

STATE COAL MINES (AMENDMENT) ACT.

Act No. 34, 1951.

An Act to enable permissive occupancies of the ^{George VI.}
^{No. 34, 1951.} Oakdale State Coal Mine to be granted; for
this purpose to amend the State Coal Mines
Act, 1912-1948; and for purposes connected
therewith. [Assented to, 27th November,
1951.]

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

1. (1) This Act may be cited as the "State Coal Mines <sup>Short title
and
citation.</sup>
(Amendment) Act, 1951."

(2)

No. 34, 1951.

(2) The State Coal Mines Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the State Coal Mines Act, 1912-1951.

Amendment
of Act No.
70, 1912.

New sec.
12A.

Permissive
occupancies
of Oakdale
State Coal
Mine.

2. The State Coal Mines Act, 1912-1948, is amended—

(a) by inserting next after section twelve the following new section:—

12A. (1) Notwithstanding the provisions of this Act, the Governor may on the recommendation of the Minister grant a permissive occupancy or occupancies of any part or parts of the land described in the First Schedule to this Act to any person for any or all of the following purposes, that is to say:—the winning, working, getting, raising and disposal of coal from such land and purposes incidental thereto and developing the Oakdale State Coal Mine.

Any such permissive occupancy granted to Coal Rights Proprietary Limited shall be granted subject to conditions substantially in accordance with and conforming generally to the conditions contained in the Second Schedule to this Act.

Any permissive occupancy granted to any person other than Coal Rights Proprietary Limited shall be granted subject to such conditions as the Governor may deem expedient. Such conditions shall so far as is practicable and the circumstances permit be substantially in accordance with the relevant conditions contained in the Second Schedule to this Act.

(2) (a) The Governor and any person to whom a permissive occupancy has been granted in accordance with the provisions of subsection one of this section may agree to any variation or amendment of the conditions of such permissive occupancy.

(b) Any such permissive occupancy may be determined or terminated in accordance with the conditions of such permissive occupancy.

(c)

(c) No such permissive occupancy shall be assigned, underlet or otherwise dealt with except in accordance with the conditions of such permissive occupancy. No. 34, 1951.

(3) The provisions of sections 14B and fifteen of this Act shall not apply to or in respect of any land being worked by any person under a permissive occupancy granted in accordance with the provisions of subsection one of this section.

(4) All acts, matters or things for or with respect to which provision is made in any such permissive occupancy, or which, by such permissive occupancy, are agreed, directed, authorised or permitted to be made, done or executed by or on behalf of His Majesty, the Governor, the Minister, the Authority or any other person are hereby sanctioned, authorised and confirmed.

(5) Such of the conditions to which any permissive occupancy granted in accordance with the provisions of subsection one of this section is subject and which require or prescribe any act or thing to be done or not to be done by the person to whom such permissive occupancy has been granted shall in addition to being read and construed as conditions of such permissive occupancy also be read and construed as agreements whereby such person covenants with His Majesty His Heirs and Successors and with the Authority and as a separate covenant with each of them to observe and perform such conditions.

(6) The person to whom any permissive occupancy has been granted in accordance with the provisions of subsection one of this section shall—

(a) be deemed to be the owner of a mine for the purposes of the Coal Mines Regulation Act, 1912-1947, the Mines Rescue Act, 1925, and the Coal and Oil Shale

No. 34, 1951.

Shale Mine Workers (Superannuation) Act, 1941-1950, or any Act amending any such Acts;

(b) from time to time upon demand pay to the Authority an amount equivalent to the amount payable by the Authority to the Commonwealth under section five of the Coal Mining Industry Long Service Leave Act, 1950-1951, in respect of coal produced by such person at the Oakdale State Coal Mine.

New
Schedules.

(b) by inserting at the end thereof the following new Schedules:—

Sec. 12A.

FIRST SCHEDULE.

All those pieces or parcels of land known as the Oakdale State Coal Mine embracing an area of about 9,300 acres within the Parishes of Burratorang and Werribee, County of Camden, Land District of Picton, Wollondilly Shire, vested in the State Coal Mines Control Board in accordance with the provisions of subsection one of section 15 of the State Coal Mines Act, 1912-1942, by notification published in the Government Gazette No. 150 of 26th November, 1948, control of which under the name of the Burratorang State Coal Mine was vested in the State Mines Control Authority by notification published in the Government Gazette No. 99 of 23rd June, 1950, being the Crown lands within the following boundaries: Commencing at the south-western corner of portion ML. 3, Parish of Burratorang; and bounded thence by portions ML. 8, ML. 2 and 37, Parish of Burratorang, to the south-western corner of portion ML. 4, Parish of Werribee; thence by the western boundaries of the latter portion and of portions ML. 1 and ML. 8 to the south-western corner of portion 50, Parish of Werribee; by that portion, portions 101, 11, 42 and 4 to a point due west of the north-western corner of portion ML. 10, Parish of Werribee; by a line, the northern and an eastern boundary of that portion, part of the northern and part of the eastern boundaries of portion ML. 11 and the northern and eastern boundaries of portion ML. 12 to the northern boundary of portion 54, Parish of Werribee; by that portion, portions 53, 52, 51 and 57, Parish of Werribee, part of the western boundary of Reserve 51,860 from Sale for Quarry, and portions 154, 42, 84, 13, 152, 151 and 169, Parish of Burratorang, to the south-eastern corner of portion ML. 5; thence by the southern boundaries of that portion and of portions ML. 4 and ML. 3 to the point of commencement.

SECOND

SECOND SCHEDULE.

No. 34, 1951.

Conditions of Permissive Occupancy to Coal Rights Pty. Ltd. Sec. 12A.

1.—In these conditions unless the context otherwise requires the singular includes the plural and vice versa and the following expressions shall have the meanings set opposite thereto respectively:—

“Authority” means the State Mines Control Authority.

“Minister” means the Minister for Mines of the State of New South Wales and his successors in office.

“Month” means calendar month.

“Occupier” means Coal Rights Pty. Ltd.

“The Occupier’s Mine” means the Wollondilly Extended Colliery worked by the Occupier and which adjoins the State Mine.

“The State Mine” means the Oakdale State Coal Mine.

2.—The Occupier shall search for and raise coal in and under the State Mine upon and subject to the conditions hereinafter contained and shall also carry out such developmental work as the Authority may from time to time direct in accordance with such conditions.

3.—The Occupier shall work and get coal in and under the State Mine by means only of underground workings through the Occupier’s Mine and shall bring such coal to the surface only through the tunnels or adits used for the purposes of the Occupier’s mine and the Occupier unless so directed by the Authority shall make no adits or other openings on the State Mine nor shall it carry on any surface operations on the State Mine.

4.—(a) Subject to the provisions hereinafter in this Clause contained the Occupier shall during the continuance of the permissive occupancy work and develop the State Mine in accordance with the instructions from time to time given to it by the Authority.

(b) The developmental works which the Occupier may be directed to carry out by the Authority shall be substantially those shown in the Preliminary Mine Working Plan prepared by the Authority for the land subject to the permissive occupancy and catalogued as Z190 in the office of the Authority, but it is to be distinctly understood that such plan does not purport to be a final plan but merely a plan to show in general principle what is intended.

(c) In addition to the working of coal in the carrying out of developmental works as aforesaid the Occupier shall be permitted to work the coal in the approximate areas shown in the said Preliminary Mine Working Plan, but the Authority shall have the right to determine when and the order in which such areas shall be worked.

(d) The general method of working and the development of the State Mine shall so far as the Authority considers possible be determined by the Authority in consultation with the Occupier.

(e)

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(e) In making any determination or giving any instruction under the provisions of this Clause the Authority shall take into account the obligations which have been imposed upon the Occupier under Clause 7 of these Conditions.

(f) In the event of any dispute arising between the Authority and the Occupier under the foregoing provisions of this Clause the matter shall be referred to the Minister whose decision shall be final for the purpose of this Clause; but a decision of the Minister under this Clause shall not be conclusive in any case where neglect or failure to comply with an instruction of the Authority given under this Clause is relied upon as a ground for determination of the permissive occupancy under Clause 11.

**Occupier
to work
State Mine
in best and
most
effectual
manner.**

5.—Subject always to the provisions of Clause 4 of these Conditions the Occupier shall observe and perform the following provisions of this Clause in the working and development of the State Mine:—

- (a) The Occupier shall upon and during all lawful working days except when prevented by any cause beyond its control (including without restricting the generality thereof inevitable accident industrial dispute or disturbance or Governmental interference) or during the execution of repairs, work and develop the State Mine and get and raise coal therefrom in the best and most effectual manner and to the best advantage without interruption.
- (b) The Occupier shall at all times effectually drain that part or those parts of the State Mine upon which the Occupier has carried out or is carrying out any work (including developmental work) and pump all water likely to cause injury thereto or which would prevent or interfere with the working thereof and if such part or parts of the State Mine shall be affected or be liable to be affected by the same flow or body of water as any other mine or mines contiguous thereto shall if and whenever requested so to do contribute with the lessee or lessees or owner or owners of such other mine or mines a reasonable proportion of the machinery and labour necessary to free and keep such mine or mines free from water to a workable extent or if such part or parts of the State Mine shall be kept free from water to a workable extent either wholly or partially by means of the machinery and labour of a contiguous mine or mines or by reason of any works constructed or money expended by the lessee or lessees owner or owners of such contiguous mine or mines—then shall pay to such lessee or lessees owner or owners as aforesaid a reasonable proportion of the cost of such machinery labour or works or a reasonable proportion of the money so expended and the Minister may if and whenever he shall think fit depute some efficient person who shall have access to and inspection of all such mines to determine when such part or parts of the State Mine is so freed or kept wholly or partially free from water and what are

**Drainage
of
State Mine.**

are the reasonable proportions of such expenses aforesaid **No. 34, 1951.**
and to whom and when the same are to be paid—such
decision to be final and conclusive on all parties.

(c) The Occupier shall make such provision for the disposal of the detritus dirt waste or refuse of that part or those parts of the State Mine upon which the Occupier has carried out or is carrying out any work (including developmental work) that the same shall not be an inconvenience nuisance or obstruction to any roadway river creek private or Crown lands or in any manner occasion any public or private damage or inconvenience. Disposal of the detritus dirt waste or refuse.

(d) The Occupier shall as often as required so to do make Plans and deliver to the Minister or any officer appointed or instructed to collect obtain or receive the same all such true and proper plans and sections returns and statistics of the workings and operations of the Occupier in and upon the State Mine made up to the last day of the preceding month (the truth and accuracy of which shall be verified by the statutory declaration of the manager or other officer of the Occupier having the charge control and direction of the works of the Occupier in and upon the State Mine) as the Minister shall from time to time direct. And shall and will whenever required by the Minister so to do deliver to any officer appointed or instructed as aforesaid samples of the minerals metals and ores or any of them found in or upon the State Mine. Plans Returns and Statistics required by Minister.

(e) The Occupier shall make proper and reasonable compensation to the occupier or occupiers lessee or lessees from the Crown of any adjoining land in respect of any damage which may be sustained by him or them by reason of the working by the Occupier of the State Mine or the carrying on by the Occupier of the works thereof or connected therewith such compensation to be determined by the Minister or by some person authorised by him so to do. Compensation to occupiers of adjoining lands.

(f) The Occupier shall at all times keep and preserve that part or those parts of the State Mine upon which the Occupier has carried out or is carrying out any work (including developmental work) from all avoidable injury or damage and also the levels drifts shafts watercourses roads ways works erections and fixtures therein and thereon in good repair and condition. Occupier to keep in good repair.

(g) His Majesty His Heirs and Successors and the Authority without compensation to the Occupier may make and use in on or under the State Mine any levels drifts leads shafts watercourses adits roads ways and passages for freeing and keeping free any part or parts of the State Mine or any other lands or mines from water or for conveying water to any other lands or mines for mining purposes or for supplying any part or parts of the State Mine or any other mines. Right of His Majesty to make and use levels drifts etcetera.

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mines with fresh air or for effectually working any part or parts of the State Mine or any other mines or for any other public purpose whatsoever causing as little damage obstruction or interference as possible to or with that part or those parts of the State Mine upon which the Occupier has carried out or is carrying out any work (including developmental work).

Occupier to provide plant and machinery.

6.—The Occupier shall at its own cost and expense provide procure and instal all such surface and underground plant machinery fittings equipment and materials (including materials required for the support of roofs and sides) as may be necessary for the purposes of or in connection with the searching for winning working getting raising and loading of coal or the carrying out of any developmental work in accordance with the conditions of the permissive occupancy and shall at all times at its own cost and expense keep all such plant machinery and equipment in repair and in good running order and condition.

Daily output of coal by Occupier.

7.—The Occupier shall as from an agreed date, except when prevented by any cause beyond its control (including without restricting the generality thereof inevitable accident industrial dispute or disturbance or Governmental interference) or during the execution of repairs win work get and raise not less than 800 tons of coal per working day and shall progressively increase the rate of production so that within nine months after that date the average output per working day from the State Mine shall be not less than 2,000 tons of coal and the Occupier shall thereafter maintain an average output of not less than 2,000 tons of coal per working day taken over any three monthly period in respect of which accounts are to be furnished under Clause 8.

Occupier to account to Authority every three months.

8.—(a) The Occupier shall at the expiration of each period of three months during the continuance of the permissive occupancy furnish the Authority with a true accurate and comprehensive return in writing showing the amount of coal produced at the State Mine and conveyed to the pit mouth of the Occupier's Mine during the said period of three months. And every such return shall be verified by Statutory Declaration of the Secretary, Accountant or other responsible officer of the Occupier or by such other means as the Authority shall require.

(b) The Occupier shall at the expiration of each period of three months pay to the Authority the sum of two shillings (or such other sum as may be fixed from time to time under paragraph (c) of this Clause) for every ton of coal produced by the Occupier in carrying out any work (including developmental work) in and upon the State Mine during the said period of three months. The amount due under this paragraph shall be paid at the time the return referred to in paragraph (a) of this Clause is furnished, and if not so paid may be recovered by the Authority as a debt in a court of competent jurisdiction.

(c)

(c) In the event of the royalty (at present sixpence per ton) **No. 34, 1951.** payable on all shale or coal won from land demised by lease granted under Part III of the Mining Act, 1906-1946, being increased the Authority may vary the amount per ton payable to it under paragraph (b) of this Clause by the addition thereto of the amount of such increase.

9.—(a) The Occupier shall duly enter and keep in a suitable book Occupier to or books to be kept during the continuance of the permissive occupancy for this purpose at a proper office at the Occupier's Mine **keep proper records.** true particular and complete records of the tonnage of coal produced by the Occupier at the State Mine.

(b) The Occupier shall from time to time if so required to do **And to produce.** by the Minister or the Authority produce all books, vouchers, documents, papers and evidence to any person or persons authorised by the Minister or the Authority so far as such inspection may be reasonably required for the purpose of ascertaining the performance or non-performance by the Occupier of the conditions of the permissive occupancy on its part to be observed and performed.

10.—The Occupier shall permit and enable any person or persons authorised by the Minister or the Authority conveniently to descend into and to view and minutely examine and survey the workings of the Occupier in or upon the State Mine (including any developmental work which the Occupier has been required to do under the permissive occupancy or the conditions thereof) and all outstrokes and instrokes connected therewith and also the workings of any adjoining mine or mines connecting or communicating with the workings of the Occupier in or upon the State Mine or any part thereof and to measure the same and to adopt any other proper means to ascertain the real state position condition or admeasurement thereof and to inspect all the machinery plant and equipment in use in the State Mine and the state and condition thereof and also conveniently to ascend and return therefrom, such person or persons thereby interrupting as little as may be the workings of the Occupier in or upon the State Mine or any adjoining mine **AND** for the purpose aforesaid if so required the Occupier shall direct and cause the Manager or Under Manager of the Occupier with one or more of the workmen or servants employed by the Occupier who shall have a full and perfect knowledge of the workings of the Occupier in or upon the State Mine (including any such developmental works as aforesaid) and any adjoining mine to attend and by giving full information or otherwise assist such person or persons authorised as aforesaid to view and survey the said workings.

11.—(a) The permissive occupancy may be determined at any time **Determination of Permissive Occupancy by Governor.** by the Governor by notification published in the Government Gazette if three months' notice of intention to determine the same shall have previously been given to the Occupier PROVIDED HOWEVER that if the Occupier has continued to work and develop the State **Mine**

No. 34, 1951. Mine substantially in accordance with its obligations under these Conditions the Governor shall not determine the permissive occupancy under this Clause prior to the expiration of ten years from the date of commencement of the permissive occupancy. Any notice given under this Clause shall be in writing and shall be signed by the Under Secretary for Mines or the person for the time being acting as such.

(b) Upon termination of the permissive occupancy under this Clause the Occupier shall have the right by notice in writing given to the Authority within one month after notice of termination to require the Authority to buy from it all such plant machinery and equipment then being used in the State Mine by the Occupier as shall have been installed or used in the State Mine with the approval in writing of the Authority.

(c) Nothing in this Clause shall affect the provisions of Clause 13 of these Conditions.

Price to be paid for plant, machinery and equipment.

12.—(a) Where the Authority is required under Clause 11 to buy plant, machinery and equipment or where under Clause 13 the Authority has exercised the right to require the Occupier to sell plant, machinery and equipment to it, the price to be paid for such plant, machinery and equipment together with the cost of installation thereof less a proper allowance for depreciation; and for the purpose of calculating depreciation upon the cost of installation it shall be assumed that the whole of the cost of installation is to be written off by equal annual amounts over a period of ten years.

Authority to have right to use plant, machinery and equipment on determination.

(b) At any time after the determination of the permissive occupancy under Clause 11 or Clause 13 of these Conditions the Authority shall have the right to use all the plant, machinery and equipment which it is required to buy under Clause 11 or which it has required the Occupier to sell to it under Clause 13 even though the price of such plant machinery and equipment has not then been determined.

Occupier to give peaceable possession on determination.

(c) Upon the determination of the permissive occupancy under Clause 11 or Clause 13 of these Conditions the Occupier shall forthwith deliver peaceable possession of all parts of the State Mine occupied by it under the permissive occupancy to His Majesty His Heirs and Successors or to the Minister or to the Authority or to the Warden or other officer authorised to receive possession thereof together with all the plant, machinery and equipment which the Authority is required to buy under Clause 11 or which the Authority has required the Occupier to sell to it under Clause 13 and in default thereof it shall be lawful for His Majesty His Heirs and Successors or the Minister or the Authority or the Warden or any bailiff or other person duly authorised for the purpose without any further demand whatsoever to enter forthwith into and upon the State Mine or any part or parts thereof and the same to repossess and enjoy as fully and effectually and to all intents and purposes as if the permissive occupancy had not been granted and to take possession of all such

such plant, machinery and equipment as is hereinbefore in this paragraph mentioned and the Occupier to expel and remove without any legal process and as effectually as the Sheriff might do in case judgment in ejectment had been obtained and a writ of habere facias possessionem had been issued on such judgment and in case of such entry and any legal proceeding taken in respect thereof the defendant or defendants in any such proceeding may plead leave and license in bar thereof and the grant of the permissive occupancy on these Conditions shall be conclusive evidence of such leave and license by the occupier or other the person or persons plaintiff or plaintiffs in such proceeding for such entry or other matters complained of in such proceeding.

(d) The determination of the permissive occupancy under Clause 11 or Clause 13 of these Conditions shall not exonerate the Occupier from any liability incurred under the permissive occupancy or the conditions thereof before such determination.

(e) In the event of the determination of the permissive occupancy under Clause 11 or Clause 13 of these Conditions such determination shall take effect on the date specified in the notification in the Government Gazette and the production of a copy of the Government Gazette containing a notice purporting to be signed by the Governor declaring that the permissive occupancy has been determined shall be conclusive evidence of such determination.

13.—If the Occupier goes or is placed into liquidation or makes an arrangement or composition with its creditors or if any assignee of the Occupier being an individual becomes bankrupt or makes an assignment of his estate for the benefit of his creditors or if the Occupier contravenes or fails to comply with any of the conditions of the permissive occupancy on the part of the Occupier to be performed or observed the Governor may by notification published in the Government Gazette terminate the permissive occupancy. PROVIDED HOWEVER that the Governor shall not exercise the right conferred by this clause to terminate the permissive occupancy on the ground of non-performance or non-observance of the conditions of the permissive occupancy unless notice in writing shall have previously been given to the Occupier requiring it to remedy any breach which is capable of remedy and the Occupier shall have neglected or failed within a reasonable time thereafter to remedy any such breach. Where the permissive occupancy is terminated under this clause the Occupier shall if so required by the Authority sell to the Authority all or any of the plant machinery and equipment then in use in the State Mine for the purposes of or in connection with the winning working getting raising and loading of coal or of any developmental work required to be done under the Conditions of the permissive occupancy.

14.—The Occupier shall indemnify and keep indemnified His Majesty His Heirs and Successors the Minister and the Authority against all claims and demands by any person in respect of any accident or disaster occurring as the result of or in connection with the

Determination not to exonerate Occupier from previous liability.

Termination of permissive occupancy.

Indemnity.

No. 34, 1951. the carrying out by the Occupier of any works (including developmental works) in or upon the State Mine and not arising from or due to or contributed to by any neglect default or misconduct of His Majesty or the Minister or the Authority or the servants or agents of His Majesty or the Minister or the Authority.

**Covenant
against
assignment
etc.**

15.—The Occupier shall not without the consent in writing of the Governor first had and obtained underlet or assign the permissive occupancy, or assign or mortgage charge or encumber any benefit whatsoever arising or which may arise under the permissive occupancy to any person or corporation whatsoever. When the permissive occupancy is assigned in conformity with this Clause a reference in the permissive occupancy or in any of the conditions thereof to the Occupier shall as from the date of the assignment be construed as a reference to the assignee but no such assignment shall exonerate the Occupier from any liability incurred under the permissive occupancy before such assignment.

**Indulgence
not to affect
rights of His
Majesty or
the
Authority.**

16.—Any time or other indulgence granted by His Majesty or the Minister or the Authority shall not affect the strict rights of His Majesty the Minister and the Authority under the permissive occupancy or the conditions thereof.

**Notice
Clause.**

17.—Any notice authority communication direction or instruction to be or that may be given or made under the permissive occupancy or the conditions thereof to the Occupier by His Majesty or the Governor the Minister or the Authority shall (subject to the provisions of Clause 11 of these Conditions) be deemed to have been duly given or made if the same shall be signed by the Under Secretary of the Department of Mines or the Secretary of the Authority or by the person for the time being acting in either of such offices and shall be left at or sent through the post addressed to the Occupier at the office of the Occupier or be affixed to the Occupier's Mine or any buildings on such mine and any notice authority communication direction or instruction so sent by post shall be deemed to have been received by the Occupier at the time when the same would in the ordinary course be delivered.

**Marginal
notes.**

18.—The marginal notes placed opposite the several Clauses of these Conditions and indicating or purporting to indicate the contents or objects of such clauses respectively shall not be taken as part of these Conditions or in any manner affect the construction hereof or of any clause or thing in these Conditions contained.

**No waiver
without
written
consent.**

19.—None of the provisions of the permissive occupancy or the conditions thereof which is to be observed or performed on the part of the Occupier shall be taken either at law or in equity to have been varied, waived, discharged or released unless by the express consent in writing of the Minister.

**Stamp
Duties.**

20.—The Occupier shall pay all Stamp Duties payable in respect of the permissive occupancy.

21.—The Occupier shall pay all rates and taxes and all fees and **No. 34, 1951.** charges under the Local Government Act, 1919, which are payable Rates and during the currency of the permissive occupancy upon any part or Taxes. parts of the State Mine occupied by it under the permissive occupancy or the conditions thereof.

22.—Neither the grant of the permissive occupancy nor anything Right of in these Conditions contained shall operate to prevent the Authority Authority itself from working or developing any part or parts of the State to work and Mine nor to prevent the granting by the Governor of a permissive occupancy to any other person or persons over any other part or parts of the State Mine.
