

MINING (AMENDMENT) ACT.

New South Wales



ANNO OCTAVO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 22, 1969.

An Act to amend the law relating to mining; for this and other purposes to amend the Mining Act, 1906, as subsequently amended; to validate certain matters; and for purposes connected therewith. [Assented to, 2nd April, 1969.]

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
commence-
ment.

1. (1) This Act may be cited as the "Mining (Amendment) Act, 1969".

(2)

Mining (Amendment).

(2) The Mining Act, 1906, as subsequently amended No. 22, 1969 and as amended by this Act, may be cited as the Mining Act, 1906-1969.

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

(4) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. Part I of the Principal Act is amended—

Amendment
of Act No.
49, 1906.

(Part I.—
Pre-
liminary.)

(a) by omitting from the matter relating to Part IV in subsection one of section one the figures "48" and by inserting in lieu thereof the figures and letter "48A";

Sec. 1.
(Short title
and division
of Act.)

(b) by inserting in the same subsection next after the matter relating to Part IVA the following new matter :—

PART IVB.—SPECIAL MINING LEASES OF
CROWN AND PRIVATE LANDS—ss. 83M-
83S.

3. Part II of the Principal Act is amended by inserting in subsection (6A) of section seventeen after the word "prospect" where secondly occurring the words ", or for a lease under Part III or V of this Act,".

Further
amendment
of Act No.
49, 1906.

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

Sec. 17.

(Authority
to prospect
on Crown
lands.)

Mining (Amendment).

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4. Part III of the Principal Act is amended—

Further
amendment
of Act No.
49, 1906.

(Part III.—
Leases of
Crown
lands.)

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

- (a) by omitting from subsection (3A) of section twenty-seven the words “for a lease made by another person who, when he made the application, was the holder of an authority to prospect on, or an exploration license over, those lands” and by inserting in lieu thereof the words “for—

(a) an authority to prospect made by another person who, when he made the application, was the holder of an exploration license over those lands; or

(b) a lease under this Part or Part V of this Act made by another person who, when he made the application, was the holder of an authority to prospect on, or an exploration license over, those lands”;

Sec. 40.
(Governor
may grant
special
leases.)

- (b) by omitting from subsection one of section forty the words “other than coal or shale mining”;

Sec. 40A.
(Leases to
Commissioner for
Railways.)

- (c) (i) by omitting subsection one of section 40A;
(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection :—

(2) Where a special lease of Crown lands to mine for coal or shale is granted to the Commissioner for Railways, the provisions of this Act (subsection three of section 39D of this Act excepted) requiring payment of rent and observance of labour conditions shall not apply to that lease.

(iii)

Mining (Amendment).

- (iii) by omitting from subsection three of the same section the words "granted under this section" and by inserting in lieu thereof the words "referred to in subsection two of this section".
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5. (1) Part IV of the Principal Act is amended—

Further
amendment
of Act No.
49, 1906.

(Part IV.—
Mining on
private
lands.)

- (a) by inserting next before subsection three of section forty-six the following new subsection :—

Sec. 46.

(For gold
and other
metals.)

(2D) Any marking out, or application for a lease under this Part, of any private lands which are exempt under this section from the provisions of this Part shall be void and of no effect :

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

- (b) (i) by omitting from subsection (1A) of section forty-seven the words "when the application for the authority to enter was made" and by inserting in lieu thereof the words "at the prescribed time";

Sec. 47.

(Not to
extend
within
certain
distance of
garden or
improved
land with-
out consent.)

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

(1B) In subsection (1A) of this section, "the prescribed time" means—

- (a) in the case of an application for an authority to enter—the time when the application for the authority was made;

(b)

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- (b) in the case of an application for a lease under this Part made by a person who made the application for the lease when he was the holder an authority to enter—the time when the application for the authority was made; or
- (c) in the case of an application for a lease under this Part made by any other person—the time when the marking out of the land the subject of the application for the lease was carried out.

Sec. 48.
(Not to extend to surface of cultivated land without consent.)

- (c) by omitting from section forty-eight the words “when the application for the authority was made” and by inserting in lieu thereof the words “at the prescribed time (within the meaning of subsection (1B) of section forty-seven of this Act)”;

New sec.
48A.

- (d) by inserting next after section forty-eight the following new section and short heading thereto :—

Permit to mark out lands.

Permit to mark out lands.

48A. (1) The warden may, at the request of an applicant for an authority to enter under this Part (including Division 4A), or an intending applicant for a lease under this Part (including Division 4A), made in the prescribed manner, and on payment of the prescribed fee, grant a permit in the prescribed form authorising the applicant or intending applicant, as the case may require, to enter the land the subject of the application or intended to be included in the application, as the case may require, for the purpose of marking out the land.

(2) A permit under this section shall entitle the holder thereof to enter, personally or by his agent duly authorised in writing, accompanied, if desired, by not more than three other persons, upon the land mentioned therein, for the purpose aforesaid,

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aforesaid, during a period named therein, No. 22, 1969
 which shall not exceed twenty-eight days, with
 right of ingress, egress and regress to and from the
 nearest practicable point of a public road, without
 incurring liability for trespass in respect thereof.

(3) Such permit shall be exhibited on
 demand to the owner or occupier of the land therein
 mentioned.

(4) During the currency of any such per-
 mit, unless and until an area has been marked out
 thereunder as aforesaid, the warden shall not issue
 another permit under this section in respect of the
 same land.

(5) Any owner, occupier or other person
 who obstructs any holder of any such permit, or his
 agent, or any person accompanying such holder or
 agent, in the performance of any act, or interferes
 with, removes, destroys or defaces any mark made
 or any notice posted in pursuance of such permit,
 shall be liable for the first offence to a penalty
 not exceeding twenty dollars, and for the second
 or any subsequent offence to a penalty not exceeding
 one hundred dollars.

- (e) by omitting section forty-nine and the short heading
 thereto; Sec. 49.
(Interim
permit
to enter.)
- (f) (i) by omitting subsection one of section fifty-
 seven and by inserting in lieu thereof the Sec. 57.
(Power to
define
boundaries.)
 following subsection :—

(1) Any person who desires to obtain a
 lease of private lands and who has, either
 personally or by his agent, in the prescribed
 manner, marked out the boundaries of the
 land desired to be leased, may, in the pre-
 scribed manner, apply to the Minister for a
 lease thereof.

Such

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Such application shall be for a lease to mine for gold or any minerals.

- (ii) by omitting from subsection two of the same section the words "or the authority" and by inserting in lieu thereof the words "or, in the case of an application made by the holder of an authority to enter in respect of lands the subject of the application, the authority";
- (iii) by inserting next after subsection nine of the same section the following new subsections : —

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

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 :

Provided further that if, upon inquiry being held as provided in subsection two of section fifty-seven of this Act, the warden is of opinion that marking out has been carried out simultaneously by two or more applicants for the same area, the question of priority may be decided by ballot.

(11) If any application for a lease is refused, 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.

(g)

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- (g) by omitting subsection four of section fifty-eight No. 22, 1969
and by inserting in lieu thereof the following
subsections :—

Sec. 58.
(Power to
refuse, &c.)

(4) Without limiting the generality of the foregoing provisions of this section, the Governor may refuse to grant to a person a lease of private lands if those lands are the subject of a pending application for—

- (a) an authority to enter made by another person who, when he made the application, was the holder of an exploration license over those lands; or
- (b) a lease under this Part or Part V of this Act made by another person who, when he made the application, was the holder of an authority to enter in respect of, or an exploration license over, those lands.

(5) Private lands held under an authority to enter or an exploration license, or the subject of an application for an authority to enter or an exploration license, shall not be leased to any person other than the holder of the authority to enter or exploration license or the applicant for the authority or license, except with the written consent of the holder of, or the applicant for, the authority or license, as the case may be, if in the case of an application for an authority to enter or exploration license, the application was made before the marking out of the land the subject of an application for a lease under this Part.

- (h) by omitting subsection two of section sixty;

Sec. 60.
(Lease for
mining
purpose.)

- (i) (i) by omitting subsection one of section sixty-eight:

Sec. 68.
(Prospecting
by owner or
occupier.)

(ii)

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- (ii) by omitting from subsection two of the same section the words "applying as aforesaid shall have no preferential rights over other applicants, and" and by inserting in lieu thereof the words "of land who is an applicant for or the holder of an authority to enter in respect of that land or a lease of that land under this Part";

Sec. 70B.
(Application
for lease.)

- (j) by omitting from subsection one of section 70B the words "Any holder of any such authority to enter who desires to obtain a lease of the land defined in such authority, or any part thereof, and has complied with the provisions of subsection four of section 70A of this Act and has paid rent and compensation as prescribed, may make application for such lease, in the manner prescribed by section fifty-seven of this Act." and by inserting in lieu thereof the following paragraphs :—

Any person who desires to obtain a lease of private lands for the purpose of mining for minerals not reserved to the Crown and who has, either personally or by his agent, in the prescribed manner, marked out the boundaries of the land desired to be leased, may, in the prescribed manner, apply to the Minister for a lease thereof.

The provisions of section fifty-seven of this Act relating to applications under that section shall apply, mutatis mutandis, to applications under this section.

Sec. 70BA.
(Application
for lease by
owner of
land and
minerals.)

- (k) (i) by omitting subsection one of section 70BA ;
(ii) by omitting from subsection two of the same section the words "An owner applying as aforesaid shall have no preferential rights over other applicants but notwithstanding the provisions of section 70BC of this Act" and by inserting in lieu thereof the words "Notwithstanding the provisions of section 70BC of this Act,

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Act, a person who is the owner of any private lands and any minerals in or on such lands and who is an applicant for or the holder of a lease of such lands to mine such minerals”;

- (1) (i) by omitting subsection one of section 70BB; Sec. 70BB.
- (ii) by omitting from subsection two of the same section the words “An owner applying as aforesaid shall have no preferential rights over other applicants but notwithstanding the provisions of section 70BC of this Act shall” and by inserting in lieu thereof the words “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, who is an applicant for or the holder of a lease of such lands to mine such minerals shall, notwithstanding the provisions of section 70BC of this Act,”; (Application for lease by owner of land or minerals.)
- (m) by omitting from subsection one of section 70BC the words “, but it shall not be necessary for an applicant under section 70BA of this Act to be the holder of an authority to enter”; Sec. 70BC. (Provisions applicable to leases and applications under this Division.)
- (n) by inserting in subsection one of section 70D after the word “made” the words “except to or with the consent of the person carrying on those bona fide mining operations”; Sec. 70D. (Protection of land upon which mining operations are being carried on.)
- (o) (i) by omitting from subsection one of section 70E the words “, where a plan or description and particulars of such colliery holding have been furnished to the Under Secretary for Mines in accordance with the provisions of the Coal Mines

Sec. 70E. (Protection of land in certain colliery holdings.)

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— —

Mines Regulation Act, 1912, as amended by subsequent Acts, prior to the making of the application for the authority to enter or lease”;

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

The foregoing provisions of this subsection shall not apply, or shall cease to apply, in respect of such colliery holding, where—

- (a) the time (including any extension thereof) for furnishing a plan or description and particulars of such colliery holding to the Under Secretary for Mines, in accordance with the provisions of the Coal Mines Regulation Act, 1912, as subsequently amended, has expired; and

- (b) such a plan or description and particulars were not so furnished before the expiration of that time (including any extension thereof).

- (p) by omitting from subsection one of section 70F the words “, other than coal or shale mining”.

Sec. 70F.
(Governor
may grant
special
leases of
private
lands.)

(2) An interim permit granted under subsection one of section forty-nine of the Principal Act, or a permit granted under subsection two of section sixty of the Principal Act, and in force immediately before the commencement of this Act shall continue in force after that commencement in all respects as if the said section forty-nine or the said subsection two of section sixty, as the case may require, had not been repealed by this Act.

(3) An application for a lease, or for an authority to enter, which was made under Part IV of the Principal Act in respect of any land and which was pending immediately before

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before the commencement of this Act shall be dealt with in No. 22, 1969 the same manner as if the amendments made by subsection one of this section had not been made, and any application for a lease, or for an authority to enter, which is made under Part IV of the Principal Act as amended by this Act shall not be dealt with until the firstmentioned application is dealt with.

6. Part IVA of the Principal Act is amended—

Further
amendment
of Act No.
49, 1906.

(Part IVA.—
Exploration
licenses.)

- (a) by inserting at the end of subsection one of section 83B the following new proviso :—

Sec. 83B.

(Exploration
licenses.)

Provided that the Minister may grant an exploration license over lands having an area of less than one hundred square miles if he is satisfied that it is necessary or desirable to do so.

- (b) by inserting in paragraph (a) of subsection thirteen of the same section after the word "period" the words "from the day of execution thereof by the Minister";
- (c) by omitting from paragraph (b) of the same subsection the words "but so that the total period including renewals for which any such license is to remain in force shall not exceed twenty-four months";
- (d) by omitting from subsection fourteen of the same section the words "twenty cents" and by inserting in lieu thereof the words "fifty cents";
- (e) by inserting next after subsection seventeen of the same section the following new subsection :—
- (18) The provisions of subsection seventeen of this section shall not apply in respect of any land a lease of which is granted by virtue of section

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124A of this Act to a complainant following the cancellation of a lease under that section, nor shall those provisions prevent such a grant of such a lease.

Further
amendment
of Act No.
49, 1906.
New Part
IVB.

7. (1) The Principal Act is further amended by inserting next after Part IVA the following new Part :—

PART IVB.

SPECIAL MINING LEASES OF CROWN AND PRIVATE LANDS.

Interpre-
tation.

83M. In this Part—

“Crown and private lands” means Crown lands and private lands.

“Private lands” has the meaning ascribed thereto in Part IV of this Act.

Special
leases of
Crown and
private
lands.

83N. (1) The Governor may, upon the recommendation of the Minister, grant a special mining lease of Crown and private lands in accordance with this Part.

(2) A special mining lease of Crown and private lands under this Part shall not be granted unless every part of the land intended to be leased thereby is adjoining another part of that land.

Grant of
application
under this
Part.

83O. An application for a lease under this Part in respect of Crown and private lands may be granted in any case where a special lease may be granted under Part III of this Act in respect of so much of the lands as is Crown lands and Part IV of this Act in respect of so much of the lands as is private lands.

83P.

Mining (Amendment).

83P. (1) Where a person has made an application for a lease under Part III of this Act and an application for a lease under Part IV of this Act, the Minister may, if every part of the lands the subject of those applications is adjoining another part of those lands, approve of those applications being treated as if that person had made an application for a lease under this Part in respect of those lands, and those applications shall be treated accordingly.

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Certain
applications
to be treated
as applica-
tions under
this Part.

(2) Where—

(a) a person has made an application for a lease of land under either Part III or Part IV of this Act;

(b) the land consists of both Crown and private lands; and

(c) the Minister is satisfied—

(i) where the application was made under Part III of this Act—that one or more special leases under that Part should be granted in respect of the Crown lands and that one or more special leases under Part IV of this Act would have been granted if application had been made therefor; or

(ii) where the application was made under Part IV of this Act—that one or more special leases under that Part should be granted in respect of the private lands and that one or more special leases under Part III of this Act would have been granted if application had been made therefor,

the Minister may approve of the application being treated as if that person had made the application under this Part, and the application shall be treated accordingly.

83Q.

*Mining (Amendment).***No. 22, 1969**

Application
of this Act
to leases
under this
Part.

83Q. Except as provided by the regulations, a lease under this Part, and any application therefor, and matters associated therewith, shall—

- (a) in respect of the Crown lands included, or intended to be included, in the lease—be subject to the provisions of this Act, and the regulations, that apply to special leases under Part III of this Act, and applications therefor, and matters associated therewith; and
- (b) in respect of the private lands included, or intended to be included, in the lease—be subject to the provisions of this Act, and the regulations, that apply to special leases under Part IV of this Act, and applications therefor, and matters associated therewith.

Regulations.

83R. The regulations may make provision for or with respect to—

- (a) the making of applications for leases under this Part;
- (b) the fees to accompany any such application;
- (c) the marking out of the land included, or intended to be included, in any such lease;
- (d) the giving of notices to the owners and occupiers of any such land and to the owners of the minerals in any such land;
- (e) the renewal of any such lease; and
- (f) any other matters relating to leases under this Part and applications therefor.

Mining (Amendment).

83s. For the purposes of this Act (except this Part) **No. 22, 1969** and the regulations (except where the contrary intention appears therein), a lease under this Part, or an application therefor, shall, subject to this Part—

Leases under this Part deemed to be leases under Parts III and IV.

- (a) in respect of the Crown lands included, or intended to be included, in the lease—be deemed to be a lease under Part III of this Act, or an application therefor, as the case may require; and
- (b) in respect of the private lands included, or intended to be included, in the lease—be deemed to be a lease under Part IV of this Act, or an application therefor, as the case may require.

(2) Section 83P of the Principal Act, as amended by this Act, shall apply to an application for a lease, made under Part III or IV of the Principal Act, which—

- (a) was made before the commencement of this Act; and
- (b) had not been granted or refused before that commencement,

as well as to such an application which was made after that commencement.

8. (1) Part V of the Principal Act is amended—

Further amendment of Act No. 49, 1906. (Part V.—Dredging leases.)

- (a) by omitting sections eighty-seven and eighty-eight and by inserting in lieu thereof the following sections :—

Subst. secs. 87, 88.

87. Any person who desires to obtain a lease under this Part and who has, either personally or by his agent, in the prescribed manner, marked out the boundaries of the land desired to be leased, may apply to the Minister for a lease thereof.

Land to be applied for to be marked out.

88.

*Mining (Amendment).***No. 22, 1969**Permit to
mark out
lands.

88. (1) The warden may, at the request of an intending applicant for a lease under this Part, made in the prescribed manner and on payment of the prescribed fee, grant a permit in the prescribed form authorising the intending applicant to enter so much of the land intended to be included in the application as is private lands for the purpose of marking out the land.

(2) A permit under this section shall entitle the holder thereof to enter, personally or by his agent duly authorised in writing, accompanied, if desired, by not more than three other persons, upon the land mentioned therein, for the purpose aforesaid, during a period named therein, which shall not exceed twenty-eight days, with right of ingress, egress and regress to and from the nearest practicable point of a public road, without incurring liability for trespass in respect thereof, but shall not entitle him to commence any mining operations.

(3) Such permit shall be exhibited on demand to the owner or occupier of the land therein mentioned.

(4) During the currency of any such permit, unless and until an area has been marked out thereunder as aforesaid, the warden shall not issue another permit under this section in respect of the same land.

(5) Any owner, occupier or other person who obstructs any holder of any such permit, or his agent, or any person accompanying such holder or agent, in the performance of any act, or interferes with, removes, destroys or defaces any mark made or any notice posted in pursuance of such permit, shall be liable for the first offence to a penalty not exceeding twenty dollars, and for the second or any subsequent offence to a penalty not exceeding one hundred dollars.

(b)

Mining (Amendment).

- (b) by omitting from subsection (2B) of section No. 22, 1969 ninety-nine the words "for a lease made" and by inserting in lieu thereof the words "for an authority to prospect, or for an authority to enter, or for a lease under Part III or IV of this Act or under this Part, made". Sec. 99. (No obligation to grant lease.)

(2) An authority granted under subsection one of section eighty-seven of the Principal Act and in force immediately before the commencement of this Act shall continue in force after that commencement in all respects as if that section and section eighty-eight of the Principal Act had not been repealed and substituted by this Act.

9. Part VII of the Principal Act is amended by inserting in paragraph (b) of subsection one of section one hundred and fifty-five after the word "application" the words ", or caused or likely to be caused by deprivation of the possession or of the use of the surface of the land or any part of the surface". Further amendment of Act No. 49, 1906. Sec. 155. (How compensation assessed.)

10. An application for a lease made by a person under Part IV of the Principal Act on or before the thirty-first day of July, one thousand nine hundred and sixty-eight, and not refused before the commencement of this Act, and a lease granted (whether before or after the commencement of this Act) to him in pursuance of such an application, shall not be, and shall be deemed never to have been, invalid by reason only of the fact that the application was made not later than one day after the date of expiry of an authority to enter under that Part held by him in respect of the land the subject of the application. Validation.