

## MINING ACT AMENDMENT ACT, 1931.

### No. 2004 of 1931.

An Act to repeal the Mining on Private Property Acts, 1909 and 1916, and to amend the Mining Act, 1930.

[Assented to 6th August, 1931.]

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

1. (1) This Act may be cited as the "Mining Act Amendment Act, 1931."

Short titles.  
Of U.K.  
13 & 14  
Geo. 5 c. 20.

(2) The Mining Act, 1930 (which is hereinafter referred to as "the principal Act"), and this Act may be cited together as the "Mining Acts, 1930 and 1931."

2. The Mining on Private Property Act, 1909, and the Mining on Private Property Act Amendment Act, 1916, are hereby repealed.

Repeal of 992,  
1909, and  
1267, 1916

3. This Act is incorporated with the principal Act, and that Act and this Act shall be read as one Act.

Incorporation.

4. Section 3 of the principal Act is amended by inserting therein after the fourteenth line thereof the words:—

Amendment  
of principal  
Act, s. 3—  
Arrangement.

### PART IIIA.—MINING ON PRIVATE LAND.

5. Section 4 of the principal Act is amended—

Amendment of  
principal  
Act, s. 4—  
Interpretation.

(a) by inserting therein after the definition of "oil" the following definition:—

"owner" includes mortgagee in possession, lessee, trustee, guardian, and committee:

s. 2. S. 12 of this Act provides that, after 30th June, 1936, the Mining on Private Property Acts, 1909 and 1916, shall be deemed to be revived. S. 12 also provides that, except ss. 1, 8 and 10, and subject to other exceptions mentioned in s. 12, the provisions of this Act shall cease to have effect upon 30th June, 1936.

(b) by inserting therein after the definition of “precious stones” therein the following definition:—

“private land” means any land the metals, minerals, precious stones, salt, gypsum, coal, shale, or oil on or under which are alienated from the Crown by grant in fee simple:

Amendment of  
principal Act,  
s. 5—  
Application of  
Act.

6. Section 5 of the principal Act is amended by adding at the end thereof the words “and to private lands as provided by Part IIIA.”

Amendment of  
principal Act,  
s. 27—  
Claims.

7. Section 27 of the principal Act is amended by inserting after the word “Crown” in the third line thereof the words “or as provided by Part IIIA.”

Amendment of  
principal Act,  
s. 33.

8. Section 33 of the principal Act is amended by adding at the end thereof the following passage:—

If any such municipal corporation or district council refuses its consent to any person to prospect or mine as aforesaid, the said person may apply to a warden for consent to prospect or mine as aforesaid. The warden may in his discretion grant any such application, in which case the applicant may prospect or mine as aforesaid without the consent of the municipal corporation or district council.

Amendment of  
principal  
Act—

9. The principal Act is amended by inserting therein after Part III. the following new Part:—

#### PART IIIA.

##### MINING ON PRIVATE LAND.

Cf. U.K.  
13 & 14  
Geo. 5 c. 20.

Application of  
Part.

69A. (1) This Part shall apply to all private lands in the State except—

(a) land exempted pursuant to section 69B; and

(b) land declared by the Governor by proclamation to be land to which this Part shall not apply.

(2) The Governor may make any such proclamation as aforesaid and may by proclamation revoke or alter any such proclamation.

S. 9. LANE V. SYMONDS (1932) S.A.S.R. 439. Held that private lands, alienated in fee simple from the Crown, and under the provisions of The Real Property Act, 1886, are subject to the provisions of this Act, and the Mining Act, 1930, if not within the exceptions comprised in such Acts. Held also that the meaning of the words “all private lands in the State” in s. 69A is not restricted by ss. 6 and 10 of The Real Property Act, 1886.

69AA. Nothing in this Act shall apply to any sand, gravel, stone, or shell in or upon any private lands in any case where the sand, gravel, stone, or shell has been alienated from the Crown, and no right of mining over any such sand, gravel, stone, or shell shall be conferred pursuant to this Act.

Non-applica-  
tion of  
Act to sand,  
gravel, stone,  
and shell on  
private  
lands.

69B. (1) The following private lands shall be exempted from the operation of this Part, namely:—

Exemption  
of certain  
lands.

- i. Land lawfully and *bona fide* used as a garden, orchard, or vineyard:
- ii. Any church, chapel, or schoolhouse, college, hospital, or asylum, and any ground enclosing the same and occupied therewith:
- 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:
- iv. Any land of less area than half an acre within any city, town, or township:
- v. Any land within one hundred and fifty yards of any artificial well, reservoir, or dam, or of any dwelling-house, factory, or building, in any case in which the well, reservoir, dam, dwelling-house, factory, or building is not of less value than fifty pounds:
- vi. Any land within one hundred yards of any spring, watering trough, or artificial watering place which is habitually used for stock.

(2) Any such exemption as referred to in subdivisions i., iv., or v. of subsection (1) hereof shall cease upon payment of compensation for loss resulting from the cesser of the exemption to the owner of the private land, the said compensation to be determined by arbitration in the prescribed manner. The person desiring the cesser of the exemption and the owner of the land shall be deemed parties to a submission to such arbitration. Any such exemption as is referred to in subdivision vi. of subsection (1) hereof shall cease upon the granting of a certificate in writing by a warden and shall cease to the extent therein specified. Any such certificate may be granted upon such conditions as the warden thinks fit and no such cesser or partial cesser shall be deemed in any way to affect the operation of section 69E.

Of. U.K.  
13 & 14  
Geo. 5 c. 20.  
s. 9.

(3) Subject to any rights of prospecting, mining, or occupation conferred pursuant to this Part, nothing in this Part shall be deemed to debar the person in whom, but for this Part, the ownership of any substances in or upon any private land would be vested, from carrying out otherwise than pursuant to this Act any mining operations upon the said land or causing the same to be so carried out; and private land upon which mining is carried on otherwise than pursuant to this Act shall be exempt from the operations of this Part for so long as the said land is 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, and for a further period of one month after mining as aforesaid ceases to be carried on. Any dispute as to whether this subsection applies to any private land shall be heard and determined by a warden. The provisions of Part II. shall apply to every such dispute and hearing.

Opening of  
private land  
to mining.

69c. Subject to this Part, all the provisions of this Act, except Divisions III., VIII., and IX. of Part III. and Parts VII. and VIII. shall apply to private land to which this Part applies, and all such private land shall, subject as aforesaid, be open to mining as if the same were mineral lands.

Authority to  
enter.  
Cf. U.K.  
24 & 25  
Geo. 5 c. 36,  
s. 2.

69d. (1) No person shall enter upon any private land to which this Part applies for any mining purpose unless he has an authority to do so pursuant to this section.

(2) Any person desiring to enter as aforesaid may obtain the written authority of the occupier of the private land and may thereupon enter upon the land. Within seven days after entering as aforesaid the said person shall give to the registrar of the Department of Mines at Adelaide notice in writing of the granting of the authority and the entry.

(3) If any person desiring to enter as aforesaid does not obtain the consent as aforesaid of the occupier of the private land, such person may make application to a warden for an authority to enter upon the said land.

(4) The warden shall give notice of the application to the occupier of the land. The notice may be given by post.

(5) Upon the expiration of fourteen days after the sending of the notice the warden may, upon considering any representations made to him by the occupier of the land, issue to the applicant an authority to enter the said

private land. If the warden is satisfied that there is no occupier of the private land he may issue an authority without giving notice as aforesaid.

Any such authority may be cancelled at any time by a warden. Except as hereinafter provided, upon such cancellation the authority to enter and remain upon the land and every right of prospecting, mining, and occupation in respect of any land comprised in such authority and held by the person named in the authority shall be absolutely determined, but no such cancellation shall have application to or affect any mining lease of any land comprised in such authority and granted to the person named in the authority.

(6) In the exercise of his powers under this section the warden may have regard to the following matters:—

- I. The character of the applicant, and in the case of a person holding an authority, the character of such person and his conduct in the exercise of any rights or powers under the authority:
- II. Whether in the opinion of the warden, there are no substances in payable quantities capable of being mined on the private land in question.

Any person who—

(a) is the owner or occupier of any land to which any authority applies; or

(b) is the holder of or an applicant for any authority,

may within one month of the giving of any decision by a warden granting or cancelling any authority or refusing to grant or cancel any authority, apply by summons to a judge of the Supreme Court for an order directing the warden to grant or cancel the authority, as the case may be, and the judge may make such order as to him shall seem just in the circumstances.

(7) Entry without authority as aforesaid shall be deemed to be unlawful.

(8) Nothing in this section and no authority issued pursuant to this section shall relieve any person from any obligation to comply with the provisions of the Act relating to the acquisition of any right of prospecting, mining, or occupation, or any other provision of this Act.

69E. Where damage is sustained by the owner, lessee, or purchaser of any private land through any person or his servant or agent entering thereon pursuant to the

Compensation for damages.

provisions of this Part, and searching for, mining or removing metals, minerals, precious stones, salt, gypsum, coal, shale, or oil, compensation shall be made to the owner, lessee, or purchaser by such person for the damage so sustained, and in any such case the provisions of subsection (2) of section 56 of the Crown Lands Act, 1929, shall apply.

Royalty from  
claims on  
private land,  
and from  
search  
licences and  
permits.

69F. (1) There shall be payable to the Minister by the owner of every claim under Division II. of Part III. on private land to which this Act applies a sum amounting to one per centum of the gross amount obtained from the occupation and working of the land comprised in the claim and the sale of the substances mined thereon.

(2) There shall be payable to the Minister by every licensee under Part V. and every holder of a permit under Part VI. issued in respect of any private land to which this Part applies a sum amounting to one per centum of the gross amount obtained from the sale of any substance mined thereon pursuant to the licence or permit, as the case may be.

(3) In addition to the annual rent, there shall be payable to the Minister by every lessee under any mining lease of private land to which this Part applies, a further sum amounting to one per centum of the gross amount obtained from the occupation and working of the land comprised in the lease and the sale of the substances mined thereon or obtained therefrom. No other amounts shall be payable as royalty under any such mining lease.

Payment of  
royalty to  
owner.

69G. All amounts payable as royalty pursuant to section 69F shall, after the deduction therefrom by the Minister of one-tenth thereof, be paid by the Minister to the person in whom, but for this Part, the ownership of the substances mined would be vested.

Rental of  
mining leases  
of private  
lands.

69H. (1) Notwithstanding the provisions of Part III. the annual rental payable under a gold lease or a mineral lease of private land to which this Part applies shall be one pound per acre, and the annual rental payable under any other mining lease of any such private land shall be at least one pound per acre.

(2) All amounts received by the Minister as rent payable under any mining lease of any such private land or as fees payable under any search licence or permit to prospect for oil in respect of any such land shall, after

the deduction of one-twentieth thereof, be paid by the Minister to the owner of the land.

69i. Upon the discovery in any private land of gold in such quantities as the Minister considers payable, the Governor may resume for mining so much of such land as he may consider necessary. But no such resumption shall be made of land occupied for the time being under any mining lease unless with the consent of the lessee and the persons entitled to the rental and royalties payable thereunder, and no such resumption shall be made of land which is exempted from the operation of this Part pursuant to subsection (3) of section 69b.

Resumption  
of private  
lands.

69j. Every such resumption shall be notified in the *Gazette*, and in some newspaper published or circulating in the district in which such land is situated, and shall take effect at the date specified for that purpose in the said notification, and such land shall thereupon vest in His Majesty and become Crown land within the meaning of this Act, and shall be reserved from sale and from lease for other than mining purposes until such reservation is revoked by the Governor.

Resumption  
to be  
notified.

Copies of all such notifications, together with the reasons for the resumption therein notified, shall be laid upon the tables of both Houses of Parliament forthwith if Parliament is then sitting, and if not, then within fourteen days after the commencement of the next session thereof.

69k. When any land is resumed under this Part, the Minister shall pay compensation therefor, which shall be assessed as provided by the Compulsory Acquisition of Land Act, 1925, but the land shall vest as provided in section 69j, and the compensation shall, failing agreement between the parties, be recoverable as if it were a disputed claim for compensation. The provisions of the said Act shall apply accordingly, but—

Compensa-  
tion.

- (a) in assessing the amount of compensation payable, regard shall not be had to any increase in value of the land resumed by reason of the discovery of gold thereon; and
- (b) the value of the land shall be taken to be its value at the date of the publication in the *Gazette* of the notification of resumption as provided in section 69j.

Amendment  
of principal  
Act, s. 104—  
Drainage  
licences.

**10.** Section 104 of the principal Act is amended by striking out the words “forty-two” in the third line thereof and by inserting in lieu thereof the words “twenty-one.”

Amendment of  
principal Act,  
s. 14—  
Regulations.

**11.** Section 141 of the principal Act is amended by inserting therein after paragraph xxi. therein the following paragraph:—

xxia. For carrying out the provisions of Part IIIA:

Limits of  
operation of  
Act.

**12.** All the provisions of this Act, except sections 1, 8, and 10, shall cease to have effect upon the thirtieth day of June, nineteen hundred and thirty-six, and after that date the provisions of the Mining on Private Property Acts, 1909 and 1916, shall be deemed to be revived, and shall continue in full force and effect in place of the provisions of this Act so ceasing to have effect: Provided, however, that the said provisions of this Act shall be deemed to continue in full force and effect with respect to—

(a) every mining lease, claim, licence, or permit issued with respect to any private lands pursuant to the said provisions and in force on the said thirtieth day of June, nineteen hundred and thirty-six; and

(b) to all land comprised in any such mining lease, claim, licence, or permit,

for so long as the said mining lease, claim, licence, or permit, or any renewal thereof, shall continue and until the same is determined.