

MINING.

11^o GEO. V., No. L.

No. 50 of 1920.

AN ACT to amend the Mining Act, 1904.

[Assented to 31st December, 1920.]

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, 1920*, and shall be read as one with the Mining Act, 1904, hereinafter referred to as the principal Act.

PART I.

Amendment of principal Act.

2. (1.) Section three of the principal Act is amended as follows:—

(a) By inserting after the interpretation of the term “mineral” the following words:—

“Mineral Oil” means petroleum and other mineral oil occurring in a free state and which may be obtained by boring or wells; the term does not include mineral oil which may be extracted from coal, shale, or other rock by some industrial process.

(b) By inserting after the interpretation of the term “Lease” the following words:—

“Lessee” includes a sub-lessee, and the person to whom a lease or sublease has been granted, assigned, or transferred, or in whom a lease or sublease is vested.

(c) By inserting after the interpretation of the term “owner” the following words:—

“Payable” as applied to mineral oil means mineral oil of such quantity and quality that it can, under ordinary circumstances, be worked with profit.

(d) By inserting after the interpretation of the term "Reservoir" the following words:—

"Tributer" means a person who works a mine or portion of a mine under an agreement with the lessee or owner of the mine to pay to or receive from such lessee or owner a portion or percentage of the product taken from the mine, or of the proceeds of the sale of such product.

(2.) The words "Under Secretary for Mines" are hereby substituted for the words "Secretary for Mines" throughout the principal Act.

PART II.

Mining for Mineral Oil.

3. All Crown grants and leases under any Act relating to Crown land issued after the passing of this Act shall contain a reservation of all mineral oil on or below the surface of the land comprised therein, and also a reservation of the right of access for the purpose of searching for and for the operations of obtaining mineral oil in any part of the land: Provided that this section shall not prejudice existing contracts.

Reservation in
Crown grants.

4. (1.) The Minister is hereby empowered, by his officers, agents, or workmen, to search for mineral oil, and conduct all operations deemed necessary for obtaining, refining, and disposing of mineral oil. For this purpose the Minister may enter upon and occupy, either temporarily or permanently—

Power to obtain
mineral oil.

(a) Any vacant Crown land; or

(b) Any land in the grant or subsisting lease of which from the Crown, whether issued before or after the passing of this Act, mineral oil has been reserved, or held under lease, license, or permit for pastoral or timber purposes only, without making any compensation, except for deprivation of the possession of so much of the surface, including any improvements thereon, as is required for the working of the mine and surface rights of way thereto or therefrom; or

- (c) Any mining tenement held for the purpose of mining gold or other mineral, including coal, subject to the payment of compensation for any interference with the operations of the holder thereof.

(2.) Subject to section four of the Western Australia Constitution Act, 1890 (Imperial), the Minister may, by himself and any person acting with his authority, for the purpose of searching for mineral oil, enter upon any other land alienated from the Crown for an estate in fee-simple before the passing of this Act or held under subsisting lease from the Crown issued before the passing of this Act, and conduct all operations deemed necessary for that purpose, subject to the payment of compensation: Provided that the owner or lessee may require the land to be resumed under and subject to the next following section.

(3.) For the purpose of determining the compensation to be paid under this section, the provisions of the Public Works Act, 1902, shall be applicable.

Land may be resumed.

5. (1.) The Governor may from time to time, under and subject to the Public Works Act, 1902, resume on behalf of the Crown any land which in his opinion ought to be resumed for the purposes of this Act, and for the purpose of any such proposed resumption may cause the land to be inspected and reported upon by such officers and workmen as he directs, all of whom may thereupon enter upon the land and carry out all necessary operations.

(2.) Upon any such resumption the owner shall be entitled to compensation, and the amount of such compensation shall be determined in the manner prescribed by the Public Works Act, 1902.

(3.) Whenever it is proved to the satisfaction of the Compensation Court that damage has been sustained by a claimant by reason of the severance of the land resumed from other adjoining land of the claimant, the Court may in its discretion order that such adjoining land or some portion thereof shall also be resumed.

Prospecting areas.

6. (1.) The Minister may, subject to this Act and the regulations, grant to any person who desires to prospect Crown land for mineral oil a license to occupy the land described therein for a period of not exceeding ten years.

(2.) Every such license shall, subject to this Act and the regulations, confer on the licensee the exclusive right to bore and search for mineral oil on the land therein defined.

(3.) The fee payable for such license shall be Five pounds per annum, payable yearly in advance.

(4.) If any such Crown land is held under lease or permit for pastoral or timber purposes, the privileges conferred by a license shall be exercised by the licensee subject to the rights of the lessee or permit holder, and to such regulations as may be prescribed.

7. (1.) The licensee shall within thirty days, or such further time as the Minister may in his discretion allow, after the grant of the license, commence and thereafter continue to search for mineral oil upon the land held under license. Operation by licensee.

(2.) If at any time during the currency of a license complaint is made to the Minister, or he has cause to believe, that a licensee has not complied with subsection (1) of this section, or has not made or is not making reasonable endeavours to search for mineral oil upon the land, he may direct a warden or resident magistrate to call upon the licensee to show cause why his license should not be cancelled.

(3.) The warden or resident magistrate shall thereupon give at least fourteen days' notice to the licensee to appear before him to show cause why his license should not be cancelled, and, having heard the case in open court, shall forward the evidence to the Minister, who if satisfied that it is just to do so may cancel the license.

(4.) Every licensee shall furnish to the Minister monthly reports of the work done in searching for mineral oil, and if he discovers mineral oil, or any indication that renders the presence of mineral oil probable, he shall immediately report the discovery to the Minister. On any such discovery being made the Minister may direct the future working by the licensee, to such extent as may be necessary to guard against loss or waste of mineral oil, and such directions when given in writing by the Minister to the licensee shall be observed and carried into effect by him. If a licensee makes default in the observance of this subsection in any respect the Minister may cancel the license. Progress reports.

(5.) If a discovery of mineral oil is made by a licensee and duly reported by him, and after inspection and report by the Government Geologist it appears that such oil is a

seepage from adjacent Crown land, whether held under license as a prospecting area or not, the Minister may extend the prospecting area of the licensee by whom the discovery was made by including therein such adjacent land, and for that purpose may excise any portion of an adjacent prospecting area therefrom, and partially cancel the license relating thereto to the extent of the portion of the area so excised.

Penalty for
infringing rights of
licensee.

8. (1.) Any person who searches or attempts to search for mineral oil on land included in any license in contravention of the rights of the licensee, or who (without reasonable ground, proof whereof shall be upon him) hinders or interferes with any licensee in the exercise of his rights under the license, shall be guilty of an offence.

Penalty: Fifty pounds.

(2.) A licensee who suffers damage by reason of any act of any person which contravenes his rights under a license may sue for such damage notwithstanding that the act is an offence against this section.

Power to reserve oil
basin.

9. (1.) Subject to the right conferred on a licensee by the next following section, on the discovery of mineral oil on Crown land, or private land as defined by section one hundred and fifteen of the principal Act, it shall be lawful for the Governor by proclamation to reserve to the Crown and except from occupation for mining purposes all Crown land within the boundaries of the oil basin as defined by the Government geologist.

(2.) On publication in the *Gazette* of such proclamation, all then existing licenses to prospect for mineral oil within the area so reserved shall cease and determine.

On discovery of
payable mineral oil
the licensee may
claim a reward
lease.

10. In the event of mineral oil being discovered in payable quantities by a licensee under this Act, and the discovery being duly reported by the licensee to the Minister, the licensee shall have the right for thirty days, and such further time as the Minister may, in his discretion, allow, to apply for and obtain, under and subject to this Act and the Regulations, a mineral oil reward lease of six hundred and forty acres and two ordinary mineral oil leases of forty-eight acres each.

Mineral oil leases.

11. (1.) Subject to this Act and the Regulations, mineral leases under the principal Act may be granted for mining for mineral oil.

(2.) An application for a mineral oil lease shall be made in the prescribed form and shall be accompanied by the prescribed survey fee.

(3.) The area comprised in a mineral oil lease shall not, except in the case of a reward lease, exceed forty-eight acres.

(4.) The term of a mineral oil lease or a reward lease shall not exceed twenty-one years.

(5.) The yearly rent shall be payable in advance and shall be at the rate of sixpence per acre: Provided that a reward lease may be granted at a peppercorn rent for the first five years of the term.

12. (1.) An applicant for a lease shall within twenty days (or such further time as the Minister allows) after his application has been lodged, mark the land to be included in the lease, unless he has marked the land prior to lodging his application.

Provisions as to applications for leases.
See *Ibid.*, s. 8.

(2.) The application shall be accompanied by a description and plan of the land sufficient to identify it.

(3.) The shape of the land applied for, shall as nearly as circumstances permit, be that of a rectangle; but when, owing to the position of adjoining boundaries or natural features, rectangular areas are not available, intervening or irregularly shaped pieces of land may be applied for.

(4.) To "mark the land" means to mark the land applied for by firmly fixing in the ground a substantial post set in L trenches at one angle or corner of the land, and firmly fixing thereon or in proximity thereto a notice in the prescribed form.

13. A mineral oil lease shall be subject to Division (4) of Part V. of the principal Act, and shall contain the following further reservations, covenants, and conditions:—

Reservations and covenants in leases.

- (a) A reservation of power to authorise mining on the land for any purpose other than mineral oil;
- (b) A covenant by the lessee to pay the prescribed royalty on the gross value of all crude oil obtained from the land;
- (c) A covenant by the lessee to work the land in accordance with the regulations in force for the time being, and to the satisfaction of the Minister;

- (d) A covenant by the lessee to refine all crude oil produced by the lessee in the State or in some part of Australia approved of for that purpose by the Minister ;
- (e) A covenant by the lessee not to ship or export any crude oil to any place outside Australia, without the consent of the Minister ;
- (f) A covenant by the lessee to observe and comply with the provisions of the Act and the Regulations for the time being in force ; and
- (g) Such other reservations, covenants, and conditions as are prescribed.

Inspection of books.
See Q., 1912, No. 6,
s. 17.

14. (1.) The lessee under a mineral oil lease shall keep proper books and accounts in which shall be entered particulars of the receipts and expenditure in connection with the working of the land for mineral oil, so that the amount of royalty payable in respect of the mineral oil obtained, and the correctness of any return may be ascertained ; and shall, if required so to do, produce such books and accounts to any officer appointed by the Minister to inspect them.

(2.) Any person who impedes or obstructs any such officer in the performance of his duty under this section shall be guilty of an offence.

Penalty : Fifty pounds.

Returns.
See Q., 1912, No. 6
s. 16.

15. (1.) The lessee under a mineral oil lease shall, not later than the seventh day of each month in each year, forward to the Minister a return in the prescribed form, showing the amount of mineral oil obtained from the land during the last preceding month, and the value or estimated value thereof, and such other particulars as are prescribed, and pay the amount due as royalty.

(2.) If the amount of royalty due is not paid within fourteen days after it has been ascertained, any officer appointed for that purpose by the Minister may seize and take possession, on behalf of the Crown, of any mineral oil obtained from the land.

(3.) Any lessee who fails to furnish any return as prescribed by this section, or who furnishes a return which is false in any material particular, shall be guilty of an offence.

Penalty : Fifty pounds.

16. The lessee under a mineral oil lease shall not, without the consent of the Minister, be entitled to assign or transfer the lease to any company not being a company formed within the Commonwealth.

Lessee not to transfer in certain cases without consent.

17. A license under this Act, or a mineral oil lease, shall not be granted to any company other than a company formed and incorporated under the law of the United Kingdom or a British Possession.

Licenses and leases to be granted to British subjects only.

18. (1.) A foreign company within the meaning of this section shall not directly or indirectly be capable of acquiring or holding a mineral oil lease, or any interest therein whether legal or equitable.

Foreign companies not to hold leases.

(2.) For the purposes of this section, every company or body of persons formed under the law of any country not being a part of the British Dominions shall be deemed to be a foreign company.

19. (1.) Subject to the preferential rights of a licensee, applications for licenses or leases shall be considered in accordance with their relative priorities as to time of lodgment.

Priority of application.

(2.) Where two or more applications are lodged at the same time, the Minister may decide which application is to have priority of consideration.

20. When an application for a license or lease has been approved, notice of such approval shall be given to the applicant, and upon the receipt thereof he shall be at liberty to enter upon the land for the purpose for which the license or lease is to be granted as if he were the licensee or lessee, and shall be subject to the terms and conditions of the license or lease to the same extent as if it had been actually issued.

Effect of approval of application.

Provided that any application for a lease approved before the land comprised in the application has been surveyed shall be deemed to be approved subject to the land being found to be available after the survey has been made.

21. All the provisions of the principal Act with respect to mineral leases shall apply to leases under this Act, except so far as those provisions are modified by this Act.

Application of general provisions as to mineral leases.

Right of pre-emption.

22. (1.) The Governor shall have the right of pre-emption of all oil produced by the lessee from any land held under a mineral oil lease or by any owner of land from land alienated by the Crown without the reservation of mineral oil, and of all products of such oil, and in the event of the exercise of this power the lessee shall do all things reasonably in his power to facilitate the delivery of the oil or products in accordance with the directions of the Governor.

(2.) The price to be paid for the oil or products shall, if the price is not agreed upon, be fixed by arbitration.

PART III.

Tribute Agreements.

Subletting on tribute.

23. (1.) The lessee of any mine may, under and subject to the provisions of this Part of this Act and the regulations, sublet the mine or any portion thereof to tributers.

(2.) The approval by the warden of a tribute agreement shall, on the registration thereof, be deemed a consent within the meaning of the covenant by a lessee not to underlet or part with possession of the mine or any part thereof without the consent in writing of the Minister or an officer acting with his authority.

Tribute agreements

24. (1.) Every tribute agreement shall be in writing signed in duplicate by or on behalf of the lessee and by the tributers, and shall be lodged at the office of the warden for approval and, subject thereto, for registration, within twenty-eight days after the execution thereof.

(2.) A lessee making default in so lodging any tribute agreement made by him shall be guilty of an offence against this Act; but a conviction for such offence shall not affect the lessee's liability to forfeiture of his lease for breach of covenant not to underlet or part with possession of any part of the mine without the consent of the Minister.

Provisions to be contained in tribute agreements.
See Vic. No. 2698, s. 393; Tas., 1917, No. 62, s. 139.

25. Every tribute agreement, unless it extends to the mine as a whole, shall by metes and bounds describe the land to be let as a specified and defined block of ground of not less than the prescribed dimensions, and shall state the minimum number of men to be kept employed by the tributer, and the period for which such agreement shall operate, and shall set out the terms and conditions thereof.

26. No tribute agreement shall be made for a lesser period than six months, and every tributer of a block of ground defined by metes and bounds shall have the right to a renewal from time to time of his tribute agreement, made after the commencement of this Act, unless such agreement shall become liable to cancellation under section thirty-three, and to continue working thereunder until it is proved to the satisfaction of the warden that the ground which is the subject of the tribute agreement is worked out.

Term and renewal
of tribute agree-
ments.
See Vic. No. 2698,
s. 393.

Provided that no such agreement shall be renewable as of right if the period thereof in the aggregate would exceed three years.

Provided, further, that it shall not be obligatory for a lessee to renew if it is proved to the satisfaction of the warden sitting with assessors that the development of the mine would be thereby seriously delayed or impaired.

27. The warden may refuse to register any tribute agreement if he considers any of the terms and conditions thereof are inequitable, and he shall, before registering the same, satisfy himself that it complies with the provisions of this Act and the regulations, and that it contains provisions to the following effect:

Condition on which
warden may register
tribute agreement.
See M. Reg. No. 192
(W.A.); Tas., 1917,
No. 62, s. 142.

(a.) That no tribute shall be payable unless the tributers engaged in the actual working of the ground have earned per man per week a sum equal to the ruling rate of wages as prescribed for the time being by any current industrial agreement or award in force in the district, after paying the costs, charges, and expenses of mining, treatment, and realisation. For the purpose of this subsection, in calculating the sum any tributer may have earned in any week, any wages or emoluments he may have received outside the working of the tribute shall be included in the aforesaid sum. In calculating such expenses, wages to employees shall be at the ruling rate in the district for the hours of labour actually spent in working the tribute.

(b.) That the terms and conditions on which the use of any mining plant, machinery, tools, and supplies belonging to the lessee are granted to the tributers, and all other terms and conditions agreed upon between the lessee and the tributers are fully set out:

Provided that in any case in which the warden may refuse registration he shall, if requested, forward to the Under Secretary for Mines, for submission to the Minister, a report giving his reasons for such refusal, together with a copy of the agreement ; and the Minister may, if he thinks fit, order registration.

- (c.) That the tribute to be payable to the lessee or owner of the mine shall not exceed a percentage, to be fixed by the agreement, of the net proceeds of the sale of the product, after deducting the costs, charges, and expenses of mining, treatment, and realisation.
- (d.) That the proceeds of the gold, or other product, shall be accounted for at the prices actually received on the sale of such gold, or other product of the mine.

Power of warden to revise the conditions of tribute agreements.

28. (1.) Any party to a tribute agreement made after the commencement of this Act may, by plaint and summons in the warden's court, claim that the conditions of working under such agreement may be reviewed by the warden.

(2.) In any such proceedings the warden shall, subject to this Act and the regulations in force for the time being, have jurisdiction to revise, amend, and adjust such conditions of the agreement, which shall thereafter have effect and be binding upon the parties as so revised, amended, or adjusted.

Payment for development work.

29. Every tribute agreement shall provide that all development work done at the express request or by the express order of the lessee, other than such work as the tributor has, by the terms of the tribute agreement expressly agreed to do, shall be paid for by the lessee at the current rate of wages :

Provided that whenever development work is done in accordance with the agreement, the lessee shall pay to the tributor a proportionate part, to be determined by the warden if not agreed upon, of the cost of any such development work.

Disputes as to manner of working. Vic. No. 2698, s. 396. Tas., 1917, No. 62, s. 143.

30. (1.) All disagreements as to the manner in which the ground held under tribute is to be worked shall be referred in the first instance by either party to the inspector of mines for the district, unless the parties shall otherwise agree.

(2.) If the decision of such inspector of mines, after full inquiry by him, is not accepted by both parties to the tribute agreement, the question at issue shall be determined by the warden, whose decision shall be final and conclusive, and without appeal.

31. Where any dispute as to the ground held under tribute, or as to the product won from such ground, occurs between the lessee of any mine and a tributer, such dispute shall be determined by the warden on the complaint of either party, and the decision of the warden shall be final and conclusive, and without appeal.

Disputes as to ground held or product won. Tas., 1917, No. 62, s. 142.

32. If a tributer fails to comply with any of the terms and conditions contained in the tribute agreement, the lessee of the mine may, after the expiration of seven days' notice in writing to the tributer, cancel the tribute agreement; but the tributer may, within seven days after service of such notice or such further time as may be prescribed, complain to the warden, who shall hear and determine such complaint and decide whether or not, having regard to all the circumstances of the case, such tribute agreement shall be cancelled by reason of such non-compliance as aforesaid.

Cancellation of tribute for breach. See Vic. No. 2698, s. 400; Tas., 1917, No. 62, s. 145.

Tributer may complain to warden.

The warden may make such order as he thinks equitable (including any order as to compensation or costs), and such order shall have effect according to its tenor, and shall be final and without appeal, and be observed by every person concerned.

Warden's jurisdiction.

33. (1.) If any mining lease granted under the principal Act expires by effluxion of time, or is surrendered, or is declared void or forfeited or determined by reason of any breach of covenant or conditions or otherwise, any new lease issued in respect of such land within six months of the date of such expiry, surrender, forfeiture, or determination, shall be subject to all the rights then existing of any person mining on such land as a tributer, unless such forfeiture or determination has been occasioned by the act or default of such person, either alone or jointly with others.

On forfeiture of mining lease for breach of covenants. See Tas., 1917, No. 62, s. 146.

(2.) Any tribute agreement which at the time of any expiry, surrender, forfeiture, or determination of the lease existed between the lessee and the tributer shall, in the event of a new lease being granted within six calendar months of the date of such expiry, surrender, forfeiture, or determination, be deemed to continue between the lessee or new lessee, as the case may be, and the tributer.

Tribute agreement to be kept alive as against lessee. *Ibid.*

(3.) If and so long as such land is not re-applied for and a new lease issued in respect thereof, such tribute agreement shall be deemed to continue as between the tributer and the Minister, for a period of six calendar months from the date of such expiry, surrender, forfeiture, or determination of such lease, after which time the tribute agreement shall cease and determine.

(4.) Save and subject as hereinbefore provided, registered tribute agreements shall bind the land comprised therein, and shall in all respects be operative and of full force and effect against the lessee for the time being of such land.

Power to extend this Part to claims by regulations.

34. The provisions contained in this Part of this Act may, by regulations, be extended to claims, and, in such case, any default by the holder of a claim which if committed by a lessee would render a lease liable to forfeiture, under this Part of this Act shall render a claim liable to forfeiture.

Definition of "tribute agreement."

35. In this Part of this Act the term "tribute agreement" means an agreement by a lessee to underlet a mine or portion thereof to a tributer.

Assessors.

36. Any function of the Warden, and any proceeding in the Warden's Court under this Part of this Act shall, if the applicant or any person interested in the application or proceeding so desires, be performed or heard and determined by the Warden and two assessors to be appointed in the prescribed manner; and in the case of a difference of opinion between the Warden and the assessors, the decision of the majority of them shall determine the matter or proceeding.

PART IV.

Miscellaneous.

Regulations.

37. (1.) The Governor may, under and subject to the provisions of the principal Act, make regulations prescribing all matters which by this Act are required or permitted to be prescribed, or which it may be necessary or convenient to prescribe, for giving effect to this Act, and by such regulations 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 the reservation of mineral oil, or any person claiming under them ; and may prescribe terms and conditions which, unless otherwise agreed to by the parties, shall be included in all tribute agreements.

(2.) Such regulations may impose for any breach thereof, or for any disobedience of a lawful order of the warden, a fine not exceeding Fifty pounds.

33. Any person who contravenes any of the provisions of this Act for which no other penalty is expressly provided shall be guilty of an offence, and on conviction shall be liable to a fine not exceeding Fifty pounds.

General Penalty,
See Mining Act,
1904, s. 304.