

# MINING ON PRIVATE PROPERTY ACT, 1909-1936.

BEING

THE MINING ON PRIVATE PROPERTY ACT, 1909, No. 992 OF 1909  
[ASSENTED TO 11TH DECEMBER, 1909.]

AS AMENDED BY

MINING ON PRIVATE PROPERTY ACT AMENDMENT ACT, 1916,  
No. 1267 OF 1916 [ASSENTED TO 16TH NOVEMBER, 1916.]

AND

STATUTE LAW REVISION ACT, 1936, No. 2293 OF 1936  
[ASSENTED TO 8TH OCTOBER, 1936.]

An Act to consolidate and amend the law relating to  
mining on private property, and for other purposes.

BE IT ENACTED by the Governor of the State of South  
Australia, with the advice and consent of the Parliament  
thereof, as follows:

## PART I.

## PART I.

### PRELIMINARY.

1. This Act may be cited as the "Mining on Private Property Act, 1909-1936."

Short title.  
Cf. U.K.  
13 & 14  
Geo. 5 c. 20.  
Cf. U.K.  
24 & 25  
Geo. 5 c. 86.

2. This Act is divided into Parts, as follows:—

Division of  
Act.

PART I.—Preliminary:

PART II.—Resumption of Private Lands for Mining  
Purposes:

PART III.—Proclamation of Private Land as  
Alluvial Field:

PART IV.—Entry upon and Pegging out Private  
Land:

PART V.—Compulsory Mining Leases:

PART VI.—Miscellaneous.

s. 1. The Mining on Private Property Acts, 1909 and 1916, were repealed by section 2 of the Mining Act Amendment Act, 1931, but, under section 12 of that Act, are deemed to be revived and to have full force and effect after 30th June, 1936.

Interpreta-  
tion.  
448, 1888,  
s. 2, altered.

3. In this Act, and in regulations made and leases and licences granted or obtained under this Act, unless inconsistent with the context or the subject matter—

626, 1895,  
s. 2.

“claim” means any area held under a miner’s right or a mining licence:

Inserted by  
1267, 1916,  
s. 3.

“daytime” means the period between the hours of six o’clock *ante meridiem* and six o’clock *post meridiem*:

“inspector” means an inspector appointed under this Act:

“justice” means a justice of the peace for the said State:

“metal” includes all metals, minerals, and metalliferous ores:

“miner’s right” means a miner’s right under the Mining Act or regulations under that Act:

“mining” or “to mine” includes all modes of prospecting and mining for obtaining and making merchantable any metal, or any substance containing metal, or of extracting the metal from any such substance:

Amended by  
S.L.R. Act,  
1936.

“Mining Act” means the Mining Act, 1930, and any Act amending that Act, or any Act substituted for that Act, and any Act amending such substituted Act:

“mining licence” means a mining licence granted under this Act:

“mining registrar” means the mining registrar appointed under the Mining Act:

Amended by  
S.L.R. Act,  
1936.

“Minister” means the Minister of Mines constituted by the Mining Act, 1930:

“owner” includes:—

the owner of land for an estate in fee simple at law or in equity; and

the owner of the metals in or under land; and

a mortgagee or a lessee of land; and

all parties who, being seized or possessed of and for the time being entitled to the receipt of the rents and profits of any private land or any estate or interest therein, are under a disability to sell and convey the same;

and all words relating to the ownership of any private land shall extend also to the ownership of any metals therein or thereunder:

“prescribed” means prescribed by regulation set out in the second schedule or made under this Act:

“private land” means any land the metals, minerals, precious stones, metalliferous ores, coal, shale oil, salt or gypsum on or under which have at any time heretofore been or at any time hereafter are, alienated from the Crown by grant in fee simple: Substituted  
by 1267,  
1916, s. 3.

“Real Property Act” means The Real Property Act, 1886, and any Act amending that Act, or any Act substituted for that Act, and any Act amending such substituted Act:

“regulation” means regulation set out in the second schedule or made under this Act:

“this Act” includes regulations set out in the second schedule and regulations made under this Act:

“warden” means a warden appointed under the Mining Act.

4. (1) The Acts mentioned in the first schedule are hereby repealed. Repeal.

(2) Such repeal shall not affect any power conferred, duty imposed, right granted or accrued, interest created, liability forfeiture or penalty incurred, offence committed, or anything done or omitted to be done, by or under the said Acts, or any of them, or any legal or other proceedings already commenced or hereafter to be commenced with respect to any of such matters or things.

(3) All such matters and things are, so far as is consistent with this Act, hereby preserved and continued and declared to be of the same force and effect as if the said enactments were still in force, or as if they were made or done under this Act, as the case may require.

5. The provisions of this Act shall not apply to—

- I. any garden, orchard, or vineyard; or
- II. any church, chapel, schoolhouse, college, hospital, or asylum, or any grounds enclosing the same and occupied therewith; or
- III. any park lands or ornamental or recreation grounds vested in any municipal corporation or district council, or in any other public body or trustees; or

Limitation  
of Act.  
448, 1888,  
s. 3.  
626, 1895,  
s. 6.

iv. any land of less area than half an acre within any city, town, or township; or

Amended by  
1267, 1916,  
s. 4.

v. any land within one hundred and fifty yards of any artificial well, reservoir, or dam, or of any dwelling-house, factory, or building: Provided such well, reservoir, dam, dwelling-house, factory, or building is not of less value than fifty pounds.

Incorporation of  
Compulsory  
Acquisition of  
Land Act,  
1925.

Amended by  
S.L.R. Act,  
1936.

6. The Compulsory Acquisition of Land Act, 1925, and all Acts amending or substituted for that Act, are hereby incorporated with this Act and for all the purposes of the Compulsory Acquisition of Land Act, 1925, and of the Acts amending that Act or any Act substituted for that Act, the Minister shall be deemed to be the promoter of the undertaking, and the undertaking shall be deemed to be the exercise of the powers conferred on the Governor and the Minister by this Act.

Acquisition  
of right to  
mine on  
private land.  
448, 1888,  
s. 5.

7. A right to mine on private land may be acquired—

- i. by the resumption of private land:
- ii. by the proclamation of private land as an alluvial field:
- iii. by compulsory mining lease.

## PART II.

## PART II.

### RESUMPTION OF PRIVATE LANDS.

Private land  
may be  
provisionally  
resumed.  
448, 1888,  
s. 6.  
626, 1895,  
ss. 3 and 6.

8. The Governor may, on behalf of the Crown, after giving two months' notice in writing to the owner and to the occupier of any private land, by proclamation published in the *Government Gazette*, provisionally resume the ownership of such private land for mining purposes. Upon the publication of such proclamation such provisional resumption shall take effect: Provided that no such proclamation shall be made without the consent of the owner, unless—

Para. I.  
substituted  
by 1267,  
1916, s. 5.

- i. an inspector has certified in writing to the Minister that he has examined such land, and that he is of

opinion that there is a reasonable prospect of mining such land at a profit, and is of opinion that such land should be resumed for the purpose of mining:

- ii. two months' previous notice, to be given in the prescribed form and manner, has been given by the Minister to the owner and also to the occupier of such land of the certificate of the inspector, and of the intention to proceed pursuant to this Part; and
- iii. there is a failure to show to the satisfaction of the Minister that, after the expiration of two calendar months from the giving of the said notice, the said land is being continuously and *bona fide* mined with the number of men and in the manner which would be necessary if the said land were held under a mining lease from the Crown.

9. (1) Within six months after the publication of any proclamation of provisional resumption, the Governor, subject to the provisions of this Act, may publish in the *Government Gazette* a further proclamation, either revoking such provisional resumption or making such resumption absolute. Such further proclamation may apply to the whole of the land provisionally resumed or to any part thereof.

Provisional  
resumption  
may be made  
absolute.  
448, 1888,  
s. 8.

(2) Upon the publication of such further proclamation the private land described therein, in respect of which such resumption is made absolute, shall thenceforth belong absolutely to the Crown, and be Crown lands, and shall be dealt with accordingly.

(3) A copy of such further proclamation shall, if such land is not under the provisions of the Real Property Act, be registered and deposited in the General Registry Office; and if such land is under the provisions of the Real Property Act, then, notwithstanding the provisions of such Act, the Registrar-General, on receipt of a copy of such further proclamation, shall enter a memorial thereof and of the effect thereof, on the folio of the register-book in the Lands Titles Registration Office evidencing the title to such land, and on all instruments of title affected by such proclamation and entry.

10. If any provisional resumption is made absolute, payment shall be made by the Minister by way of purchase-money for the land resumed, and also compensation for the resumption and the damage thereby occasioned, as if such land had been acquired by the Minister under the powers of

Purchase on  
absolute  
resumption.  
448, 1888,  
s. 9.  
Amended by  
S.L.R. Act,  
1936.

compulsory purchase contained in the Compulsory Acquisition of Land Act, 1925, and the Acts amending the same or substituted therefor.

Metal not to be considered in assessing purchase-money or compensation.  
448, 1888, s. 16.

11. In assessing the amount of purchase-money and compensation and damage payable under this Part no allowance shall be made for any metal removed from any private land after any provisional resumption thereof, nor for any metal known or supposed to be thereon or thereunder.

Interest on purchase-money.  
448, 1888, s. 10, altered.

12. Interest at the rate of five pounds per centum per annum, estimated from the date of the provisional resumption until the date of the absolute resumption, shall be allowed on and added to the purchase-money mentioned in section 10, and shall be paid therewith.

Effect of provisional resumption.  
448, 1888, s. 11.

13. During the period of the provisional resumption of any private land such private land may be dealt with for mining purposes, subject to the following provisions:—

- i. The licensee under any mining licence which may be granted of any such land shall pay to the Minister, at intervals to be specified in the licence, a royalty of two pounds and ten shillings per centum on the gross money value of all metal obtained therefrom:
- ii. Every such licence shall be issued subject to conditions that the licensee shall—
  - (a) take all proper precautions for the protection of man and beast, the preservation of timber, and the prevention of fires;
  - (b) do no unnecessary damage to the land;
  - (c) crush, refine, wash, or otherwise in a miner-like manner treat and render marketable all metal obtained from the land; and
  - (d) keep proper accounts for inspection, containing all information necessary to enable the amount of royalty payable to be determined:
- iii. Every such licence shall also be subject to all such other provisions as the Minister thinks desirable, or as are prescribed, and in particular, any such licence may contain a right of renewal or to a lease, to be exercisable in the event of the provisional resumption being made absolute:

iv. Every person who applies for a mining licence in respect of such land shall, at the time of making such application, pay to the Minister such sum as the Minister deems to be sufficient to pay the compensation which will be payable by the Minister in the event of the provisional resumption of such land not being made absolute:

v. On proof to the Minister of a breach by any licensee of any of the above-mentioned conditions, the Minister may forfeit his licence.

14. At the end of six months after the publication of any proclamation of provisional resumption such resumption shall cease so far as the same has not previously been made absolute.

Cesser of  
provisional  
resumption.  
448, 1888,  
s. 12.

15. (a) On the cesser or revocation of any provisional resumption of any land payment shall be made by the Minister to the owner thereof by way of compensation for the loss and damage sustained by him by reason of such provisional resumption and by the exercise of the powers of the Minister during the period thereof:

Compensa-  
tion on  
cesser or  
revocation of  
provisional  
resumption.  
448, 1888,  
ss. 10 and 13,  
altered.

(b) Every dispute as to the amount of such compensation shall be heard and determined in a summary way by a special magistrate or by a special magistrate and two justices:

(c) In estimating the amount of such compensation no account shall be taken of the value of any metal removed from the land during the period of such provisional resumption, or known or supposed to be thereon or thereunder:

(d) The amount of any compensation paid by the Minister pursuant to this section, together with the costs and expenses incidental thereto, and of estimating and recovering the same, shall be deemed a debt due to the Minister by the person who applied to have the land resumed, and shall be recoverable accordingly.

16. Every mining lease or licence granted in respect of any private land absolutely resumed shall be subject to the provisions contained in subdivisions I., II., and III. of section 13, as to mining licences granted during the period of provisional resumption.

Terms of  
leases after  
absolute  
resumption.  
448, 1888,  
s. 14.

17. All royalties required to be reserved by this Part, and received by the Minister in respect of mining on private land, either provisionally or absolutely resumed, shall, after

Division of  
royalties.  
448, 1888,  
s. 15.

deduction by the Minister of a commission calculated at the rate of two pounds and ten shillings per centum thereon, be payable to the person (if any) who, but for the resumption of such private land, would for the time being have been entitled to the first right to mine thereon.

## PART III.

## PART III.

PROCLAMATION OF PRIVATE LAND AS  
ALLUVIAL FIELD.

Private land  
may be  
declared an  
alluvial  
field.

448, 1888,

s. 17.

626, 1895,

s. 7.

728, 1899,

s. 2.

Amended by

1267, 1916,

s. 6.

18. (1) The Governor may, after giving two months' notice in writing to the owner and to the occupier of any private land, by proclamation published in the *Government Gazette*, declare that such private land shall be an alluvial field: Provided that no private land shall be declared an alluvial field, except under conditions similar to those required in cases of provisional resumption, by subdivisions i., ii., and iii. of section 8, but so that the certificate of the inspector required by the said subdivision i. shall state that he is of opinion that there is a reasonable prospect of alluvial mining on such land at a profit.

(2) Upon the publication of any proclamation declaring any private land an alluvial field, the following consequences shall ensue:—

(a) The said land shall, for all purposes of all laws in force for the time being relating to alluvial mining, be deemed to be Crown lands and an alluvial field; and the said land, and all persons entering thereon for mining or other purposes, shall be subject to the warden's jurisdiction, and to such regulations as are made under this Act relating to alluvial mining; and persons shall be entitled to mine upon such land subject to such regulations and to the provisions of this Act: Provided that until such regulations are made, or in so far as such regulations do not apply, all laws and regulations in force for the time being relating to alluvial gold mining on Crown lands (except so far as inconsistent with this Act) shall apply to such land and persons, and persons shall be entitled to mine upon such land subject to the last-mentioned laws and regulations (except as aforesaid) and to the provisions of this Act:



- (b) Every person mining upon or occupying any claim upon the said land shall pay therefor to the warden a weekly rent of two shillings, or such rent as is prescribed, in advance:

Provided as follows:—

- i. No person shall mine on the said land or peg out any alluvial claim thereon until he has obtained a special licence for mining thereon, which special licence shall be in force until the field ceases to be an alluvial field, or is resumed, and may be issued by the Minister on payment by the applicant of a fee of ten shillings:
- ii. Any person mining on or occupying any of the said land without having duly paid the rent of his claim as required by subdivision (b) of this subsection, or mining on any such land or pegging out any such claim thereon without having obtained a special licence as required by subdivision i. of this subsection, shall be liable to a penalty not exceeding twenty pounds.

19. The amount received for fees for special licences under the next preceding section in respect of any land, and all moneys received by the warden for rent of any claims thereon, shall, after retention thereof by the Minister or payment thereof to the Minister (as the case may be) of a charge calculated at the rate of two pounds and ten shillings per centum thereon, be equally divided between the person who but for the declaration of such lands as an alluvial field, would for the time being have been entitled to the first right to mine thereon and the person who, but for such declaration, would for the time being have been entitled to the possession of the said land. If the same person is entitled to the first right to mine and to possession, then the whole of such amount and of such moneys, after deducting such charge, shall be paid to him.

To whom  
licences, fees,  
and rents  
(less com-  
mission) to  
be paid.  
448, 1888,  
s. 18 (part).  
626, 1895,  
s. 8.

20. (1) Every person who pegs out an alluvial claim shall, within such time thereafter as is prescribed—

Claims to be  
registered.  
626, 1895,  
s. 9.

- (a) register such claim with the warden;
- (b) inform the warden of his name and usual place of abode; and
- (c) keep posted up on such claim the registered number thereof.

(2) If any person fails to wholly comply with this section his claim shall be liable to forfeiture.

Alluvial field  
may be  
resumed.  
448, 1888,  
s. 17  
(proviso i.).

21. Subject to the provisions of subdivision i. of section 8, and without complying with subdivisions ii. and iii. thereof, the Governor may resume for mining purposes the ownership of the whole or any part of any private land, which has been declared an alluvial field.

Owner may  
require  
alluvial  
field to be  
resumed.  
448, 1888,  
s. 18 (part).

22. The owner of any private land which has been declared an alluvial field may, after the expiration of six months from the date of the publication of the proclamation declaring the same an alluvial field, give written notice to the Minister requiring the said land to be absolutely resumed; and if such land is not absolutely resumed within one month after the receipt by the Minister of such notice, such land shall thereupon cease to be an alluvial field.

On such  
resumption  
owner to have  
rents in lieu  
of royalties.  
448, 1888,  
s. 18 (part).

23. When an alluvial field has been resumed at the request of the owner, pursuant to the next preceding section, on the issue of any lease or licence for alluvial mining thereon, one-half of the rents shall be reserved to the owner, in lieu of the royalties which, but for this section, would be payable.

Private land  
to cease to be  
alluvial on  
proclamation.  
448, 1888,  
s. 20.

24. (1) The Governor may, by proclamation published in the *Government Gazette*, declare that any private land declared to be an alluvial field, shall cease to be an alluvial field, and upon the publication of such proclamation, all powers arising by virtue of the original proclamation shall cease to be exercisable.

(2) If any land absolutely resumed pursuant to this Part ceases to be used for mining purposes for six months, the Minister may sell and convey the same or any part thereof; but the person who, but for such resumption, would be the owner, shall have the prior right to purchase such land or part; and in the event of such person exercising such right, the price to be paid therefor, if the whole of such land, shall be the amount paid on resumption; or, if a part of such land, then a proportionate part of such amount based on the relative value of such part of the land as compared with the value of the whole thereof.

#### PART IV.

#### PART IV.

#### ENTRY UPON AND PEGGING OUT PRIVATE LAND.

Authority to  
enter private  
land and  
peg out  
claim or  
prospect.  
Substituted  
by 1267,  
1916, s. 7.

25. (1) Any holder of a miner's right who desires to obtain a claim on, or a lease of, any private land, or to prospect thereon, shall first obtain from the Minister or a warden or mining registrar a written authority to enter upon

such land, of the granting of which authority notice shall be given to the owner before making entry.

(2) The Minister or a warden or mining registrar is hereby authorised to grant such authority upon being satisfied by the declaration of the applicant therefor, made before a justice, that there are reasonable grounds (which shall be shortly stated in such declaration) for supposing that such land is mineral bearing: Provided that no such authority shall be issued before the applicant has deposited with the Minister or such warden or registrar such sum as is agreed upon between the applicant and the owner and the occupier of such land, or, if no such agreement has been arrived at within seven days of the making of the application for such authority, such sum as the Minister or such warden or registrar thinks proper, by way of security for compensating the owner or occupier of such land for any damage caused by the exercise by the applicant of his rights under this section.

(3) The holder of any such authority shall, before his first entry upon such land in pursuance of such authority, give to the owner and also to the occupier of such land at least three clear days' notice in writing of his intention so to enter.

(4) The holder of any such authority having given notice as required by subsection (3) of this section shall, subject to this section and to any limitations expressed in such authority, and not doing any unnecessary damage, be entitled to exercise all or any of the following powers, viz.:—

- i. He may at all reasonable times in the daytime enter upon such land, with any other persons (not exceeding three at any one time) to assist him, for the purpose of exercising any or all of the powers hereunder mentioned:
- ii. He may peg out any portion of such land which he desires to have included in a claim or lease:
- iii. He may prospect, for a period not exceeding fourteen days, on the portion of such land (not exceeding one square mile) defined in such authority; and may, in his search for minerals, make trenches and sink holes in and otherwise mine on the portion of land so defined, provided the area of the surface broken by such operations does not exceed one hundred square feet in the aggregate; and may remove mineral samples from the portion of land so defined

for the purpose of ascertaining their value, provided that no one sample exceeds twenty-eight pounds avoirdupois in weight.

(5) The powers mentioned in subsection (4) hereof shall be exercised in accordance with anything prescribed.

(6) Nothing done pursuant to this section by the holder of any such authority, or by any person assisting him as mentioned in subsection (4) hereof, shall be deemed to be a trespass.

(7) The holder of any such authority shall, if required so to do, produce such authority to the owner of the land or his agent, and to the occupier thereof or his agent, on or before entering upon such land.

(8) The Minister may, at any time, give to the owner or occupier of the land in respect of which a deposit has been made as mentioned in subsection (2) hereof notice in writing requiring him to show, within two months from the giving of such notice, cause why the amount of such deposit, or any balance thereof, should not be repaid to the applicant; and if such owner or occupier fails to show good cause to the contrary to the satisfaction of the Minister within such time, the Minister shall repay such amount or balance to the applicant. In all other respects such amount shall be applied by the Minister for the purposes for which it was deposited.

Compensation to be paid or agreed before mining.  
Vic., 1514,  
1897, s. 74.  
Amended by  
1267, 1916,  
s. 8.

26. Neither the holding of a miner's right, nor the holding of an authority under the next preceding section, by any person, shall confer upon such person any right to mine upon any private land (except as mentioned in that section) unless and until—

(a) I. such person has either paid or tendered to the owner, or to the owner and the occupier respectively of such land, the amount or amounts of compensation fixed as in this Part provided, or has entered into an agreement in writing with such owner or owner and occupier as to the payment thereof; and

II. the fact of such payment, tender, or agreement has been certified on the registration of the claim, or on the authority, lease, or licence (as the case may be) by the owner or owner and occupier, or by the Minister, a warden, or the mining registrar:

Provided that if the owner or occupier to whom any compensation is payable cannot be found by such person, he may pay the same to the Minister in trust for such owner or occupier, and the Minister's certificate of such payment shall be sufficient; or

(b) if no compensation is payable, that fact has been certified in manner aforesaid.

27. (1) The amount or amounts of compensation referred to in the next preceding section shall be fixed—

How compensation fixed.  
Vic. 1514, 1897, ss. 75-7, adapted.

(a) by agreement between the parties respectively; but no such agreement shall have any force unless in writing, and signed by the parties thereto in triplicate;

or, failing such agreement within twenty-one days after the pegging out under section 25—

(b) by the determination of a warden made on the application of any party.

(2) The warden in making his determination shall take into consideration the damage which would probably be done to the land in consequence of the granting of a mining lease under Part V., any probable damage to any adjoining land of the same owner or occupier, and any other probable consequential damage, such damage in each case being of a permanent nature; and his determination shall be final and not subject to any appeal.

Substituted by 1267, 1916, s. 9.

28. (1) Before any lease of private lands is issued under section 33, to any person other than the owner thereof, the Minister shall be satisfied that the following provisions have been complied with:—

Compensation to be paid before lease issues under section 33.  
Vic. 1514, 1897, s. 78.

I. Where the amount or amounts of compensation has or have been determined by a warden, that such amount or amounts has or have been paid or tendered to the owner or the owner and the occupier (as the case may be), or that such owner or owner and occupier has or have consented in writing to the issue of the lease without such payment:

II. Where the parties have agreed in writing as mentioned in the next preceding section—

(a) that the parties have so agreed; and

- (b) that one original part of such agreement has been forwarded to the Minister; and
- (c) that any amount agreed to be paid before issue of the lease has been paid or tendered, or that such payment has been waived in writing by the party entitled thereto.

(2) For the purposes of this section, if the person to whom any payment should be made or tendered cannot be found, it shall be sufficient to make such payment to the Minister in trust for such person.

PART V.

PART V.

COMPULSORY MINING LEASES.

Classes of  
leases.  
728, 1899,  
ss. 3 and 4.

29. For the purposes of this Part mining leases shall be either—

- i. gold leases, or
- ii. mineral leases.

(a) Gold leases shall authorise the lessee to mine for gold, and all other metals:

(b) Mineral leases shall authorise the lessee to mine for all metals except gold.

Area of  
leases.  
728, 1909,  
s. 5.

30. A gold lease may include any area not exceeding twenty acres, and a mineral lease may include any area not exceeding forty acres.

Application  
for lease.  
448, 1888,  
s. 21,  
adapted.  
728, 1890,  
s. 6.

31. (1) Any person may apply in the form and manner prescribed by the regulations to the owner of any private land to grant to him a mining lease of any portion of such land in the shape prescribed by the regulations, not exceeding twenty acres if the application is for a gold lease, or forty acres if the application is for a mineral lease.

(2) The application shall state whether it is for a gold lease or a mineral lease, and shall be deemed to be made when served upon the owner in manner prescribed.

(3) In the absence of an agreement to the contrary, in writing signed by or on behalf of the owner and the applicant, no application under this section for a mining lease shall be deemed to be duly made until the applicant has deposited

with the Minister the sum of ten pounds as a guarantee for the payment of all costs and expenses connected with the obtaining, granting, and execution and delivery of such lease, and the due fulfilment of all its terms and conditions. The Minister may at any time give to the owner a notice in writing, requiring the owner within two months from the giving of such notice to show cause why the said sum, or any balance thereof, should not be repaid to the applicant; and if the said owner fails to show good cause to the satisfaction of the Minister within such time, the Minister shall repay the said sum or balance to the applicant. In all other respects the said sum shall be applied by the Minister in satisfying the aforesaid objects.

32. If the owner of the land in respect of which an application for a mining lease has been duly made, within one month after such application is made, consents in writing to grant the same, the following consequences shall ensue:—

Provisions as  
to terms and  
conditions  
of mining  
leases.  
448, 1888,  
s. 25  
(altered), and  
regulation  
14.

(a) If the owner and the applicant agree upon the terms of such mining lease, the owner shall grant the lease accordingly:

(b) If no such agreement is come to within one month after the application, the owner shall, subject to the provisions of this Act, grant to the applicant a gold or mineral lease (according to the application) of such land, on the following terms and conditions:—

- i. The lease shall be in the form prescribed, or to the like effect (varied if necessary so as to comply with the Real Property Act), and shall reserve to the owner a royalty at the rate of two pounds and ten shillings per centum on the gross money value of the metal raised from the land during the currency of the lease:
- ii. There shall also be reserved a rent for the surface of the land, to be assessed by the local court of full jurisdiction nearest by the most convenient route to such land:
- iii. The lease shall be for the term of twenty-eight years, and shall comprise a convenient right of way to such land, and shall contain all such powers and provisions as are prescribed; and shall also

contain proper provisions compelling the lessee to fence in with a substantial sheep-proof fence the workings on such land, to take all proper steps for the prevention of fires, and to take all proper precautions for the preservation of timber and for preventing any unnecessary damage to the land, and for preventing injury to man or beast:

- iv. The lease shall contain a right of re-entry by the owner of the land, on non-payment of rent or royalty or breach of covenant by the lessee for such time as is prescribed:

Provided as follows:—

Substituted  
by 1267,  
1916,  
s. 10.

- i. In assessing the rent the local court shall take into consideration the deprivation of the possession of the surface of the land and the probable damage to the land, any probable damage to any adjoining land of the same owner, and any other probable consequential damage, such damage in each case being of a temporary nature:

Substituted  
by 1267,  
1916, s. 10.

- ii. The local court, besides assessing the rent, shall fix the amount or amounts of compensation to be paid for the damage which will probably be done to the land in consequence of the granting of the lease, for any probable damage to any adjoining land of the same owner or occupier, and for any other probable consequential damage, such damage in each case being of a permanent nature. The court shall order that the amount or amounts so fixed be paid by the applicant by way of compensation prior to the granting of the lease; and the lease shall not be executed (unless by the owner) until such compensation is paid:
- iii. There shall be no appeal against the decision of the local court:
- iv. If the applicant for the lease is dissatisfied with the rent assessed, or if he is unwilling to pay compensation pursuant to



the order of the local court, he may give notice in the prescribed form to the owner of the land abandoning his claim to such lease:

v. The costs of all proceedings in the local court, in respect of the matters herein referred to, shall be paid by the applicant for the lease:

(c) Subject to the above proviso ii., if within fourteen days after agreeing upon the terms of the lease, as mentioned in paragraph (a), or with fourteen days after the rent has been assessed, as mentioned in paragraph (b), as the case may be, the owner does not execute a lease in accordance with such agreement or in accordance with the provisions of paragraph (b), as the case may be, a lease in accordance with such agreement or provisions may be tendered for his execution; and if such lease is not executed and delivered to the applicant within fourteen days after such tender, the Minister upon being satisfied that the lease is in accordance with such agreement or provisions and that such lease has been tendered as aforesaid and not executed and delivered as aforesaid, shall execute and deliver the same in the name and on behalf of the owner, whereupon such lease shall be deemed to be validly executed and delivered by the owner.

(d) Upon production of the lease executed as aforesaid and by the lessee, and on payment of the proper fees, such lease shall, if the land is under the Real Property Act, notwithstanding the Real Property Act, be registered by the Registrar-General without requiring the production of the land grant or certificate of title to the land; or, if such land is not under the Real Property Act, such lease shall be registered by the Registrar-General in the General Registry Office for the registration of deeds. And upon such registration the term of years granted by such lease shall vest in the lessee, and the lease shall have effect in all respects as if the same had been executed by the owner of the land.

Minister  
may grant  
lease on  
failure of  
owner  
448, 1888,  
ss. 22 and 24  
(altered).

**33.** (1) If the owner of the land in respect of which an application for a mining lease has been duly made, does not, within one month after such application is made, consent in writing to grant the same, the Minister may, subject to section 28 and to subsection (2) of this section, grant and execute and deliver the mining lease applied for in the prescribed form (varied, if necessary, so as to comply with the Real Property Act) in the name and on behalf of the owner; and thereupon such lease shall be deemed to be validly executed and delivered by the owner and all the provisions of paragraph (d) of section 32 shall apply: Provided as follows:—

i. The owner of the land shall, if his failing to consent as aforesaid to grant such lease did not proceed from legal incapacity, pay all the costs and expenses connected with the obtaining, granting, and execution and delivery of such lease, or the same may be deducted by the lessee out of the rents and royalties payable under such lease:

ii. The Minister shall from time to time, until the owner of the land ratifies the lease, hold the rents and royalties received under such lease upon trust (after payment of the costs and expenses abovementioned if unpaid) for the owner of such land; but shall be entitled to deduct therefrom a charge of two pounds and ten shillings per centum for the cost of collecting the same, and the Minister shall not be required to invest any accumulations of rent or royalty.

(2) The Minister shall not grant or execute and deliver such mining lease—

Amended by  
1267, 1916,  
s. 11 i.

(a) unless an inspector, having examined the said land either before or after the making of the application for such lease, has certified in writing to the Minister that he has examined such land, and that he is of opinion that there is a reasonable prospect of mining such land at a profit, and is of opinion that such land should be resumed for the purpose of mining.

Paras. (b)  
and (c)  
repealed by  
1267, 1916,  
s. 11 ii.

\* \* \* \* \*

Subsec. (3)  
added by  
1267, 1916,  
s. 11 iii.

(3) The provisions of paragraph (b) of section 32 (except the first five lines) shall apply to a mining lease granted or

to be granted by the Minister under this section: Provided that—

(a) the rent to be reserved shall be assessed by a warden on the application of the applicant for the lease; and

(b) in lieu of the provisos to the said paragraph (b) the following provisions shall apply:—

- i. In assessing the rent the warden shall take into consideration the deprivation of the possession of the surface of the land, and the probable damage to the land, any probable damage to any adjoining land of the same owner, and any other probable consequential damage, such damage in each case being of a temporary nature:
- ii. If the amount or amounts of compensation to be paid by the said applicant have not been fixed as provided by section 27, the warden shall, besides assessing the rent, determine such amounts in accordance with that section:
- iii. There shall be an appeal to the local court against the assessment or determination of the warden:
- iv. If the applicant for the lease is dissatisfied with the rent assessed, or is unwilling to pay the compensation determined by the warden, he shall give notice in the prescribed form to the owner of the land abandoning his claim to the lease:
- v. The costs of all proceedings before the warden or the local court in respect of the matters herein referred to, shall be paid by the applicant.

**33a.** (1) In fixing the amount of compensation pursuant to section 27 or to section 32 or 33, the warden or local court (as the case may be), instead of fixing an amount to be paid in respect of the whole of the land to be comprised in the claim or lease and any other land which will probably be damaged, may fix separate amounts and allot the same respectively to separate portions of the land to be comprised in the claim or lease, such portions being defined by the warden or court, or may fix the compensation at a specified amount or

Separate amounts of compensation for damage may be allotted to separate portions of land to be mined or leased.

Inserted by 1267, 1916, s. 12, as amended by S.L.R. Act, 1936.

amounts per acre of the land to be comprised in the claim or lease.

(2) When the warden or court fixes amounts in either of the ways permitted by subsection (1) of this section, he or it shall state the particular portion or portions of land in respect of which compensation is to be paid before any mining takes place or before the granting of the lease (according to the nature of the case), and shall fix the amount of the compensation so to be paid.

(3) Payment or tender of the amount fixed as mentioned in subsection (2) of this section shall be sufficient compliance with section 28 or with proviso II. to paragraph (b) of section 32, according to the nature of the case.

(4) When separate amounts of compensation have been fixed, as permitted by subsection (1) of this section, no mining in pursuance of this Act or of the lease shall take place on any portion of the land until the amount or amounts of compensation allotted to that portion have been paid or tendered to the person or persons entitled thereto.

(5) When compensation has been fixed at a specified amount or amounts per acre, as permitted by subsection (1) of this section, no mining in pursuance of this Act or of the lease shall take place on any portion of the land, until the amount or amounts of compensation so fixed for land of the area of that portion have been paid or tendered to the person or persons entitled thereto.

Where  
metals  
reserved, no  
lease without  
Minister's  
consent.  
448, 1888,  
s. 24 (VI.)

**34.** In any case in which the metal in any private land has been or is reserved to the Crown, or is the property of the Crown, no mining lease of such land shall be granted under this Part without the consent of the Minister, and proper royalties shall be reserved to the Minister by every such lease.

Minister may  
cancel lease  
for non-  
compliance  
with working  
conditions.  
772, 1901, s. 2  
(altered).

**35.** (1) Unless the lessee holding a mining lease under this Part employs and keeps employed in mining upon the land comprised in such lease, for at least eight months in every year of the term of such lease—

(a) at least one man for every five acres of such land if it is held under a gold lease; or

(b) at least one man for every ten acres of such land if it is held under a mineral lease;

there being in any case at least three men so employed and kept employed, the Minister may cancel such lease; and shall

thereupon insert a notice in the *Government Gazette* declaring the lease cancelled.

(2) Such notice shall be conclusive evidence that the lease was legally cancelled, and the land, mines, and premises comprised therein shall be capable of being dealt with by the owner as if such lease had never been granted; and notwithstanding the Real Property Act the Registrar-General shall, at the request of the Minister make the entries in the register book necessary to give effect to such cancellation: Provided that—

- i. such land, mines, and premises, and the owner thereof shall continue to be subject to the provisions of this Part without any further examination or certificate of an inspector: and
- ii. no lease or licence so far as it gives any right to mine on the said lands or premises or any part thereof shall be valid unless granted with the previous consent in writing of the Minister.

(3) The power of cancellation given by this section is in addition to any right or remedy of the owner.

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PART VI.  
MISCELLANEOUS.

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PART VI.

36. The provisions and regulations hereafter mentioned in this section shall apply to and in respect of all mines and mining on private land as if such land were Crown lands, namely—

Provision as to inspection of mines and returns of minerals to apply.

Amended by S.L.R. Act, 1936.

- i. the Mines and Works Inspection Act, 1920;
- ii. sections 113 and 136 of the Mining Act;
- iii. all provisions of any Act amending or substituted for either Act which deals with the matter dealt with in the Mines and Works Inspection Act, 1920, or the said sections 113 and 136; and
- iv. all regulations made under either Act, or any such amending or substituted Act, which deal with the said matters, including (but without limiting the operation of this section) all regulations dealing with the inspection and working of mines, the works and machinery thereon or therein, and the furnishing of plans of underground workings therein.

Powers of  
wardens.

**37.** For the purposes of this Act a warden shall have and may exercise all the powers and functions conferred upon or exercisable by a warden by or by virtue of the Mining Act.

Proceedings  
before  
wardens.

Inserted by  
1267, 1916,  
s. 13, as  
amended by  
S.L.R. Act,  
1936.

**37a.** All applications made to a warden, and all proceedings of or taking place before a warden, under or for the purposes of this Act, shall be made and taken in manner prescribed by regulations: Provided that, until otherwise so prescribed, such applications and proceedings shall be made and taken in the manner prescribed by Part II. of the Mining Act, with regard to the suits therein mentioned and the proceedings in such suits.

Inspectors  
and their  
powers.  
448, 1888,  
s. 25  
(altered).

**38.** (1) The Governor may appoint any person or persons to be an inspector or inspectors under this Act.

(2) An inspector may at any convenient time during the daytime, either alone or with such assistants as he deems necessary, enter upon any private land, and he and such assistants (if any) may examine such land and do all things deemed necessary by such inspector for the purpose of making any report, or giving any certificate required by this Act to the Minister: Provided that at least two clear days' notice in writing shall be given to the occupier (if any) of such land before such entry is made.

(3) Every person on or about such land shall do all things necessary to facilitate the entry by the inspector and such assistants as aforesaid (if any), and the exercise by them of their powers under this Act; and any person who fails so to do, or who obstructs or interferes with any inspector or any of his assistants in the exercise of any such powers shall be liable to a penalty of not less than two pounds and not exceeding fifty pounds.

Return to be  
laid before  
both Houses  
of Parlia-  
ment.  
448, 1888,  
s. 27.

**39.** Within twenty-one days after the giving of any notice of intention to provisionally resume any private land, or to declare any private land an alluvial field, if Parliament is then sitting, or, if Parliament is not then sitting, then within twenty-one days after the commencement of the next session thereof, a return shall be laid before both Houses of Parliament showing the land proposed to be resumed or declared an alluvial field and the names of the owners thereof.

Provision  
where metals  
the property  
of Crown.  
448, 1888,  
s. 28.

**40.** Save as herein expressly provided, no claim shall be made for any payment for purchase-money, compensation, rent, royalty, or otherwise, or on account of the exercise of any power conferred on the Governor or the Minister by this

Act; and in any case in which any metal on or under any private land is reserved to or is the property of the Crown, no royalty reserved in respect of such metal will be payable to any private person, but the same shall be wholly paid to the Minister, and one-half of all rents payable under Part III. shall be paid to the Minister in any such case, in lieu of the charge provided by section 19.

41. (1) The Governor may make regulations not inconsistent with this Act, in addition to, or altering, or in substitution for the regulations contained in the second schedule or any of them, and may also make any regulations, not inconsistent with this Act prescribing all matters and things which by this Act are contemplated, required, or permitted to be prescribed, or which may be necessary or convenient to be prescribed for giving effect to this Act.

Regulations.  
448, 1888,  
s. 29.

(2) Any regulation so made may impose a penalty not exceeding twenty pounds for any breach of the same or any other regulation.

(3) Section 38 of the Acts Interpretation Act, 1915, shall apply to all regulations made under this section.

Substituted  
by S.L.R. Act,  
1936.

42. (1) Any document required or allowed to be served under this Act may be served personally; or

Service of  
documents.

(a) where the person upon whom the document is to be served does not reside in the said State, by serving such document upon some known agent of such person, or by posting it to such person addressed to his usual place of abode in the said State, or to his last place of abode in the said State known to the person who is required or allowed to serve such document:

(b) where the residence or address of the person upon whom the document is to be served is unknown to the person who is required or allowed to serve such document, by serving such document upon the occupier of the land in respect of which it is to be served, or, if there is no such occupier, by advertisement published in such newspapers as the Master of the Supreme Court directs:

Provided that if any such document exceeds seventy-two words in length it shall not be necessary to set it out in any such advertisement, but it shall be sufficient in such advertisement to state the general effect of the document and where it may be inspected.

(2) In this section "document" includes any summons, order, notice, application, lease, and any other document; "serve" includes give, tender, and serve; "serving" includes giving, tendering and serving; and "served" includes given, tendered, and served.

Procedure  
for offences.  
Amended by  
S.L.R. Act,  
1936.

43. All proceedings in respect of offences against this Act shall be heard and determined in a summary way.

Ss. 44 and 45  
repealed by  
S.L.R. Act,  
1936.

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## THE SCHEDULES.

Sec. 4.

### THE FIRST SCHEDULE.

Act No. 448 of 1888—"Mining on Private Property Act, 1888."  
Act No. 626 of 1895—"Mining on Private Property Act Amendment Act, 1895."  
Act No. 728 of 1899—"The Mining on Private Property Amendment Act, 1899."  
Act No. 772 of 1901—"Mining on Private Property Amendment Act, 1901."

### THE SECOND SCHEDULE.

#### REGULATIONS.

#### PART I.—RESUMPTION OF PRIVATE LANDS.

##### *Application for Resumption and Proceedings thereon.*

1. Every application to the Minister for the resumption of private land shall contain the particulars and be in the form A in the Appendix hereto, or to the like effect, and shall be signed by the applicant.

2. Upon the receipt of any application the Minister shall instruct an inspector to examine the land mentioned in the application, and report as to whether or not, in his opinion, payable reef metal exists therein, and whether or not such land should be resumed for the purpose of mining.

3. The notice required to be given to the occupier of the intended visit of the inspector for the purpose of examining the land and reporting thereon shall be in the form B in the Appendix hereto, or to the like effect.

4. The Minister shall, if he intends to provisionally resume such land, give to the owner, and also to the occupier thereof, a notice of the report of the inspector, and of such intention, such notice to be in the form C in the Appendix hereto, or to the like effect, and shall also furnish such owner and occupier with a copy of the report of the inspector.

##### *Mining Licences and Duties of Licensees.*

5. Mining licences under this Act shall be issued by the Minister, and all licences issued previously to the provisional resumption of land being made absolute shall, in case of cesser or revocation of such provisional resumption, immediately determine.



6. Every licensee and every lessee shall furnish particulars to the satisfaction of the Minister from time to time when required by him, so as to enable him to ascertain the amount of royalty payable, and such licensee or lessee shall, if so required by the Minister, verify such particulars by a declaration before a justice; and in the event of any licensee or lessee neglecting or refusing to comply with any requirement of the Minister, of which notice has been given to him, within the time limited for the performance thereof by such notice, he shall be liable to a penalty not exceeding five pounds for every day during which such neglect or refusal continues after such limited time has elapsed; and every licensee or lessee shall, if required by the Minister, allow him or any officer whom he appoints to inspect the books of account and memoranda kept by such licensee or lessee and take copies thereof or particulars therefrom.

7. If any licensee or lessee fails to perform any condition of his licence or lease, or to comply with this Act or any regulation, the Minister may cancel such licence or lease.

8. The Minister or his agents and workmen may at all reasonable times enter into and upon the land comprised in any licence or lease, and into and upon any mines or works therein or thereunder and inspect the same.

#### PART II.—PROCLAMATION OF PRIVATE LAND AS ALLUVIAL FIELD.

##### *Applications and Proceedings thereon.*

9. The foregoing regulations as to the provisional resumption of private land, and for all purposes consequent thereon as provided by this Act, shall, *mutatis mutandis*, apply to the declaration of private land as an alluvial field and for all purposes consequent thereon as provided by this Act.

##### *Applications for Special Licences.*

10. After the owner of any private land has received due notice of intention to declare such land an alluvial field, any person may apply to the Minister to be recorded as an applicant for a special licence to mine on the said land, and upon payment of the licence fee of ten shillings the name of such applicant shall be recorded in a list of applicants. In the event of the land in respect of which applications for licences are made not being declared an alluvial field, all licence fees paid in respect of such applications shall be returned on application to the warden.

11. No person, whether his name has been previously recorded or not, will be entitled to receive a special licence unless he has taken out a miner's right.

12. The special licences to be issued for mining on private land declared an alluvial field shall be in the form D in the Appendix hereto.

##### *Issue of Special Licences.*

13. At the hour of 2 o'clock on the afternoon of the day upon which a proclamation declaring any private land an alluvial field is published in the *Government Gazette* a flag will be hoisted at the warden's office, and the warden, or some person authorised by him, will be in attendance at the land proclaimed, for the purpose of issuing special licences to those persons only whose applications have been previously recorded, who must produce their miners' rights. On failure to produce miners' rights licences will be refused.

14. The first licences will be issued to the persons who have, under arrangement with the inspector, prospected the land applied to be declared an alluvial field. Each of such prospectors shall be entitled to two ordinary alluvial claims by virtue of one special licence, provided they make application for the same to the warden within one week after prospecting on the said lands has been discontinued by direction of the inspector; provided also they hand over to the warden the gold, if any, obtained by them from the property.

15. After the granting of the prospectors' licences, licences will be issued in the order in which the applications for the same have been recorded, as provided in regulation 10, and immediately on receipt of the licence the holder will be entitled to select and take possession of the area of declared ground allowed for alluvial claims under the regulations under the Mining Act, which claims must be at once pegged and marked off in the manner prescribed in such regulations.

16. Pegging out of claims will not be allowed after 5 o'clock p.m. on the day of the publication of the proclamation; and on each succeeding day claims may be taken out and pegged off between the hours of 7 o'clock a.m. and 5 o'clock p.m. No pegging will be recognised before the hoisting of the flag as aforesaid.

17. Applicants must be in personal attendance at the warden's office for their licences, and must come forward to receive the same immediately their names are called; any person who does not respond within one minute after his name is called will forfeit his turn, and his licence will not be granted until after the name last on the recorded list has been called.

18. No miners' rights will be issued on the ground on the day of the publication of the proclamation, nor will any rents for claims be received on that day. Special licences will not be granted on that day to other than recorded applicants until after such applicants have received their licences.

*Late Applications for Licences.*

19. When all recorded applicants present have obtained licences, the warden, or other person authorised by him, will receive applications, with fees, and will issue special licences to other persons, duly provided with miners' rights, until the hour of 5 o'clock p.m. on the day of the publication of the proclamation; and on each subsequent working day miners' rights and special licences will be obtainable at the warden's office, in Adelaide, and also at the office on the ground, between the hours of 9.30 o'clock a.m. and 5 o'clock p.m.

*No Person to Peg Off without Special Licence.*

20. No person will be entitled to mine on the field or peg out any claim until he has obtained a special licence, and any person mining on the land or pegging out any claim thereon without a special licence will be liable to a penalty not exceeding twenty pounds.

*Rent to be Paid.*

21. On the day next after the day of the publication of the proclamation each claimholder shall pay to the warden, or other person authorised by him, at his office on the ground, between the hours of 9 o'clock a.m. and noon, his first weekly rent of two shillings in advance, and thereafter on the same day and during the same time in each succeeding week.

22. Any person mining on or occupying any land on the field without having paid his rent will be liable to a penalty not exceeding twenty pounds.

23. Persons who do not obtain licences on the day of the publication of the proclamation must pay the first week's rent with the licence fee, and must thereafter pay the rent on the same day on each following week, at the warden's office on the field.

*Production of Licence, &c.*

24. Any person mining on the field must forthwith produce his licence, miner's right, and receipt for current week's rent, or any of them, to the warden or officer in charge of the field for the time being, if requested to do so, and, in default, shall be liable to have his claim at once forfeited.

*Shafts not to be sunk deeper than 100ft.*

25. No shaft shall be sunk to a greater depth than 100ft. without the written consent of the owner of the land.

*Disputes to be settled by Warden.*

26. Any disputes that arise in pegging out claims or otherwise, shall be settled by the warden, under the regulations under the Mining Act.

PART III.—PEGGING OUT PRIVATE LAND AND COMPULSORY MINING LEASES.

*Pegging Out.*

27. Any holder of a miner's right who desires to obtain a claim on or lease of any private land shall peg out such land as follows:—He shall erect posts, bearing the distinguishing number of the miner's right by virtue whereof the land is pegged out and the date of the pegging out of such land (in clear legible

characters), not less than three inches in diameter and not less than three feet above the ground, to define the boundaries and angles of the land, each post to be fixed at the point of intersection of two trenches cut out in the earth not less than three feet long, one foot wide and six inches deep, cut in the direction of the boundary lines of which the post is intended to form one corner, and to be kept erected until the boundaries of the land are defined by a surveyor.

28. The regulations as to surveys for the time being in force under the Mining Act shall apply to the surveying of private land pegged out under this Act.

*Service of Documents.*

28A. (1) Any document required or allowed to be served under the Mining on Private Property Acts, 1909 and 1916, or under any regulation, may be served personally; or

Inserted by  
regulation  
made 9th  
July, 1919,  
Gazette,  
10th July,  
1919, p. 38.

(a) Where the person upon whom the document is to be served does not reside in the State, by serving such document upon some known agent of such person, or by posting it to such person addressed to his usual place of abode in the said State, or to his last place of abode in the said State known to the person who is required or allowed to serve such document;

(b) Where the residence or address of the person upon whom the document is to be served is unknown to the person who is required or allowed to serve such document, by serving such document upon the occupier of the land in respect of which it is to be served, or, if there is no such occupier, by advertisement published in such newspapers as the Master of the Supreme Court directs:

Provided that if any such document exceeds seventy-two words in length, it shall not be necessary to set it out in any such advertisement, but it shall be sufficient in such advertisement to state the general effect of the document and where it may be inspected.

(2) In this regulation—

“document” includes any summons, order, notice, application, lease, and any other document;

“serve” includes give, tender, and serve;

“serving” includes giving, tendering, and serving; and

“served” includes given, tendered, and served.

*Application for Lease.*

29. Every application for a lease under Part V. of this Act to any owner of private land shall be in the form E in the Appendix hereto, or to the like effect, and the applicant shall deposit a copy of his application with the Mining Registrar.

30. The shape of the land in respect of which the lease is applied for shall, as nearly as circumstances permit, be that of a rectangular parallelogram, the length of the longer sides of which does not exceed twice the length of the shorter sides, and one of the sides shall run as nearly as practicable in a north and south direction, the bearings being magnetic. When regular rectangular areas are not available, owing to the position of adjoining boundaries or natural features, the application may be in respect of any intervening or irregularly-shaped piece or pieces of land not exceeding the prescribed area.

*When Owner Consents to Lease.*

31. If any owner who is willing to grant a mining lease in accordance with the application made to him cannot agree with the applicant as to the terms of the mining lease to be granted, then such lease shall contain all the powers and provisions set out in the form G in the Appendix hereto, and shall be in such form or to the like effect: Provided that if the land intended to be leased is under the provisions of the Real Property Act, then such form may be altered, so as to conform with the requirements of such Act.

32. The notice of abandonment to be given by an applicant for a mining lease who is dissatisfied with the rent assessed by the local court, or who is unwilling to pay compensation pursuant to the order of the local court, shall be in the form H in the Appendix hereto, or to the like effect.

*When Owner Fails to Consent.*

33. If the owner of the land in respect of which the application is made does not, within one month after such application is made, consent in writing to grant the lease, the applicant may give to the Minister a notice of the owner's failure to give such consent. Such notice shall be in the form F in the Appendix hereto, or to the like effect.

34. A lease to be granted, executed, and delivered by the Minister on the failure of the owner to consent to grant the same shall contain all the powers and provisions set out in form G in the Appendix hereto, and shall be in such form or to the like effect: Provided that if the land required to be leased is under the provisions of the Real Property Act, then such form may be altered so as to conform with the requirements of such Act.

*Recovery of Rents and Royalties.*

35. In addition to any other remedy, all rents and royalties reserved in any mining lease of private land, or payable in respect of any metal raised from any such land, may be recovered by distress in the same manner as rent in arrear is recoverable under an ordinary lease.

## PART IV.—MISCELLANEOUS.

*Proceedings in Local Court.*

36. All matters which by this Act are to be determined by a local court of full jurisdiction shall be commenced by an application in writing, intituled "In the matter of 'The Mining on Private Property Act, 1909,'" and shall be signed by the applicant or his solicitor or agent.

37. The application shall state in a clear and concise manner the nature and object thereof, and shall be left at the office of the clerk of the local court in which such application is to be made, with as many copies thereof as there are persons to be served therewith.

38. The clerk of such court shall fix a day for the hearing of the application, and forthwith post a copy of the application, together with a notice of the day fixed for the hearing, to each party to be served therewith.

39. The day fixed for the hearing shall be the day when the next court of full jurisdiction will be held after the expiration of ten days from the posting of such notice, provided that the court may adjourn the hearing from time to time, as it deems fit.

40. The hearing of the application shall, as nearly as possible, be conducted in the same manner as ordinary trials in local courts in their full jurisdiction.

*Costs.*

41. The costs of and incidental to all matters and things under this Act shall be in the discretion of the court or other tribunal by which the same is heard or determined, and any costs awarded by any court or tribunal may be recovered in the same manner as costs awarded by such court or tribunal are generally recovered.

*False Declarations.*

42. If any person knowingly makes a false declaration concerning or in any matter or thing done, or any proceedings taken, under or in pursuance of this Act, he shall be deemed guilty of perjury, and may be proceeded against and punished accordingly.

## APPENDIX TO THE SECOND SCHEDULE.

## A.

## FORM OF APPLICATION TO MINISTER FOR RESUMPTION OF PRIVATE LAND.

"The Mining on Private Property Act, 1909."

To the Minister of Mines.

I, A.B., of [address and occupation] do hereby request that all that piece of land being [here insert a full description of the land] and now in the occupation of [here insert name of occupier] be resumed for mining purposes, and that a report by an inspector pursuant to the said Act be obtained.

Dated this                      day of                      19                      .

[Signature of Applicant.]

B.

NOTICE TO OCCUPIER OF VISIT OF INSPECTOR.

“The Mining on Private Property Act, 1909.”

To [name and description of occupier in full].

I hereby give you notice that [name of inspector] is authorised to enter upon and to examine and report upon the land occupied by you being [insert description of land as in application], and that the day fixed for the examination is the

day of , 19 .  
Dated this day of , 19 .  
, Minister of Mines.

C.

NOTICE TO OWNER AND OCCUPIER OF INTENDED PROVISIONAL RESUMPTION.

“The Mining on Private Property Act, 1909.”

To [name of occupier or owner].

I hereby give you notice that [name of inspector], the inspector appointed under this Act to examine and report upon [here insert description of land as in application], has examined the same, and has certified that he is of opinion that payable (reef metal, or alluvial metal, as the case may be) exists on the said land, and that such land should be resumed for the purpose of mining, and that it is my intention to (provisionally resume the ownership of such land on behalf of the Crown for mining purposes, or declare such land to be an alluvial field, as the case may be).

A copy of the inspector's report is herewith.

day of , 19 .  
Dated this day of , 19 .  
, Minister of Mines.

D.

SOUTH [Royal Arms] AUSTRALIA.

“The Mining on Private Property Act, 1909.”

No.

Date

SPECIAL LICENCE.

A.B., of [address and occupation], is hereby licensed for twelve months from this date, and no longer, to dig, search for, and remove metals, minerals, and metalliferous ores from the land proclaimed on the day of , 19 , as an alluvial field, being [here describe the land].

Fee paid, 10s.

, Minister of Mines.

E.

FORM OF APPLICATION FOR MINING LEASE.

“The Mining on Private Property Act, 1909.”

To [name and address of owner].

I, [name of applicant, address, and occupation], hereby request that you will grant me, in accordance with “The Mining on Private Property Act, 1909,” a gold or mineral (as the case may be) lease of [describe particularly the portion of land required], which said piece of land contains [area as nearly as possible], and is roughly delineated in the plan hereto annexed. And I hereby give you notice that I will execute such mining lease upon such terms as shall be agreed upon, or upon the basis mentioned in the said Act.

day of , 19 .  
Dated this day of , 19 .  
[Signature of Applicant.]

[Note.—Annex a sketch showing roughly the portion and shape of the land required.]

## F.

NOTICE BY APPLICANT OF FAILURE OF OWNER TO CONSENT TO  
GRANT LEASE.

"The Mining on Private Property Act, 1909."

To the Minister of Mines.

I, [here state the name of applicant, address, and occupation], hereby give you notice that on the                      day of                      , 19                      , I applied, in accordance with "The Mining on Private Property Act, 1909," to [name and address of person to whom application was made], for a gold or mineral (as the case may be) lease of [here shortly describe land], and that the said [name] has failed to consent in writing to grant me such lease; and I hereby request that a report by an inspector, pursuant to the said Act, be obtained.

Dated this                      day of                      , 19                      .  
[Signature of Applicant.]

## G.

## FORM OF LEASE.

"The Mining on Private Property Act, 1909."

This Indenture made the                      day of                      one thousand nine hundred and                      between A.B. of                      in the State of South Australia (who and his heirs executors administrators and assigns are hereinafter called the lessor) of the one part and C.D. of                      in the said State (who and his executors administrators and assigns are hereinafter called the lessee) of the other part Witnesseth that in consideration of the rent and royalties hereinafter reserved and made payable and of the covenants conditions and agreements hereinafter contained the lessor doth demise and lease unto the lessee all that [here describe land with a convenient right-of-way if same is necessary] for the purpose of mining for [metals minerals and metalliferous ores of all kinds or metals minerals and metalliferous ores of all kinds except gold as the case may be] Together with liberty for the lessee and                      agents and workmen in and upon the said land to construct races drains dams reservoirs roads and tramways and to dig sink drive make and use all such pits shafts levels watercourses and other works as it may be necessary to use in finding seeking for winning working and obtaining the said metals minerals and ores therein contained and also to appropriate and use such part of the said lands either underground or on the surface as may be requisite as well for placing and heaping the waste refuse and rubbish which may be worked therewith from time to time as for washing and obtaining such metals minerals and ores and for effectually separating from them all the substances mixed with them and for the purposes aforesaid to erect make and employ all such are steam water or other engines buildings smelting works furnaces workmen's houses shops crushing-mills sheds or hovels machinery and works as may be proper and reasonable for the purposes aforesaid [If a mineral lease insert— Excepting to the lessor all gold and gold-bearing minerals and ores with liberty of ingress egress and regress to and for the lessor and all other persons authorised by                      with or without horses carts and carriages into over and upon the said lands to dig try search and work for gold and gold-bearing minerals and ores and to take the same from the said lands and also to do all such other works upon the said lands as shall be necessary in and about the premises] To have and to hold the said land and premises with their appurtenances [If a mineral lease insert—except as aforesaid] unto the lessee from the day of                      one thousand nine hundred and                      for and during the term of twenty-eight (28) years thence next ensuing Yielding and paying therefor yearly and every year unto the lessor a yearly rental [here state amount and manner of payment of rent] And also a further sum or royalty of Two Pounds and Ten Shillings per centum on the gross amount of metals minerals and ores to be raised from the said land and premises and which said sum or royalty shall be payable at the times and in manner hereinafter mentioned And the lessee hereby covenants with the lessor that the lessee will during the said term pay or cause to be paid to the lessor (or in case the lease is executed by the Minister of Mines to the Minister of Mines until these presents shall be ratified by the lessor and from and after such ratification to the lessor) the said rent and royalty hereby reserved at the times and in manner

herein appointed for payment thereof And also will pay and discharge all taxes rates and outgoings whatsoever to become due in respect of the said premises And will not during the continuance of the said term use the said land for any other purpose than for the purpose of mining as aforesaid and other purposes connected therewith And will during the continuance of the said term hereby granted work and carry on such mining operations in a skilful and workmanlike manner and according to "The Mining on Private Property Act, 1909" and any regulations under the said Act in every respect And will crush refine wash or otherwise in a miner-like manner treat and render marketable all such metals minerals and ores therein contained And that it shall be lawful for the lessor or agents and workmen at all reasonable times during the said term without any interruption from the lessee or agents servants or workmen to enter into and upon the premises and into and upon any mines or works that may be found therein to view and examine the conditions thereof and whether the same are worked in a proper skilful and workmanlike manner and for such purposes to make use of any of the tramways other roads or ways machinery and works belonging to such mines and premises And that the lessee shall effectually assist the lessor agents servants and workmen in descending any pits and shafts and entering into inspecting and examining the said mines and works and in returning to the surface And that the lessee shall also properly secure and keep open with timber stone or other durable means the pits and shafts to be sunk or made on the said lands or premises and make and maintain sufficient walls and fences around all such pits and shafts for the protection of all persons and so as to effectually prevent access thereto by all kinds of cattle And that the lessee will not at any time during the continuance of the said term place or leave any waste or dead heaps of refuse or rubbish which may be brought out of the said mines near to any river brook or channel of water whereby such waste or dead heaps refuse or rubbish may reasonably be supposed to be liable to be disturbed or carried away by floods or other natural causes And that the lessee will at all times during the continuance of the said term keep and preserve the said land mines and premises from all unnecessary injury and damage and all the levels drifts shafts pits pumps watercourses races drains dams reservoirs roads tramways buildings houses erections sheds washing-places puddles and other conveniences in good order repair and condition and in such state and condition at the end or other sooner determination of the said term deliver peaceable possession thereof And also will during at least eight months during every year of the said term employ and keep employed at least *[if a gold lease one man for every five acres of the land hereby demised or if a mineral lease one man for every ten acres of the land hereby demised]* in mining upon the said land and in searching for or raising metals minerals and ores as aforesaid And shall preserve from injury by cattle or otherwise all timber and timber-like trees growing on the said land and premises and will not fell cut or destroy the same without the consent in writing of the lessor for that purpose first had and obtained And also shall at all times during the said term keep or cause to be kept correct and proper books of account which shall contain accurate entries of the quantity of metals minerals and ores as aforesaid raised from the said mines during the said term and particulars of all sales made in respect of the same for the purpose of ascertaining the royalties payable under these presents And the lessee shall half-yearly on the day of and the day of in each and every year deliver to the lessor or agent correct extracts from the said books of account for the purpose of showing what royalties are payable for the preceding half-year and shall if required by the lessor verify such extracts by a declaration before a Justice of the Peace And shall pay to the lessor the royalties at the rate aforesaid which shall be due up to the date of furnishing the extracts aforesaid And in default of such payment the said royalties shall be recoverable in the same manner as rent in arrear Provided that the lessee shall permit the lessor or agent at all reasonable times to inspect the said books of account and take extracts therefrom And it is hereby declared that if the rents and royalties hereby reserved or any of them or any part or parts thereof shall not be paid at the times and in manner hereinbefore mentioned for payment thereof the lessor may in every such case enter into and upon the mines and premises hereby demised or any lands which shall for the time being be possessed or occupied by the lessee for the purpose of these presents and may distrain all or any of the metals minerals ores as aforesaid and all or any of the horses engines wheels trams whimses tools implements machines and all other goods and chattels of what nature and kind soever which may be found in or upon the said land and the same may take lead drive away and impound keep or otherwise demean therein according to law until the rent and royalties which shall then be due and all costs and

expenses occasioned by the non-payment thereof and such distress shall be fully paid and satisfied And also that if any rent or royalty hereby reserved or any part or parts thereof shall be unpaid for the space of twenty-one days next after the day whereon the same ought to be paid as aforesaid whether the same shall have been legally demanded or not or if the lessee shall commit any breach of the covenants and conditions contained in this lease and on part to be observed and performed or any of them then and in any such case it shall be lawful for the lessor at any time thereafter into and upon the mines and premises hereby demised or any part thereof in the name of the whole to re-enter and the same to have again re-possess and enjoy as of former estate And that the lessee shall be at liberty to determine these presents by giving to the lessor or agent three calendar months' notice in writing to expire on any of the days hereinbefore appointed for the payment of the rent hereby reserved of desire or intention so to do and shall also have power to remove all machinery from the said land and premises prior to the expiration of such notice And the lessor covenants with the lessee that the lessee paying the rents and royalties hereby reserved and observing and performing the covenants provisos conditions and restrictions herein contained and on part to be observed and performed shall peaceably and quietly hold and enjoy the mines and premises hereby demised for and during the term hereby granted without any lawful interruption from or by the lessor or any person lawfully claiming from or under In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year firstly before written.

Signed sealed and delivered by the lessor (or  
by the Minister in the name and on behalf  
of the lessor) in the presence of

Signed sealed and delivered by the lessee in  
the presence of

Sec. 32.

H.

#### NOTICE ABANDONING CLAIM TO LEASE.

“The Mining on Private Property Act, 1909.”

To [*name and address of owner*].

I, A.B. [*address and occupation*], hereby give you notice that I abandon my claim to a mining lease of the land referred to in my application, being [*here shortly describe land*].

Dated this

day of

, 19 .

[*Signature of Applicant.*]

MINISTERS OF THE CROWN

see Constitution.

MINOR INDICTABLE OFFENCES

see Justices.