



Western Australia.

ANNO SEXAGESIMO SECUNDO

VICTORIÆ REGINÆ.

No. XXIX.

AN ACT to permit Mining on Private Property.

[Assented to, 28th October, 1898.]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

(1.)—Preliminary.

1. THIS Act may be cited as the Mining on Private Property Act, 1898.

Short Title.

2. THE Mining on Private Property Act, 1897, is hereby repealed.

Repeal.

3. IN this Act, if not inconsistent with the context or subject matter —

“Applicant” includes any person to whom an interest in any application for a mining lease has been transferred under the regulations ;

Interpretation.
Victorian Mines Act,
1897, Section 67
partly altered.
“Applicant.”

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- “ Claim ” means any private land occupied for the purpose of seeking for gold therein, by virtue of a miner’s right, in accordance with the provisions of this Act and the regulations ;
- “ Earth ” includes any rock, stone, quartz, clay, sand, and soil ;
- “ Gold ” signifies as well any gold as any earth containing gold, or having gold mixed in the substance thereof, or set apart for the purpose of extracting gold therefrom ;
- “ Lease ” means a gold mining lease granted pursuant to this Act ;
- “ Lessee ” includes executor or administrator of a lessee, or the transferee of a lessee, and includes any person to whom an interest in a lease comes by operation of law ;
- “ Mine,” or “ to mine,” means to disturb, remove, cart away, wash, sift, smelt, refine, crush, or otherwise to deal with any earth by any mode or method whatsoever for the purpose of obtaining gold therefrom ;
- “ Miner’s Right ” means a miner’s right issued under the Goldfields Act, 1895, or any amendment thereof ;
- “ Minister ” means the Minister for the time being charged with the administration of this Act ;
- “ Owner ” includes any person who is the owner or proprietor of land alienated from the Crown for any estate at law or in equity, and any person who is the licensee or lessee of land under any Act relating to Crown lands with the right of acquiring the fee simple thereof, and any person who is a mortgagee, and all parties who, being seised or possessed of, and for the time being entitled to the receipt of the rents and profits of any private land, or any estate or interest therein, are under a disability to sell and convey the same ;
- “ Person,” “ holder,” “ owner,” or “ lessee ” respectively shall include any body of persons whether incorporated or not ;
- “ Private land ”: Any land alienated from the Crown for any estate of freehold at law or in equity, or the subject of any conditional purchase agreement, or of any lease, license, or concession with or without the right of acquiring the fee simple thereof other than for pastoral or timber purposes ; but no land held or occupied under the provisions of the Goldfields Act, 1895, or any amendment thereof, shall be deemed private land within the meaning of this Act ;

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- “Proclamation”: A Proclamation by the Governor published in the *Government Gazette*; “Proclamation.”
- “Regulations” means regulations made pursuant to this Act; “Regulation.”
- “Warden” means a warden duly appointed under the Goldfields Act, 1895, or any amendment thereof, and in the case of land not within a proclaimed goldfield the Resident Magistrate of the district within which the land in question is situate. “Warden.”

4. ALL gold, until lawfully acquired under the provisions of this Act, whether on or below the surface of all land whatsoever in Western Australia, whether alienated or not alienated from the Crown, and if alienated whensoever alienated, is and shall be and remain the property of the Crown.

All gold whatever to be and remain property of Crown.
Vic. Mines Act, 1897, s. 68.

(2.)—*Grant of Leases of Private Land.*

5. THE Minister, with the approval of the Governor may, in the name and on behalf of Her Majesty, subject to the provisions of this Act and to the regulations, grant to any person a gold mining lease of any private land, to be effectual on or below or both on or below the surface thereof, for the purpose of mining thereon or therein for gold, and for cutting and constructing thereon races, drains, dams, bores, reservoirs, or tramways, and erecting any building and machinery, and generally for doing all such acts and things as shall appear to be requisite for efficiently mining in or on the said land.

Gold mining leases on private land.
Ibid., s. 69, altered.

6. (1.) NO lease shall be granted of any mines under any private land used as a garden, orchard, or vineyard, unless either—
- Gardens, orchards, or vineyards.
Ibid., s. 71, slightly altered.
- (a.) The applicant has authority from the owner to enter thereon for the purpose of mining in or on the same; or
- (b.) Such lease is limited to a greater depth than one hundred feet from the lowest part of the surface.
- (2.) No lease shall be granted of any mines under any private land in any municipality or townsite, unless either—
- Land within municipalities and townsites.
- (a.) The applicant has authority from the owner to enter thereon for the purpose of mining in or on the same; or
- (b.) Such lease is limited to a greater depth than two hundred feet from the lowest part of the surface.
- (3.) No lease shall be granted of any mines under any private land on which any hospital, asylum, or public building is situated, or under or within one hundred and fifty yards laterally of
- As to leases under hospitals, public buildings, etc.

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any natural or artificial reservoir, or any waterworks, unless either—

(a.) The consent, in writing, of the owners or trustees of such land in such case has been first obtained; or

(b.) Such lease is limited to a greater depth than two hundred feet from the lowest part of the surface.

As to mining under churches and cemeteries.

(4.) No lease shall be granted of any mines, nor shall any mining operations be carried on under any private land on which any church or other place registered as a place of worship or cemetery is situated, nor within one hundred yards laterally of any such church or registered place of worship. Provided that this sub-section shall not apply to any lease granted with the consent, in writing, of the owners or trustees of the land on which any church or other place registered as a place of worship is situated, and also with the consent, in writing, of the head or authorised representative of the denomination to which such church or place of worship belongs.

Limitation on the leasing of springs, reservoirs, dwelling houses, etc.

(5.) No lease shall be granted of any mines under, or within one hundred yards laterally, of any private land on which any spring or dam, or any dwelling-house, outhouse, building, or manufactory in *bonâ fide* use is situated, unless—

(a.) The applicant has authority from the owner to enter thereon for the purpose of mining in or on the same; or

(b.) The land applied for, and the whole of the land belonging to the owner of the land applied for within one hundred yards laterally of such spring, dam, dwelling-house, outhouse, building, or manufactory, and a right of access, shall have first been taken by the applicant, which he is hereby authorised to do, and the amount of the purchase money thereof ascertained in the same manner as purchase money is ascertained under the provisions of this Act; or

(c.) Such lease is limited to a greater depth than two hundred feet from the lowest part of the surface.

Compensation.
Ibid., s. 72.

7. (1.) WHERE a lease is applied for of mines at a greater depth than one hundred feet or two hundred feet (as the case may be), without the consent of the owner or trustees, the applicant shall pay to the owner, or the owner and occupier or trustees, such compensation as may be ascertained under the provisions of this Act; and before any lease of such land is granted the applicant shall prove to the satisfaction of the warden—

Conditions on which such leases may be granted.

(a.) That he is the owner of the land included in the application, or that he possesses a claim or lease for

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mining purposes either adjoining the land applied for, or a claim or lease with such way-leaves and other rights through intermediate lands as will enable him to mine upon the land applied for without any occupation of or interference with the overlying strata, or that such claim or lease is being worked by such shafts, adits, or tunnels as will enable him to mine on the land applied for without such occupation or interference, and

- (b.) That such working can be carried on in the usual course of skilled mining without appreciable damage to the surface or the upper strata of the land applied for or any building, erection, or other work, whether public or private, existing thereon.
- (c.) Before such proof shall be given ten days' clear notice, in writing, of the time and place appointed by the warden for the hearing shall be given by the applicant to the owner and occupier or trustees. If the owner or trustees be dead or cannot be found, notice may be given by advertisement or otherwise as the warden shall direct.

(2.) Owners, occupiers, and trustees of land under which mining has been authorised by a lease shall be entitled, if authorised in writing by the warden, to inspect and survey the underground workings from time to time as in the opinion of the warden may be deemed necessary. Every such owner, occupier, and trustee shall, before entering, inspecting, or surveying any of the underground workings, make a declaration before the warden (who is hereby authorised to take the same) that he, the said owner, occupier, and trustee will not (except so far as may be necessary to protect or enforce his rights, or except as a witness in a court of justice), without the consent, in writing, of the lessee, divulge or cause to be divulged to any person whomsoever any information obtained upon or by such entry, inspection, or survey, and every such owner, occupier, or trustee who shall act contrary to such declaration shall forfeit and pay any sum not exceeding Fifty pounds.

Owners of land may inspect underground workings of mine thereunder.

(3.)—*Entry upon and Marking out Private Land.*

8. (1.) (a.) ANY holder of a miner's right who desires to obtain possession of as a claim or

(b.) Any person who desires to obtain a lease of

any private land may, at all reasonable times and doing no unnecessary damage, enter upon any part of such land for the purpose of marking out any portion thereof which he may desire to take possession of by virtue of such miner's right or under the regulations.

Mode of obtaining possession or lease of certain land.

Ibid., s. 73.

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(2.) For the purpose of marking out or otherwise complying with the regulations, such land shall be deemed to be Crown land.

(3.) No such entry or marking out shall be or be deemed to be an act of trespass on the part of such person, his servants, or agents.

Certain land not to be entered, etc., without consent of owner.

(4.) No such holder or person shall be entitled to enter for the purpose of marking out any enclosed private land used as a garden, orchard, or vineyard, or on which is situated any spring, lake, artificial reservoir, or dam, or any dwelling-house, outhouse, or manufactory in *bona fide* occupation, or of any land within one hundred yards of the same, unless with the written consent of the owner thereof.

(5.) No private land mentioned in Section six shall be taken possession of under a miner's right except by or with the consent of the owner, and as to private land mentioned in Sub-section four of Section six, except with the consent of the head or authorised representative of the denomination to which such land belongs.

(6.) Notwithstanding anything hereinbefore in this Section provided, no such holder or person shall be entitled to enter for the purpose of marking out any part of any private land unless he has first obtained from the warden a written authority so to do. Such authority may be granted on receiving from such holder or person a statutory declaration to the effect that he believes the land to be auriferous, and gives his reason for such belief, and such holder or person shall, whenever required so to do, produce such written authority to the owner and occupier of such private land or their agent. The application may be made to the warden, personally or in writing through the post, and the warden, may, if satisfied with the *bona fides* of such application, and if he thinks fit, without reference to the owner or occupier of the land required to be entered upon, grant authority, in writing, to enter and mark out as aforesaid within a time limited by him.

9. SO far as regards any private land in respect of which compensation is payable as hereinafter provided—

Compensation to be paid or agreed upon before mining.

Ibid., s. 74.

(a.) The holding of a miner's right by any person; or

(b.) The granting of a lease to any person

shall not confer upon such person any right of entry upon such land for the purpose of mining or making preparations for mining, unless and until such person shall either have paid or tendered to the owner, or the owner and occupier of such land, the amount of compensation determined as in this Act provided, or have paid or tendered to the owner the purchase money of land taken under the provisions of this

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Act, or have entered into an agreement, in writing, with such owner or owner and occupier as to such compensation and the payment thereof, and such payment, tender, or agreement shall have been certified on the lease or on the registration of the claim by the owner and occupier or trustees, or by the Minister or warden; or in case no compensation is payable, the same shall have been certified in manner aforesaid. If the owner or trustees be dead, not within the Colony, or cannot be found, such payment may be made to the Minister in trust for the owner or trustees.

(4.)—*Purchase Money or Compensation payable to Owner or Occupier of Private Land.*

10. (1.) ANY person being the holder of a miner's right, or an applicant for a lease, may treat and agree with the owner, or with the owner and occupier respectively of any private land—

Power to agree to amount of purchase money or compensation.
Ibid., s. 75.

(a.) As to the amount of purchase money of the land proposed to be taken by such holder or applicant; or

(b.) As to the amount of compensation which by this Act it is declared shall be made to the owner, or owner and occupier, by a person who desires to mine on the land.

(2.) No such agreement shall have any force or validity unless the same is in writing and signed by the parties thereto.

11. (1.) THE compensation to be made to the owner, or to the owner and occupier aforesaid, shall be for being deprived of the possession of the surface, or of any part of the surface of private land, as defined in Section three of this Act, and for damage to the surface of the whole, or any part thereof, as the case may be, which may arise from the carrying on of mining operations therein or thereon, and for the severance of such land from other land of the owner or occupier, and for all consequential damages; and the right to compensation in respect of such damage shall not be abridged or in anywise affected by reason that such damage would not be the subject of an action at law. Such compensation shall be paid to the owner, or to the owner and occupier of such land.

Measure of compensation.
Ibid., s. 76 altered.

12. (1.) (a.) IF within twenty-one days after the marking out of any land as aforesaid by the holder of a miner's right; or

(b.) If within ten days after the completion of the survey of the land and the posting of the notice by the mining surveyor as provided by the regulations,

When no agreement warden to determine compensation.
Ibid., s. 77.

the holder of a miner's right, or the applicant for a lease, as the case may be, and the owner or the owner and occupier of the land be

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unable to agree upon the amount of compensation or purchase money (as the case may be) to be paid, then on the complaint, in the Warden's Court, of any party, the warden may hear such complaint and determine the amount of compensation or purchase money to be paid by the holder of the miner's right or the applicant for the lease.

(2.) In determining the amount of such compensation the warden shall take into consideration the amount of any compensation which the owner, or owner and occupier has or have already received for or in respect of the damage for which compensation is being assessed, and shall deduct the amount already so received from the amount which the owner, or the owner and occupier would otherwise be entitled to for such damage.

(3.) The warden shall forthwith forward to the Minister a copy of every complaint as aforesaid by or against a holder of a miner's right or an applicant for a lease, and of his decision thereupon.

(4.) Any application for a lease, or marking out for a lease or as a claim, may be abandoned at any time by the applicant giving notice thereof, in writing, to the Minister (by leaving the same with the warden) and to the owner and occupier, the applicant or claimholder also paying to the owner and occupier such costs as the warden shall allow.

Before lease issued purchase money or compensation to be paid or owner to consent.

Ibid., s. 78.

13. BEFORE any lease of private land is issued to any person other than the owner of such land, the Minister shall be satisfied that the following provisions have been complied with:—

(a.) Where the amount of purchase money or compensation has been determined by the warden, that such amount has been paid or tendered to the owner, or owner and occupier, or that such owner, or owner and occupier, has or have consented, in writing, to the issue of the lease without such payment:

(b.) Where the parties have agreed in writing as hereinbefore provided, that the agreement has been executed in triplicate, and one original part thereof forwarded to the Minister, and that any amount agreed to be paid before issue of the lease has been paid or tendered, or such payment before issue has been waived in writing by the party entitled thereto.

Lessee may obtain more surface area.

Ibid., s. 79.

14. (1.) IF after the granting of any lease, or the commencement of work on any claim marked out under this Act, the lessee or holder of a miner's right desire to occupy any portion of the surface

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of the land comprised in such lease or claim, in addition to the surface area which he is already entitled so to occupy, and if within twenty-one days after notice, in writing, to the owner, or owner and occupier, by such lessee or holder of his desire, no agreement, in writing, be made as to the amount of compensation or purchase money (as the case may be) to be paid therefor, then, on the complaint of either party, the warden may, subject to the provisions of this Act, determine the amount of compensation or purchase money to be paid.

(2.) The provisions of Sub-sections (2) and (3) of the last but one preceding section of this Act shall apply to proceedings under this section.

15. (1.) EVERY application for a lease shall be made in accordance with the regulations, but any lease may be granted notwithstanding that the person applying for the same may not otherwise in all respects have complied with the said regulations.

Application for lease to be pursuant to regulations.

Ibid., s. 81.

(2.) Nothing in this Act contained shall be construed as rendering it obligatory to grant any lease or license to any person applying for the same, notwithstanding that he may have complied with the enactments and regulations in force and applicable thereto.

Not obligatory to grant lease.

16. NO mining lease shall be granted under the Act until after the expiration of seven days from the date of notification in the *Government Gazette* of intention to grant the same, and in some newspaper the place of publication of which is as near as may be to the land sought to be leased.

Notice of intention to grant mining lease to be published in *Government Gazette*.

Ibid., s. 82.

17. EVERY lease granted under this Act shall contain a condition that if the lessee fail at any time during the term to fulfil the conditions and terms therein contained, or to use the land *bonâ fide* for the purposes for which it is demised, such lease shall, for any such failure, be voidable at the will of the Governor.

Leases to contain conditions *re* non-fulfilment of covenants.

Ibid., s. 83.

18. THE term for which a mining lease may be granted under this Part shall be for a term not exceeding twenty-one years from the first day of January next preceding the application therefor, and the yearly rent shall be at the rate of one pound an acre, payable half-yearly in advance.

Terms and rent of lease.

Ibid., s. 84.

19. EVERY mining lease may, with the consent of the Governor, be at any time surrendered.

Mining lease may be surrendered.

Ibid., s. 88.

20. WHEN any land is occupied under the provisions of this Act, the same shall be worked in accordance with the provisions of

Private land occupied to be worked in accordance with Part II.

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Ibid., s. 89, altered.

the Goldfields Act, 1895, and any amendments thereof and the regulations thereunder, in like manner as if the same were Crown land.

Copy of agreement as to purchase money or compensation to be filed with mining registrar, otherwise void.

Ibid., s. 90.

21. THE holder of a miner's right who occupies private land as a claim under the provisions of this Act shall, if any agreement has been entered into by him with the owner or the owner and occupier of such land for the payment of purchase money or compensation as herein provided, file a copy of such agreement with the mining registrar at the time when he makes application for the registration of such land as a claim; and until such agreement be so filed it shall have no force or validity at law or in equity.

Owner of mine entitled to purchase freehold.

Ibid., s. 91.

22. (1.) THE holder of any claim or lease shall be entitled to take for mining purposes the whole of any private land belonging to one owner within the boundaries of, or adjoining, or abutting on such claim or lease, and within any municipality or townsite, on payment of the amount of purchase money therefor, which shall be ascertained by agreement in writing, or, in default of agreement, in the same manner as purchase money is to be ascertained under the provisions of this Act.

How purchase money to be paid.

(2.) When such purchase money is ascertained on complaint to a warden, the said holder of such claim or lease shall pay it to the registrar or as the warden shall order, and shall thereupon be entitled to possession of the said private land, and the owner of the same shall forthwith execute to the holder of such claim or lease all necessary conveyances, transfers, and assurances, and in the event of such holder failing to comply with such order, execution may be issued by the warden for the amount of such purchase money or compensation on the application by or on behalf of the person entitled thereto.

(3.) A mining lease in respect of such land may be issued to the holder of the said claim or lease upon proof of transfer to him of such land.

(4.) This section shall not apply to any private land on which any church is situated.

Parties under disability or having limited interest enabled to sell or convey, and exercise other powers.

Ibid., s. 92.

23. (1.) ALL parties under disability to sell and convey who are seised or possessed of or entitled to any private land, or any estate or interest therein may, subject to the provisions of this Act, settle by agreement with any person desiring to mine therein or thereon under a miner's right or a mining lease the amount of compensation to be paid in respect of any such land, estate, or interest as provided in this Act.

(2.) Such parties may enter into all necessary agreements for that purpose, and particularly any of the following parties so

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seised, possessed, or entitled as aforesaid may so settle with the holder of a miner's right, or the applicant for a mining lease (that is to say:—All corporations, tenants in tail or for life, guardians, committees of lunatics and idiots, trustees for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such land in possession, or subject to any estate in dower, or to any lease for life or for lives, or for years, or any less interest, and every valuation so settled as aforesaid by all such parties other than lessees for life or for lives, or for years, or for any less interest, shall be binding, not only on themselves and their respective heirs, executors, administrators, and successors, but also on every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such guardians on their wards, and as to such committees on the lunatics and idiots of whom they are the committees respectively, and as to such trustees, executors, or administrators, or their *cestui que trusts*, whether infants, issue unborn, lunatics, married women, or other persons.

24. THE owner of any private land may make application in accordance with this Act, and the regulations for a lease of such land, but shall not, in respect of such application, be subject to the provisions of this Act relating to compensation.

Owner may apply for lease.
Ibid., s. 93, altered.

25. IF mining operations have not been commenced during the twelve months following the issue of a lease, or if after mining operations have been commenced in or upon any private land held under a lease granted under this Act, the same have wholly ceased without the consent of the Governor or the warden, as the case may be, it shall be lawful for the Governor, if he shall think fit, on the application of the owner of the land, to authorise him to re-enter and take possession of such land notwithstanding that such lease may not have expired.

Re-entry by owner.
Ibid., s. 94.

26. IT shall be lawful for the Minister, in manner and subject as aforesaid, in his discretion, to grant a lease under this Act to any person who shall have made an application in respect of any private land under the provisions of the Mining on Private Property Act, 1897, in priority to any applicant under the provisions of this Act.

Priority may be given to applicants under 61 Vict., No. 33.

(5.)—*Prospecting Area on Private Land.*

27. (1.) ANY person being an applicant for a lease of any private land under this Act, and being desirous of testing such land, may, in his application, apply for a prospecting area of such land not exceeding five acres, together with a reserved area of the remainder of the private land applied for by him.

Lease of prospecting area and reserved area of private land.
Ibid., s. 95.

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(2.) The Minister, with the approval of the Governor or any person authorised by him in that behalf, may, subject to this Act and to the regulations, grant a license to occupy and to prospect any part of the land applied for as a prospecting area, and for a time not exceeding twelve months, and may renew such license for a further period of twelve months.

(3.) The application for the prospecting area and reserved area shall be made and be dealt with in accordance with the regulations.

(4.) The amount of compensation for the whole area shall be ascertained as provided for in this Act with reference to mining leases so far as the provisions hereof can be made applicable, and the compensation in respect of the prospecting area and the reserved area respectively shall be separately stated.

(5.) No such license shall be granted unless and until the compensation in respect of the prospecting area has been paid to the owner, or owner and occupier of the land, or he or they has or have consented, in writing, to the issue of the license without such payment.

(6.) On the granting of such license the reserved area shall not be occupied for mining during the currency of such license, or of a renewal thereof, or during the pendency of the application for a lease of the reserved area.

(7.) If the applicant considers the land applied for is not sufficiently tested by the prospecting work done under such license, the prospecting area held thereunder may be surrendered by him, and he may apply for a further prospecting area not exceeding ten acres of the reserved area, and the amount of compensation for such further prospecting area shall be ascertained as aforesaid, and a license to occupy and to prospect such further area may be granted in the manner, and for the period, and under the conditions hereinbefore provided, and successive areas may in like manner be applied for, granted, or surrendered until the land is sufficiently tested or the lease applied for be granted of the reserved area or any part thereof.

(8.) If the holder of such license do not comply with its conditions the license may be cancelled by the Minister, with the approval of the Governor.

(9.) (a.) If the applicant desires to surrender his license during the currency thereof, and to obtain a lease of the reserved area, he shall give notice of such desire to the Minister; or

(b.) If the Minister is of opinion that the land has been sufficiently tested he may require the applicant to surrender his license and proceed with his application for a lease, and if such applicant fails or neglects to do so,

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such license may be cancelled by the Minister, with the approval of the Governor, and such application shall be deemed to be abandoned, and be dealt with accordingly under the regulations.

(10.) If the Minister is satisfied that the applicant has complied sufficiently with the conditions of any license granted to him, and has, as to such application, otherwise complied with the provisions of this Act, a lease of the land, or of any part of it, may be granted to him.

(11.) The term of any lease granted under the provisions of this subdivision may be for any term not exceeding twenty-one years from the first day of January next preceding the date on which the last license was issued or renewed in respect of such land.

(6.)—Jurisdiction.

28. AFTER the granting of any lease under the provisions of this Act, or after the occupation by a holder of a miner's right of any private land, the jurisdiction of the warden, and every other jurisdiction established by "The Goldfields Act, 1895," and any amendment thereof, with respect to mining on Crown land shall apply to any private land comprised in such lease, or to land occupied by such holder of a miner's right, as the case may be, and to mining in any land in which such mining is authorised by such lease or by virtue of a miner's right.

Jurisdiction.

Ibid., s. 96, altered.*(7.)—Renewal of Lease and Pendency of Application.*

29. (1.) THE person beneficially interested and entitled under any lease to mine in or on the land the subject of such lease, shall, if he make application before the expiration of such lease, be entitled to, and it shall be lawful for the Minister, with the approval of the Governor, to grant a renewal of his lease of the whole or of any part of the private land comprised therein for a term of twenty-one years, and without payment of any compensation other than compensation to the owner, or owner and occupier of land for depriving him of the possession of the surface of such land, or any part thereof, and for any injury or damage which it may reasonably be supposed will be done to the surface beyond that already done, and which has not been already compensated for under any previous agreement or proceeding before any warden; and if the amount of such compensation be not ascertained by agreement between the owner, or the owner and occupier, and the person entitled to such lease before the expiration of one month after the date of such application, it shall be determined in the same manner as in the case of an original lease.

Renewal of lease.

Ibid., s. 97, slightly altered.

(2.) Where a portion of the land included in any lease granted has been or is transferred by the proprietor of such lease to any other person, any transferee, in respect of the portion so

Right to renewal of transferee and transferee of portion of a mining lease.

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transferred, shall be entitled to obtain a renewal of a lease, pursuant to the provisions of this Act, so far as regards the portion transferred.

Ground applied for under gold mining lease protected pending application.
Ibid., s. 98.

30. (1.) PENDING any application for a lease or renewal of a lease, it shall not be lawful to mark out as a claim, or include within the boundaries of any claim, the land applied for or any part thereof, and no such marking out shall confer any right or title to the said land; and if any person who, not having previously been in lawful occupation of such land, shall at any time thereafter, until and unless the application for the lease or the renewal of a lease shall be refused, enter upon, occupy, or in any way interfere with such land, such entry, occupation, or interference shall be deemed a case of trespass or encroachment within the jurisdiction of the warden.

(2.) Such applicant may proceed therefor and for any damages in respect of such trespass or encroachment, and for the recovery of any gold taken by such person out of such land, or of the value thereof, before a warden in manner provided in Part IV. of the Goldfields Act, 1895, and any amendment thereof, for proceedings before wardens in cases of trespass or encroachment.

(3.) Notwithstanding any decision of a warden the applicant shall not be entitled to have delivered to him any such gold, or to receive payment of, or to levy the amount of the value thereof, or of any damages assessed and awarded to him until it shall have been decided to grant his application for the lease; but such gold, or the value of the same, or such amount of damages shall, until the matter of such application shall be determined, be lodged with the registrar, and if determined in favour of the applicant shall be delivered or paid to him, and if otherwise to the person from whom the same shall have been recovered.

Pendency of application defined.

Ibid., s. 99, with a sub-section omitted.

31. (1.) THE pendency of an application for a lease shall begin with the marking out of private land for a lease, and shall continue until the Minister, with the approval of the Governor, shall grant or refuse the same.

(2.) The pendency of any application for a lease shall cease if the applicant do not proceed with his application, and complete his application within such time as may be fixed by the regulations, or within such further reasonable time as may, upon a written application, be permitted, in writing, by the Minister, and a copy of such permission shall be posted, and kept so posted upon some conspicuous part of such land during the further pendency of such application.

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(3.) During the pendency of any application as aforesaid it shall not be lawful for the owner of any such private land to enter into any agreement with the holders of miners' rights under the provisions of this Act. Every agreement entered into contrary to the foregoing provisions of this section shall be null and void.

32. THE pendency of any application for the renewal of a lease shall begin with the receipt of such application by the Minister, and shall continue until the Minister, with the approval of the Governor, grants or refuses the same. During the pendency of any application for the renewal of a lease of private lands under the provisions of this Act—

Lease to continue in operation during pendency of application for renewal.
Ibid., s. 100.

(a.) It shall not be lawful for the owner of any such private lands to enter into any agreement with the holders of miners' rights under the provisions of this Act. Every agreement entered into contrary to the foregoing provisions of this section shall be null and void; and

(b.) Any lease, the renewal of which is the subject of the application (whether made before or after the commencement of this Act), shall, notwithstanding anything to the contrary in such lease, continue in full force and effect during the pendency of such application for a renewal.

(8.)—*Breach of Labour Conditions and Exemption.*

33. ALL the provisions of the Goldfields Act, 1895, and any amendment thereof relating to the breach of labour conditions, exemption, abandonment, and forfeiture shall apply to this Act as if they were repeated herein.

Breach of labour conditions, etc.

(9.)—*Encroachment.*

34. IF any person, not being lawfully authorised under the provisions of this Act, mines, or attempts to mine, or encroaches in, under, or upon, or within the prohibited distance from any private land, the Supreme Court or the warden may grant an injunction to restrain such mining or encroachment at the suit of the Attorney General, the owner of the land, or of any person in lawful possession thereof, without proof of any special or material damage.

Injunction may be granted to restrain encroachment without proof of special damage.
Ibid., s. 102.

35. THE warden may, upon the application of any public body having the care and management of any highway, street, or road, or upon the application of any person authorised by such public body, by writing under the hand of the warden, authorise any mining surveyor or surveyors, either alone or together with some experienced miner or miners, to enter upon and inspect any land or mines held as a claim or comprised in any lease under this Act for

Encroaching on highways, streets, etc.
Ibid., s. 103.

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the purpose of ascertaining whether the persons working such mines are encroaching on any public highway, street, or road, and whether the mining operations carried on can be continued without causing injury or damage to such public highway, street, or road, or to any house or building abutting thereon or adjoining thereto.

Powers of persons
authorised to enter
and inspect.

Ibid., s. 105.

36. THE person or persons authorised by an order made under the authority of this Act may enter into and inspect and survey the land and mines described in such order, and every part thereof, and descend any shaft or mine, and for such purpose use the engines and other machinery ordinarily employed for that purpose by the persons whose shaft or mine is descended; and the holder under any miner's right, or the lessee of such shaft or mine, or other person for whom the same is being worked, shall provide all labour, assistance, appliances, and materials necessary to facilitate such inspection and survey; and such person or persons authorised as aforesaid may make such plans and sections of the land entered upon, and of any drives or other works therein as are necessary for the purposes aforesaid. Provided that the person or persons authorised by such order pays all costs attending such inspection, such costs to be fixed by the warden.

Owner, occupier,
agent, mining sur-
veyor, and miner to
make a declaration.

Ibid., s. 106.

37. EVERY such owner, occupier, agent, and mining surveyor or miner shall, before entering on such land, make a declaration before the warden (who is hereby authorised to take the same) that he, the said owner, occupier, agent, surveyor, or miner, will not (except as a witness in a court of justice), without the consent, in writing, of the holder under any miner's right, or the lessee of the land or mines to be entered upon, divulge, or cause to be divulged, to any person whomsoever any information obtained in the case of any such entry made for the purpose of ascertaining whether the persons working such mines are or have been encroaching on any public highway, street, or road, and whether the mining operations carried on can be continued without causing injury or damage to such public highway, street, or road, or the houses or buildings abutting thereon or adjoining thereto, or in the case of any such entry made for the purpose of ascertaining whether the persons working such mines are encroaching upon the land of any owner, not being land comprised in the claim or lease of such persons, save only as to whether such persons working such mines are encroaching on such public highway, street, or road, or upon land of any owner (not being land comprised in the claim or lease of such persons as aforesaid) as the case may be, and every person who acts contrary to such declaration shall forfeit and pay any sum not exceeding Fifty pounds, to be recovered in a summary way before any Justice.

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38. THE warden may, upon the application of the public body or applicant obtaining an order under the provisions of this Act (such application to be made on notice served twenty-four hours at least before the time of the making thereof on the parties interested in opposing the same, or such of them as appear to the warden sufficiently to represent the parties so interested), in the presence of such parties, or such of them as aforesaid, or in the absence of any of them upon whom service of such notice is proved, to the satisfaction of the warden, hear, receive, and examine evidence, and thereupon if he in his discretion think fit, by order under his hand, enjoin all persons named in such order, and all other persons mining on the land or in the mines mentioned in the said order, to desist from trespassing upon or driving in, under, or upon any public highway, street, or road, or from continuing to carry on any mining operations which, in the opinion of the warden, will cause damage or injury to any public highway, street, or road, or any house or building abutting thereon or adjoining thereto, or from encroaching on the land of any owner not comprised in a claim or a lease granted under the provisions of this Act.

Warden may enjoin persons to desist from trespassing.

Ibid., s. 107.

39. EVERY order made by the warden under the preceding section may be in the form to be prescribed by the regulations, or to that effect, and every such order shall (except the warden otherwise direct) be served by delivering a copy to the person, or to any one of the persons to be bound thereby, and at the same time showing the original order if the person or persons to be bound thereby, or any of them, require to see the same, and by affixing a copy thereof on some conspicuous place on the land mentioned in such order. If for any reason such copy cannot be delivered to the person to be bound thereby, the said affixing of the copy shall be sufficient. The cost of obtaining any such order shall be in the discretion of the warden.

Order of warden.

Ibid., s. 108.

40. IF after a copy of the said order of injunction have been affixed on some conspicuous place as aforesaid, the same be disobeyed, every person working in the mine, in the land mentioned in the said order, and the person in charge of the mining operations carried on in the said mine, and the occupiers of the said land shall each be considered to have disobeyed the said order.

Disobeying order.

Ibid., s. 109.

41. ANY person who disobeys any of the said orders, or obstructs or otherwise interferes with any person authorised by the warden as aforesaid to enter upon any land for the purpose aforesaid, shall be liable to a penalty not exceeding Fifty pounds, to be recovered in a summary way before any Court of Petty Sessions, or may be proceeded against under the provisions of Part IV. of the Goldfields Act, 1895.

Penalty.

Ibid., s. 110.

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(10.)—*Power of Survey.*

Survey officers may enter upon any private lands.
Ibid., s. 111.

42. (1.) ANY surveyor acting under the authority of the Minister of Mines, and any other person acting in aid or under the orders of such surveyor, may from time to time without making compensation :

- (a.) Enter into and upon any land of any person or persons whomsoever for the purpose of making and carrying on a survey thereof, and for the purpose of fixing any object to be used in the survey on any post, stone, or boundary mark whatsoever ; and
- (b.) Fix and place any such object, post, stone, or boundary mark whatsoever in the land or upon any wall, tree, or post in the land of any person whatsoever ; and
- (c.) Dig up any ground for the purpose of fixing any such object, post, stone, or boundary mark ; and
- (d.) Cut down and remove any scrub or timber, other than ornamental timber, fruit trees, or vines which may obstruct any survey line.

(2.) Such surveyor and his assistants and workmen shall do as little damage as may be in the execution of the several powers conferred on them by the said authority or orders.

(11.)—*Miscellaneous.*

Power of applicant to transfer interest.
Ibid., s. 112.

43. ANY applicant for a mining lease may, with the approval of the Minister and in accordance with the regulations, transfer the whole or any portion of his interest in his application to any person ; and in the event of the death of an applicant for a lease, such lease may be granted in the name of such applicant, and be executed by his executor or administrator, and shall devolve or pass in like manner as if the lease had been executed prior to the death of the applicant.

Register of dealings.

44. (1.) THERE shall be kept at the office of the Registrar of every goldfield or district a complete record of all leases, claims, transfers, liens and other dealings or matters connected with any private land within the jurisdiction of the Warden, and all transactions, matters, and things to be effected, and all notices to be served or issued at in or out of the office of the Warden in connection therewith, shall be effectual if done, served, or issued at or out of the office of such Registrar. There shall also be kept in the office of the Minister in Perth a register to be called the Register of Gold Mining Leases on Private Land, wherein shall be registered all leases and applications therefor, and transfers thereof and of all shares

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and interests therein respectively, and all liens, charges and other dealings and transactions relating thereto respectively.

(2.) No transfer of any lease or application for lease or of any share or interest therein, nor any lien charge or other dealing or transaction relating thereto respectively shall, until registered as aforesaid, be effectual to pass any share or interest in any such lease or application for lease, or render the same liable to any charge or encumbrance.

45. ALL the provisions of "The Goldfields Act, 1895," and any amendment thereof relating to the amalgamation of leases and claims, liens for wages, and caveats shall apply to this Act as if they were repeated herein.

Amalgamation of leases and claims.
Lien for Wages.
Caveats.

46. THE Governor may at any time except from occupation for mining purposes any specific portions of private lands, and no land so excepted shall be marked out or occupied under any provision of this Act for mining purposes until such exception be revoked by the Governor.

Private lands may be excepted from mining.

Ibid., s. 113.

47. IN case it is necessary for the proper working of a mine comprised in any claim held or any lease granted under this Act, that water should be conveyed therefrom, or brought thereto, or from, or to any shaft or works thereon from any river, stream, or other water-course, or from any lake, water-hole, bore, dam, reservoir, or place where water is artificially stored, it shall be lawful for the Governor, in the name and on behalf of Her Majesty, to enter upon so much of any private land as may be required for the construction of a race or flume, or for the laying of pipes for the bringing of such water to or from the said mine or claim, and to grant to any person requiring to remove or using such water a lease of such private land as may be required for such construction, and the rent for the land comprised in any such lease shall be Sixpence per acre per annum.

Easements over private land.

Ibid., s. 115.

48. EVERY such lease shall be obtained, and compensation for surface damage to be done to the land comprised therein shall be ascertained and paid as hereinbefore in this Act provided, and shall be as nearly as may be in the form and subject to and contain the terms, provisions, and conditions contained in leases under this Act.

Compensation; form, etc., of lease.

Ibid., s. 116.

49. NOTHING in this Act contained shall give any lessee, licensee, or claimholder the right to impound any sheep, cattle, horses, or other animals belonging to, or being the property of, or being in the custody or under the control of the owner or occupier of any adjoining land, or to disturb or molest any such sheep, cattle, horses, or other animals in any way whatever, or to prevent any

Lessee no right to impound or molest any animal belonging to the owner on land unless fenced.

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Trespass, etc.

such sheep, cattle, horses, or other animals from depasturing on or over any land occupied under the provisions of this Act, unless the said land be fenced as hereinafter provided. And no action or suit for trespass, or otherwise in respect of any of the matters or things mentioned or referred to in this section shall lie, either at law or in equity, against any such owner or occupier of such adjoining land at the suit of the lessee, licensee, or claimholder, or any person or persons claiming under him, unless the said land so occupied under the provisions of this Act shall, at the time when any alleged cause of action or suit arose, have been securely fenced in the manner prescribed by the regulations, and the same shall have been, at the time when the alleged cause of action or suit arose, in good order and repair, and the cost of erecting and keeping such fence in good order and repair shall have been borne or paid by the lessee, licensee, or claimholder.

Power for the Governor to grant licenses to construct drives through land occupied for mining purposes.

Ibid., s. 117.

50. WHEN a lease of any private land has been granted to any person, or when such land has been occupied as a claim by the holder of a miner's right under the provisions of this Act, and such land is severed, or any part thereof is separated from the other part or parts thereof by the private land of any other person over which a mining lease has been granted, or which has been occupied as a claim as aforesaid, and is occupied for mining purposes at the time of the application for the license hereinafter mentioned, it shall be lawful for the Governor to grant to such first-mentioned person or holder a license to construct a drive or drives through such private land so severing or separating such land, for the purpose of enabling the whole of such first-mentioned land to be effectually worked and mined. This section shall not apply to any private land on which any church is situated.

Term and form of license.

Ibid., s. 118.

51. EVERY such license shall be for such term not exceeding twenty-one years, and shall be in such form and subject to such reservations, covenants, and provisoes as shall be prescribed by the regulations.

Not to be effectual within 200 feet of surface.

Ibid., s. 119.

52. NO such license shall authorise the construction of a drive at a depth of less than two hundred feet from the surface of any such private land as measured from the lowest part of the surface.

Owner of land or buildings in vicinity of leased land entitled to compensation for loss and damage caused by mining.

Ibid., s. 122.

53. IF any land, or buildings thereon, adjoining or in the vicinity of any land occupied as a claim, or held under any lease granted under this Act, be injured or depreciated in value by any operations carried on by the occupier of the claim or lessee, the owner of such land or buildings shall be entitled to compensation for all loss and damage thereby sustained by him, and the amount of such compensation shall be ascertained in the same manner as the amount of compensation is ascertained under the provisions of this Act.

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54. ANY person who, not being authorised so to do under a lease, or by virtue of a miner's right, takes or removes any gold found or being in any private land shall, on conviction before a Court of Petty Sessions, pay for every day during which he takes, removes, or continues to take or remove any such gold, a penalty not exceeding Five pounds, and forfeit all the gold which he has so taken or removed, and shall be liable, on a second conviction, to be imprisoned for a period not exceeding twelve months, in addition to forfeiting any gold so taken or removed.

Penalty for removing gold.

Ibid., s. 124.

55. (1.) IT shall be lawful for the Governor, from time to time to make, alter, and repeal such regulations as may be deemed necessary for the purpose of giving effect to this Act, and for the management of mining on private property generally.

Power to make regulations.

(2.) Such regulations may be made for the whole Colony, or for any particular part thereof, and shall be published in the *Government Gazette*, and after publication therein shall have the force and effect of law, and shall be judicially noticed in every court of justice. Copies of all regulations made under this Act, shall be laid before both Houses of Parliament within fourteen days from the making thereof, if Parliament shall be then in session, and if not, then within fourteen days after the commencement of the next session thereof; and such regulations shall, as from such publication as aforesaid, and in so far as not disallowed by Parliament, be deemed to be within the powers conferred by this Act, and to have been legally and properly made.

Regulations may be partial or general.

To be published and have effect of law.

To be laid before Parliament.

(3.) It shall be lawful by such regulations to impose for any breach thereof, or for any disobedience of a lawful order of the warden, or Warden's Court, a fine not exceeding Twenty pounds, and in default of payment imprisonment with or without hard labour for any period not exceeding six months.

Penalties for breach may be imposed.

(12.)—*Hampton Plains Estate.*

56. IT is declared as follows:—

(a.) By an agreement, in writing, dated the 18th day of June, 1890, made between Sir Frederick Napier Broome, Knight Commander of the Most Distinguished Order of St. Michael and St. George, Governor of the Colony of Western Australia, acting therein for and on behalf of the Government of the said Colony of the one part, and the Hampton Lands and Railway Syndicate, Limited, of the other part, it was agreed that the Government should sell and the Syndicate should purchase 216,000 acres of Crown Lands on the terms and conditions in the said agreement mentioned:

The Hampton Lands and Railway Syndicate, Limited.

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- (b.) The said purchase was duly completed by the said Syndicate :
- (c.) It was one of the terms of the said Agreement that the Government should grant to the Syndicate on its application a permit to work all the metals reserved by the Crown Grants of the said lands in accordance with the Regulations authorising such permit :
- (d.) The lands which were granted to the said Syndicate, under the said agreement, are those set forth in the Schedule hereto, and the same are now held in fee simple by the said Syndicate or its assigns :
- (e.) By the regulations authorising the permit aforesaid a royalty of Two shillings per ounce is payable on all gold won from the said lands :
- (f.) With the object of facilitating the settlement and development of the said lands it is expedient to release the said royalty, and to enact the following provisions.

Regulations to be made.

57. THE respective owners of the said lands mentioned in the Schedule hereto, may, from time to time, with the approval of the Governor, but not otherwise, make, alter, amend, and repeal regulations for the management of gold-mining on their lands.

And on publication to have the force of law.

58. SUCH regulations shall be published in the *Government Gazette*, and after publication shall have the force and effect of law, and shall be judicially noticed in every Court of Justice: Provided that all such regulations shall be submitted to Parliament in the manner prescribed by Section 55.

Fines may be imposed.

59. BY such regulations there may be imposed a fine for any breach thereof not exceeding Ten pounds.

Proceedings on breach of regulations.

60. ALL proceedings for the breach of any such regulations and for the recovery of any fine or penalty may be commenced and prosecuted as if such proceedings related to the breach of the regulations made under the Goldfields Act, 1895, and the recovery of fines or penalties thereby imposed.

Royalty released.

61. SUBJECT to the said regulations being duly made and published, and so long as the same shall continue binding on the syndicate and its assigns, the royalty of two shillings per ounce now payable in respect of all gold won from the said lands shall be, and the same is hereby released.

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62. THE provisions of the preceding divisions of this Act shall not apply to the lands in the said Schedule hereto.

Provisions of preceding divisions of this Act not to apply.

In the name and on behalf of the Queen I hereby assent to this Act.

ALEX. C. ONSLOW, Governor's Deputy.

THE SCHEDULE.

Section 57.

				Acreage.
East Location	36	...	...	6,375
Do.	41	...	...	3,995
Do.	48	...	...	27,349
Do.	51	...	...	6,369
Do.	53	...	...	34,468
Do.	55	...	...	1,989
Do.	57	...	...	1,000
Do.	59	...	...	50,830
Do.	32	...	...	21,077
Do.	35	...	...	2,500
Do.	39	...	...	1,920
Do.	40	...	...	7,680
Do.	42	...	...	13,452
Do.	44	...	...	5,120
Do.	45	...	...	18,808
Do.	50	...	...	8,000
Do.	37	...	...	3,000
Do.	61	...	...	1,000
Do.	62	...	...	1,068