

MINING (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 79, 1974.

An Act relating to the royalty payable on minerals won from lands held under mining leases; to vary the provisions contained in certain mining leases in certain respects; for these purposes to amend the Mining Act, 1973; and for purposes connected therewith. [Assented to, 27th November, 1974.]

BE

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BE it enacted by the Queen's Most Excellent Majesty, by **No. 79, 1974** 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:—

1. This Act may be cited as the "Mining (Amendment) **Short title.** **Act, 1974**".

2. (1) Except as provided in subsections (2) and (3), **Commencement.** **this Act shall commence on the date of assent to this Act.**

(2) Section 3 shall be deemed to have commenced **on 1st November, 1974.**

(3) Section 4 shall commence on 1st January, 1975.

3. The Mining Act, 1973, is amended—

**Amendment
of Act No.
42, 1973.**

(a) by omitting from section 2 the figures "104" and **Sec. 2.** **by inserting instead the matter "104A";** **(Division
of Act.)**

(b) (i) by omitting from section 97 (1) the words "is **Sec. 97.** payable at the prescribed rate" and by inserting **(Rate of
royalty.)** instead the words "on minerals won from land subject to a mining lease is payable at such rate as is, at the time the minerals are won, prescribed for the purposes of this subsection";

(ii)

(ii)

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(ii) by inserting after section 97 (1) the following subsection :—

(1A) Subsection (1) does not apply to or in relation to a mining lease referred to in section 97A (2).

(iii) by omitting from section 97 (10) the words "or fixed" wherever occurring;

(iv) by inserting after section 97 (10) the following subsection :—

(10A) The rate of royalty fixed under this section may be fixed—

(a) as a percentage of the value of minerals won;

(b) as an amount payable on the basis of any specified measurement of minerals won; or

(c) by reference to such other matters as the Governor or the Minister, as the case may require, determines.

Sec. 97A.

(c) by inserting after section 97 the following section :—

Variation
of liability
for royalty
in respect
of certain
leases.

97A. (1) Notwithstanding anything in this Act, but subject to subsection (2)—

(a) any provision in—

(i) a mining lease; or

(ii)

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(ii) an instrument (other than the No. 79, 1974 regulations) issued, made or given under or for the purposes of the Mining Act, 1906, or this Act,

in force or having effect on 1st November, 1974, shall, in so far as it relates to royalty payable on minerals won on or after that date from land subject to that lease, be deemed, on and from that date, not to have any force or effect; and

(b) royalty payable on minerals won on or after that date from land subject to that lease is payable—

(i) at such rate as is, at the time the minerals are won, prescribed for the purposes of section 97 (1), except where and to the extent that a different rate is fixed pursuant to section 97 (2), (3), (4), (5), (7), (8) or (9) on or after that date; and

(ii) in accordance with section 103 and the regulations.

(2) Subsection (1) does not apply to or in relation to a mining lease specified or described in the regulations for the purposes of this subsection.

(3) A regulation made for the purposes of subsection (2) may be made so as to take effect on and from 1st November, 1974, notwithstanding that it is made or published in the Gazette after that date.

(d)

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Sec. 100.
(Returns.)

(d) (i) by inserting in section 100 (1) after the word "intervals" the words ", in respect of such periods";

(ii) by inserting in section 100 (2) after the words "different intervals," the words "or in respect of different periods,";

(iii) by omitting from section 100 (2) the words "or the intervals" and by inserting instead the words ", intervals or periods";

Sec. 103.

(e) by omitting section 103 and by inserting instead the following section :—

Payment of
royalty.

103. (1) Royalty is payable—

(a) except in so far as a determination under paragraph (b) has effect—at such times or within such periods as may be specified in or determined in accordance with the regulations and in respect of such period or periods as may be so specified or determined; or

(b) on demand by the Minister in respect of such period or periods as he determines.

(2) When an amount of royalty is not paid—

(a) at or before the time at which it is due and payable in accordance with the regulations; or

(b) within twenty-eight days of the demand for its payment,

as

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as the case may require, interest shall, if the Minister so directs, be added at such rate as the Minister determines to the amount due until it is paid.

(3) The regulations may make provision for or with respect to the manner in which royalty is to be paid, and, in particular, the regulations may require that payment of any royalty referred to in the regulations is to accompany a return made under section 100.

(f) by inserting after section 104 the following Sec. 104A.
section :—

104A. The regulations may provide that a reference in a mining lease referred to in section 97A to "year" in certain leases. (2) to a year (however expressed) is a reference to such period or periods as may be specified in or determined in accordance with the regulations.

(g) by omitting from paragraph 16 (3) (a) in the Second Sch., Second Schedule the words "the royalty" and by inserting instead the words "subject to section 97A, (Mining leases.) the royalty".

4. The Mining Act, 1973, as amended by section 3, is amended—
Further amendment of Act No. 42, 1973.

(a) by inserting after section 97A the following Sec. 97B.
section :—

97B. (1) On and from 1st January, 1975—

(a) any provision in a mining lease specified in the Fourth Schedule shall, in so far as it relates to royalty payable by reference to net profits (as referred to in that provision) arising on or after that date, be deemed not to have any force or effect; and

(b)

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(b) the lease shall be deemed to contain the provisions set out in the Fifth Schedule.

(2) A reference to net profits in the Fifth Schedule is a reference to net profits arising on or after 1st January, 1975.

(3) The regulations may amend the Fourth Schedule—

(a) by omitting therefrom the reference to a mining lease; or

(b) by inserting therein a reference to a mining lease,

and may make any consequential amendments to that Schedule that are necessary or convenient to be made in connection with any amendment made pursuant to paragraph (a) or (b).

(4) A regulation made for the purposes of subsection (3) may be made so as to take effect on and from 1st January, 1975, notwithstanding that it is made or published in the Gazette after that date.

Fourth and
Fifth Schs.

(b) by inserting after the Schedules the following Schedules :—

Sec. 97B.

FOURTH SCHEDULE.

LEASES REFERRED TO IN SECTION 97B.

Part 1.

Parishes of Cobar and Mopone in the County of Robinson.

Mineral Lease (Mining Act, 1906) 5220

Private Lands Leases (Mining Act, 1906) 2448, 2449, 2450, 2451, 3041, 3042, 3043, 3060, 3110, 3141, 3323, 3340, 3341, 3380.

Gold Leases (Mining Act, 1906) 3728, 3729, 4748, 4858, 4859, 5094, 5095, 5153, 5191, 5192, 5193, 5336, 5337, 5472, 5603, 5613.

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Part 2.

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Parish of Kaloogleguy in the County of Robinson.

Mineral Leases (Mining Act, 1906) 4742, 4743.

FIFTH SCHEDULE.

Sec. 97B.

PROVISIONS DEEMED TO BE CONTAINED IN LEASES SPECIFIED IN
FOURTH SCHEDULE.

(1) IT IS HEREBY AGREED AND DECLARED that the lessee shall pay unto Us Our Heirs and Successors royalty in the following manner, that is to say, the lessee shall pay to the Minister for Mines on demand an annual payment by way of royalty in respect of the net profits (if any), arising in any year from the working of any mine on land comprised within this lease or on land comprised within this lease and any related lease or arising from the disposal or treatment of the products of any such mine, calculated in the following manner, that is to say—

- (a) where such net profits do not exceed the sum of two hundred thousand dollars (\$200,000) in any year—two per centum of such profits;
- (b) where such net profits exceed the sum of two hundred thousand dollars (\$200,000) but do not exceed the sum of four hundred thousand dollars (\$400,000) in any year—two per centum of such profits, plus a further one per centum on the second two hundred thousand dollars (\$200,000) or part thereof; or
- (c) where such net profits exceed the sum of four hundred thousand dollars (\$400,000) in any year—two per centum of such profits, plus a further one per centum on the second two hundred thousand dollars (\$200,000), and thereafter in the increasing proportion of one per centum on each successive two hundred thousand dollars (\$200,000) or part thereof of the balance of such profits.

(2) AND IT IS HEREBY FURTHER AGREED AND DECLARED that where an annual payment is made on the basis and at the rates aforesaid it shall to the extent of actual payment operate in discharge of the obligation to pay royalty on net annual profits contained in this lease and every other related lease for mining in respect of which the net annual profits have been so computed.

(3)

No. 79, 1974 (3) PROVIDED that if it be or has been shown to the satisfaction of the Minister for Mines that at least two million dollars (\$2,000,000) has been spent in prospecting and developing any lease or leases held at any time under the provisions of the Mining Act, 1906, as amended, or the Mining Act, 1973, as amended, by the lessee within the Parishes of Cobar, Mopone and Kaloogleguy County of Robinson then the maximum rate of royalty which shall be payable under paragraph (1) above shall be eight per centum. PROVIDED FURTHER that such concession shall only apply where the value of copper produced for realisation from any mine on land comprised within this lease or on land comprised within this lease and any related lease in any year exceeds fifty per centum of the total value of all minerals produced for realisation from any such mine in that year and for this purpose the respective values of the copper and other minerals produced in any year shall be deemed to be the realised values of such copper and other minerals sold by the lessee in that year (whether sold as metal concentrates or otherwise) together with the estimated realisable value on sale of unsold stocks held by the lessee at the end of such year less the estimated realisable value on sale of unsold stocks held by the lessee at the commencement of the year, and where there shall be any doubt whether the value of copper produced exceeds such fifty per centum the decision of the Minister for Mines whether such concession shall be applicable shall be final.

(4) AND IT IS HEREBY FURTHER AGREED AND DECLARED that in paragraphs (1), (2) and (3) hereof "related lease" means—

- (a) if this lease is specified in Part 1 of the Fourth Schedule to the Mining Act, 1973, as amended—any lease (other than this lease) under that Act of land within the Parish of Cobar or Mopone in the County of Robinson; or
- (b) if this lease is specified in Part 2 of that Schedule—any lease (other than this lease) under that Act of land within the Parish of Kaloogleguy in the County of Robinson,

being a lease held now or at any time by the lessee and worked with this lease as part of the one mine.

Commencement of certain regulations.

5. A regulation made for the purposes of section 97 (1) of the Mining Act, 1973, as amended by this Act, may be made so as to take effect on and from 1st November, 1974, notwithstanding that it is made or published in the Gazette

after

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after that date, provided it is made and published in the No. 79, 1974 Gazette before 1st January, 1975.

6. No person is entitled to compensation or damages, nor shall any proceedings against the Crown, any Minister of the Crown, the Government of the State or any nominal defendant appointed under the Claims against the Government and Crown Suits Act, 1912, be brought or continued in relation to any matter (being a matter connected with a mining lease or a mining purposes lease), by reason of—

- (a) the enactment or operation of this Act; or
- (b) the making or operation of any regulation—
 - (i) having effect for the purposes of section 97A or 97B of the Mining Act, 1973, as amended by this Act; or
 - (ii) having effect consequent on the enactment by this Act of those sections.

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