired, or taken in pursuance of this section shall be determined in accordance with the provisions of this section and not otherwise.

“(3) The amount of compensation payable to the owner of any land which is purchased, acquired, or taken in pursuance of this section shall be such amount as may be determined by agreement between the Minister and the owner or, in default, of agreement as may, on the application as prescribed of either the Minister or the owner, be determined by the warden’s court.

“(4) The *Lands Resumption Act 1910†*, as modified by this section, shall be incorporated and read as one with this section.

“131B—(1) Where any land has been purchased, acquired, or taken in pursuance of section one hundred and thirty-one A, every mining lease or claim granted in respect of, or occupied upon, that land shall, notwithstanding any other provision of this Act, be subject to such rent and other payments as the Minister may, in each case, determine.

Provisions applicable where land, after acquisition, becomes occupied for mining purposes.

“(2) Where any land which has been purchased, acquired, or taken in pursuance of section one hundred and thirty-one A thereafter becomes occupied for mining purposes, the lessee shall, in addition to all other requirements of this Act which are applicable to him, make such payments at such time and in

* 11 Geo. V. No. 60. For this Act as amended to 31 January 1936 see Reprint of Statutes, Vol. IV., page 260. Since amended by 2 Geo. VI. No. 12, 3 & 4 Geo. VI. No. 47, 4 Geo. VI. No. 39, 5 Geo. VI. No. 58, and 6 Geo. VI. No. 22.

† 1 Geo. V. No. 11. For this Act as amended to 31 January 1936 see Reprint of Statutes, Vol. VI. page 5. Since amended by 4 Geo. VI. No. 11, and 8 Geo. VI. No. 12.

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A.D. 1944. — such manner as the Minister may determine as may be necessary for the purpose of reimbursing the Minister for all costs and expenses incurred in relation to the acquisition of the land.

Power of
minister to
revoke leases
and licences.

“131C—(1) Notwithstanding anything to the contrary contained elsewhere in this Act, if the Secretary is satisfied that the holder of any lease or licence has failed to comply with any of the prescribed covenants which are applicable to that lease or licence, the Minister may, upon the recommendation of the Secretary and with the consent of the Governor, by notice in writing in the prescribed form served as prescribed upon the holder of the lease or licence, revoke and determine such lease or licence.

“(2) Upon the service of a notice under subsection (1) the foregoing provisions of this Act shall apply to the lease or licence specified in the notice in the same manner and to the same extent in all respects as if the lease or licence had been forfeited in pursuance of the provisions of Part V. or Part VI.”.