

Act No. 44, 1899.

An Act to regulate mining for gold and other minerals by dredging, pumping, sluicing, or other method, in the beds of rivers and lakes, under tidal or standing waters under the ocean contiguous to the coast-line, and in, on, and under any land contiguous to the aforesaid places; and for purposes consequent on or incidental to those objects. [22nd December, 1899.]

GOLD AND MINERAL
DREDGING.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Gold and Mineral Dredging Act, 1899."

2. In this Act unless the context otherwise indicates or requires—
"Crown land" means all land held by the Crown except land held under tenure from the Crown for purposes other than pastoral purposes.

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“Lake” includes a lagoon, swamp, or other collection of still water whether permanent or temporary not contained in an artificial work.

“Minerals” means all minerals as defined by the Mining Act of 1889.

“Occupier” means any lessee from the Crown under any tenure under the Crown Lands Acts or any tenant of land alienated from the Crown, or any person in charge of alienated lands for the owner thereof.

“Owner” means the owner or conditional purchaser of any land or holder of a homestead selection, or any trustee in whom any land is vested.

“River” includes any stream of water, whether perennial or intermittent, flowing in a natural channel.

“River-bed” means the soil between the tops of the banks of a river, to be defined by the mining surveyor when making the survey.

Governor may grant leases for purposes of mining by dredging, &c., and of what lands.

3. (1) Subject to the provisions of this Act, the Governor may grant for the purpose of mining for gold or any other mineral, by dredging, pumping, sluicing, or other method, leases of the land forming the bed of any river or lake, or under any tidal water, or under the ocean contiguous to the coast line, or of the land contiguous to any such place, except land held under or by virtue of any Act relating to mining.

Area that may be demised.

(2) The area that may be demised by any such lease shall be in proportion to the number of men to be employed and the amount to be expended in the purchase and erection of machinery and appliances for the purpose of working the area, not exceeding ten acres for every man to be employed, and one acre additional for every fifty pounds expended or to be expended as aforesaid, and the labour to be employed shall not be less than in the proportion of seven men to one hundred acres: Provided that the Minister shall have power to modify such condition if it be shown that the circumstances warrant a reduction thereof: Provided also that the maximum area to be demised by any such lease shall not exceed one hundred acres.

(3) Where it shall appear to the satisfaction of the Minister that two or more leases issued under this Act can by amalgamation be more efficiently worked, the Minister may authorise such amalgamation according to the conditions which may be prescribed by the regulations: Provided that any application for such amalgamation shall be heard in open court before the warden, who shall forward his report and recommendation to the Minister, who shall then give his decision.

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(4) Such leases shall not be granted for a longer term than fifteen years, but may be renewed for any term not exceeding fifteen years on payment of the fine, and subject to the conditions prescribed by the regulations. Duration of leases and renewals.

(5) The warden may, subject to any regulations made under this Act, suspend, in whole or in part, the labour conditions of any such lease upon being satisfied by evidence on oath in open court that the circumstances warrant such suspension.

4. (1) Any person holding a miner's right or mineral license desiring to apply for a lease of an area of any land, under this Act, shall— Land to be applied for to be entered and marked out.

(a) where such land, whether covered by water or not, is wholly or in part Crown land, mark out the area intended to be included in the application, or so much thereof as is Crown land, in the manner prescribed by the regulations; Where Crown land, procedure.

(b) where such land, whether covered with water or not, is wholly or in part not Crown land, obtain in the manner prescribed by the regulations from the warden of the mining district in which such land is situated an authority to enter such land, or such part as is not Crown land, for the purpose of marking out the area intended to be included in the application, or so much thereof as is not Crown land. Where not Crown land authority to be obtained.

(2) Such authority shall be granted by the warden on payment of the deposit prescribed by the regulations, and shall be in the form prescribed by the regulations. Deposit.

Such deposit shall be refunded to the applicant by order of the Minister on the execution of the lease by the lessee, or if the Minister is satisfied that the application was bona fide, on the refusal of the application.

(3) Such authority shall entitle the holder thereof to enter, personally or by an agent duly authorised in writing, accompanied, if desired, by not more than three other persons, upon the land therein mentioned, for the purpose aforesaid, during a period named therein, which shall not exceed fourteen days, with right of ingress, egress, and regress to and from the nearest practicable point of a public road, without incurring liability for trespass in respect thereof, but shall not entitle him to commence any mining operations.

(4) Such authority shall be exhibited on demand to the owner or occupier of the land therein mentioned.

(5) The holder of such authority shall mark out such area during the currency of the authority and in the manner prescribed by the regulations.

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Warden not to issue any other authority in respect of same land during certain time.

Owner, &c., obstructing holder of authority.

(6) During the currency of any such authority, unless and until an area has been marked out thereunder as aforesaid, the warden shall not issue any other authority to enter upon the same land.

(7) Any owner, occupier, or other persons who obstructs any holder of any such authority, or his agent or the person accompanying such holder or agent, in the performance of any act in pursuance of such authority, or interferes with, removes, destroys, or defaces any mark made or any notice posted in pursuance of such authority, shall be liable for the first offence to a penalty not exceeding ten pounds, and for the second or any subsequent offence to a penalty not exceeding fifty pounds.

Not to apply to lands enclosed and under cultivation except in certain cases.

5. Nothing in this Act except the provisions as to roads of access and sites shall, unless with the consent of the owner, apply to any lands not Crown lands which are found by the warden to have been at the time of the application for the authority to enter enclosed and under actual cultivation.

Person marking out area to be deemed in possession.

6. The person who has marked any area of land under the provisions of this Act shall, to the extent of the area specified in the application as against all persons, be deemed to be in possession thereof until the application has been finally disposed of:

Provided that the owner or occupier of any such land shall, during such period, be entitled to the continued use and enjoyment thereof for all purposes not inconsistent with such application.

Applications for leases to be made to warden and forwarded to the Minister.

7. (1) All applications for leases under this Act shall be made to the warden of the mining district in which such land is situated within such time and in such manner as is prescribed by the regulations.

(2) All such applications shall be forwarded by such warden to the Minister for consideration, with a recommendation as to whether the application should be granted, wholly or in part, or subject to any and what conditions, stipulations, or restrictions, or should be refused.

Minister may refuse to entertain application, or may direct inquiry.

8. The Minister may refuse to entertain any such application, or may direct the warden to hold the inquiry hereinafter mentioned.

Warden to give notice of inquiry.

9. (1) The warden on receipt of such direction shall serve upon the owner and occupier and shall cause to be inserted in two consecutive issues of the Gazette, and of a newspaper published or circulating in the locality where the land applied for is situated, and shall exhibit at the nearest post-office or court-house a notice stating that on a day therein named, which shall not be less than seven days from the date of the later issue of the Gazette, and at a place therein specified within the mining district in which such land is situated, an inquiry concerning the application mentioned in such notice will be made
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by a warden in pursuance of the provisions of this Act, and requiring any objections to the granting of such application to be lodged with him before the day therein specified for the holding of such inquiry.

(2) Such notice shall either be served personally on the owner and occupier or left at their usual place of abode (if the same can, after diligent inquiry, be found); and, in case the owner is absent from the Colony, or cannot, after diligent inquiry, be found, such notice shall be left with the occupier of the land, or, if there be no such occupier, shall be affixed upon some conspicuous part of the land, and in the latter case, the affixing of such notice shall be deemed service of notice on the owner or occupier.

10. (1) On the day and at the place mentioned in such notice the warden shall make inquiry and determine—

Warden to inquire and make orders as to roads of access, sites for machinery, rent, and compensation.

- (I) what roads of access and what sites for machinery, workshops, storage of fuel or other materials are necessary for carrying on the mining operations intended;
- (II) what sum by way of rent—
 - (a) for the use of the land comprising such roads of access and sites as aforesaid,
 - (b) for the land to be included in the lease applied for, shall be paid by the lessee—
 - (i) to the owner or occupier in respect of so much of such land as is not Crown land;
- (III) what sum by way of compensation for the damage which would be caused by acts done in or incidental to carrying on the mining operations intended, shall be paid by the lessee—
 - (i) to the owner and to the occupier of such land to be included in the lease as is not Crown land; and,
 - (ii) to the owner and to the occupier of such land adjoining the land to be included in the lease as is not Crown land (except such as is held on any tenure from the Crown);
- (IV) as to any objection or other matter affecting the application; and shall issue orders in accordance with such determinations:

Provided that if the applicant for the lease produces to the warden a document duly signed by himself and by the parties who would be entitled to any such rent or compensation, and witnessed, certifying that they have agreed as to the amount of such rent or compensation, or both, to be paid by such applicant, such amount shall be adopted by the warden without any further inquiry in respect thereof.

Proviso that parties may agree as to rent and compensation.

(2) The warden shall hold such inquiry in open Court, and may adjourn the same from day to day, and at such inquiry the evidence shall be taken on oath.

11. (1) The warden may order that any road of access or site as aforesaid which he finds to be necessary shall be marked out on the land

Warden may order such road or site to be marked out by person appointed by him;

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land by a person appointed by him in that behalf, and such person shall not incur liability for trespass committed by him in pursuance of such order.

Such road shall be marked out in the manner prescribed by the regulations from the nearest practicable point of a public road.

(2) The order of a warden declaring that a road of access along the line determined by him is necessary shall entitle the lessee to use such road with horses, cattle, and vehicles.

and may order compensation to be paid in instalments, and at times he thinks fit.

(3) The warden may order that any compensation awarded by him shall be paid in one amount, or by yearly or half yearly instalments during the term of the lease, and, except as to the first payment, at such times as he thinks fit.

(4) The order of a warden by which any rent or compensation is directed to be paid under the last preceding section to any person shall be final and not subject to any appeal, and shall entitle such person to sue for and recover any instalment thereof in any court of competent jurisdiction: Provided that the rent to be paid to the Crown shall be—

(a) for gold and other minerals associated therewith, or for gold solely, twenty shillings per acre per annum ;

(b) for minerals other than gold, five shillings per acre per annum.

And such rent shall be payable at the time and places and in the manner prescribed by the regulations: Provided that all such rents shall be payable yearly in advance, and the first annual payment shall be made on making the application for such lease.

First payments to be made into warden's court.

12. (1) The amount of the compensation or of the first instalment thereof, and of the first year's rent so awarded and determined by the warden shall be paid by the applicant into the warden's court within the time prescribed by the regulations.

When such payments to be refunded or paid out.

(2) Such amounts shall be paid to the parties entitled thereto under the order of the warden on the execution of the lease by the lessee, or refunded to the applicant if the application is refused or if the lease is not accepted by him as hereinafter provided.

When orders of warden to take effect.

13. Subject to the provisions of the last preceding section, all such orders of the warden as aforesaid shall take effect on the execution of the lease by the Governor, but not before.

Minister may direct warden to hold further inquiry at any time.

14. The Minister may at any time authorise and direct a warden to hold any further or other inquiry in open Court with reference to any matter concerning an application for a lease.

At such inquiry the evidence shall be taken on oath.

Evidence and orders at inquiries to be sent to the Minister.

15. Every warden holding an inquiry under this Act shall forward to the Minister the evidence taken by him, and a report of his orders thereon.

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16. (1) The Minister, on receipt of such evidence and report as aforesaid, may determine that the application shall be refused, or may determine that a lease of the area included in the application, or that a lease of any greater or less area than that included in the application, may be granted to the applicant, and may determine whether any and what special conditions shall be inserted in the lease.

Minister may determine to refuse application or to grant lease on any terms.

(2) Notice of such determination shall be published in the Gazette.

Notice of determination to be published in Gazette.

(3) Where the Minister has determined that a lease may be granted, the applicant shall, within the time and in the manner prescribed by the regulations, give notice to the Minister whether he will accept a lease on the terms mentioned in such notice in the Gazette or not, otherwise the application shall lapse.

Applicant to notify whether he accepts or not.

17. (1) The Governor may, where the applicant has given notice of acceptance as aforesaid, grant a lease on the said terms to the applicant or to any person named by the applicant.

No obligation to grant lease.

(2) Nothing in this Act shall be construed as rendering it obligatory on the Governor to grant any lease under this Act to any person applying for the same, notwithstanding that he may have complied with the provisions of this Act and of the regulations thereunder.

(3) A lease may be granted by the Governor, notwithstanding that the person applying for the same may not in every respect have complied with the regulations, but no lease granted under this Act shall prevent the owner or occupier of any freehold or conditionally purchased land which may be included within such lease from having free and uninterrupted access to the water for stock watering and such purposes.

Lease may be granted though regulations not complied with.

18. (1) Every lease under this Act shall take effect from the date on which it is executed by the Governor.

Date lease to take effect.

(2) Every such lease shall be deemed to be cancelled if it is not executed by the lessee within the time prescribed by the regulations.

Lease if not executed by lessee within time to be deemed cancelled.

19. Any applicant for a lease who commences mining operations, without having first obtained the consent of the owner or occupier, in or on the area of land included in the application, whether covered with water or not, before such lease has been executed by him, shall be guilty of a misdemeanour.

Applicant not to mine till he has executed lease.

20. If after the issue of any lease it is found that a road of access, or a site for residence, machinery, workshops, storage of fuel or other material, other than that mentioned in the original order of the warden, is necessary, the warden may, in the manner prescribed by the regulations, and subject to such rent as he may by an order which shall

Further or other roads of access and sites for machinery, &c., may be ordered by warden.

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be final and not subject to any appeal determine, and to such terms and conditions as he may deem proper, mark or cause to be marked such other or additional road or site; but such road or site shall not be used until the amount of the first year's rent thereof ordered by the warden has been paid and any conditions imposed by him have been fulfilled.

Compensation for damage not originally provided for.

21. (1) If during the progress of mining operations it is found that damage is being done that was not anticipated when the inquiry as to compensation was held, the persons affected may make application to the Minister for additional compensation in respect thereof.

(2) On receipt of such application the Minister shall authorise and direct the warden to hold an inquiry, in the same manner as that in which the previous inquiry was held, to ascertain and determine whether any and what compensation should be made, and to issue an order accordingly.

The order of the warden awarding any such compensation shall be final and not subject to any appeal and shall entitle the person to whom it is awarded to sue for and recover the same in any court of competent jurisdiction.

Wardens and inspectors to have same jurisdiction and powers as under Mining Acts.

22. (1) The jurisdiction, powers, and authorities conferred by or under the Mining Act of 1874, or any Act amending or repealing the same, upon wardens and inspectors of mines, shall apply to and may be exercised in respect of all lands the subject of any lease under this Act, whether Crown lands within the meaning of the said Act or not, and in respect of all questions affecting such lands or interests therein or matters in dispute arising out of or connected with mining in or upon such lands, and for that purpose the said Act shall be read in connection with and as forming part of this Act, and the word land as used in the said Acts shall be deemed to comprise any land the subject of a lease under this Act.

(2) The provisions of the Mining Act of 1874, or any Act amending or repealing the same, relating to appeals from the decisions of wardens and Mining Appeal Courts, shall be read in connection with and as forming part of this Act: Provided, however, that every determination or direction of the said court upon appeal shall be absolutely final and conclusive and not subject to further or other appeal to the Supreme Court or otherwise howsoever.

Governor may cancel lease on breach of conditions.

23. The Governor, on being satisfied of the breach of any condition which, by the terms of a lease under this Act, or by any regulation made under this Act, renders such lease liable to forfeiture, may withdraw and cancel such lease.

Minister may reduce men and capital on amalgamated leases.

24. Notwithstanding anything in this Act the Minister may, after inquiry and report by the warden, reduce the number of men to be employed and the capital to be expended on any amalgamated leases should it be shown that the circumstances warrant such reduction.

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25. The holder of any lease granted under the provisions of this Act, and the executors, administrators, and assigns of any such holder shall be entitled at any time—

Leases may be surrendered.

(a) in respect of such land as is Crown land with the consent of the Governor, and

(b) in respect of other land with the consent of the owner thereof, to surrender the lease thereof. But such surrender shall not affect in any way any amalgamation of any other area or areas held by the said holder.

26. (1) The Governor may make regulations under this Act prescribing—

Governor may make regulations.

(a) The conditions upon which the amalgamation of adjoining leases may be authorised ;

(b) the forms of applications, notices, and other documents to be used in pursuance of this Act ;

(c) the manner of obtaining an authority to enter and mark out land under this Act, and the amount of the deposit to be paid in respect thereof ;

(d) the manner in which the area intended to be included in the application shall be marked out ;

(e) the manner and time in which applications for leases under this Act shall be made ;

(f) the procedure to be followed in any inquiry before a warden under this Act ;

(g) the time and manner within which any payment required to be made or any notice required to be given by this Act shall be made or given ;

(h) the manner in which any road of access or site mentioned in the Act shall be marked out ;

(i) the time within which a lessee shall execute the lease ;

(j) the general conditions which must be observed by lessees under this Act, and specifying what breaches of those conditions shall render the lease liable to forfeiture ;

(k) the conditions under which suspension of any condition imposed by the lease or by the regulations may be granted ;

(l) the proper working of machinery on dredges, and making provision for the safety of life and property in connection with dredging operations ;

(m) generally the manner in which the provisions of this Act shall be carried out,

and may in any such regulation impose a penalty not exceeding fifty pounds for any breach of the same.

Probate Duties (Amendment).

(2) All such regulations shall be published in the Gazette, and shall thereupon have the force of law.

(3) All such regulations shall be laid before both Houses of Parliament, if then sitting, within fourteen days after such publication, and if not then sitting, within fourteen days after the commencement of the next session thereof.

Recovery of penalties.

27. All penalties imposed by any regulations made under this Act may be recovered before a stipendiary or police magistrate, or any two justices of the peace in petty sessions.

Saving applications already approved and others made before commencement of this Act.

28. (1) All leases of lands, whether covered by water or not, for the purposes of mining for gold or any other mineral, by dredging, pumping, sluicing, or other method, the applications for which were approved before the commencement of this Act, shall, when granted, be as valid as if they had been granted under this Act, and shall not be affected by this Act.

(2) All applications for such leases made before the commencement of this Act, other than those approved as aforesaid, shall be deemed to have been made under this Act, and shall be inquired into and dealt with accordingly.