

MINING (AMENDMENT) ACT.

Act No. 57, 1963.

Elizabeth II, No. 57, 1963 An Act to amend the law relating to mining; for this and other purposes to amend the Mining Act, 1906, the Petroleum Act, 1955, and certain other Acts; to validate certain matters; and for purposes connected therewith. [Assented to, 19th December, 1963.]

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

Short title,
citation
and com-
mencement.

1. (1) This Act may be cited as the "Mining (Amendment) Act, 1963".

(2) (a) The Mining Act, 1906, as amended by subsequent Acts and by this Act, may be cited as the Mining Act, 1906-1963.

(b) The Petroleum Act, 1955, as amended by subsequent Acts and by this Act, may be cited as the Petroleum Act, 1955-1963.

(3) The Mining Act, 1906, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(4) (a) This Act shall, except where otherwise expressly provided, commence on such day or days as may be appointed and notified pursuant to paragraph (b) of this subsection.

(b) The Governor may, from time to time, appoint and notify by proclamation published in the Gazette the day upon which any provision of this Act specified in the proclamation shall commence and may appoint and notify different days for different provisions and the provision so specified shall commence accordingly.

2.

2. Part I of the Principal Act is amended—

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Amendment
of Act No.
49, 1906.Part I.—
(Pre-
liminary.)

- (a) (i) by omitting from the matter relating to Part II in section one the figures "13" and by inserting in lieu thereof the figures and letter "13A";
- (ii) by omitting from the matter relating to Part III in the same section the figures and letters "ss. 35-39B." and by inserting in lieu thereof the following letters, figures and words :—
ss. 35-38.
3A. Mining leases of Crown lands containing minerals not reserved to the Crown—
s. 39D.
- (iii) by inserting in the same section after the figures, letters and symbols "ss. 70A-70E." in the matter relating to Part IV the following figures, letters and words :—
4B. Special leases of private land—s. 70F.
- (iv) by inserting in the same section after the matter relating to Part IV the following new matter :—
PART IVA.—EXPLORATION LICENSES—
ss. 83A-83L.
- (v) by omitting from the matter relating to Part V in the same section the figures "103" and by inserting in lieu thereof the figures and letter "103A";
- (vi) by omitting from the matter relating to Part VI in the same section the figures "130" and by inserting in lieu thereof the figures and letter "130A";
- (vii) by omitting from the matter relating to Part IX in the same section the figures "183" and by inserting in lieu thereof the figures and letter "183B";

(viii)

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—

(viii) by inserting at the end of the same section the following new subsection : —

(2) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State to the intent that where any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected.

Sec. 3.
(Interpretation.)

(b) (i) by inserting in section three next after the definition of "Crown Lands Acts" the following new definition : —

"Crown lease for pastoral purposes" means—

(a) a Crown lease, under the Crown Lands Acts, of land, not being a Crown lease of land set apart for disposal by way of Crown lease for grazing, which contains a condition restricting the use of the land comprised therein to grazing or grazing and the giving of access to water; and

(b) a Crown lease, under the Crown Lands Acts, of land set apart for disposal by way of Crown lease for grazing, whether or not the whole or any part of the land comprised in the lease may, under the lease, be used for agricultural purposes.

(ii) by inserting in the same section after the definition of "Earth" the following new definition : —

"Exploration license" means an exploration license under Part IVA of this Act.

(iii)

- (iii) by omitting from the definition of "Justice" in the same section the words "or police";
- (iv) by omitting from the same section the definition of "Lease for pastoral purposes";
- (v) by omitting from the same section the definition of "Minister";
- (vi) by omitting from the same section the definition of "Small coal" and by inserting in lieu thereof the following definition : —

"Special lease for pastoral purposes" means a special lease under the Crown Lands Acts which is expressed to be for the purposes of grazing or grazing and the giving of access to water.

- (vii) by omitting from the same section the definition of "Street, road, or highway,";
- (viii) by omitting from the definition of "To mine" in the same section the word "therefrom";
- (ix) by inserting at the end of the same section the following new subsection : —

(2) The provisions of this Act shall, subject to such modifications as may be prescribed, apply to and in respect of the sea-bed and subsoil of the continental shelf that is contiguous to the State of New South Wales and is outside the land beneath the territorial waters of that State, as if such sea-bed and subsoil were Crown lands within that State.

For the purposes of this subsection, the regulations may prescribe modifications of the provisions of this Act applicable to the whole of such sea-bed and subsoil, or may prescribe different modifications of such provisions applicable to different parts of such sea-bed and subsoil.

- (c) (i) by omitting from subsection three of section four the words "the University of Sydney" and by inserting in lieu thereof the words "any university within the State";
- (ii)

Sec. 4.
(Schools of
mines and
museums
may be
established.)

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- (ii) by omitting from the same subsection the words "Senate of the University, and such Senate" and by inserting in lieu thereof the words "governing body of such university, and such governing body".

Amendment
of Act No.
49, 1906.

Part II—
(Miners'
rights and
business
licenses.)

Sec. 9.
(Issue of
miners'
rights.)

Sec. 10.
(Issue of
business
licenses.)

Sec. 13.
(Duplicate
rights and
licenses.)

Sec. 14.
(Certain ex-
emptions.)

3. (1) Part II of the Principal Act is amended—

- (a) by omitting from section nine the words "five shillings for every year or two shillings and sixpence" and by inserting in lieu thereof the words "one pound for every year or ten shillings";
- (b) by omitting from section ten the words "one pound for every year or ten shillings" and by inserting in lieu thereof the words "ten pounds for every year or five pounds";
- (c) by omitting from section thirteen the words "one shilling" and by inserting in lieu thereof the words "five shillings";
- (d) (i) by inserting in paragraph (a) of subsection one of section fourteen after the word "common" the words "or a commonage";
- (ii) by inserting in subsection two of the same section after the word "standing" the words "and Crown lands held under a permissive occupancy for residence purposes only,";
- (iii) by inserting at the end of the same section the following new subsections :—

(4) Any marking out or taking possession of, or application for, any Crown lands which are exempt pursuant to this section from occupation as a tenement shall be void and of no effect.

(5) Upon the forfeiture, surrender or expiration of any lease or other holding, or part of a lease or other holding, under the Crown Lands Acts of lands situated within the external

external boundaries of any lands exempted under this section, the lands comprised in such lease or other holding shall form part of such area. No. 57, 1963

- (e) (i) by omitting from paragraph (a) of subsection one of section fifteen the word "therein" and by inserting in lieu thereof the words "and prospect therein or thereon"; Sec. 15.
(Rights of occupation in respect of Crown lands.)
- (ii) by omitting paragraph (f) of the same subsection;
- (f) (i) by inserting in subsection three of section sixteen after the word "time" where firstly occurring the following new proviso : — Sec. 16.
(Residence area.)

Provided that the legal representative, or the committee, or manager of the property, of two or more deceased, bankrupt or mentally ill holders of residence areas may, while acting in that capacity, hold and be registered as the holder of one residence area in respect of each deceased, bankrupt or mentally ill holder.

- (ii) by inserting at the end of the same section the following new subsection : —

(4) Nothing in this section shall authorise any person to take possession of and occupy any residence area after the commencement of this subsection : Provided that where any person is lawfully in occupation of any residence area at such commencement, he may, subject to the provisions of this Act, continue to occupy such area after such commencement.

- (g) by omitting section seventeen and by inserting in lieu thereof the following section : — Subst.
sec. 17.

17. (1) The Minister, on the recommendation of the warden or the prospecting board, may subject to such conditions as to marking out the land comprised therein and taking possession thereof as Authority to prospect on Crown lands.
may

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may be prescribed grant to a holder of a miner's right, upon application therefor made by him, an authority to prospect for gold or any mineral on any Crown lands, whether or not any such mineral is reserved to the Crown and whether or not such Crown lands are exempted from occupation under this Part, or from leasing under Part III of this Act, but not being Crown lands validly held under an authority to prospect granted under this section or an exploration license granted under Part IVA of this Act, or the subject of an application for any such authority or license (such application having been made before the application for such firstmentioned authority to prospect or for such exploration license) and may by such authority authorise the holder to occupy any such Crown lands and to construct and use thereon races, dams, pipe lines, reservoirs and roads and carry out such other mining purposes as may be authorised by the Minister.

(2) The application shall be made in the manner and form prescribed and shall be accompanied by the deposit prescribed which may, if the Minister so approves, be applied towards payment of the rent referred to in this section.

(3) Where an applicant for an authority to prospect dies or becomes bankrupt or mentally ill before his application is granted or refused, the authority may, if the legal representative of such deceased or bankrupt applicant or the committee or manager of the property of such mentally ill applicant so requests, be granted to such legal representative, committee or manager.

Where the holder of an authority to prospect dies or becomes bankrupt or mentally ill, the authority shall subsist for the benefit of the legal representative of the deceased or bankrupt holder or the committee or manager of the property of the mentally ill holder.

(4)

(4) An authority to prospect may be granted **No. 57, 1963** notwithstanding that the applicant therefor has not in every respect complied with the regulations or has included in the land applied for land in respect of which an authority may not be granted under this Act.

(5) An authority to prospect may, at the request in writing of the applicant therefor, be granted to any person nominated by him.

(6) The Minister may refuse any such application and such refusal shall take effect from the time of publication of such refusal in the Gazette.

(7) The Minister may—

- (a) determine the land to be held under an authority to prospect and may grant any such authority with respect to the surface of the land and the soil thereof below the surface, to the surface of the land and the soil thereof to a specified depth below the surface, or to the soil between or below any specified depths or depth below the surface;
- (b) subject to this Act, grant any such authority in respect of the land referred to in the application therefor, or, with the consent in writing of the applicant, grant such authority in respect of such land subject to such alterations, enlargements or reductions in the area of such land as the Minister may determine;
- (c) determine the rent to be paid in respect of any such authority;
- (d) grant any such authority subject to such conditions, provisions and stipulations as he may think fit;

(e)

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- (e) suspend or postpone the fulfilment of any conditions, provisions and stipulations subject to which the authority was granted for periods not on any one occasion exceeding three months;
- (f) cancel any such authority where the holder thereof has failed to comply with any of the conditions, provisions and stipulations subject to which such authority was granted or has failed to comply with any requirement of the Minister made under subsection ten of this section;
- (g) withdraw without payment of compensation any area from any such authority where such area is required for any public purposes and cancel the authority in respect of the land so withdrawn;
- (h) at the request of the holder cancel any authority either wholly or in part.

(8) Any such authority may be granted for such period not exceeding twelve months as the Minister may determine.

Upon application in that behalf made by the holder of any such authority during the currency of the authority held by him or any renewal thereof, and not later than one month before the expiry of such authority or renewal, as the case may be, the Minister may, at his discretion and subject to such conditions, provisions and stipulations as he may think fit, grant successive renewals of the authority for further periods not exceeding twelve months each in respect of the whole of the land comprised therein or any part thereof.

(9) An authority to prospect shall, on payment in advance of the rent determined as aforesaid, and survey fee where a survey is required by the Minister, entitle the holder during the currency
of

of the authority to carry on prospecting operations and to occupy and use the area for any purpose authorised by the authority. **No. 57, 1963**

(10) Within fourteen days after the discovery of gold or any mineral within any land comprised in any authority to prospect, the holder of the authority shall report the discovery to the Under Secretary for Mines who shall thereupon report the discovery to the Minister. The Minister may thereupon require the holder of the authority to apply for a lease of the land or such part thereof as the Minister may deem advisable or to continue prospecting operations.

- (h) by inserting at the end of section eighteen the following new proviso and subsection :—

Sec. 18.
(Holder may occupy land and erect buildings.)

Provided that the legal representative, or the committee, or manager of the property, of two or more deceased, bankrupt or mentally ill holders of business areas may, while acting in that capacity, hold and be registered as the holder of one business area in respect of each such deceased, bankrupt or mentally ill holder.

(2) On and from the commencement of this subsection, the holder of a business license shall not be entitled to exercise the powers conferred by subsection one of this section except in relation to a business area of which he was lawfully in occupation at such commencement.

- (i) by omitting from subsection (1c) of section nineteen the words "may be made within one month before the said day or during the month of January after the day aforesaid" and by inserting in lieu thereof the words "shall be made within one month before the said day". **Sec. 19.**
(Holder to register.)

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(2) Any authority to prospect under section seventeen of the Principal Act in force immediately before the commencement of the amendment made by paragraph (g) of subsection one of this section, and any application for an authority to prospect under that section made before, and not granted or refused at, such commencement, shall respectively be deemed to be an authority to prospect, and an application for an authority to prospect made, under section seventeen of the Principal Act, as amended by this Act.

Amendment
of Act No.
49, 1906.
Part III—
(Leases of
Crown
lands.)

4. (1) Part III of the Principal Act is amended—

Sec. 23.
(Governor
may grant
leases.)

- (a) (i) by omitting from subsection one of section twenty-three the words “and any street, road, or highway”;
- (ii) by inserting in paragraph (b) of subsection two of the same section after the words “Crown land” the words “held under a permissive occupancy for residence purposes only, a special western lands lease for residence, or Crown land”;
- (iii) by inserting next after the same paragraph the following new paragraph :—
 - (bi) Crown lands held under an authority to prospect, or the subject of an application for an authority to prospect, under the provisions of section seventeen of this Act shall not be leased to any person except with the written consent of the holder of, or the applicant for, such authority, as the case may be, if, in the case of an application for an authority to prospect, the application was made before the marking out of the land the subject of an application for a lease under this Part.

(iv)

(iv) by omitting paragraph (d) of the same No. 57, 1963 subsection;

(v) by inserting at the end of paragraph (e) of the same subsection the following new paragraph :—

Any such notification may be made with respect to the surface of the land and the soil thereof below the surface, to the surface of the land and the soil thereof to a specified depth below the surface, or to the soil between or below any specified depths or depth below the surface.

(vi) by inserting next after the same subsection the following new subsections :—

(2A) Any marking out or taking possession, or application for a lease under this Part, of any Crown lands which are exempt from leasing under this section shall be void and of no effect :

Provided that where part only of any Crown lands which have been marked out, taken possession of, or applied for are so exempt, nothing in this subsection shall prevent a lease being granted under this Part of such part of those Crown lands as is not so exempt.

(2B) Upon the forfeiture, surrender or expiration of any lease or other holding, or part of a lease or other holding, under the Crown Lands Acts of lands situated within the external boundaries of any lands exempted from leasing under this section the lands comprised in such lease or other holding shall form part of such area.

(vii)

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—

(vii) by omitting subsection five of the same section and by inserting in lieu thereof the following subsection : —

(5) (a) Upon the cancellation or determination of any lease under this Part, or part of such a lease, of Crown lands situated within the external boundaries of any area exempted from the leasing provisions of this Act, the land comprised in such lease or part shall form part of such area.

(b) The provisions of this subsection shall not apply so as to prevent the granting of a lease to a complainant following the cancellation of a lease under section 124A of this Act.

Sec. 26.
(First applicant to have priority.)

(b) by omitting from subsection one of section twenty-six the words "Provided that if" and by inserting in lieu thereof the words "Provided that where under the regulations a datum post is not required to be erected, the time of taking possession shall be deemed to be the time at which the application is lodged :

Provided further that if";

Sec. 27.
(Irregular application may be granted.)

(c) by inserting in subsection three of section twenty-seven after the word "lease" the words "notwithstanding that the applicant may have complied in every respect with the provisions of this Part and of the regulations thereunder";

Sec. 28.
(Applicant may mine upon land.)

(d) (i) by omitting from section twenty-eight the words "mining lease has been duly made, the applicant may, by virtue of his application," and by inserting in lieu thereof the words "lease has been duly made, the applicant or his nominee may, by virtue of the application,";

(ii)

(ii) by omitting from paragraph (a) of the same section the words "occupy the land applied for, and subject to any conditions or restrictions imposed by the Minister mine upon and in the same" and by inserting in lieu thereof the words "subject to the consent of the Minister and to any conditions (including payment of rent and royalty) or restrictions specified in such consent, occupy the land applied for and—

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(i) where the application is for a mining lease, mine upon and in such land; or

(ii) where the application is for a mining purposes lease, construct and use such works upon and in such lands as the Minister may in writing authorise and specify in a notice sent to the applicant";

(iii) by omitting from paragraph (c) of the same section the words "or mineral";

(iv) by omitting from the same section the words "Provided that the rights specified in paragraph (a) of this section shall not accrue to any applicant for a mining lease of any street, road, or highway, or any Crown land reserved or dedicated for and in actual use for any public purpose." and by inserting in lieu thereof the following paragraphs : —

The Minister may by notice in writing served on the applicant or his nominee revoke any consent referred to in paragraph (a) of this section or may in like manner vary any such consent as he may think fit.

Any person occupying any land pursuant to this subsection who neglects or fails to comply with the conditions or restrictions specified in any relevant consent given under paragraph (a) of this section, or any variation thereof, shall be liable to a penalty not exceeding fifty pounds.

(e)

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Sec. 30.
(When
application
pending.)

- (e) (i) by inserting in subsection three of section thirty after the word "representatives" the words "or, in the event of his becoming mentally ill, of the committee or manager of the property";
- (ii) by inserting in subsection four of the same section after the word "representatives" the words "or the committee or manager";

Subst.
sec. 31.

- (f) by omitting section thirty-one and by inserting in lieu thereof the following section : —

Survey
fee to
accompany
application
for lease.

31. Except in the prescribed circumstances, every application for a lease shall be accompanied by the prescribed survey fee.

Where the Minister is of opinion that a survey is unnecessary for the purposes of any such application, or that the cost of the survey is less than the prescribed survey fee lodged by the applicant for the lease, he may refund to such applicant the whole, or such part as he thinks fit, of any prescribed survey fee paid by such applicant.

Sec. 32.
(Lodging
and
service of
objections.)

- (g) by omitting from subsection one of section thirty-two the words "registered letter" and by inserting in lieu thereof the words "certified mail";

Sec. 34.
(Warden to
inquire.)

- (h) (i) by omitting subsection two of section thirty-four and by inserting in lieu thereof the following subsection : —

(2) At the conclusion of such inquiry, the warden shall announce in open court his finding and the purport of his report to the Minister and shall forthwith transmit to the Minister the evidence and documents relating thereto and his finding and report as aforesaid.

- (ii) by omitting from subsection three of the same section the word "recommendation" and by inserting in lieu thereof the words "finding and report";

(i)

- (i) (i) by omitting subsections one and two of section No. 57, 1963 thirty-six;

- (ii) by inserting at the end of subsection (2A) of the same section the following new paragraph : —

Sec. 36.

(Gold and coal leases—rent and royalty.)

This subsection shall not apply to any such lease granted after the commencement of subsection (2AB) of this section.

- (iii) by inserting next after the same subsection the following new subsection : —

(2AB) The annual rent for a gold-mining lease or a mineral lease granted under this Part after the commencement of this subsection shall be five shillings per acre or portion of an acre.

- (iv) by omitting from subsections (2B) and (2C) of the same section the words “such commencement” wherever occurring and by inserting in lieu thereof the words “the commencement of the Mining (Amendment) Act, 1918”;

- (v) by inserting in paragraph (a) of subsection (2D) of the same section after the word “prescribed” the words “or, in the case of a special mining lease granted under section forty of this Act, at such rates as may be fixed by the Governor under that section”;

- (vi) by omitting from paragraph (b) of the same subsection the words “one shilling” and by inserting in lieu thereof the words “two shillings”;

- (vii) by omitting from the same paragraph the word “ninepence” and by inserting in lieu thereof the words “one shilling”;

- (viii) by omitting from subsection three of the same section the word “Minister” and by inserting in lieu thereof the word “Governor”;

(ix)

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(ix) by omitting from subsection five of the same section the words “: Provided also that the Minister may at his discretion remit the amount of royalty payable on coal used for raising steam for motive power at a colliery”;

(x) by omitting from subsection six of the same section the words “by the lessee to the Crown” and by inserting in lieu thereof the words “to the Crown by the lessee, or applicant for a lease, or his nominee, as the case may be, or, in the event of the lessee, applicant or nominee dying or becoming bankrupt or mentally ill, by the legal representative of such deceased or bankrupt lessee, applicant or nominee, or the committee or manager of the property of such mentally ill lessee, applicant or nominee, as the case may be”;

Sec. 37.
(Labour
conditions.)

(j) (i) by omitting from subsection one of section thirty-seven the word “Minister” and by inserting in lieu thereof the word “Governor”;

(ii) by omitting subsection two of the same section;

Sec. 38.
(Term
of lease.)

(k) (i) by omitting subsection two of section thirty-eight and by inserting in lieu thereof the following subsection : —

(2) Any such lease may, with the consent of the Governor, be successively renewed from time to time for any further term not exceeding twenty years from the expiry of the lease or the last renewal thereof, as the case may be : Provided that application for such renewal shall be made during the last five years of the term of the lease or last renewal thereof, as the case may be, or where the term of the lease or the last renewal thereof does not exceed five years during the last year of such term.

(ii)

- (ii) by inserting in subsection three of the same section after the word "approve" the words "and may authorise the mining of gold or such minerals, or the carrying on of such mining purposes, as the Governor may approve";
- (l) by omitting sections thirty-nine, 39A, 39B and 39C; No. 57, 1963
—
Secs. 39,
39A, 39B,
39C.
(Renewals
of leases.)
- (m) by inserting next after Division 3 the following new Division : — New
Division 3A.

**DIVISION 3A.—MINING LEASES OF CROWN LANDS
CONTAINING MINERALS NOT RESERVED TO THE
CROWN.**

39D. (1) The Governor in the name and on behalf of Her Majesty may, under and subject to section twenty-three of this Act, grant mineral leases of Crown lands containing any minerals not reserved to the Crown, whether or not such lands also contain gold or minerals reserved to the Crown. Application
for lease.

(2) Subject to the provisions of this section—

- (a) the provisions of Divisions 2 and 3 of this Part of this Act apply mutatis mutandis to leases under this Division and to applications for such leases; and
- (b) the provisions of this Act relating to the rights and duties of applicants, and nominees of applicants, for, and lessees under, and of other persons in relation to the land comprised in, leases of Crown lands granted under this Division shall be the same as the rights and duties of applicants, and nominees of applicants, for, and lessees under, and of other persons in relation to the land comprised in, leases of Crown lands granted under section twenty-three of this Act.

(3)

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(3) In addition to the rent payable to the Crown in respect of any lease under this Division, a yearly rental of five shillings per acre or portion of an acre in respect of the whole of the area included in any such lease, being a lease to mine for coal or shale, shall be reserved to the owner of such coal or shale and shall be paid half-yearly in advance.

(4) (a) A royalty at such rate as may be prescribed shall be paid in respect of all minerals not reserved to the Crown won from any land included in a lease under this Division.

(b) The regulations may prescribe rates according to a percentage of the value of the mineral won or an amount per ton on all mineral won or an amount per cubic foot, cubic yard, gallon or other appropriate standard of measurement or otherwise howsoever.

Different rates may be prescribed in respect of different minerals. In the case of rates according to a percentage of the value of the mineral won such rates shall not exceed one and three-quarters per centum of such value. In the case of rates according to an amount per ton on all mineral (other than coal or shale) won such rates shall not exceed two shillings per ton. The rate prescribed in respect of coal or shale shall not exceed one shilling per ton.

(c) The holder of any lease granted under this Division shall at the times and in the manner prescribed pay to the Minister on behalf of the owner of the minerals included in such lease the royalties required to be paid by such holder under this subsection.

(d) The Minister shall at the times and in the manner prescribed pay to the owner of the minerals the sum paid as royalties as aforesaid less one-seventh of such sum, which he is hereby authorised to deduct; and the amounts so deducted shall be paid by the Minister into the Treasury and carried to the Consolidated Revenue Fund.

(e)

(e) Upon any renewal of a lease under this Division the Governor may, in respect of such renewal, vary the amount payable by way of royalty under paragraph (a) of this subsection to such extent as he may determine. No. 57, 1963

For the purposes of paragraph (d) of this subsection the amount determined by the Governor in respect of any such renewal pursuant to the foregoing provision shall in respect of such renewal be deemed to be the amount prescribed by paragraph (a) of this subsection.

The provisions of paragraph (d) of this subsection with regard to deductions shall apply to such renewed leases.

(f) The lessee of any lease granted under this Division, being a lease to mine for coal or shale not reserved to the Crown, may deduct from the sum payable to the Minister under paragraph (a) of this subsection in any one year on behalf of the owner of the coal or shale a sum equal to the amount paid by him to such owner as rent for that year in accordance with the provisions of subsection three of this section. For the purposes of this paragraph leases amalgamated under the provisions of this Act shall be regarded as separate leases unless the owners of the coal or shale are identical.

(5) Where there are in any Crown lands minerals not reserved to the Crown together with gold or minerals reserved to the Crown, and a lease under this Division is granted in respect of the minerals not so reserved, the provisions of Division 5 of this Part shall extend to enabling the Governor to grant an authority under that Division in respect of such land, and to revoke or cancel any such authority.

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The holder of any such authority at the times and in the manner prescribed, shall pay to the Crown in respect of any minerals reserved to the Crown won by him pursuant to such authority a royalty in accordance with the provisions of section thirty-six of this Act and such royalty may be recovered from such holder as a Crown debt.

(6) No lease under this Division shall be granted—

- (a) where the owner of the minerals not reserved to the Crown, or some other person with his consent, is, at the time possession of the land is taken by the applicant for the lease, bona fide carrying on mining operations for the purpose of winning such minerals unless such owner consents to the lease; or
- (b) where the minerals that are not reserved to the Crown are coal or shale and the Crown lands applied for are within the external boundaries of a colliery holding a plan or description and particulars of title of which have been furnished to the Under Secretary for Mines in accordance with the provisions of the Coal Mines Regulation Act, 1912, as amended by subsequent Acts, before possession of the land is taken by the applicant for the lease, unless the owner of the colliery consents to the lease.

In the event of any dispute arising as to whether bona fide mining operations are being carried on as aforesaid or as to the area protected by this section, the question shall be determined by the Minister after inquiry and report by the warden and the Minister's decision shall be final.

(n)

- (n) (i) by inserting in subsection one of section forty after the words "coal or shale mining" the words "whether or not the land applied for exceeds the limits prescribed as to area or dimensions in respect of ordinary leases under this Part,"; No. 57, 1963
Sec. 40.
(Governor may grant special leases.)
- (ii) by omitting from paragraph (a) of subsection two of the same section the words "that an area in excess of the limit prescribed should be leased" and by inserting in lieu thereof the words "that a special mining lease should be granted";
- (iii) by omitting from subsection three of the same section the words "form of and area to be comprised in any such lease" and by inserting in lieu thereof the words "area to be comprised in any such lease and the form of such area";
- (iv) by inserting at the end of the same section the following new subsection : —

(5) Where the Minister is satisfied that by reason of the difficulties and cost attending the construction of mine works upon or of mining any land the subject of an application for a lease under this Part (this section excepted) or that for any other sufficient reason it is necessary that any such application should be dealt with in accordance with the provisions of this section the Minister may approve of the application being so dealt with, and, if the Minister so approves, the application shall be deemed to have been made for a lease under this section.

This subsection shall apply to applications for leases made before the commencement of this subsection and not granted or refused at such commencement as well as to applications for leases made after such commencement.

- (o) (i) by omitting from subsection one of section 40A the words "Railway Commissioners for New South Wales" and by inserting in lieu thereof the words "Commissioner for Railways"; Sec. 40A.
(Railway Commissioners' leases.)
- (ii)

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—

- (ii) by omitting from the same subsection the words “the form of and area to be comprised in any such lease” and by inserting in lieu thereof the words “the area to be comprised in any such lease and the form of such area”;
- (iii) by inserting in subsection two of the same section after the word “Act” the words “(subsection three of section 39D of this Act excepted)”;
- (iv) by omitting from subsection three of the same section the word “Commissioners” wherever occurring and by inserting in lieu thereof the word “Commissioner”;
- (v) by omitting from the same subsection the word “owners” and by inserting in lieu thereof the word “owner”;
- (vi) by omitting from the same subsection the word “them” and by inserting in lieu thereof the word “him”;

Sec. 41.
(Mining for
other min-
erals under
mineral
lease.)

- (p) (i) by omitting from subsection one of section forty-one the word “Minister” and by inserting in lieu thereof the word “Governor”;
- (ii) by inserting in the same subsection after the word “writing” the words “to the Minister”;
- (iii) by omitting from the same section the words “mineral lease” wherever occurring and by inserting in lieu thereof the words “mineral or special mining lease”;

Sec. 42.
(Mining for
gold under
mineral
lease.)

- (q) (i) by omitting from section forty-two the words “mineral lease” wherever occurring and by inserting in lieu thereof the words “mineral or special mining lease”;
- (ii) by omitting from subsection one of the same section the word “Minister” and by inserting in lieu thereof the word “Governor”;

(iii)

- (iii) by inserting in the same subsection after the word "writing" the words "made to the Minister";
- (r) (i) by omitting from subsection one of section forty-three the word "Minister" and by inserting in lieu thereof the word "Governor";
- (ii) by inserting in the same subsection after the word "writing" the words "made to the Minister";
- (s) (i) by omitting from subsection one of section forty-four the words "under this Part, whose occupancy" and by inserting in lieu thereof the words "or other person whose occupancy under this Part";
- (ii) by inserting in the same subsection after the word "completed" the following new paragraph :—

The person to whom leave is granted shall pay royalty in respect of any gold or mineral won at the rate at which royalty was payable by him at the time of the determination of his occupancy.
- (iii) by inserting in the same subsection after the words "Any application for" the words "an authority to prospect or".

(2) The amendments made by paragraph (d) of subsection one of this section shall not apply to any applicant for a mining lease where his application was made before the commencement of that paragraph and had not been granted or refused at such commencement, but the provisions of section twenty-eight of the Principal Act shall continue to apply to and in respect of any such applicant and his application until his application is granted or refused.

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Amendment
of Act No.
49, 1906.Part IV.—
(Mining on
Private
Lands.)Sec. 45.
(Interpreta-
tion.)

5. (1) Part IV of the Principal Act is amended—

- (a) (i) by omitting from section forty-five the definitions of “Occupier” and “Owner” and by inserting in lieu thereof the following definitions :—

“Occupier” means a person in lawful occupation of any private lands.

“Owner”, in relation to private lands, includes—

- (a) any person to whom the Crown has lawfully contracted to grant the fee simple under the Crown Lands Acts, or to whom the Crown has granted any lease under those Acts; and
- (b) trustee for, or guardian in infancy of, an owner, legal representative of a deceased or bankrupt owner, committee or manager appointed under Part X of the Mental Health Act, 1958, as amended by subsequent Acts, of the property of a mentally ill owner, and mortgagee in possession.
- (ii) by inserting in paragraph (i) of the definition of “Private lands” in the same section after the word and figure “Part V” the words “, or this Part,”;
- (iii) by inserting at the end of paragraph (ii) of the same definition the words “Any such proclamation may be made with respect to the surface of the land and the soil thereof below the surface, to the surface of the land and

and the soil thereof to a specified depth below the surface, or to the soil between or below any specified depths or depth below the surface.”;

- (b) (i) by inserting in subsection one of section forty-six after the words “open to” the words “prospecting and”;
- (ii) by inserting in subsection two of the same section after the words “open to” the words “prospecting and”;
- (iii) by omitting from subsection (2A) of the same section the words “the Crown grant of which contains, or if not yet issued will when issued contain, a reservation to the Crown of any mineral,”;
- (iv) by inserting next after the same subsection the following new subsections : —

(2B) (a) Upon the cancellation or determination of any lease or part of a lease of land situated within the external boundaries of any area exempted from the provisions of this Part, the lands comprised in such lease or such part of a lease shall form part of such area.

(b) The provisions of this subsection shall not apply so as to prevent the granting of a lease to a complainant following the cancellation of a lease under section 124A of this Act.

(2c) When any land is proclaimed by the Governor in pursuance of the provisions of section forty-five of this Act to be private lands within the meaning of this Part and at the date of such proclamation there is pending an application for an authority to enter in respect of such private lands or any part thereof, such application shall not be invalid by reason only that the lands the subject of the application were
not

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not private lands at the date of the application, but may be dealt with and completed, and an authority to enter may be granted pursuant thereto, as if the lands the subject of the application had been private lands at the date of the application.

- (v) by inserting in subsection three of the same section after the words "carrying on" wherever occurring the words ", or entitled to carry on,";
- (vi) by inserting in the same subsection next after the word "operations" where firstly occurring the words "or is using or entitled to use the land for any mining purpose";
- (vii) by omitting from the same subsection the word and symbol ", whether";

Sec. 47.
(Not to extend within certain distance of garden or improved land without consent.)

- (c) (i) by inserting in paragraph (b) of subsection one of section forty-seven after the word "occupier" the words "of any land, whether or not it is the land in respect of which the authority to enter or lease is applied for";
- (ii) by inserting in paragraph (c) of the same subsection after the words "carried on." the words "Any such area so defined may be wholly within the land in respect of which the authority to enter or lease is applied for or partly within such land and partly within other land or wholly within other land.";
- (iii) by inserting after the same subsection the following new subsection :—

(1A) The provisions of subsection one of this section shall not apply in respect of any garden, orchard, residence or improvement unless it was in existence when the application for the authority to enter was made.

(d)

- (d) by omitting from section forty-eight the words **No. 57, 1963**
 “enclosed and”;

Sec. 48.

(Not to
 extend to
 surface of
 cultivated
 land with-
 out consent.)

- (e) (i) by omitting the short heading to section 49A **Sec. 49A.**
 and by inserting in lieu thereof the following (Application
 short heading : — for license.)

License to prospect on private lands.

- (ii) by omitting from subsection one of the same section the words “by a deposit of ten shillings, which deposit may be applied wholly or in part towards payment of compensation for occupation and for surface damage to be assessed by the warden” and by inserting in lieu thereof the words “by a fee of one pound”;

- (iii) by omitting paragraph (b) of subsection six of the same section and by inserting in lieu thereof the following paragraph : —

(b) The licensee shall pay into the warden’s court within the time ordered by the warden compensation as assessed by the warden.

- (iv) by omitting from paragraph (a) of subsection seven of the same section the words “such amount as will with any surplus to his credit after assessment and payment into court of compensation in respect of the area previously held under his license make up the sum of ten shillings” and by inserting in lieu thereof the words “a further fee of one pound”;

- (f) (i) by omitting from subsection one of section fifty **Sec. 50.**
 the words “on any private lands” and by (Warden
 inserting in lieu thereof the words “in and upon may grant
 any private lands and search for gold or any authority.)
 mineral reserved to the Crown.

If

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If more than one application is made for the same land, the application which has been first lodged shall be first considered and dealt with, and so on, according to priority of lodgment”;

(ii) by omitting paragraph (a) of subsection two of the same section and by inserting in lieu thereof the following paragraph : —

(a) if the land is land for the time being included in a notification under subsection (2A) of section forty-six of this Act or land in respect of which no application for an authority to enter may be granted by virtue of subsection three of that section;

(iii) by omitting from subsection three of the same section the words “of five shillings which” and by inserting in lieu thereof the words “calculated at the rate of one pound for each one hundred acres or part thereof comprised in the area applied for, which fee”;

(iv) by inserting in the same subsection next after the word “Fund” the following words and new paragraph : —

and, in addition thereto a deposit of ten pounds.

Such deposit may, as directed by the warden, be applied towards costs incurred by the owner or occupier of the land applied for in the event of such applicant not pursuing his application or may be applied towards any compensation assessed by the warden in the event of an authority being granted in satisfaction of the application and any surplus shall be refunded to the applicant.

(v)

- (v) by inserting next after the same subsection the **No. 57, 1963** following subsection :—

(4) Where an applicant for an authority to enter dies or becomes bankrupt or mentally ill before his application is granted or refused, the authority may, if the legal representative of such deceased or bankrupt applicant or the committee or manager of the property of such mentally ill applicant so requests, be granted to such legal representative, committee or manager.

Where the holder of an authority to enter dies or becomes bankrupt or mentally ill, the authority shall subsist for the benefit of the legal representative of such deceased or bankrupt holder or the committee or manager of the property of the mentally ill holder.

- (g) (i) by inserting at the end of subsection one **Sec. 51.** of section fifty-one the following new **(Rent to be fixed.)** paragraphs :—

Notwithstanding the foregoing provisions of this subsection where no part of the surface is applied for and there are ten or more persons, each of whom is an owner or occupier of the land applied for, the warden, in lieu of giving notice to any such owner or occupier as required by this subsection, may, by advertisement published in a newspaper circulating in the district where the land is situated, give notice of the inquiry to be held under this subsection and where notice of any such inquiry is so advertised due notice of the inquiry shall be deemed to have been given to every owner and occupier of the land applied for.

Where any change in ownership or occupancy of the land applied for has occurred since the date of the lodgment of the application any
inquiry

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inquiry under this subsection held by the warden shall not be invalid by reason only that any new owner or new occupier has not been served with a notice of inquiry in accordance with the provisions of this subsection, and any person claiming to be the owner or occupier of any of the land applied for may be heard in evidence by the warden.

- (ii) by omitting subsections three and four of the same section and by inserting in lieu thereof the following subsections : —

(3) The first payment of the rent shall be made within fourteen days of the date of execution of the authority by the warden and before entry upon the land in pursuance of the authority. If such payment is not so made, or if any rent afterwards due is left unpaid for a period of one month, the warden may cancel the authority.

(4) Compensation shall be paid within the period fixed by the warden. If such compensation is not so paid, or if any compensation afterwards assessed and ordered to be paid is left unpaid for a period of one month, the warden may cancel the authority.

- (iii) by omitting from subsection five of the same section the words “within fourteen days”;

- (iv) by omitting from the same subsection the words “the last two preceding subsections” and by inserting in lieu thereof the words “subsection three of this section”;

Sec. 52.
(Duration
and extension
of
authority.)

- (h) (i) by inserting in subsection one of section fifty-two after the words “in force” the words “and where the application for the extension thereof is made not later than one month before the expiry of the authority or any extension thereof”;

(ii)

- (ii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection : — No. 57, 1963

(3) The holder of such authority shall, within the period and as directed by the warden, give notice, in the prescribed form, of the grant of such authority and of every extension thereof to the owner and occupier, at the time of the grant or extension, of the land defined in the authority.

Notwithstanding the foregoing provisions of this subsection where no part of the surface is applied for and there are ten or more persons, each of whom is an owner or occupier of the land applied for, the holder with the consent of the warden may, in lieu of giving notice to any such owner or occupier as required by this subsection, by advertisement, in such form as the warden may direct, published in a newspaper circulating in the district where the land is situated, give notice of the grant of the authority and of any extension thereof and where notice of any such grant or extension is so advertised due notice of the grant or extension shall be deemed to have been given to every owner and occupier of the land applied for.

- (i) by omitting section fifty-three and by inserting in lieu thereof the following section : — Subst.
sec. 53.

53. (1) Every such authority shall state the area, and contain a definition, of the land in respect of which it is granted. Extent of
area.

(2) The said area may be such as appears to the warden suitable, having regard to the class of deposit to be searched for, but shall not exceed one thousand acres and the warden shall, except where he considers it is impracticable or unnecessary to do so, cause the boundaries of the land in respect of which the authority is granted to be defined, as prescribed, on the land.

(j)

No. 57, 1963**Sec. 54.**

(When prospecting lawful.)

- (j) by inserting in paragraph (a) of subsection two of section fifty-four after the word "authority" the words "or within such further time as the warden may, in writing, allow";

Sec. 57.

(Power to define boundaries.)

- (k) (i) by omitting paragraph (a) of subsection one of section fifty-seven and by inserting in lieu thereof the following paragraph :—

(a) has complied with the provisions of subsection three of section fifty-two of this Act; and;

- (ii) by omitting from the proviso to the same subsection the words "not exceeding the extent prescribed by section sixty-three" and by inserting in lieu thereof the words "but, except where application is made for a special mining lease under this Part, the area shall not exceed that prescribed by section sixty-three of this Act";

- (iii) by omitting from subsection four of the same section the word "or" and by inserting in lieu thereof the word "and";

- (iv) by inserting in the same subsection after the word "lease" the following new paragraph :—

Notwithstanding the foregoing provisions of this subsection where no part of the surface is applied for and there are ten or more persons, each of whom is an owner or occupier of the land applied for, the applicant with the consent of the Minister may, in lieu of serving notice on any such owner or occupier, by advertisement, in such form as the Minister may direct, published in a newspaper circulating in the district where the land is situated, give notice of his intention to apply for a lease and where notice of such intention is so advertised due notice of the applicant's intention so to apply shall be deemed to have been given to every owner and occupier of the land.

(v)

- (v) by omitting subsection five of the same section and by inserting in lieu thereof the following subsections : —

(5) When any application for a lease has been duly made, the applicant, or his nominee, may by virtue of the application, until such lease is granted or refused, subject to the consent of the Minister and to any conditions (including payment of rent, royalty and such compensation as may be assessed by the warden) or restrictions imposed by him, occupy, for mining purposes, the land applied for and mine upon and in such land.

The Minister may by notice in writing served on the applicant revoke any such consent or may, in like manner, vary any such consent as he may think fit.

Any person occupying any land pursuant to this subsection who neglects or fails to comply with the conditions or restrictions specified in any relevant consent given under this subsection, or any variation thereof, shall be liable to a penalty not exceeding fifty pounds.

(5A) Any such application shall subsist for the benefit of the applicant or, in the event of his death or bankruptcy, of his legal representative or, in the event of his becoming mentally ill, of the committee or manager of the property, who shall be deemed to hold the land under promise of a lease until default occurs in making or prosecuting the application, or the Governor refuses the same or voids the lease before issue, and notice thereof is published in the Gazette.

(5B) In the event of an applicant or his legal representatives or the committee or manager as aforesaid carrying on mining operations during the pendency of an application, he or they, as the

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the case may be, shall pay royalty on any gold or ~~mineral~~ won during such pendency at the rate which would have been payable on such gold or mineral had such gold or mineral been won from the land the subject of a lease granted under this Part at the time the gold or mineral was won.

Sec. 57A.
(Applicant
for
authority
to enter to
be deemed
in certain
cases to be in
possession.)

(l) by omitting section 57A;

Sec. 58.
(Power to
refuse, etc.)

(m) (i) by inserting at the end of subsection one of section fifty-eight the following new paragraph : —

Any such refusal shall be notified in the Gazette and shall take effect from the time of publication thereof.

(ii) by inserting in subsection three of the same section after the word “enter” the words “or marked out by the applicant”;

Sec. 59.
(Particulars
to be stated
in lease.)

(n) (i) by omitting from paragraph (b) of subsection one of section fifty-nine the word “Minister” and by inserting in lieu thereof the word “Governor”;

(ii) by omitting from paragraph (c) of the same subsection the words “determined by the Minister in accordance with the regulations” and by inserting in lieu thereof the word “prescribed”;

(iii) by omitting subsection two of the same section;

(o)

- (o) by inserting next after section fifty-nine the following new section :—

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New
sec. 59A.

59A. (1) The Governor may, upon application in writing to the Minister by the holder of a lease, grant authority upon such terms as he may think fit permitting such holder to mine on the land comprised in the lease for gold or any mineral other than that in respect of which such lease has been granted and may vary or revoke any such authority.

Mining
for other
minerals.

(2) If the holder of any lease mines for gold or any mineral when he is not authorised to do so by his lease or any such authority, his lease shall be liable to forfeiture.

- (p) (i) by omitting subsection one of section sixty and by inserting in lieu thereof the following subsection :—

Sec. 60.
(Lease for
race, tram-
way, etc.)

(1) Subject to the assessment by the warden of compensation, the Governor may grant to any person who has made application to the Minister in that behalf in the prescribed manner a lease for any mining purpose specified therein of the surface of any private lands and the soil thereof below the surface, of the surface of any private lands and the soil thereof to a specified depth below the surface or of the soil between or below any specified depths or depth below the surface of any private lands.

- (ii) by inserting at the end of subsection (1A) of the same section the following paragraph :—

If the holder of any lease uses the land comprised in such lease for any purposes other than those in respect of which his lease or any such authority as aforesaid was granted, his lease shall be liable to forfeiture.

(iii)

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(iii) by inserting next after subsection four of the same section the following new subsection :—

(5) When any application for a lease under this section has been duly made, the applicant, or his nominee, may by virtue of the application, until such lease is granted or refused, subject to the consent of the Minister and to any conditions (including payment of such rent as may be fixed by the Minister) or restrictions imposed by him and subject to assessment of compensation by the warden, occupy the land applied for and construct and use such works upon and in the same as the Minister may authorise.

The Minister may by notice in writing served on the applicant revoke any such consent or may, in like manner, vary any such consent as he may think fit.

Any person occupying any land pursuant to this subsection who neglects or fails to comply with the conditions or restrictions specified in any relevant consent given under this subsection or any variation thereof shall be liable to a penalty not exceeding fifty pounds.

Sec. 61.
(Lessee
may apply
for lease of
additional
surface.)

(q) by omitting from section sixty-one the words “any purpose in connection therewith” and by inserting in lieu thereof the words “carrying on mining purposes”;

Sec. 62.
(Term of
lease.)

(r) (i) by inserting at the end of subsection three of section sixty-two the following new proviso :—

Provided that application for such renewal shall be made during the last five years of the term of the lease or, where the term of the lease does not exceed five years, during the last year of such term.

(ii)

- (ii) by inserting in subsection four of the same section next after the word "approve" the words "and may authorise the mining of gold or such minerals or the carrying on of such mining purposes as the Governor may approve";

- (s) (i) by inserting at the end of subsection one of section 62A the following paragraph :—

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—
Sec. 62A.
(Renewal
for further
term.)

Provided that application for such renewal shall be made during the last five years of the term of the lease or, where the term of the lease does not exceed five years, during the last year of such term.

- (ii) by inserting in subsection two of the same section next after the word "approve" the words "and may authorise the mining of gold or such minerals or the carrying on of such mining purposes as the Governor may approve";

- (t) (i) by omitting from section sixty-three the words "The area" and by inserting in lieu thereof the words "Except in respect of special mining leases granted under Division 4B of this Part, the area";

Sec. 63.
(Extent of
lease.)

- (ii) by omitting from the same section the words " : Provided that upon the recommendation of the Minister, the Governor may grant a lease exceeding the area above prescribed; but the Minister shall not make such recommendation unless the prospecting board certifies that, by reason of the difficulties and cost attending the construction of mine works upon or of mining such land, it is necessary that such greater area, to be specified by the board, should be included in the lease";

(u)

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Sec. 64.

(Rents payable.)

- (u) (i) by inserting at the end of subsection one of section sixty-four the following new paragraph : —

This subsection shall not apply to any such lease granted after the commencement of subsection (1A) of this section.

- (ii) by inserting next after the same subsection the following new subsection : —

(1A) The yearly rental reserved to the owner of the land in respect of any such lease (except a lease under section sixty of this Act) granted after the commencement of this subsection shall be two pounds per acre or portion of an acre commencing from the date of the lease payable half-yearly in advance, and shall be payable in respect of the portion of the surface leased.

Sec. 65.

(Powers as to surface.)

- (v) by omitting paragraph (a) of subsection one of section sixty-five and by inserting in lieu thereof the following paragraph : —

(a) carrying on any mining purposes;

Sec. 66.

(Lessee not to use water artificially conserved, nor depasture sheep, nor keep dog, nor remove rock, etc.)

- (w) by inserting in paragraph (b) of section sixty-six after the word "owner" the words "of such trees, bark or timber";

Sec. 67A.

(Tailings, &c., left after determination of lease.)

- (x) (i) by omitting from subsection one of section 67A the words "under this Act, or any Act hereby repealed, whose occupancy" and by inserting in lieu thereof the words "or other person whose occupancy under this Act";

(ii)

- (ii) by inserting in the same subsection after the word "completed" the following new paragraph : —

The person to whom leave is granted shall pay royalty in respect of any gold or mineral won at the rate at which royalty was payable at the time of the determination of his occupancy.

- (iii) by inserting in the same subsection after the words "so left" the words "and the right of any other person to treat such tailings, ore, minerals or stone";
- (y) by omitting from subsection one of section sixty-eight the words "mining operations by way of prospecting" and by inserting in lieu thereof the words "prospecting operations";
- (z) (i) by omitting from subsection two of section sixty-nine the words and symbols "(after deduction of any sum paid by way of rent)":
- Sec. 69.
(Lease or agreement by owner to mine for minerals reserved to the Crown.)
- (ii) by omitting subsections four, five and six of the same section;
- (aa) by omitting subsections five, six and seven of section seventy;
- Sec. 70.
(Lease or agreement to mine for minerals not reserved to the Crown.)
- (bb) (i) by omitting from subsection two of section 70A the words "be granted by the warden";
- Sec. 70A.
(Grant of authority to enter.)
- (ii) by inserting in the same subsection after the word "compensation" the words "be granted by the warden";

(iii)

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- (iii) by inserting at the end of the same subsection the following new proviso : —

Provided that where application for any such authority to enter is made in respect of any mineral, which is owned by a person other than the owner of the land, the warden shall, before issuing the authority, give due notice of the inquiry referred to in subsection one of section fifty-one of this Act to the owner of such mineral in addition to any other person to whom notice is required to be given under that subsection, and for the purposes of that subsection, the owner of the mineral shall be deemed to be an owner of the land applied for.

- (iv) by inserting next after subsection three of the same section the following new subsection : —

(4) The holder of any such authority shall, within the period and as directed by the warden, serve notice, in the prescribed form, of the grant of such authority and of every extension thereof upon the owner and occupier, at the time of the grant or extension, of the land defined in the authority and upon the owner of any mineral in the land owned by a person other than the owner of the land.

Notwithstanding the foregoing provisions of this subsection where no part of the surface is applied for and there are ten or more persons, each of whom is an owner or occupier of, or an owner of the mineral on or in, the land applied for, the holder with the consent of the warden, in lieu of serving notice upon any such owner or occupier as required by this subsection, may, by advertisement, in such form as the Minister may direct, published in a newspaper circulating in the district where the land is situated, give notice of the grant of the authority and of any extension thereof and where any such grant or extension is so advertised due notice

notice of the grant or extension shall be deemed to have been given to every such owner and occupier. **No. 57, 1963**

(cc) (i) by inserting in subsection one of section 70B after the words "or any part thereof," the words "and has complied with the provisions of subsection four of section 70A of this Act and has paid rent and compensation as prescribed,"; Sec. 70B. (Application for lease.)

(ii) by inserting at the end of the same subsection the following new paragraph : —

The notice of intention to apply for a lease required to be served upon the owner and occupier of the land as provided by subsection four of section fifty-seven of this Act shall also be served by the applicant upon the owner of any mineral, which is owned by a person other than the owner of the land.

(iii) by omitting subsections two, three and four of the same section;

(dd) by inserting next after section 70B the following new sections : — New secs. 70BA, 70BB and 70BC.

70BA. (1) Any person who is the owner of any private lands and any minerals in or on such lands may, if such lands are not applied for or held or occupied for prospecting, mining or mining purposes under this Act, make application in the prescribed manner for a lease of such lands to mine such minerals. Application for lease by owner of land and minerals.

(2) An owner applying as aforesaid shall have no preferential rights over other applicants but notwithstanding the provisions of section 70BC of this Act shall not be subject to the provisions of this Part relating to the assessment and payment of rent and compensation, or of those provisions which relate

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—

relate to such notices as the owner would be entitled to receive in his capacity as owner of the lands in the case of an application made by some other person.

Application
for lease
by owner
of land or
minerals.

70BB. (1) Where any private lands and minerals therein or thereon are not owned by the same person (such lands or minerals not being lands or minerals owned by or reserved to the Crown), the owner of such lands or the owner of such minerals may if—

- (a) such lands are not applied for or held or occupied for prospecting, mining or mining purposes under this Act; and
- (b) he is the holder of an authority to enter under this Part,

make application in the prescribed manner for a lease of such lands to mine such minerals.

(2) An owner applying as aforesaid shall have no preferential rights over other applicants but notwithstanding the provisions of section 70BC of this Act shall not be subject to the provisions of this Part—

- (a) where the applicant or lessee is the owner of the lands and the application is for, or the lease is, a lease to mine for coal or shale, relating to the assessment and payment of rent and compensation other than rent reserved to the owner of the minerals under subsection three of section 70BC of this Act;
- (b) where the applicant or lessee is the owner of the minerals and the application is for, or the lease is, a lease to mine for coal or shale, relating to the payment of rent reserved to the owner of the minerals under subsection three of section 70BC; or

(c)

- (c) being such other provisions of this Part as relate to notices that the owner would be entitled to receive in his capacity as owner of the lands or owner of the minerals, as the case may be, if the application had been made by some person other than the owner of the lands or the minerals. No. 57, 1963

70BC. (1) Leases under this Division may be granted by the Governor in the name and on behalf of Her Majesty, and the provisions of Division 3 of this Part of this Act relating to the grant or refusal of applications for leases of private lands shall apply to applications made under this Division, but it shall not be necessary for an applicant under section 70BA of this Act to be the holder of an authority to enter. Provisions applicable to leases and applications under this Division.

(2) The provisions of this Act in relation to the term, rent, area, dimensions, form, and conditions of leases of private lands and the rights and duties of lessees and applicants for such leases, or their nominees, shall, subject to this Division, apply to leases granted, and applications for leases made, under this Division.

(3) In addition to the rent payable in respect of the portion of the surface leased, a yearly rental of five shillings per acre or portion of an acre in respect of the whole area included in a lease to mine for coal or shale shall be reserved to the owner of the minerals, and shall be payable half-yearly in advance.

- (ee) (i) by omitting the proviso to subsection three of section 70C; Sec. 70c.
(Royalty payable.)
- (ii) by inserting in paragraph (a) of subsection five of the same section after the figures "1952" the words ", and before the commencement of subsection six of this section";

(iii)

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—

(iii) by inserting next after the same subsection the following new subsection : —

(6) (a) In respect of any authority or lease granted after the commencement of this subsection the foregoing provisions of this section shall have effect as if : —

- (i) the words “one and one-eighth per centum” were omitted from paragraph (a) of subsection one and the words “an amount calculated at such rate as may be prescribed” were inserted in lieu thereof;
- (ii) the words “sixpence per ton” were omitted from paragraph (b) of the same subsection and the words “such rate per ton as may be prescribed” were inserted in lieu thereof;
- (iii) the words “paragraph (a) or paragraph (b) of this subsection” were omitted from the same subsection wherever occurring and the words “paragraph (a) or paragraph (b) of this subsection as amended by subsection six of this section” were inserted in lieu thereof;
- (iv) paragraphs (i) and (ii) of subsection two were omitted and the following paragraph : —
 - (i) one-seventh of such sum;were inserted in lieu thereof;
- (v) subsection four were omitted and the following subsection inserted in lieu thereof : —

(4) The lessee may deduct from the sum payable under subsection one of this section in any one year to the Minister on behalf of the owner of the minerals a sum equal to the amount paid by him
to

to such owner in accordance with the provisions of subsection three of section 70BC of this Act as rent for that year. No. 57, 1963

(b) The provisions of paragraph (b) of subsection five of this section shall apply, mutatis mutandis, to the making of regulations for the purposes of this subsection, but in the application of that paragraph, it shall have effect as if—

- (i) the words “one shilling” were omitted therefrom and the words “two shillings” were inserted in lieu thereof; and
- (ii) the word “ninepence” were omitted therefrom and the words “one shilling” were inserted in lieu thereof.

(ff) by inserting in subsection one of section 70D after the word “warden” the words “and the Minister’s determination shall be final”; Sec. 70D.
(Protection of land upon which mining operations are being carried on.)

(gg) (i) by inserting in subsection one of section 70E after the word “plan” the words “or description”; Sec. 70E.
(Protection of land in certain colliery holdings.)

(ii) by omitting from subsection (1A) of the same section the words “of section 70D of this Act or”;

(iii) by inserting in the same subsection after the word “section” where thirdly occurring the words “or a lease for mining purposes of any such land”;

(iv) by inserting in the same subsection after the word “may” where firstly occurring the words “, subject to section 70D of this Act,”;

(v)

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—

(v) by inserting in subsection three of the same section after the word "complaint" the words "in writing";

(vi) by omitting from the same subsection the words "the protection afforded by the plan lodged under this section" and by inserting in lieu thereof the words "the provisions of subsection one of this section";

New Div.
4B.

(hh) by inserting next after section 70E the following new Division : —

DIVISION 4B.—SPECIAL LEASES OF PRIVATE LAND.

Governor
may grant
special
leases of
private
lands.

70F. (1) The Governor may, upon the recommendation of the Minister, grant, in any case in which a lease may be granted under any of the foregoing provisions of this Part, a special mining lease of private lands for mining, other than coal or shale mining, whether or not the area applied for exceeds the limits prescribed as to area or dimensions of ordinary leases under this Part, if the Minister is satisfied that by reason of the difficulties and cost attending the construction of mine works upon or of mining such lands, or for any other sufficient reason, it is necessary that such lease be granted.

(2) The Minister may, on application being made in the prescribed manner for such lease, direct the prospecting board or the warden to inquire and report—

- (a) whether by reason of the difficulties and cost attending the construction of mine works upon and of mining such lands, or for any other sufficient reason, it is necessary that a special mining lease should be granted; and
- (b) upon the royalty to be paid; and
- (c) upon such other matters as the Minister may direct.

(3)

(3) The Governor may fix the area to be comprised in any such lease and the form of such area and the labour and other conditions, reservations and exceptions to be contained in the lease. No. 57, 1963

(4) The Governor may fix the royalty to be paid by the lessee of any such lease and the lessee shall—

- (a) in respect of all gold and minerals reserved to the Crown won from the lands so leased, pay to the Crown the royalty fixed as aforesaid at the times and in the manner prescribed and such royalty may be recovered from the lessee as a Crown debt; and
- (b) in respect of minerals not so reserved won from the lands so leased, pay to the Minister on behalf of the owner of such minerals, the royalty fixed as aforesaid at the times and in the manner prescribed.

The Minister shall at the times and in the manner prescribed pay to the owner of such minerals the sum paid under paragraph (b) of this subsection less one-seventh of such sum which he is hereby authorised to deduct from such sum; and the amounts so deducted shall be paid by the Minister into the Treasury and carried to the Consolidated Revenue Fund.

Where any private land the subject of a lease under this section and the minerals for which the lessee is pursuant to such lease entitled to mine in or upon such land are privately owned and in the same ownership, and the royalty payable in respect of such minerals by the lessee during any one year exceeds the rent paid for such year in respect of such land, the amount paid as rent as aforesaid may be deducted from such sum payable as royalty; but if the royalty in any one year amounts to less than the rent paid for such year, the lessee shall not for such year be required to pay royalty.

(5)

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(5) In all other respects a special mining lease of private land and the application therefor shall be subject to the provisions of this Act in respect of ordinary leases under this Part.

(6) Where the Minister is satisfied that by reason of the difficulties and cost attending the construction of mine works upon or of mining any land the subject of an application for a lease under this Part (this section excepted) or for any other sufficient reason it is necessary that any such application should be dealt with in accordance with the provisions of this section the Minister may approve of the application being so dealt with, and, if the Minister so approves, the application shall be deemed to have been made for a lease under this section.

This subsection shall apply to applications for leases made before the commencement of this subsection and not granted or refused at such commencement as well as to applications for leases made after such commencement.

Div. 5.
(Resump-
tion.)

Sec. 82.
(Amount.)

(ii) by omitting Division 5;

(jj) by inserting at the end of paragraph (a) of subsection (2A) of section eighty-two the words "or, in the case of a special mining lease granted under section 70F of this Act, at such rates as may be fixed by the Governor under that section";

Sec. 83.
(Right of
ingress,
egress and
regress.)

(kk) (i) by inserting in section eighty-three after the words "every lease" the words "and every application for a lease";

(ii) by omitting from the same section the words "thereby conferred" and by inserting in lieu thereof the words "conferred by or under this Act, or the lease, upon the holder of such authority or lease or upon the applicant for such lease";

(iii)

- (iii) by inserting in the same section after the words "or lease" the words " , or the subject of the application,"; No. 57, 1963
- (iv) by inserting in the same section after the word "lessee" the words " , or the applicant, as the case may be,";
- (v) by omitting from the same section the words "gates in any case where such gates are rabbit-netted" and by inserting in lieu thereof the words " , marsupial-proof or dog-proof gates in any case where such fences are rabbit-proof fences, marsupial-proof fences, or dog-proof fences, as the case may be";
- (vi) by omitting from the same section the words "the said right be exercised over any garden, yard, orchard, or pleasure ground" and by inserting in lieu thereof the words "any such right-of-way be marked out over any garden, yard, orchard or public recreation reserve".

(2) The amendments made by subparagraph (v) of paragraph (k) of subsection one of this section shall not apply to any applicant for a lease of private lands where his application was made before the commencement of that subparagraph and had not been granted or refused at such commencement, but the provisions of subsection five of section fifty-seven of the Principal Act shall continue to apply to and in respect of any such applicant until his application is granted or refused.

6. The Principal Act is amended by inserting after section eighty-three the following new Part : —

PART IVA.

EXPLORATION LICENSES.

83A. In this Part, "private lands" has the meaning ascribed thereto in Part IV of this Act.

83B.

Amendment
of Act No.
49, 1906.
New
Part IVA.

Inter-
pretation.

No. 57, 1963

Explora-
tion
licenses.

83B. (1) The Minister may, on the recommendation of the prospecting board, grant in respect of gold or any mineral exploration licenses in the prescribed form over any lands within the State having an area of not less than one hundred square miles nor more than one thousand square miles, whether Crown lands or private lands or partly Crown lands and partly private lands—

- (a) which are not validly held under any lease, authority, license or other holding under Parts II, III, IV or V of this Act, or the subject of a valid application for any such lease or authority, such application having been made before the application for the exploration license was made;
- (b) in or upon which bona fide mining operations are not being carried on by or with the concurrence of the owner at the time the application for the exploration license is made; or
- (c) which are not included in an existing exploration license held by any person other than the applicant.

(2) Every application for an exploration license under this Part shall be made in the form and manner prescribed and shall be delivered or forwarded by post to the Under Secretary for Mines.

(3) The applicant shall forward with every application for an exploration license—

- (a) a sum calculated at the rate of two shillings for each square mile or part of a square mile comprised in the area applied for;
- (b) a map or plan drawn to the prescribed scale upon which shall be delineated the boundaries of the area in respect of which the license is applied for;
- (c) evidence of—
 - (i) the financial standing of the applicant;
 - (ii)

- (ii) the technical qualifications of the applicant and his technical advisers; and
- (iii) the ability of the applicant to comply with the provisions of this Part relating to the license; and
- (d) a proposed scheme for the exploration of the land comprised in such application.

(4) (a) If the exploration license is granted the sum referred to in paragraph (a) of subsection three of this section shall be applied in or towards the payment of the annual fee payable in respect of the exploration license.

(b) If the applicant proceeds with his application in accordance with the requirements of this Act and the regulations and the application is refused such sum shall be refunded to the applicant.

(c) If the applicant abandons his application or fails to proceed with his application in accordance with the requirements of this Act and the regulations the whole or such part of such sum as the Minister may determine shall be forfeited to the Crown.

(5) The applicant shall, if so requested in writing by the Minister, furnish such further evidence relating to the matters referred to in paragraph (c) of subsection three of this section as the Minister requires and if the applicant fails to furnish such further evidence to the satisfaction of the Minister within thirty days of such request the application may be refused.

(6) Every proposed scheme referred to in paragraph (d) of subsection three of this section shall—

- (a) provide for a geological survey or other survey of the lands comprised in such application to be carried out by or under the direction of a person approved by the Minister to the satisfaction of the Minister; and

(b)

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- (b) contain particulars of the geological survey or other survey and other operations which such applicant proposes to carry out, the periods within which he proposes to carry them out and the sums proposed to be expended in carrying them out.

(7) An exploration license may be granted notwithstanding that the applicant therefor has not in every respect complied with the regulations or has included in the land applied for land in respect of which a license may not be granted under this Part.

(8) An exploration license may, at the request in writing of the applicant therefor, be granted to any person nominated by him.

(9) The Minister may refuse any application for an exploration license and any such refusal shall be notified in the Gazette.

(10) The Minister may—

- (a) grant an exploration license in respect of the lands referred to in the application therefor or, with the consent in writing of the applicant therefor, grant such a license in respect of such lands subject to such alterations, enlargements or reductions in the area of such lands as the Minister may determine;
- (b) grant an exploration license subject to such conditions, provisions and stipulations as he may think fit;
- (c) suspend or postpone the fulfilment of any conditions, provisions and stipulations subject to which the license was granted for periods not on any one occasion exceeding three months;
- (d) cancel an exploration license where the holder thereof has failed to comply with any of the conditions, provisions and stipulations subject to which the license was granted or with any conditions imposed on him under section 83D of this Act;

(e)

- (e) withdraw without payment of compensation any area from any exploration license where such area is required for any public purposes and cancel the license in respect of the land so withdrawn;
- (f) at the request of the holder cancel an exploration license either wholly or in part.

(11) The applicant or nominee referred to in subsection eight of this section shall, within twenty-eight days after being notified of the approval of the application for an exploration license, or within such further time as the Minister may allow, and before the exploration license is issued, lodge with the Minister a bond in the form prescribed with a surety approved by the Minister, or other security in cash or otherwise as the Minister thinks proper to accept, in a sum of not less than one thousand pounds or such greater sum as the Minister requires, conditioned upon compliance with the conditions, provisions and stipulations of such license.

If the applicant fails to comply with the provisions of this subsection his application and the Minister's approval thereof shall be deemed to have lapsed.

(12) Every license under this Part shall be dated the day of execution thereof by the Minister.

(13) (a) An exploration license may be granted for such period not exceeding twelve months as the Minister may determine.

(b) Upon application in that behalf made by the holder of an exploration license during the currency of such license or any renewal thereof and not later than one month before the expiry of such license or renewal, as the case may be, the Minister may, at his discretion and subject to such conditions, provisions and stipulations as he may think fit, grant successive renewals of the license for further periods not exceeding six months each in respect of the whole of the land comprised therein or any part thereof but so that the total period including renewals for which any such license is to remain in force shall not exceed twenty-four months.

(14)

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—

(14) The holder of an exploration license shall pay in advance by way of license fee for the whole term of the license and for any renewal thereof a sum calculated at the rate of two shillings per annum for each square mile or part of a square mile of the area comprised in such license.

(15) Every holder of an exploration license shall have the exclusive right to carry out such surveys and other operations as are authorised by the exploration license for the purpose of prospecting in or on the land for gold or minerals as is specified in such license.

(16) Where an applicant for an exploration license dies or becomes bankrupt or mentally ill before his application is granted or refused, the license may, if the legal representative of such deceased or bankrupt applicant or the committee or manager of the property of such mentally ill applicant so requests, be granted to such legal representative, committee or manager.

Where the holder of an exploration license dies or becomes bankrupt or mentally ill, the license shall subsist for the benefit of the legal representative of the deceased or bankrupt holder or the committee or manager of the property of the mentally ill holder.

(17) Any areas within the external boundaries of an exploration license and the subject of any lease, authority, license or other holding under Part II, III, IV or V of this Act or of any application under such Parts at the date of the grant of the exploration license shall in the event of the expiry, cancellation or other determination of any such lease, authority, license or other holding or the refusal of any such application during the term of the exploration license or any renewal thereof thereupon form part of the area granted under the exploration license.

83C. (1) Where, in respect of any part of any land which is comprised in an exploration license, any person is authorised to prospect or mine for gold or any minerals by virtue of—

- (a) any lease, authority, license or other holding under Part II, III, IV or V of this Act; or
- (b) any agreement under section sixty-nine of this Act; or
- (c) his ownership of any minerals; or

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 Disputes between holders of licenses and other persons carrying on operations on land under license or lease.
 cf. Act No. 28, 1955, s. 41.

(d) an agreement with the owner of any minerals, and any difference arises, between the holder of such license and the person so authorised with respect to the operations carried out or proposed to be carried out by such holder or such person, such holder or such person or both of them may refer the matter for determination to the Minister who shall thereupon refer the matter to the warden for an inquiry and report.

(2) Upon receipt of the warden's report the Minister may make such order and give such directions to such holder or such person or to both of them as in the public interest and in the circumstances of the case may seem to him to be just and equitable and by such order may direct the payment by such holder or such person or both of them of any costs and expenses incidental to the conduct of such inquiry.

If such holder or person neglects or fails to comply with any such order or directions, the Minister may cancel such holder's exploration license or the lease, authority, license or other holding, if any, held by such person.

83D. (1) Without the consent of the Minister being first had or obtained nothing in any exploration license shall authorise any person to enter upon or carry out any surveys or prospecting operations upon the surface of any Crown lands exempted from occupation under section fourteen of this Act.

Restriction on rights of holders of licenses over certain lands.
 cf. *Ibid.*, s. 46.

(2)

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(2) The Minister may refuse his consent under this section or may grant his consent either unconditionally or upon such conditions as he thinks fit.

Operations
on private
land.

cf. Act No.
28, 1955,
s. 47.

83E. If any of the land comprised in an exploration license is private lands, surveys and operations under such license shall be carried out so as not to interfere with the existing use of such private lands to a greater extent than is necessary or, in the case of dispute, is determined by the Minister after reference to him by the parties to such dispute or any of such parties.

Liability to
compensate
owner or
occupier.

cf. *Ibid.*
s. 48.

83F. Without derogating from any other provisions of this Part, the holder of any exploration license shall be liable to compensate the owner or occupier of the land comprised in such license for all damages sustained by such owner or occupier to crops and improvements, including permanent artificial water supply, by reason of operations and construction works carried out or erected by such holder during the period of occupation by such holder.

Restrictions
on rights of
holders of
exploration
licenses
over certain
land.

cf. *Supra*,
s. 47.

83G. (1) No exploration license shall, except with the consent of the owner, extend to the surface of any land—

- (a) within fifty yards of any land bona fide in use as a garden or orchard; or
- (b) within two hundred yards of the principal residence of the owner or occupier of any land whether or not it is the land in respect of which the exploration license is applied for; or
- (c) whereon is any substantial building, bridge, dam, reservoir, well or other valuable improvement, other than an improvement effected for mining purposes and not bona fide used for any other purpose.

The

The Minister shall determine whether any improvement referred to in paragraph (c) of this subsection is substantial or valuable, and may define an area adjoining such improvement within which no surveys shall be carried out or prospecting operations carried on. Any such area so defined may be wholly within the land in respect of which the exploration license is applied for or partly within such land and partly within other land or wholly within other land.

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(2) The provisions of subsection one of this section shall not apply in respect of any such garden, orchard, residence or improvement unless it was in existence at the time when the application for the exploration license was made.

(3) Except with the consent of the owner, no surveys shall be carried out and no operations shall be conducted under any such exploration license below the surface of any land to which an exploration license does not extend by reason of subsection one of this section.

83H. No exploration license shall, except with the consent of the owner and occupier, extend to the surface of any land under cultivation when the application for the exploration license was made; and without such consent no surveys or operations under such exploration license shall be carried out or conducted, except with the authority of the Minister, and at such depth as the Minister may, after full inquiry, deem to be sufficient to prevent damage to the surface :

Restrictions
on rights of
holders of
exploration
licenses over
cultivated
land.
cf. *Supra*,
s. 48.

Provided that—

- (a) cultivation for the growth and spread of pasture grasses shall not be deemed to be cultivation within the meaning of this section unless, in the opinion of the Minister, the circumstances so warrant; and
- (b) in the case of dispute as to whether land is or is not under cultivation within the meaning of this section, the Minister's decision thereon shall be final.

83I.

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Compensation before commencement of operations on private lands covered by exploration license. cf. Act No. 28, 1955, s. 51.

83I. (1) Where a holder of an exploration license determines or is required to carry out any surveys or prospecting operations on any portion of private lands comprised in such license, he shall before commencing such surveys or operations apply to the warden to determine the amount of compensation payable by him in respect of such surveys and operations unless before commencing such surveys or operations an agreement between such holder and the owner or the owner and occupier, as the case may be, of such private lands as to the amount of compensation to be paid by such holder in respect of such surveys or operations has been lodged with the Under Secretary for Mines.

The warden shall, pursuant to any such application, assess the compensation to be paid by such holder.

Requirements in application.

(2) Such holder shall—

- (a) in such application, state and furnish a description of the area of the surface of private lands required and the purpose for which it is required; and
- (b) give such further information as the warden requires.

Compensation. cf. *Ibid.* s. 53.

83J. (1) The holder of an exploration license shall be liable to pay compensation to be assessed by the warden to every person having any estate or interest in any land injuriously affected by reason of any operations conducted or other action taken by such holder in pursuance of this Part or such license.

(2) Compensation shall not be payable under this Part by the holder of an exploration license where the operations of such holder do not affect any portion of the surface of any land.

Parties to agree as to compensation. cf. *Ibid.* s. 54.

83K. (1) (a) The holder of an exploration license may treat and agree with any person entitled to compensation under this Part as to the amount of such compensation.

(b)

(b) No such agreement shall be valid unless the same is in writing and signed by the parties thereto or their agents and lodged with the Under Secretary for Mines. No. 57, 1963

(2) (a) If within such time as may be prescribed the parties are unable to agree upon the amount of compensation to be paid then, on the complaint of any party, the warden shall hear such complaint and assess the amount of compensation to be paid by such holder. Where parties unable to agree, warden to determine compensation.

(b) Forthwith after such assessment the warden shall furnish to the Minister a copy of the complaint as aforesaid by or against such holder and of the decision of the warden thereupon.

83L. (1) Subject to this Part compensation payable under this Part shall be compensation for— Measure of compensation.

(a) deprivation of the possession of the surface of the land or of any part of the surface; cf. Act No. 28, 1955, s. 55.

(b) damage to the surface of any land or to any improvements on any land, which has been caused by or which may arise from the carrying on of operations by the holder of an exploration license on the land comprised in such license;

(c) all consequential damages.

(2) In assessing the amount of compensation the warden shall take into consideration the amount of compensation which any person entitled thereto or his predecessor in title has already received for or in respect of the damage or loss for which compensation is being assessed and shall deduct the amount already so received from the amount which he would otherwise be entitled to for such damage or loss.

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7. Part V of the Principal Act is amended—

Amendment
of Act No.
49, 1906.

Part V—
(Dredging
leases.)

Sec. 84.
(Interpre-
tation.)

- (a) (i) by omitting from section eighty-four the definitions of “Occupier” and “Owner” and by inserting in lieu thereof the following definitions :—

“Occupier”, “Owner” and “Private lands”
have the meanings respectively ascribed
to those expressions in Part IV of this
Act.

- (ii) by omitting from the same section the definition
of “River-bed”;

Subst.
sec. 85.

- (b) by omitting section eighty-five and by inserting in
lieu thereof the following new section :—

This Part
not to apply
to certain
cultivated
land.

85. Nothing in this Part shall apply to any lands
held under this Act nor, where the owner of any
private lands has not consented to the grant of an
authority to enter thereon, to those private lands if
they are found by the warden to have been at the
time the application for such authority was made
under actual cultivation.

Cultivation for the growth and spread of pasture
grasses shall not be deemed to be cultivation within
the meaning of this section unless, in the opinion
of the Minister, the circumstances so warrant.

In the case of dispute as to whether land is or is
not under cultivation within the meaning of this sec-
tion the Minister’s decision thereon shall be final.

Sec. 86.
(Governor
may grant
leases for
purposes of
mining by
dredging,
etc., and of
what lands.)

- (c) (i) by omitting from subsection one of section
eighty-six the word and symbol “mining)” and
by inserting in lieu thereof the words “mining,
or land in or upon which any bona fide mining
operations are being carried on by or with the
concurrence of the owner) whether or not such
land is Crown lands or private lands”;

(ii)

- (ii) by inserting next after the same subsection the following new subsections : — No. 57, 1963

(1A) The Governor, on the recommendation of the Minister, may, by notification, exempt from the provisions of this Part any land, whether Crown lands or private lands, and may, in like manner, revoke or amend any such notification.

(1B) (a) Upon the cancellation or determination of any lease or part of a lease of land situated within the external boundaries of any area exempted from the provisions of this Part, the lands comprised in such lease or such part of a lease shall form part of such area.

(b) The provisions of this subsection shall not apply so as to prevent the granting of a lease to a complainant following the cancellation of a lease under section 124A of this Act.

- (iii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection : —

(2) (a) The area that may be demised by any lease granted under this section shall not exceed one hundred acres.

(b) Every such lease shall contain such labour conditions as the Governor may determine.

(c) Except in the prescribed circumstances, every application for any such lease shall be accompanied by the prescribed survey fee.

Where the Minister is of opinion that a survey is unnecessary for the purposes of any such application, or that the cost of the survey is less than the prescribed survey fee lodged by the applicant for the lease, he may refund to such applicant the whole, or such part as he thinks fit, of any prescribed survey fee paid by such applicant.

(iv)

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—

- (iv) by inserting at the end of subsection four of the same section the following new proviso : —

Provided that application for such renewal shall be made during the last five years of the term of the lease or, where the term does not exceed five years, during the last year of such term.

- (v) by inserting in subsection five of the same section after the word “approve” the words “and may authorise the mining for gold or such minerals as the Governor may approve”;

Sec. 86A.
(Renewal of
leases for
further
term.)

- (d) (i) by inserting at the end of subsection one of section 86A the following new proviso : —

Provided that application for such renewal shall be made during the last five years of the term of the last renewal thereof or, where the term of the last renewal does not exceed five years, during the last year of such term.

- (ii) by inserting in subsection two of the same section after the word “approve” the words “and may authorise the mining for gold or such minerals as the Governor may approve”;

Sec. 87.
(Land to be
applied for
to be
entered and
marked
out.)

- (e) (i) by omitting from subsection one of section eighty-seven the words “is not Crown land” wherever occurring and by inserting in lieu thereof the words “is private lands”;

- (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection : —

(2) Such authority shall be granted by the warden upon payment of a fee of one pound.

Sec. 88.
(Entry in
pursuance
of
authority.)

- (f) by omitting from subsection one of section eighty-eight the words “fourteen days” and by inserting in lieu thereof the words “twenty-eight days”;

(g)

(g) (i) by inserting in section eighty-nine after the word "marked" the word "out"; No. 57, 1963
Sec. 89.

(ii) by inserting in the same section after the word "thereof" where firstly occurring the words "from the time of marking out"; (Person marking out area to be deemed in possession.)

(h) by omitting section ninety and by inserting in lieu thereof the following section : — Subst.
sec. 90.

90. (1) Applications for leases under this Part shall be made within the time and in the form and manner prescribed. Applica-
tions for
leases to
be made to
warden and
forwarded
to Minister.

(2) Any such application shall subsist for the benefit of the applicant or, in the event of his death or bankruptcy, of his legal representatives or, in the event of his becoming mentally ill, of the committee or manager of the property, who shall be deemed to hold the land under promise of a lease until default occurs in making or prosecuting the application or the Governor refuses the same or voids the lease before issue and notice thereof is published in the Gazette. cf. *Supra*,
s. 30 (3).

(3) In the event of an applicant or his legal representatives or the committee or manager as aforesaid carrying on mining operations during the pendency of an application, he or they, as the case may be, shall pay royalty on any gold or mineral won during such pendency at the rate which would have been payable on such gold or mineral had such gold or mineral been won from the land the subject of a lease granted under this Part after the commencement of this section. cf. *Supra*,
s. 30 (4).

(4) If more than one application is made for a lease of the same land the application of the person who has first marked out such land shall be first considered and dealt with and so on according to priority of marking out.

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—

For the purposes of this subsection “marking out” means the act of erecting a datum post, provided that the mode of marking out prescribed by the regulations is forthwith complied with :

Provided that where under the regulations a datum post is not required, the time of marking out shall be deemed to be the time at which the application is lodged.

(5) If any application for a lease is refused or abandoned any other application for a lease of the same land may be considered and dealt with regard being had where necessary to the rule of priority aforesaid.

Sec. 91.

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

- (i) (i) by omitting from subsection one of section ninety-one the words “At such inquiry” and by inserting in lieu thereof the words “The Minister may direct the warden to hold an inquiry in the manner prescribed with respect to any application for a lease under this Part.
At such inquiry ”;
 - (ii) by omitting from paragraph (a) of the same subsection the words “and what sites for machinery, workshops, storage of fuel or other material”;
 - (iii) by omitting from paragraph (b) of the same subsection the words “not Crown land” and by inserting in lieu thereof the words “private lands”;
 - (iv) by omitting from the same paragraph the words “and sites”;
 - (v) by inserting in the proviso to the same subsection after the words “such rent” wherever occurring the words “or compensation”;
 - (vi) by omitting from the same proviso the words “But no such agreement shall contain any provision or stipulation for the payment of any sum by way of royalty upon the gold or minerals won from the land applied for.”;
- (j)

- (j) by omitting section ninety-four;

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Sec. 94.

(Minister
may refuse
application
or grant
lease.)

- (k) (i) by omitting from the heading to section ninety-five the words "*or site*";

Sec. 95.

(Warden
may
order such
road or
site to
be marked
out.)

- (ii) by omitting from subsection one of the same section the words "*or site*";

- (iii) by omitting from subsection two of the same section the words "to use such road with horses, cattle, and vehicles" and by inserting in lieu thereof the words "the applicant for a lease under this Part, or his nominee, as the case may be, to use such road in connection with mining operations carried on under the lease or by virtue of the application";

- (iv) by inserting next after the same subsection the following new subsection :—

(3) The cost of marking out such road shall be borne by the lessee or the applicant who shall place substantial sheep-proof gates at all fences intersected by such road or rabbit-proof, marsupial-proof or dog-proof gates in any case where such fences are rabbit-proof fences, marsupial-proof fences or dog-proof fences, as the case may be; but the right to cross any tenement, leasehold or other holding under this Act for the purpose of obtaining access to the nearest public road shall not be exercised except under the authority of the warden nor shall any such right-of-way be marked out over any garden, yard, orchard or public recreation reserve.

(1)

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Sec. 96.

(Further or other roads of access and sites may be ordered by warden.)

- (1) (i) by omitting from section ninety-six the words "or a site as aforesaid";
- (ii) by omitting from the same section the words "or site" wherever occurring;
- (iii) by inserting at the end of the same section the following new paragraph : —

The cost of marking out such road shall be borne by the lessee who shall place substantial sheep-proof gates at all fences intersected by such road or rabbit-proof, marsupial-proof or dog-proof gates in any case where such fences are rabbit-proof fences, marsupial-proof fences or dog-proof fences, as the case may be; but the right to cross any tenement, leasehold or other holding under this Act shall not be exercised except under the authority of the warden nor shall any such right-of-way be marked out over any garden, yard, orchard or public recreation reserve.

Sec. 97.

(First payment to be made into warden's court.)

- (m) (i) by omitting from subsection one of section ninety-seven the words "land which is not Crown land" and by inserting in lieu thereof the words "private lands";
- (ii) by inserting in subsection three of the same section after the word "paid" the words "yearly in advance";

Sec. 98.

(Rent and royalty.)

- (n) (i) by inserting at the end of subsection one of section ninety-eight the following new paragraph : —

This subsection shall not apply to any such lease granted after the commencement of subsection (1A) of this section.

(ii)

- (ii) by inserting next after the same subsection the No. 57, 1963 following new subsection : —

(1A) The rent to be paid to the Crown in respect of Crown land included in any dredging lease granted under this Part after the commencement of this subsection shall be five shillings per acre or portion of an acre. Such rent shall be payable at the times and places and in the manner prescribed :

Provided that all such rents shall be payable yearly in advance and the first annual payment shall be made on making the application for such lease.

- (o) (i) by inserting next after subsection two of section ninety-nine the following new subsection : —

(2A) The Governor may refuse any application for a lease and such refusal shall take effect from the time of publication of such refusal in the Gazette.

Sec. 99.
(No obligation to grant lease.)

- (ii) by omitting subsection four of the same section and by inserting in lieu thereof the following subsections : —

(4) The Governor may, upon application in writing to the Minister by the holder of a lease under this Part, grant authority upon such terms as he may think fit permitting such holder to mine on the land comprised in the lease for any mineral other than that in respect of which such lease has been granted and may vary or revoke any such authority.

(5) If the holder of any lease mines for any mineral other than that in respect of which his lease or any such authority as aforesaid was granted, his lease shall be liable to forfeiture.

- (p) by omitting from section one hundred the words "freehold or conditionally purchased";

(q) Sec. 100.
(Owner to have access to water.)

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Subst. sec.
101 and new
sec. 101A.

- (q) by omitting section one hundred and one and short heading thereto and by inserting in lieu thereof the following short heading and sections :—

Mining during pendency of application.

Minister
may
consent to
mining
during
pendency.

101. (1) When any application for a lease under this Part has been duly made the applicant, or his nominee, may by virtue of the application, until such lease is granted or refused, subject to the consent of the Minister and to any conditions (including, in the case of Crown lands, the payment of rent and royalty and such compensation as may be determined by the warden and, in the case of private lands, royalty and such rent and compensation as may be determined by the warden) or restrictions imposed by him, occupy, for mining purposes, the land applied for and mine upon and in such land. The Minister may by notice in writing addressed to the applicant revoke any such consent or may, in like manner, vary any such consent as he may think fit.

Any person occupying any land pursuant to this subsection who neglects or fails to comply with any conditions or restrictions specified in any relevant consent given under this subsection, or any variation thereof, shall be liable to a penalty not exceeding fifty pounds.

(2) This section shall apply to applications for leases made under this Part before the commencement of this section, and not granted or refused at such commencement as well as to applications for leases made under this Part after such commencement :

Provided that where the applicant for a lease applied for before, and not granted or refused at, such commencement, has before such commencement obtained the consent of the owner or occupier to commence mining operations in or on the area included in the application, such applicant may, in accordance

accordance with such consent, commence, and continue to carry on, such operations notwithstanding the provisions of this section until his application is granted or refused. No. 57, 1963

101A. (1) The provisions of paragraphs (b), (c) and (d) of section twenty-eight, and section twenty-nine of this Act shall apply, mutatis mutandis, to applications for leases under this Part so far as such applications extend to Crown lands. Application of certain provisions of Part III and Part IV of this Act.

(2) The provisions of sections sixty-five (paragraph (b) of subsection one excepted), sixty-six and sixty-seven of this Act shall apply, mutatis mutandis, to leases under this Part so far as such leases extend to private lands.

(3) The provisions of—

- (a) section forty-four of this Act shall apply, mutatis mutandis, to any lessee in respect of any Crown lands leased to him under this Part; and
- (b) section 67A of this Act shall apply, mutatis mutandis, to any lessee in respect of any private lands leased to him under this Part, where his occupancy is by any means determined.

8. Part VI of the Principal Act is amended—

Amendment of Act No. 49, 1906.
Part VI.—
(Tenements and leases generally.)

- (a) by omitting from section one hundred and four the words “Chief Commissioner for Railways and Tramways” and by inserting in lieu thereof the words “Commissioner for Railways”; Sec. 104.
(Leases for railways and tramways for mining purposes.)

- (b) by omitting section one hundred and five;

Sec. 105.
(Suspension of pastoral lease.)

(c)

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Sec. 106.
(Exemption
of Crown
lands from
alienation.)

- (c) by inserting in section one hundred and six after the words "any Act." the following new paragraph :—

Any such notification may be made with respect to the whole of the surface of any land and the soil thereof below the surface, to the surface of the land and the soil thereof to a specified depth below the surface or to the soil between or below any specified depths or depth below the surface.

Sec. 107.
(Applicant
or legal
representa-
tive to
execute
lease.)

- (d) (i) by inserting in subsection one of section one hundred and seven next after the word "bankruptcy" the words "or the committee or manager of the property of a mentally ill applicant";
- (ii) by inserting in the same subsection after the word "representatives" where secondly occurring the words "or such committee or manager";
- (iii) by inserting in subsection two of the same section after the word "representatives" the words "or the committee or manager";

Subst.
sec. 107A.

- (e) by omitting section 107A and by inserting in lieu thereof the following section :—

Operation
of lease
during
pendency of
application
for renewal.

107A. (1) Where an application is made for the renewal or further renewal of a lease granted under any of the provisions of this Act and the application has not been granted or refused before the date on which the term of the lease or renewed lease would but for this subsection expire (which date is in this section referred to as the date of expiry) the term of the lease or renewed lease shall, subject to this section, be deemed to be extended until the application is granted or refused, and the Governor may grant or refuse such application after the date of expiry of the lease or renewed lease.

During

During the period the term of any lease or renewed lease is deemed to be extended under this subsection, the provisions of this Act applicable to leases and lessees shall apply to and in respect of the lease, or renewed lease, as so extended, and to the lessee thereunder.

(2) At any time before the grant or refusal of the application the Minister may vary any of the provisions of such lease or renewed lease, not being a provision relating to the rent or royalty payable thereunder.

(3) At any time before, or upon, the grant or refusal of the application the Governor may vary the amount of the rent and royalty payable by the holder of the lease or renewed lease during the period from the date of expiry of the lease or renewed lease until the application is granted or refused.

If the rent or royalty paid by the holder in respect of the period from the date of expiry of the lease or renewed lease to the date on which notice of the variation referred to in subsection four of this section is served on him—

- (a) was less than the rent or royalty, as the case may be, as varied by the Governor as aforesaid, the applicant for such renewal or further renewal shall be liable to pay the difference on demand; or
- (b) was greater than the rent or royalty, as the case may be, as varied by the Governor as aforesaid, the difference shall be refunded to the applicant for such renewal or further renewal.

(4) Where the provisions of a lease or renewed lease or the rent and royalty payable thereunder are varied in accordance with the provisions of

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—

of this section, the extension of the term of the lease or renewed lease effected by subsection one of this section shall, after service upon the applicant for such renewal or further renewal of notice of the variation signed by the Under Secretary for Mines, have effect subject to any such variation.

(5) The refusal of any application for the renewal or further renewal of a lease shall be notified in the Gazette and shall take effect from the date of publication in the Gazette.

(6) Where a transfer of a lease or renewed lease is registered under this Act after the date on which an application for the renewal or further renewal of a lease is made, any renewal or further renewal granted pursuant to that application shall be granted to the transferee under such transfer, or if there is more than one such transfer, to the transferee under the transfer last so registered before the grant of the renewal or further renewal.

(7) Any notice under this section may be served personally or by certified mail addressed to the address of the applicant for renewal or further renewal shown in his application.

Subst.
sec. 109.

(f) by omitting section one hundred and nine and by inserting in lieu thereof the following section : —

Registration
of leases,
etc.

109. (1) Every lease under this Act shall be registered with the Registrar, Department of Mines, Sydney.

(2) Every transfer or assignment (except an assignment by operation of law) of, and every instrument (whether a sub-lease, tribute agreement, option contract, mortgage, deed of trust, partnership agreement, working agreement, or any other instrument) affecting, any lease under this Act or lease or agreement registered under section sixty-nine or seventy of this Act, together with a copy of every such

such instrument certified by any two persons to be a true copy of the original, shall be lodged within the time and in the manner prescribed for the concurrence of the Minister and for registration by the Registrar, Department of Mines, Sydney, under the provisions of this section. **No. 57, 1963**

The Minister may refuse such concurrence or may grant it absolutely or subject to such amendments, modifications, stipulations or conditions (including a condition as to the payment of rent, royalty and compensation), as he may think necessary in the public interest to make or impose.

Any person who neglects or fails to comply with any such amendment, modification, stipulation or condition so imposed upon him shall be liable to a penalty not exceeding fifty pounds and to a further penalty not exceeding five pounds for each and every day such neglect or failure continues.

Any transfer, assignment or other instrument required to be lodged for registration under this subsection, which is not lodged within the time and in the manner prescribed, shall not be registered unless the Minister so approves.

(3) Every transfer, assignment or instrument which by this section is required to be lodged for registration shall be lodged by such person as may be prescribed.

Any person so prescribed who neglects or fails to lodge any transfer, assignment or instrument in accordance with the requirements of subsection two of this section shall be liable upon conviction to a penalty not exceeding fifty pounds and to a further penalty not exceeding five pounds for each and every day such neglect or failure continues.

(4)

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(4) (a) No transfer or assignment (except an assignment by operation of law) of, and no instrument (whether a sub-lease, tribute agreement, option contract, mortgage, deed of trust, partnership agreement, working agreement or any other instrument) affecting, any lease under this Act or lease or agreement registered under section sixty-nine or seventy of this Act shall have any force or effect unless it is in writing and is signed by the parties thereto.

Nothing in this paragraph applies to any transfer or assignment or instrument made before the commencement of this section, other than a transfer or tribute agreement referred to in section sixty-nine or seventy of this Act, as enacted immediately before such commencement and not registered at such commencement.

(b) Any transfer, assignment or other instrument required to be lodged for registration under subsection two of this section shall not have any force or effect until it is registered under the provisions of this section.

Nothing in this paragraph applies to any transfer, assignment or other instrument made before the commencement of this section, other than a transfer or tribute agreement referred to in section sixty-nine or seventy of this Act, as enacted immediately before such commencement and not registered at such commencement.

(5) Any person claiming interest in any lease under this Act, or under any lease or agreement under section sixty-nine or seventy of this Act may, before the registration of any instrument required by subsection one or two of this section to be registered, lodge with the Minister a caveat in the prescribed form, and accompanied by the prescribed fee, against such registration. On receipt of such caveat

caveat the Minister shall stay registration for twenty-eight days, unless the caveat is sooner withdrawn, but may then register the instrument, unless the person lodging the caveat has obtained and served upon him an order of some competent court forbidding such registration. No. 57, 1963

(6) Every lease or transfer, assignment or instrument registered, or submitted for registration, and every caveat lodged, under and in accordance with this section as in force from time to time before the substitution of this section by the Mining (Amendment) Act, 1963, or under and in accordance with section sixty-nine or seventy of this Act as in force from time to time before the respective amendments of those sections made by that Act, shall be deemed to have been registered, or lodged for registration, or lodged, as the case may be, under and in accordance with this section as so substituted.

(7) Any amendments, modifications, stipulations or conditions imposed by the Minister at the time of his granting his concurrence or sanction under this section as in force from time to time before the substitution of this section by the Mining (Amendment) Act, 1963, shall be deemed to be amendments, modifications, stipulations or conditions imposed by the Minister under this section as so substituted.

(8) Subject to subsection four of this section, this section shall apply to leases, transfers, assignments and instruments executed or made before the substitution of this section by the Mining (Amendment) Act, 1963, except instruments not required to be registered under this section before such substitution.

- (g) (i) by inserting in subsection one of section one hundred and ten after the word "regulations" the words "and such conditions and restrictions as he may consider necessary"; Sec. 110.
(Warden may allow pipeline, etc., to be constructed on public road, etc.)
- (ii)

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—

(ii) by omitting from the same subsection the words “claim or of a lease” and by inserting in lieu thereof the words “lease, claim, authority or other holding or any applicant for a lease”;

(iii) by inserting next after subsection four of the same section the following new subsection : —

(5) If the person to whom such permission is granted fails to observe the conditions and restrictions subject to which such permission was granted, the warden may cancel such permission.

Sec. 111.
(Authority
to construct
tunnels, etc.,
on holding.)

(h) (i) by inserting in subsection one of section one hundred and eleven after the word “regulations” the words “and such conditions and restrictions as he may consider necessary”;

(ii) by omitting from the same subsection the words “claim or lease” and by inserting in lieu thereof the words “lease, claim, authority or other holding, or any applicant for a lease,”;

(iii) by omitting from the same subsection the words “or other holding” and by inserting in lieu thereof the words “, authority or other holding, or the subject of an application for a lease,”;

(iv) by inserting in the same subsection after the word “shafts” the words “, aerial ropeways, conveyor belts, telephone lines, railways, tramways”;

(v) by omitting from the same subsection the words “or lessee” and by inserting in lieu thereof the words “, lessee or applicant, or to or from any land the subject of any such application”;

(vi) by omitting from the same subsection the words “such land” and by inserting in lieu thereof the words “the land held under such lease, claim, authority or other holding, or the subject of an application for a lease, as aforesaid”;

(vii)

(vii) by inserting in subsection three of the same section after the word "conditions" the words "and restrictions";

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(viii) by omitting subsection four of the same section and by inserting in lieu thereof the following new subsection :—

(4) The rights and duties under any authority issued under this section may be assigned and transferred with the claim, lease or other holding in connection with which it was issued or to the nominee of any applicant for a lease.

(ix) by omitting from subsection five of the same section the words "or lease" and by inserting in lieu thereof the words "lease or holding";

(x) by inserting in the same subsection after the word "period" where secondly occurring the words "or notwithstanding that the application for the lease has been granted or refused";

(i) (i) by omitting from subsection one of section one hundred and thirteen the words "The registered owners, or not less than one-half of the registered owners, of any claim or lease" and by inserting in lieu thereof the words "The holder, or applicant for registration as the holder, of any claim or lease, or if there is more than one such holder, or such applicant, not less than one-half of such holders, or such applicants, as the case may be";

Sec. 113.
(Registered owners may apply.)

(ii) by omitting from subsection two of the same section the words "owners of" and by inserting in lieu thereof the words "holders of";

(iii) by inserting in subsection three of the same section after the word "authority" the words "to the extent specified therein";

(iv)

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—

(iv) by omitting from paragraph (b) of the same subsection the words “the owners” and by inserting in lieu thereof “the holders or applicants for registration as holders”;

(v) by omitting from paragraph (c) of the same subsection the words “the owner or lessee” and by inserting in lieu thereof the words “any such holder or applicant”;

(vi) by inserting at the end of the same paragraph the following word and new paragraph : —

; or

(d) that in the case of a lease, the lessee, or applicant for registration as the lessee, requires time to enable him to plan the development and make preparatory arrangements for the working of the lease :

Provided that the warden shall not grant any such authority only on the ground specified in this paragraph for a period which would expire after the expiration of the first twelve months of the term of the lease.

(vii) by omitting from paragraph (a) of subsection four of the same section the word “further”;

(viii) by inserting in the same paragraph after the word “authority” the words “to the extent specified therein”;

(ix) by omitting from paragraph (b) of the same subsection the words “, and the Minister may grant, such authority” and by inserting in lieu thereof the words “such authority to such extent as he thinks fit, and the Minister may grant such authority to the extent specified therein”;

(x)

- (x) by inserting at the end of subsection six of the same section the words "or as to the continuance by the lessee of restoration work during the period of suspension"; No. 57, 1963

- (j) (i) by inserting in subsection one of section one hundred and fifteen after the word "repealed" the words ", and every applicant for any such lease or other title to mine, carrying on mining operations under this Act"; Sec. 115.
(Return to be furnished by holder of lease, etc.)

- (ii) by omitting from the same subsection the words ", verified by statutory declaration,";

- (iii) by inserting in the same subsection after the words "to mine" where lastly occurring the words ", or applied for, as the case may be,";

- (iv) by inserting in the same subsection after the words "such holder" the words "or applicant";

- (v) by inserting in subsection two of the same section after the words "holder of" the words ", or applicant for,";

- (vi) by inserting next after the same subsection the following new subsection : —

(2A) Notwithstanding the foregoing provisions of this section, the Minister may by notice served upon any such holder of or applicant for a lease or other title to mine call upon him to furnish, within such time as may be specified in the notice, a return in the form prescribed under subsection two of this section covering any period so specified.

- (vii) by inserting in subsection three of the same section after the word "holder" the words "or applicant";

(viii)

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(viii) by inserting in the same subsection after the words "extended time" where firstly occurring the words " , or within the time specified in any notice referred to in subsection (2A) of this section, as the case may be,";

(ix) by inserting in the same subsection after the word "extended" where secondly occurring the words "or specified";

(x) by inserting at the end of the same section the following new subsection : —

(4) The Minister may grant permission, to any such holder, manager, person, secretary or applicant, for such returns to be furnished in such different form as the Minister may think fit and notify to such holder or applicant, and where the holder or applicant furnishes a return in such different form he shall be deemed for the purposes of subsection three of this section to have furnished it in the prescribed form.

Sec. 116.
(Further
particulars
and
inquiries.)

(k) (i) by inserting in subsection one of section one hundred and sixteen after the word "holder" where firstly occurring the words "or applicant";

(ii) by inserting in the same subsection after the word "company" where firstly occurring the words "or any person conducting mining operations by virtue of a sub-lease, tribute agreement or other working agreement";

(iii) by inserting in the same subsection after the word "holder" where secondly occurring the words "or applicant";

(iv) by inserting in the same subsection after the word "company" where secondly occurring the words "or person so conducting mining operations";

(1)

- (l) (i) by inserting in subsection one of section 116A after the words "holder of" the words "or applicant for"; No. 57, 1963
Sec. 116A.
(Trust fund.)
- (ii) by inserting in paragraph (a) of the same subsection after the word "holder" the words "or applicant";
- (m) by inserting in section 116B after the words "Every holder of" the words ", or applicant for,"; Sec. 116B.
(Interest may be added.)
- (n) (i) by omitting subsections one and (1A) of section one hundred and eighteen and by inserting in lieu thereof the following subsection : — Sec. 118.
(Minister may authorise amalgamation.)
- (1) (a) On application in the prescribed manner by the lessee or lessees of two or more leases under this Act and after investigation and report by the Chief Inspector of Mines or the Chief Inspector of Coal Mines as to whether the lands comprised in such leases can be more effectively worked as one mine, the Minister may subject to such stipulations or conditions, including conditions as to the payment of royalty, as he may think necessary in the public interest to impose, authorise the amalgamation of the said leases upon payment of a fee of two pounds for each lease so amalgamated, or he may refuse such application.
- (b) Where any two or more leases have been amalgamated, whether before or after the commencement of this subsection and such amalgamated leases are the subject of any application made under this subsection after such commencement, they shall, for the purpose of calculating the fee payable in respect of such application, be regarded as one lease.
- (ii)

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- (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection :—

(2) The Minister may, after investigation and report by the Chief Inspector of Mines or the Chief Inspector of Coal Mines and subject to such stipulations or conditions, including conditions as to the payment of royalty, as he may think necessary in the public interest to impose, cancel any amalgamation of such leases.

- (iii) by inserting at the end of subsection four of the same section the following new paragraph :—

Any such reduction shall not be granted for a period exceeding twelve months at any one time.

Sec. 118A.
(Perform-
ance of
labour con-
ditions on
adjoining
land.)

- (o) (i) by omitting from subsections one, two and three of section 118A the word “adjoining” wherever occurring and by inserting in lieu thereof the word “other”;
- (ii) by omitting from subsection two of the same section the word “warden” and by inserting in lieu thereof the words “Chief Inspector of Mines or the Chief Inspector of Coal Mines”;
- (iii) by omitting from subsection four of the same section the word “warden” and by inserting in lieu thereof the words “Chief Inspector of Mines or the Chief Inspector of Coal Mines”;
- (iv) by omitting subsection five of the same section;

Sec. 119.
(Encroach-
ing on
highways,
streets,
&c.)

- (p) (i) by omitting from section one hundred and nineteen the words “The warden” and by inserting in lieu thereof the words “The Minister or the warden”;
- (ii) by inserting in the same section after the word “surveyor” the words “or other person”;
- (q)

- (q) by inserting in section one hundred and twenty after the word "surveyor" wherever occurring the words "or other person"; No. 57, 1963
Sec. 120.
(Warden may authorise mining surveyor to inspect as to encroachment.)
- (r) by inserting in section one hundred and twenty-one after the word "surveyor" the words "or other person"; Sec. 121.
(Surveyor to make a declaration.)
- (s) (i) by omitting from section 121A the words "geological surveyor" wherever occurring and by inserting in lieu thereof the word "geologist"; Sec. 121A.
(Geologist may enter and inspect.)
- (ii) by omitting from subsection two of the same section the words "Such surveyor" and by inserting in lieu thereof the words "Such geologist";
- (t) by omitting from section 121B the words "geological surveyor" and by inserting in lieu thereof the word "geologist"; Sec. 121B.
(Power of geologist to enter private lands.)
- (u) by inserting in section one hundred and twenty-three after the word "Governor" where firstly occurring the words "and on payment of a fee of two pounds"; Sec. 123.
(Lessee may surrender lease wholly or in part.)
- (v) (i) by inserting in subsection one of section 124A after the word "cancelled." the words "No such notice by complaint shall be given in respect of any non-compliance with labour conditions relating to a period greater than two years before the date of the notice and any such notice by complaint shall be lodged within one month after the last day of the period of non-compliance referred to in such notice."; Sec. 124A.
(Complaint as to non-compliance with labour conditions.)
- (ii) by omitting from subsection two of the same section the words "five pounds" and by inserting in lieu thereof the words "twenty-five pounds"; (iii)

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- (iii) by omitting from subsection five of the same section the words "the purport of his report and" and by inserting in lieu thereof the words "his finding on the complaint and the purport of his";
- (iv) by inserting in paragraph (b) of subsection seven of the same section after the word "complainant" the words "or be not so granted";
- (v) by omitting from subsection eight of the same section the words "so recommended" and by inserting in lieu thereof the words "recommended that a lease be granted to the complainant";
- (vi) by omitting from the same subsection the words "The notification of the approval of the Governor to the grant of such lease shall be published at the same time as the notification of cancellation of the cancelled lease, and thereupon the complainant shall be entitled upon making all the prescribed payments to the same rights as are conferred by the provisions of this Act upon an applicant for a lease of the same class as the cancelled lease." and by inserting in lieu thereof the following paragraph :—

Upon the notification of the cancellation of the lease, the complainant shall, where he has made an application for a lease as is mentioned in subsection one of this section, be entitled, upon making all the prescribed payments, to the same rights and be subject to the same duties as are conferred or imposed by the provisions of this Act upon an applicant for a lease of the same class as the cancelled lease until such application is granted or refused.

(w)

- (w) (i) by inserting in section 124B after the word "repealed" the words " , or upon the refusal of any application for any such lease,"; No. 57, 1963
Sec. 124B.
(Writing off Crown rent.)
- (ii) by inserting in the same section after the words "on such lease" the words "or application, whereupon such debt shall be extinguished";
- (x) (i) by inserting in subsection one of section one hundred and twenty-five after the word "lease" where firstly occurring the words " , authority to prospect, authority to enter, or exploration license,"; Sec. 125.
(Machinery, &c., on forfeited area.)
- (ii) by inserting in the same subsection next after the word "repealed" the words "or after the refusal or abandonment of any application for such a lease";
- (iii) by inserting in the same subsection after the word "lessee" the words " , holder, applicant, or licensee";
- (iv) by inserting in the same subsection after the words "lease of" the words " , application for a lease of, an authority to enter on, or exploration license in respect of,";
- (v) by inserting in subsection two of the same section next after the word "lessee" wherever occurring the words " , holder, applicant or licensee";
- (y) by inserting in section 125A after the words "lessee of" the words " , or applicant for,"; Sec. 125A.
(Removal of improvements.)
- (z) by omitting subsection two of section 125c; Sec. 125c.
(Cancellation of abandoned tenements.)
- (aa)

Mining (Amendment) Act.**No. 57, 1963**Subst.
sec. 127.Minister
may direct
inquiry by
warden.

- (aa) by omitting section one hundred and twenty-seven and by inserting in lieu thereof the following section : —

127. The Minister may direct a warden to hold an inquiry with reference to any proposal relating to mining or any matter affecting any tenure or application therefor under this Act.

Every inquiry under this section shall be conducted in open court and the warden shall have the powers of a warden's court.

Sec. 128.
(Inspection
of mine.)

- (bb) by inserting in section one hundred and twenty-eight after the words "instructions of" the words "the Minister or";

Subst.
sec. 128A
and heading.

- (cc) by omitting section 128A and the heading thereto and by inserting in lieu thereof the following heading and section : —

*Non-vitiation of applications and titles.*Applications
and titles
not to be
vitiated for
non-per-
formance
if caused
by warden,
etc.

128A. No application for a title made, and no title issued, under this Act shall be vitiated by reason of the non-performance of any act, matter, or thing required to be done by or for the applicant for or holder of such title if the non-performance was caused by any act, fault, neglect, or absence of any warden, warden's clerk, mining registrar or other officer performing any duties in or in connection with the administration of this Act.

Sec. 129.
(Share in
claim.)

- (dd) (i) by omitting from subsection one of section one hundred and twenty-nine the word "authority,";
- (ii) by inserting in the same subsection next after the word "regulations" where firstly occurring the words "with respect to any tenement";
- (ee)

- (ee) (i) by omitting the heading to section one hundred and thirty and by inserting in lieu thereof the following heading :—

Resumption for township or public purpose.

No. 57, 1963

Sec. 130.

(Area may be resumed for township or public purpose.)

- (ii) by omitting from the same section the words "specified depth below the surface of the said part of the land" and by inserting in lieu thereof the words "soil thereof below the surface, to the surface of the land and the soil thereof to a specified depth below the surface, or to the soil between or below any specified depths or depth below the surface";
- (iii) by omitting from the same section the word "thereunder" where firstly occurring and by inserting in lieu thereof the words "in the part not so cancelled".

9. Part VII of the Principal Act is amended—

Amendment of Act No. 49, 1906.
Part VII—
(Wardens' courts.)

- (a) by omitting from section one hundred and thirty-four the words "twenty-five pounds" and by inserting in lieu thereof the words "one hundred pounds";
- (b) by inserting in subsection two of section one hundred and fifty after the word "newspaper" the words "as the warden may direct";
- (c) by inserting in section one hundred and fifty-seven after the word "cancelled" the words "or the application refused";
- (d) (i) by omitting from section one hundred and fifty-eight the words and symbols "(other than assessments in respect of land resumed)";
- (ii) by omitting from the same section the word "five" where firstly occurring and by inserting in lieu thereof the word "twenty-five";

Sec. 134.

(Wages to be a first charge.)

Sec. 150.

(Form.)

Sec. 157.

(Additional assessment.)

Sec. 158.

(Appeal to arbitration.)

(e)

- No. 57, 1963** (e) by omitting section one hundred and fifty-nine;
 Sec. 159.
 (Appeal against assessment.)
- Sec. 160. (f) by omitting section one hundred and sixty.
 (Rules and orders of appeal, by whom made.)
- Amendment of Act No. 49, 1906.
 Part IX—
 (General provisions.)
- 10.** Part IX of the Principal Act is amended—
- Sec. 177. (a) by omitting section one hundred and seventy-seven;
 (Resumption or surrender of land for mining villages.)
- Sec. 178. (b) (i) by omitting from subsection one of section one hundred and seventy-eight the words “land not Crown land” and by inserting in lieu thereof the words “the owner of any mineral”;
 (Service of notices.)
- (ii) by inserting in paragraphs (a) and (b) of the same subsection after the words “owner or occupier” wherever occurring the words “of the private land or the owner of the minerals”;
- (iii) by omitting from paragraph (b) of the same subsection the words “post in a registered letter” and by inserting in lieu thereof the words “certified mail”;
- (iv) by omitting from the same paragraph the words “that letter” and by inserting in lieu thereof the words “that mail”;
- (v) by omitting from the same paragraph the words “registered letter” where secondly occurring and by inserting in lieu thereof the words “certified mail”;
- (vi)

- (vi) by inserting in subsection two of the same No. 57, 1963 section after the words "private land" the words "or the owner of any mineral in or upon any land";

- (c) by inserting next after section 183A the following new heading and section : — New sec. 183B.

Recovery of public moneys expended on testing for gold or minerals.

183B. Where any public moneys have been expended in order to test any land by way of boring or by any other means whatsoever for the purpose of proving whether or not gold or any minerals occur therein, the Minister may, where an application is made for a lease to mine for gold or other minerals in or upon such land serve a notice in writing on the applicant notifying him that such applicant may within the period (in this section referred to as the "prescribed period") specified in the notice elect—

Lessee to repay prospecting expenses incurred by Crown.

- (a) to pay to the Minister in a lump sum an amount specified in the notice, such amount being the amount of public moneys so expended or such part thereof as the Minister thinks fit; or
- (b) to pay to the Minister by such instalments and at such times as may be specified in the notice an amount so specified, such amount being the amount of public moneys so expended or such part thereof as the Minister thinks fit.

If the applicant neglects or fails to make the election aforesaid within the prescribed period the Governor may refuse the application.

If the applicant makes the election referred to in—

- (i) paragraph (a) of this section the application for the lease shall be refused unless the lump sum is paid to the Minister within such time as

No. 57, 1963

as the Minister may by a further notice in writing served on the applicant have specified ;
or

- (ii) paragraph (b) of this section the lease when issued may contain a condition requiring the payment to the Minister, in addition to any other payments required by the lease, of the instalments specified in the notice referred to in the said paragraph (b) at the times so specified.

Amendment
of Act No.
49, 1906.

Part X—
(Regula-
tions and
rules.)

Sec. 184.

(Purposes
for which
regulations
may be
made.)

11. Part X of the Principal Act is amended by omitting paragraph (xxxiii) of section one hundred and eighty-four.

Amendment
of Act No.
49, 1906.

Part XI—
(Penalties.)

12. Part XI of the Principal Act is amended—

Sec. 187.
(Un-
authorised
mining,
etc.)

- (a) by omitting from section one hundred and eighty-seven the words “ten pounds” and by inserting in lieu thereof the words “five hundred pounds”;

Sec. 188.
(Un-
authorised
occupation
of Crown
land.)

- (b) by omitting from section one hundred and eighty-eight the words “ten pounds” and by inserting in lieu thereof the words “five hundred pounds”;

Sec. 189.
(Breach of
regulation.)

- (c) by omitting from section one hundred and eighty-nine the words “ten pounds” and by inserting in lieu thereof the words “fifty pounds”;
(d)

- (d) by omitting from section one hundred and ninety-three the words "fifty pounds" and by inserting in lieu thereof the words "two hundred and fifty pounds"; No. 57, 1963
Sec. 193.
(Wrongful
exaction
of moneys.)
- (e) (i) by omitting from section one hundred and ninety-five the words and figures "Part IV, or of any land which is not Crown land as defined in Part V" and by inserting in lieu thereof the words and figures "Parts IV and V"; Sec. 195.
(Wrongful
obstruction
on private
lands.)
- (ii) by inserting in paragraph (a) of the same section after the words "authority to enter," the words "or exploration license,";
- (iii) by inserting in paragraph (b) of the same section after the word "Act" the words "or the regulations thereunder";
- (f) (i) by inserting in section one hundred and ninety-six after the word and symbols "Part IV" the word and symbol "or V"; Sec. 196.
(Wrongful
mining on
private
lands.)
- (ii) by omitting from the same section the words "ten pounds" and by inserting in lieu thereof the words "five hundred pounds".

13. The Petroleum Act, 1955, as amended by subsequent Acts, is amended— Amendment
of Act No.
28, 1955.

- (a) by inserting at the end of section two the following new subsection :— Sec. 2.
(Division
into
Parts.)
- (2) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State to the intent that where any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected.
- (b)

Mining (Amendment) Act.**No. 57, 1963****Sec. 3.**(Interpre-
tation.)

- (b) by inserting at the end of section three the following new subsection :—

(2) The provisions of this Act shall, subject to such modifications as may be prescribed, apply to and in respect of the sea-bed and subsoil of the continental shelf that is contiguous to the State of New South Wales and is outside the land beneath the territorial waters of that State, as if such sea-bed and subsoil were Crown lands within that State.

For the purposes of this subsection, the regulations may prescribe modifications of the provisions of this Act applicable to the whole of such sea-bed and subsoil, or may prescribe different modifications of such provisions applicable to different parts of such sea-bed and subsoil.

Subst.
sec. 30A.Operation
of lease
during
pendency of
application
for renewal.

- (c) by omitting section 30A and by inserting in lieu thereof the following section :—

30A. (1) Where an application is made for the renewal or further renewal of a lease granted under any of the provisions of this Act and the application has not been granted or refused before the date on which the term of the lease or renewed lease would but for this subsection expire (which date is in this section referred to as the date of expiry) the term of the lease or renewed lease shall, subject to this section, be deemed to be extended until the application is granted or refused, and the Governor may grant or refuse such application after the date of expiry of the lease or renewed lease.

During the period the term of any lease or renewed lease is deemed to be extended under this subsection, the provisions of this Act applicable to leases and lessees shall apply to and in respect of the lease, or renewed lease, as so extended, and to the lessee thereunder.

(2) At any time before the grant or refusal of the application the Minister may vary any of the provisions of such lease or renewed lease, not being a provision relating to the rent or royalty payable thereunder.

(3)

(3) At any time before, or upon, the grant No. 57, 1963
or refusal of the application the Governor may vary
the amount of the rent and royalty payable by the
holder of the lease or renewed lease during the
period from the date of expiry of the lease or
renewed lease until the application is granted or
refused.

If the rent or royalty paid by the holder in respect
of the period from the date of expiry of the lease or
renewed lease to the date on which notice of the
variation referred to in subsection four of this section
is served on him—

- (a) was less than the rent or royalty, as the case
may be, as varied by the Governor as afore-
said, the applicant for such renewal or further
renewal shall be liable to pay the difference
on demand; or
- (b) was greater than the rent or royalty, as the
case may be, as varied by the Governor as
aforesaid, the difference shall be refunded to
the applicant for such renewal or further
renewal.

(4) Where the provisions of a lease or
renewed lease or the rent and royalty payable there-
under are varied in accordance with the provisions
of this section, the extension of the term of the lease
or renewed lease effected by subsection one of this
section shall, after service upon the applicant for
such renewal or further renewal of notice of the
variation signed by the Under Secretary for Mines,
have effect subject to any such variation.

(5) The refusal of any application for the
renewal or further renewal of a lease shall be notified
in the Gazette and shall take effect from the date of
publication in the Gazette.

(6)

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(6) Where a transfer of a lease or renewed lease is registered under this Act after the date on which an application for the renewal or further renewal of a lease is made, any renewal or further renewal granted pursuant to that application shall be granted to the transferee under such transfer, or if there is more than one such transfer, to the transferee under the transfer last so registered before the grant of the renewal or further renewal.

(7) Any notice under this section may be served personally or by certified mail addressed to the address of the applicant shown in his application.

Validation
of certain
leases.

14. No lease under the Principal Act granted or purporting to have been granted before the first day of December, one thousand nine hundred and fifty-nine, shall be or be deemed ever to have been invalid by reason only that the application therefor described the area applied for by reference to lines of high or low water and not by reference to a readily identifiable fixed point or line.

Amendment
of Act No.
32, 1960.
Sec. 8.

(Revocation
of popula-
tion areas
and certain
reserves,
etc.)

15. (1) The Crown Lands (Amendment) Act, 1960, is amended by inserting at the end of section eight the following new subsection : —

(2) Nothing in this section affects any reservation of land deemed, for the purposes of section one hundred and six of the Mining Act, 1906, as amended by subsequent Acts, to have been reserved for mining or mining purposes.

(2) This section shall be deemed to have commenced on the twenty-eighth day of April, one thousand nine hundred and sixty.

PISTOL