

TASMANIA.

THE MINING AMENDMENT ACT, 1920.

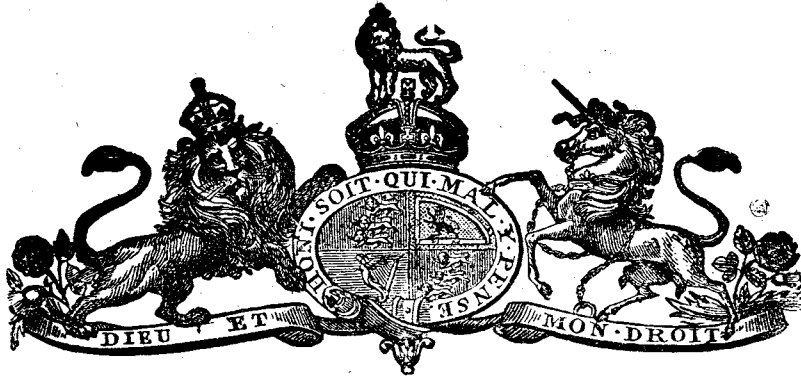
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TASMANIA



1920.

ANNO UNDECIMO

GEORGII V. REGIS.

No. 54.

AN ACT to further amend "The Mining Act, 1917." [24 December, 1920.]

A.D.
1920.

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 This Act may be cited as "The Mining Act, 1920," and shall be incorporated with "The Mining Act, 1917," which is hereinafter referred to as "the Principal Act," and any reference herein to a section shall, except where a contrary intention appears, be a reference to such section of the Principal Act.

Short title and
incorporation
with 7 Geo. V.
No. 62.

2 Section Twenty-five is amended by substituting for the words "gold and minerals" in the Third line thereof the words "gold, coal, and minerals."

Amendment of
Section 25:

3 Section Twenty-six is amended by inserting the word "coal" immediately after the word "gold" in the Second line thereof.

Amendment of
Section 26.

4 Section Thirty-six is repealed and the following section substituted therefor:—

New Section 36.

"**36**—(1) The holder of a prospector's licence or miner's right may, at any time within Fourteen days after the expiration of its currency, apply to a warden for a new prospector's licence or miner's right, to be dated as of the date of such expiration.

Ante-dating
Licences and
Rights.
Ibid., s. 38
(Tas.)
Cf. *ibid.*, s. 39
(W.A.).

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“(2) Upon production by the applicant of the expired prospector’s licence or miner’s right, the warden may issue, or cause to be issued, a prospector’s licence or miner’s right, dated as of the day of such expiration, which shall have the same force and efficacy as if it had been issued on that day.

“(3) If the application is made within Seven days after such expiration, the fee payable for the new prospector’s licence or miner’s right shall be the ordinary fee payable for a prospector’s licence or miner’s right or consolidated miner’s right, as the case may be; but if the application is made after Seven days from such expiration, a fee of Two Shillings and Sixpence shall be payable for the new prospector’s licence or miner’s right or for each miner’s right represented by a consolidated miner’s right, in addition to the ordinary fee.”

Amendment of
Section 74.

5 Section Seventy-four is amended by adding at the end thereof the following paragraph :—

Limit to area of
lease of bed of bay.

“ Provided also that in no case shall the area comprised in any lease granted under this section exceed Three hundred and twenty acres.”

Amendment of
Section 88.

6 Section Eighty-eight is amended by adding at the end of Subsection (1) the words—

“ Provided that, in any case where the Secretary for Mines has granted the permission in writing mentioned in Section Ninety-one, the term granted and the liability of the lessee to pay rent shall commence on the First day of the calendar month in which such permission was first so granted.”

Amendment of
Section 99.

7 Section Ninety-nine is amended by inserting the word “ or ” between the words “ alluvial ” and “ open cut ” in the Eighth line of Subsection (2).

Amendment of
Section 102.

8 Section One hundred and two is amended—

- i. By substituting for the words “ for a period exceeding Thirty-one days ” in the Eighth and Ninth lines the words “ to the extent of a sum amounting to at least One-fourth of the total expenditure required for each period of Twelve months of the term granted by the lease ”;
- ii. By inserting after the word “ Minister ” in the Tenth line the words “ or the Board.”

Section 103
re-enacted.

9 Section One hundred and three is repealed, and the following section substituted therefor :—

Exemptions as of
right.
Ibid., s. 89 (Tas.)

“ **103** If a lessee shall satisfy a warden—

- i. That he has expended money on the demised land in the manner required by his covenant in that behalf in excess of the amount required by the said covenant ; and

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ii. That there are also reasonable grounds for applying for exemption— A.D. 1920.

he shall, for every such excess of expenditure as shall equal Two years' expenditure required under that covenant, be entitled to exemption from future expenditure under the covenant to the extent of a sum equivalent to Twelve months' expenditure required by Section Ninety-four. And the warden may from time to time grant successive exemptions as aforesaid, but so as not in the aggregate to exceed a sum equivalent to Three years' expenditure required by Section Ninety-four.

This section shall not be construed to take away any of the rights of lessees under leases existing before the commencement of this Act."

10 Sections One hundred and two and One hundred and three as hereby amended shall apply to all leases whether issued before or after the passing of this Act. Application to leases already issued.

11 Section One hundred and five is amended by adding at the end thereof the following words :—" Provided always that nothing in this section shall be construed to authorise the removal of any building from the land comprised in such lease." Amendment of Section 105.

12 Section One hundred and eleven is amended by substituting the word "herein" for the word "hereinafter" in the Third line thereof. Amendment of Section 111.

13 Section One hundred and twelve is repealed and the following section substituted therefor :— New Section 112.

"**112**—(1) If the lessee of any land commits a breach of or fails to observe any of the covenants of his lease, except the covenant with regard to the payment of rent or royalty, it shall be lawful for any person other than the Minister to apply to a warden in the form set out in Schedule (5) to this Act or to the like effect. Where breach of covenant any person may apply for inquiry
Schedule (5).

"(2) If any holder of a water-right, mining easement, machinery-site licence, or other mining tenement, commits a breach of or fails to observe any of the provisions or conditions on his part to be performed or observed by virtue thereof or of this Act or the regulations relating thereto, it shall be lawful for any person other than the Minister to apply to a warden in the form set out in Schedule (6) to this Act or to the like effect. Schedule (6).

"(3) If such application be made and the person so applying lodges with or forwards to the warden or registrar an application fee of One Pound and the sum of Five Pounds as security for costs, or, in the case of such an application with respect to a lease of land upon which machinery of a value of at least Two hundred Pounds is standing, the sum of Ten Pounds, the warden shall hold a public inquiry concerning the alleged breach. The warden may before or at the holding of such inquiry require or allow the applicant who has lodged or forwarded Five Pounds as security for costs as Security for costs in application for forfeiture.
Ibid., s 93
(Tas.).
Cf. No. 1961,
1904, s. 20
(Vic.).

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aforsaid to lodge forthwith a further deposit of Five Pounds if such warden shall be of opinion that such further sum of Five Pounds should have been lodged or forwarded."

Amendment of
Section 113.**14** Section One hundred and thirteen is amended—

- i. By inserting immediately after the word "lessee" in the Fourth line the words "or holder of the water-right, mining easement, machinery-site licence, or other mining tenement in question":
- ii. By deleting the words "the covenant with regard to the expenditure of money" in the Seventh line of Subsection (3) and substituting therefor the words "any of the covenants, provisions, or conditions aforesaid":
- iii. By inserting after the word "lease" in the Eighth line of Subsection (3) the words "water-right, mining easement, machinery-site licence, or other mining tenement."

Amendment of
Section 115.

15 Section One hundred and fifteen is amended by substituting for the words "the covenant with regard to the expenditure of money" in the Fifth and Sixth lines thereof the words "any of the covenants, provisions, or conditions aforesaid."

Amendment of
Section 116.

16 Section One hundred and sixteen is amended by inserting after the word "lease" wherever it occurs therein the words "water-right, mining easement, machinery-site licence or other mining tenement."

Amendment of
Section 117.

17 Section One hundred and seventeen is amended by adding thereto the following subsection:—

"(3) All the provisions of this section shall, so far as applicable and with the necessary modifications, but except as otherwise prescribed, apply to the proceedings on the forfeiture of a water-right, mining easement, machinery-site licence or other mining tenement."

18 After Section One hundred and twenty the following new sections are inserted:—

*"Application by the Minister for Forfeiture.*Minister may
apply to Mining
Board for inquiry.

"**120a**—(1) If the lessee of any land does not comply with the covenant of his lease with regard to the expenditure of money, it shall be lawful for the Minister to apply to the Board in the form set out in Schedule (7) to this Act or to the like effect.

Notice to be given.

"(2) Provided that the Minister shall cause notice of his intention to make such application to be sent by post to the lessee, and also to be published in the 'Gazette'; and such application shall not be lodged with the Board until the expiration of Three months from the date of the sending of such notice to the lessee, or until the expiration of such longer period as shall be stated in such notice.

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“(3) If during the period stated in such notice, the lessee shall satisfy the Minister that he has during that period expended upon the tenement such sum as will, together with the sum already expended thereon during the immediately preceding Three completed years of the term of his lease, amount to the sum which should have been expended thereon during those Three years, then the application of the Minister shall not be further pursued, and the Minister shall cause notice of the facts to be published in the ‘Gazette.’

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On lessee making due expenditure, application to cease.

“(4) During the said period stated in such notice and thereafter until the application (if any) of the Minister has been finally dealt with by the Board, no person shall be entitled to apply for an inquiry under Section One hundred and twelve of this Act in respect of the lease in question.

No other applicant to apply.

“(5) On the receipt from the Minister of any such application the Board shall hold an inquiry and hear and examine the parties and their witnesses on oath. The provision of Subsections (1) and (2) of Section One hundred and thirteen shall, with the necessary modifications, apply to such inquiry, and the Board shall have all the powers of a warden thereunder.

Board to inquire.

“(6) If on such inquiry the Board is of the opinion that a breach of the covenant with regard to the expenditure of money has been committed without reasonable cause (and mere lack of funds on the part of the lessee, shall not be deemed a “reasonable cause”), the Board shall declare the lease forfeited, and the lease shall forthwith be void, and the land comprised therein shall no longer be subject to the operation of this Act except as in this section hereinafter provided.

And may forfeit lease.

“(7) The decision of the Board upon such inquiry shall be final and shall be forthwith published in the ‘Gazette,’ and the production of the “Gazette” containing such decision shall be conclusive evidence in all courts of a breach of covenant by the lessee or other cause sufficient to authorise such decision, and that all the estate and interest in the lease of the lessee, and any person claiming under him, have been lawfully determined by re-entry, and all the provisions of Sections One hundred and five, One hundred and six, and One hundred and seven shall take effect.

“Gazette” to be evidence.

“(8) The Board may order the payment of costs by the lessee to the Minister in the same manner and with the same effect as an order under Section One hundred and nineteen.

Costs.

“(9) The Minister may by notice published in the ‘Gazette’ declare that the lands comprised in the lease so forfeited, or any portion thereof, are again open to application for lease for such time as is stated in such notice.

Land may be again opened for lease.

“(10) Any application for a lease of such lands shall be made as prescribed, and within the time stated in such notice, and the applicant shall deposit therewith a sum to be fixed by the Minister not exceeding Ten Pounds for every acre of land applied for in addition to the prescribed fees, and shall state the manner in which he proposes to open up, work, and deal with the land, and also the capital which is estimated as necessary for such work, and the amount available or obtainable, and the sources from which further capital is expected, and also any other prescribed particulars.

Procedure on application therefor.

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Mining Board to report.

“(11) Every such application shall be forwarded to the Board, who shall on the expiration of the time stated in such lastmentioned notice inquire into the allegations contained in the application or in all the applications (if more than One), and may take such evidence on oath as they think fit, and shall report thereon to the Minister whether or not in their opinion a lease as applied for, or any portion thereof, should in the interests of the State be granted, and to whom, and may recommend that any special conditions be inserted in such lease, whether as to the subscription of capital, mode and time of working, amount of expenditure periodically required, or as to any other matter whatsoever.

Lease or special prospector's permit may issue.

(12) Upon the receipt of such report the Minister may with the sanction of the Governor approve or refuse the application of the person recommended by the Board, or may grant to an applicant a special permit to prospect as prescribed, or may remit the report to the Board for further consideration.

Special lease.

“(13) Upon the approval of an application, the Minister may with the consent of the Governor grant a special lease to the person recommended by the Board, and such lease shall be subject to the provisions of Section Seventy-seven, except that it shall not be necessary that a resolution assenting thereto should be passed by either House of Parliament.

Matters to be considered.

“(14) The Board and the Minister in the exercise of their respective functions under this section shall consider—

- I. The capital required to properly develop and work the land applied for:
- II. The capital available to the applicant for working the land and the opportunities which he has for obtaining, and the probabilities of his successfully raising, sufficient capital therefor:
- III. All other matters mentioned in the application or which may be prescribed.

Special prospector's licence.

“(15) A special permit to prospect shall be issued and signed by the Minister and shall entitle the holder thereof during its continuance, exclusive of all other persons, to prospect for gold, minerals, coal, and oil upon such area on such conditions and for such term not exceeding Two years as shall be stated therein, and may contain a provision whereby the holder shall be entitled at any time during its currency to receive upon the conditions mentioned therein a special lease as aforesaid.

Marking off claim.

“(16) A claim held under a special permit to prospect shall be marked off and taken possession of or the boundaries thereof otherwise defined in manner prescribed.

Forfeiture.

“(17) If at any time the conditions stated therein or in the Regulations are not observed by the holder of a special permit to prospect, the Minister may declare such permit forfeited, and the claim shall thereupon be deemed to be abandoned, and the Minister may in his discretion again deal with the same, either under this section or under any other provision whatsoever in this Act contained,

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“(18) The Minister may before declaring the forfeiture of such licence, refer the matter to the Board or to a warden, who shall inquire into the same and report to the Minister thereon with power to take evidence on oath and other powers as upon any other inquiry held by them under this Act: but if the matter is referred to a warden, there shall be no appeal to the Board from his report or recommendation.

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Reference to Board or warden.

“(19) If any application for a lease under this section is refused by the Minister or withdrawn by the applicant, whether before or after the granting of a special permit to prospect, the deposit mentioned in Subsection (9) shall be returned to the applicant without interest.

Return of deposit on refusal of lease, &c.

“(20) If the Minister is satisfied by evidence that the applicant has expended a sum or sums upon the land in question within the time and in the manner provided in the permit or lease, as the case may be, then a sum or sums equal to the amount so expended shall be returned to the applicant out of such deposit without interest. Provided that no such amount shall be so returned unless and until the sum or sums so expended amount to not less than One-half the amount of such deposit.

Or expenditure of money.

“(21) In all other cases than those abovementioned, such deposit shall be forfeited to the Minister, and be paid into and form part of the Consolidated Revenue.

Forfeiture of deposit.

“(22) Subject to any special permit to prospect, or special lease issued under this section, the Minister may at any time, at his discretion, declare, by notice in the ‘Gazette,’ that the whole or any portion of the land comprised in any lease declared forfeited under Subsection (6) is available generally for lease or otherwise under this Act; and thereupon the provisions of this section shall not apply to such land, but the Minister may deal with the same under any other provision whatsoever of this Act.”

“**120b** The powers and provisions in this Division VIII. of this Act are in addition to and not in derogation of any rights of voidance, cancellation, or forfeiture vested by this Act in the Governor; provided that the Governor shall not exercise any such rights during the pendency of an application under this division except the right of forfeiture for non-payment of rent or royalty.”

19 The following new heading and section are inserted immediately after Section One hundred and twenty-nine:—

“Surrender of Mining Easements and Machinery Sites.

“**129a**—(1) A holder of a mining easement or machinery-site licence may at any time, with the consent of the Governor, and subject to the regulations, surrender such easement or licence: Provided that at the time of surrender the conditions thereof on the part of the holder shall have been fulfilled as far as the time which may have elapsed shall permit, and that all payments due in respect thereof up to date shall have been made.

New section 129a. Surrender of mining easements and machinery sites.

“(2) Where a holder of a mining easement or machinery-site licence applies to surrender it for the purpose of obtaining in lieu thereof a new easement or licence of the whole or any part of the premises comprised in such surrendered easement or licence, he shall have

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a prior right to the exclusion of all other persons for Twenty-one days next after the day on which the Governor consents to the surrender to apply for an easement or licence for the whole or any part of such premises, and he need not again mark off the same if he applies for a new easement or licence for the whole unless directed to do so by the Secretary for Mines.

Such new easement or licence shall, when granted, confer all the same privileges, rights, and priorities as the original licence."

Amendment of Section 163.

20 Section One hundred and sixty-three is amended by adding at the end of the definition of "Minerals" the words—" v. Coal and shale, but not slate, freestone, or limestone."

Amendment of Section 176.

21 Section One hundred and Seventy-six is amended by substituting for the words "registrar's office," in the Seventh line, the words "office of the Secretary for Mines.

Amendment of Section 221.

22 Section Two hundred and twenty-one is amended by substituting for the words "judges of the Supreme Court" in Subsections (2) and (4) the words "Governor in Council."

New section.

23 The following new section is inserted immediately after Section Two hundred and seventy-one :—

Lapse of caveat after Six months.

"**271a** Notwithstanding anything hereinbefore contained, every caveat, other than a caveat filed under Section Two hundred and seventy, shall, after the expiration of Six months from the receipt thereof by the Secretary for Mines, lapse unless the caveator—

Cf. 64 V. No. 61 s. 184 (Tas.).

- i. Shall within that time have taken proceedings in the Supreme Court, or in the Wardens Court, or in some other court of competent jurisdiction, to establish his title to the interest claimed by him, and shall have given written notice of such proceedings to the Secretary for Mines, and shall prosecute the same to a successful end : or
- ii. Shall have obtained from such court an order restraining the Secretary for Mines from registering any transfer or other instrument dealing with the mining tenement in question.
- iii. Shall have renewed the caveat by lodging a fresh caveat in manner provided in Section Two hundred and sixty-nine."

Penalty for removing, &c., gems and precious stones.

24 Sections Two hundred and ninety-three, Two hundred and ninety-four, Two hundred and ninety-five, Three hundred and four, and Three hundred and five are amended by inserting the words "gems or precious stones" immediately after the word "coal" wherever it occurs.

Amendment of Schedule (2).

25 Schedule (2) to the Principal Act is amended as follows :—

1. By substituting the words "within Ten days from the day of the service hereof" for the words "at least Three clear days before the day appointed for the hearing" in the form of summons provided in Rule Six :

