

MINING.

23° GEO. V., No. XXXVIII.

No. 38 of 1932.

AN ACT to amend Part VA of the Mining Act, 1904.

[Assented to 30th December, 1932.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the *Mining Act Amendment Act, 1932*, and shall be read as one with the Mining Act, 1904, as reprinted in the Appendix to the Sessional Volume of the Statutes for the year 1926, hereinafter referred to as the principal Act.

Commencement.

2. Save and except as to sections three, four, and nine, this Act shall come into operation upon the passing thereof; but sections three, four, and nine shall come into operation on a day to be fixed by proclamation.

Amendment of heading to Part VA.

3. The heading to Part VA of the principal Act is amended by deleting therefrom the words "Mining for Mineral Oil and."

Repeal.

4. Sections one hundred and seventeen to one hundred and forty, both inclusive, of the principal Act are repealed.

Amendment of s. 142.

5. Section one hundred and forty-two of the principal Act is amended by inserting in subsection one, after the word

“lodged” in line four, the words “by the lessee”; and after the word “approval,” in the same line, the words “by the warden.”

6. Section one hundred and forty-five of the principal Act is repealed, and a section is inserted in lieu thereof, as follows:—

Amendment of
s. 145.

145. (1.) The warden shall refuse to register a tribute agreement if the same does not in all respects comply with the provisions of this Part of this Act and the regulations, and if the agreement does not also contain provisions to the following effect:—

Registration of
tribute agreement
liable to refusal by
the warden in
certain cases.

- (a) That no tribute shall be payable unless those tributers engaged in the actual working of the ground have earned at the rate of three pounds ten shillings per man per week for the period worked by them respectively after paying the costs and expenses of mining, treatment, and realisation, and that such expenses shall be exclusive of their own wages; and that in calculating such deductions, the wages to employees shall be at the ruling rate in the district for the hours of labour actually spent in working the tribute area: Provided that this condition shall not apply when royalty or tribute is payable in the manner provided for in section one hundred and forty-five C of this Act.
- (b) Provisions setting out fully and clearly the terms and conditions on which the use of any mining plant, machinery, air tools and supplies belonging to the lessee is granted to the tributers, and also other terms and conditions agreed upon between the lessee and the tributers; and so that charges or payments to be made by the tributers to the lessee are fixed on the basis of the reasonable value of the service in relation to which the charge or payment is fixed:

Provided, however, that the cost of treatment and realisation may be fixed on a sliding scale varying with the value of the gold or the quantity of gold per ton of ore or otherwise:

Provided further, that the cost under such sliding scale shall not exceed a maximum of forty shillings per ton.

Provided also that the charge, under such scale, for treatment of ore (not being free milling ore) assaying not more than ten pennyweights of gold to the ton shall be fifteen shillings per ton of ore treated, and such charge shall be increased by such amount (not exceeding sixpence) for each additional pennyweight of gold per ton of ore as may be agreed on by the parties, or in default of agreement as may be determined by the State Mining Engineer, up to the maximum aforesaid.

(2.) The warden may refuse to register a tribute agreement if, in his opinion, any of the terms or conditions thereof are inequitable: Provided that—

- (i) before dealing with a tribute agreement lodged for his approval, the warden shall, if requested so to do by any party to the agreement, refer the agreement to the State Mining Engineer for his decision as to whether any term or condition of the agreement is inequitable, and such decision shall be accepted and given effect to by the warden; and
- (ii) the warden shall, if requested so to do by any party to the agreement, refer any objection raised by the warden to the State Mining Engineer for his decision, and such decision shall be accepted by the warden.

(3.) Any tribute agreement the registration whereof is refused by the warden acting in accordance with this section, shall be absolutely null and void.

New sections.

7. Sections are inserted in the principal Act, after section one hundred and forty-five, as follows:—

Payment of
royalty or tributa.

145A. Every tribute agreement shall contain therein a provision setting out clearly the manner in which the tributers shall pay royalty or tribute to the lessee, and such royalty or tribute may be paid by either one of the following methods:—

- (a) By means of a percentage on a sliding scale to be fixed by the agreement on the value in Australian currency of the gold extracted from the ore produced and delivered by the tributers as ruling at a date one month after the ore is delivered for treatment, but so that the sliding scale aforesaid shall vary with the value of the gold in Australian currency.

For the purposes of this paragraph the value of the gold shall be the difference between the gross proceeds from the sale thereof and the costs of treatment and realisation; or

- (b) By means of a division in equal shares between the lessee and the tributers of the gold extracted from the ore produced, or of the gross proceeds from the sale of such gold.

145B. (1.) Where royalty or tribute is payable by the method mentioned in paragraph (a) of section one hundred and forty-five A of this Act, and the ore produced by the tributers is treated by the lessee, the following conditions shall apply:—

Provision for payment of royalty on a percentage basis.

- (a) The lessee shall account for all ore received by him from the tributer on the basis of not less than ninety per centum extraction of the assayed value of the ore, unless on an application to the warden it shall be otherwise determined on proof to his satisfaction that the ore is of so refractory a nature that ninety per centum of such assayed value cannot be extracted.
- (b) The lessee shall pay to the tributers the value of gold extracted from the ore received (on a ninety per centum basis) in Australian currency at the market rate ruling one calendar month after the ore is delivered to the lessee for treatment, less service charges or payments payable by the tributers for service prior to delivery of the ore, and less cost of treatment and realisation, and less the amount of the royalty or tribute payable, but so that the tributers shall receive payment, as follows:—
 - (i) On the completion of the assay a sum equal to four pounds per ounce on such assay value less the service charges or payment aforesaid, and cost of treatment and realisation and royalty on the gold at the value of four pounds per ounce; and
 - (ii) At the expiration of one calendar month as aforesaid the balance of the value of the gold at the market rate then ruling as aforesaid less any further royalty payable.

(2.) Where royalty or tribute is payable as aforesaid and the ore produced by the tributers is treated by the owner of a treatment plant, not being the lessee or owner of the mine under tribute, the owner of such treatment plant shall—

- (a) account to the lessee for all ore received by such owner on the basis of not less than ninety per centum extraction of the assayed value of the ore, unless on an application to the warden it shall be otherwise determined on proof to his satisfaction that the ore is of so refractory a nature that ninety per centum of such assayed value cannot be extracted; and
- (b) account for and pay to the lessee the value of the gold extracted from the ore received (on a ninety per centum basis) in Australian currency at the market rate ruling one calendar month after the ore is delivered to such owner for treatment, less the cost of such treatment and realisation.

(3.) On receipt of payment by the lessee from the owner as provided for in subsection two hereof, the provisions of paragraphs (a) and (b) of subsection one of this section shall, as between the lessee and the tributers, apply.

145C. Where royalty or tribute is payable by the method mentioned in paragraph (b) of section one hundred and forty-five A of this Act, the following conditions shall apply:—

- (1) Where the ore produced is treated by the lessee—
 - (a) the lessee shall cause all the ore received by him to be assayed, and such ore shall be deemed to yield not less than ninety per centum of the assayed value of the ore, unless on an application to the warden it shall be otherwise determined on proof to his satisfaction that the ore is of so refractory a nature that ninety per centum of such assayed value cannot be extracted;
 - (b) the lessee shall cause all the ore received by him to be hauled and treated with as little delay as possible, and shall, subject to paragraph (e)

Provision for payment of royalty or tribute on the basis of a division of gold.

hereof, forthwith after such treatment deliver to the tributers gold equal in quantity to forty-five per centum of the assayed value of the ore, or such smaller percentage as may be equal to one-half of the percentage of extraction as may be determined by the warden upon an application provided for and made under subparagraph (a) hereof, or otherwise pay to the tributers one-half of the gross proceeds from the sale of such gold in Australian currency at the market rate ruling one month after the delivery of the ore;

- (c) the lessee shall be entitled to the remainder of the gold extracted, or the remainder of the gross proceeds aforesaid, as and for royalty or tribute due from the tributers;
- (d) the lessee shall not be entitled to claim or demand from the tributers any other charges or payments whatsoever in relation to the tribute agreement, save and except charges in respect of insurance against liability to employees and charges for air tools and supplies belonging to the lessee and used by or supplied to the tributers to enable them to deliver ore produced by them at the place adjacent to the ground in the tribute agreement from which such ore can be hauled to the surface;
- (e) on completion of the assay of the ore produced by the tributers, the lessee shall pay to the tributers on account of their share of the gold, or the proceeds thereof, under paragraph (b) hereof, an amount equal to two pounds per ounce on such assay value (on a ninety per centum basis), less the charges payable by the tributers to the lessee as provided for in paragraph (d) hereof, but the amount of such payment shall be taken into account when the share of the gold or the proceeds thereof to which the tributers are entitled as provided in paragraph (b) hereof is being ascertained.

(2.) Where royalty or tribute is payable as aforesaid, and the ore produced by the tributers is treated by the

owner of a treatment plant not being the lessee or owner of the mine under tribute, the tribute agreement shall set out clearly the conditions relating to the manner in which, the time when, and the means by which the shares of the tributers and the lessee respectively, and the amounts of such shares respectively of the gold extracted from the ore produced or of the gross proceeds from the sale of such gold shall be ascertained and delivered or paid to or received by the tributers and the lessee respectively, and also the conditions relating to the nature and amount of the charges (if any) to be paid by the tributers to the lessee, and all such conditions shall be subject to the provisions of subsection two of section one hundred and forty-five of this Act.

Repeal of s. 152.

8. Section one hundred and fifty-two of the principal Act is hereby repealed.

Amendment of s. 155.

9. Section one hundred and fifty-five of the principal Act is amended by deleting from subsection one the words "may regulate and control in all respects any operations in mining for mineral oil by lessees under this Act, or by owners of land alienated by the Crown without reservation of mineral oil, or any person claiming under them; and," in lines six, seven, eight and nine of the said subsection.

Provision as to tribute agreements made before the commencement of this Act.

10. (1.) Any tribute agreement made before the thirtieth day of September, one thousand nine hundred and thirty-two, and subsisting at the commencement of this Act shall, as from and including the date of any extension or further extension of the period specified in the agreement for the continuance thereof granted after the said thirtieth day of September, one thousand nine hundred and thirty-two, or as from the date of the commencement of this Act, whichever date shall be the earlier, be deemed to have been made in accordance with the provisions of section one hundred and forty-five B of the principal Act as amended by this Act, notwithstanding anything to the contrary contained in section one hundred and fifty-two of the principal Act hereby repealed or in such tribute agreement; and the material terms and conditions of such agreement shall forthwith after the commencement of this section be amended so as to conform to the provisions of the said section one hundred and forty-five B.

(2.) Any tribute agreement made before the commencement of this Act, but on or after the thirtieth day of September, one thousand nine hundred and thirty-two, shall, notwithstanding anything to the contrary contained in section one hundred and fifty-two of the principal Act hereby repealed or in such tribute agreement, be deemed to have been made in accordance with the provisions of section one hundred and forty-five B of the principal Act as amended by this Act; and forthwith after the commencement of this section the material terms and conditions of such tribute agreement shall be amended so as to conform to the provisions of the said section one hundred and forty-five B.

(3.) Every amendment made in a tribute agreement in compliance with subsection one or subsection two of this section shall be in writing signed in duplicate by the lessee and by every other person at the time interested in the tribute, and shall be lodged at the office of the warden for his approval, and, subject thereto, for registration within twenty-eight days after the execution thereof; and the provisions of subsection two of section one hundred and forty-five of this Act shall apply as if such amendment were a separate tribute agreement: Provided that no fee shall be payable for the registration of such amendment.

(4.) If any such amendment is, in the opinion of the warden, or in the opinion of the State Mining Engineer upon reference of the same to him, in accordance with the proviso to subsection two of section one hundred and forty-five, inequitable in its effect, the warden or the State Mining Engineer, as the case may be, may alter or vary such amendment in such manner as he may think just; and all the parties to the said tribute agreement shall thereafter, during the continuance of the agreement, be bound by and give effect to such amendment as so altered or varied.

(5.) A lessee making default in so making any amendment referred to in this section in compliance therewith, or in so lodging any such amendment as required by this section, or in giving effect to any such amendment altered or varied as provided for in subsection four hereof, shall be guilty of an offence against this Act.

Penalty: Fifty pounds, and an additional penalty of five pounds for every day or part of a day during which the offence continues.