

## THE MINING ACT, 1904.

No. 15 of 1904.

Reprinted the 2nd day of December, 1925, as amended by the Acts No. 27 of 1919\*, No. 50 of 1920†, No. 22 of 1921‡, and No. 12 of 1923§.

### AN ACT to consolidate and amend the Law relating to Mining for Gold and other Minerals.

[Assented to 16th January, 1904.]

**B**E 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:—

#### PART I.—PRELIMINARY.

1. This Act may be cited as the *Mining Act 1904*, and is divided into Parts and Divisions, as follows:—

Short title and division.

PART I.—PRELIMINARY, SS. 1-4.

PART II.—ADMINISTRATION, SS. 5-9.

PART III.—GOLDFIELDS AND MINERAL FIELDS, SS. 10-15.

PART IV.—MINERS' RIGHTS, SS. 16-41.

PART V.—MINING LEASES—

*Division 1.—Gold Mining Leases, ss. 42-47.*

*Division 2.—Mineral Leases, ss. 48-60.*

*Division 3.—Mining Leases of Reserves and Authorised Holdings, ss. 61-65.*

*Division 4.—Provisions relating to Leases generally, ss. 66-116.*

\* Assented to 15th November, 1919.

† Assented to 6th December, 1921.

‡ Assented to 31st December, 1920.

§ Assented to 22nd February, 1923.

No. 50 of 1920,  
Parts II., III.,  
and IV.

PART VA.—MINERAL OIL LEASES AND TRIBUTE AGREEMENTS, SS. 117-156.

PART VI.—MINING ON PRIVATE LAND, SS. 157-206.

PART VII.—THE DRAINAGE OF MINES, SS. 207-216.

PART VIII.—MINERS' HOMESTEAD LEASES, SS. 217-246.

PART IX.—PURCHASE AND SALE OF GOLD. [Repealed by No. 28 of 1921, s. 2.]

PART X.—ADMINISTRATION OF JUSTICE, SS. 247-287.

PART XI.—GENERAL PROVISIONS, SS. 288-326.

PART XII.—REGULATIONS, SS. 327-331.

**Commencement.**

2. This Act shall commence and take effect on and from the first day of March, one thousand nine hundred and four.

**Interpretation**

3. In this Act, unless the context otherwise indicates, the following terms have the meanings set against the same respectively, that is to say:—

“Alluvial”—(1) When applied to gold: Any earth containing or supposed to contain gold, and not being a lode, dyke, reef, or vein.

(2) When applied to other minerals: Any earth from which any mineral is ordinarily obtained by washing.

“Authorised holding.”—Any mining tenement other than a lease, an application for a lease, or a claim.

“Bankruptcy” includes any composition or arrangement with creditors under any Act relating to bankrupt debtors, and in the case of an incorporated company means any winding-up proceedings.

“Claim.”—The portion of land which any miner shall lawfully have taken possession of and be entitled to occupy for mining purposes, or any number of such portions lawfully amalgamated; but no land comprised in any mining lease, or in any application therefor, shall be deemed to be a claim.

“Coal” includes stratified ironstone, shale, and fireclay.

“Crown land.”—All land of the Crown which has not been dedicated to any public purpose, or reserved, or which has not been granted in fee or lawfully contracted to be so granted, or which is not held under

lease for any purpose except pastoral and timber purposes. The term includes commons, State forests, timber reserves, and any reserve declared by the Governor to be subject to mining, and all land between high and low-water mark on the seashore and on the margin of tidal rivers, and below low-water mark.

“Dam.”—Any artificial storage or accumulation of water on the surface.

“Earth.”—Any rock, stone, quartz, clay, sand, soil, cement, conglomerate, gravel, or mineral.

“Electric Line.”—A wire, conductor, or other means used for conveying, transmitting, or distributing electricity, with any casing, coating, tube, pipe, or insulator enclosing, surrounding, or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of conveying, transmitting, or distributing electricity.

“Gold.”—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.

“Goldfield.”—Any lands proclaimed or deemed to have been proclaimed a goldfield under the provisions of this Act.

“Improvements.”—Any substantial house, store, stable, hut, or building; any fence as prescribed; any well, dam, reservoir, tank, trough, pump or other apparatus for raising water; or any garden, plantation, or cultivation.

“Lease.”—Any lease granted or approved under the provisions of this Act or of any repealed Act.

“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. No. 50 of 1920,  
s. 2.

“Mine.”—Any land held, occupied, or used for mining purposes.

“Miner.”—Any person being the holder of a miner’s right.

“Minerals.”—All minerals other than gold, and all precious stones.

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- “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.
- “Mineral Field.”—Any lands proclaimed or deemed to have been proclaimed a mineral field under the provisions of this Act.
- “Miner’s Homestead.”—The land comprised in a miner’s homestead lease.
- “Miner’s Right.”—A miner’s right or consolidated miner’s right lawfully issued under the provisions of this Act, and includes a miner’s right, mining license, business license, consolidated miner’s right, or consolidated mining license lawfully issued under the provisions of any repealed Act.
- “Mining” or “to mine.”—All modes of prospecting and mining for and obtaining gold or minerals.
- “Mining Lease.”—A gold-mining lease or mineral lease granted under this Act or any repealed Act.
- “Mining Tenement.”—Any land applied for, held, occupied, used, or enjoyed under a lease or application therefor, or as a claim, or any area, water race, drain, dam, or reservoir; any stack or accumulation of earth containing gold or any other mineral; or any easement taken up, held, occupied, used, or enjoyed under or by virtue of a miner’s right.
- “Minister.”—The responsible Minister of the Crown for the time being charged with the administration of this Act.
- “Owner.”—The holder of any mining tenement, or any sub-lessee of any such tenement, or any person in possession of such tenement with the consent of the holder.
- “Payable” as applied to mineral oil means mineral oil of such quantity and quality that it can, under ordinary circumstances, be worked with profit.
- “Prescribed.”—Prescribed by this Act or the regulations.
- “Proclamation.”—A proclamation by the Governor published in the *Government Gazette*.
- “Regulations.”—The regulations and forms for the time being in force under the provisions of this Act.

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“Reserve.”—Any street or road or any land which for the time being is set apart for any public purposes, or which is a reserve within the meaning of any Act relating to Crown lands and in force for the time being, and not being Crown land within the meaning of this Act, and any land which for the time being is excepted from occupation for mining purposes under the provisions of this Act or otherwise.

“Reservoir” has the same meaning as “dam.”

“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.

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“Warden.”—A warden appointed or deemed to have been appointed under the provisions of this Act, and in the case of private land outside a proclaimed gold-field or mineral field, includes the resident magistrate of the magisterial district within which such private land is situated.

4. The Acts mentioned in the First Schedule are hereby repealed to the extent therein stated. Repeal.

Provided that—

- (1) Every holder of a mining tenement acquired before the commencement of this Act under any repealed Act or the regulations thereunder shall, in respect of any such mining tenement, be entitled to all the privileges conferred by this Act, and every such mining tenement shall be held subject to the provisions of this Act and the regulations thereunder in force at or after the commencement of this Act for the time being.
- (2) Any officer appointed, any body constituted, and any office established under any Act hereby repealed shall continue and be deemed to have been appointed, constituted, or established, as the case may be, under this Act.
- (3) Any proclamation published, notification made, document issued, notice given, license, certificate, or authority granted under any Act hereby repealed shall continue in force as if it had been published, made, issued, given, or granted under this Act.

- (4) All regulations and rules not being inconsistent with the provisions of this Act duly made and published under any Act hereby repealed shall continue in force until altered or repealed by regulations or rules made under this Act, and, so far as may be necessary, shall be deemed to have been made under this Act.
- (5) Where this Act repeals and re-enacts, with or without modification, any provision of any Act, references in any other Act or in any document to the provisions so repealed shall, unless a contrary intention appears, be construed as references to the provisions so re-enacted.

PART II.—ADMINISTRATION.

The Minister  
for Mines.

5. The administration of this Act and the control of the Department of Mines shall be vested, as heretofore, in the responsible Minister of the Crown holding for the time being the office of Minister for Mines.

The Under-  
Secretary and  
other officers.  
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6. There shall be an Under Secretary for Mines, and such mining registrars, mining surveyors, and other officers as the Governor may deem necessary for the due administration of this Act.

Wardens.

7. (1.) The Governor may appoint officers to be called wardens, who shall have the powers, duties, and authorities hereinafter expressed.

(2.) Every existing warden appointed under the Goldfields Act, 1895, and every existing registrar appointed under the Mineral Lands Act, 1892, shall be deemed to have been appointed a warden under this Act.

(3.) The Under Secretary for Mines shall be a warden by virtue of his office.

No Warden,  
mining registrar,  
or mining surveyor  
to hold mining  
interests.

8. Any person who—

- (1) being a warden, mining registrar, or mining surveyor, holds, directly or indirectly, any share or interest in any claim, mining lease, or other mining adventure whatsoever; or,
- (2) being a warden, acts or adjudicates in any matter in which he has, directly or indirectly, any pecuniary interest,

shall be guilty of a misdemeanour and be liable on conviction to imprisonment for any term not exceeding two years, or to be fined at the discretion of the court.

9. In case of the illness or absence of a warden, or on any emergency, the Governor may appoint some fit and proper person to discharge the duties of a warden, and such officer shall have the same jurisdiction and all the powers and authorities conferred upon a warden by this Act, and shall, while so acting, be a justice of the peace by virtue of his office.

Power to appoint Acting Warden.

PART III.—GOLDFIELDS AND MINERAL FIELDS.

10. The Governor may, by proclamation—

Proclamation of goldfields.

- (1) constitute any lands to be a goldfield;
- (2) divide any goldfield into districts;
- (3) alter or amend the boundaries of a goldfield or district;
- (4) abolish a goldfield or district.

11. Every existing goldfield and district proclaimed or constituted before the commencement of this Act shall be and remain a goldfield and district for the purposes of this Act, and, so far as may be necessary, shall be deemed to have been constituted and proclaimed under the provisions of this Act:

Existing goldfields.

But the boundaries of every such goldfield and district may be altered or amended, and every such goldfield or district may be abolished under the provisions of this Act.

12. On proof to the satisfaction of the Minister of the discovery of payable gold at a place distant more than ten miles from the nearest place where payable gold has, prior to such discovery, been discovered, the Governor may, in his discretion, and subject to the regulations, pay a sum of money not exceeding one thousand pounds to the discoverer.

Reward for discovery of payable gold.

13. The Governor may, by proclamation—

Proclamation of mineral fields.

- (1) constitute any lands to be a mineral field;
- (2) divide any mineral field into districts;
- (3) alter or amend the boundaries of a mineral field or district;
- (4) abolish a mineral field or district.

Existing mining districts.

14. Every existing mining district proclaimed or constituted under the provisions of the Mineral Lands Act, 1892, shall be, and be deemed to be, a mineral field for the purposes of this Act; and, so far as may be necessary, shall be deemed to have been constituted and proclaimed as a mineral field under the provisions of this Act:

But the boundaries of every such mineral field may be altered or amended, and every such mineral field may be abolished under the provisions of this Act.

Power to suspend or cancel pastoral or timber leases.

15. When any land held under a pastoral or timber lease or license under any Act or regulation relating to Crown lands is situate within the boundaries of any goldfield or mineral field, the Governor may suspend or cancel, wholly or in part, such lease or license in respect of any such land:

But the rent reserved in the case of any partial suspension or cancellation of any lease or license shall be proportionately reduced.

#### PART IV.—MINERS' RIGHTS.

Miners' rights.

16. The Minister and every warden may issue, or cause to be issued, miners' rights.

Application for miners' rights.

17. Subject to the provisions of this Act, a miner's right, or any number of miners' rights, may be granted to any person applying for the same upon payment of a sum of five shillings for each miner's right.

Consolidated miners' rights.

18. The Minister and every warden may issue, or cause to be issued, consolidated miners' rights.

Application for consolidated miners' rights.

19. Subject as hereinafter provided, a consolidated miner's right may be granted to an incorporated company, or any co-operative body of persons who shall have agreed to work in co-ownership or co-partnership any claim or claims taken up or held under the provisions of this Act, or to any manager, attorney, trustee, or trustees for any such company or co-operative body applying for the same.

Any such consolidated miner's right shall, during its continuance, be held on behalf of the persons who shall for the time being be members of such company or co-operative body.

20. A consolidated miner's right—

Effect of consolidated miner's right.

- (a) shall be in lieu of and represent and be of the same force and effect as a number of miners' rights granted equal to the number of the miners' rights by virtue of which the claim or claims is or are taken possession of or held; and
- (b) shall be granted to any company or co-operative body of persons applying for the same on payment of a sum at the rate of five shillings multiplied by the number of miners' rights the consolidated miner's right is to represent.

21. The office of every incorporated company holding a miner's right or consolidated miner's right, and the name of the legal manager, representative, or attorney of such company, shall be registered in the office of the warden of every goldfield or mineral field or district in which any mining tenement of such company is situated.

Office of company holding miner's right to be registered.

22. Every miner's right shall be signed by the person who issues the same, and—

Particulars to be stated in miner's right.

- (1) shall state the date and place of issue;
- (2) shall state the name in full of the person in whose favour it is issued; and
- (3) shall be in force for one year from the date of issue.

23. No miner's right shall be issued to or held by any Asiatic or African alien, nor to any person of Asiatic or African race claiming to be a British subject without the authority, in writing, of the Minister first obtained.

Miner's right not to issue to certain aliens.

24. No Asiatic or African alien shall hold any interest by virtue of a miner's right, nor shall any person of Asiatic or African race, claiming to be a British subject, be entitled to hold any such interest without the authority, in writing, of the Minister first obtained.

No interest under miner's right to be held by certain aliens.

25. Save as provided by regulations, a miner's right shall not be transferable.

Miner's right not transferable.

26. The holder of a miner's right shall, subject to this Act and the regulations, be entitled (except as against His Majesty)—

Privileges conferred by miner's right.

- (1) to take possession of, mine, and occupy Crown land for mining purposes;

- (2) to take possession of and occupy Crown land as an authorised holding;
- (3) to cut, construct, and use races, dams, drains, wells, reservoirs, roads, and tramways which may be required for mining purposes through and upon any Crown land;
- (4) to take or divert water from any natural spring, lake, pool, or stream situate in or flowing through any Crown land, and to use, sell, and dispose of such water for any purpose in connection with mining;
- (5) to bore, or by other means sink for, collect, and store water on any Crown land, and to use, sell, and dispose of such water for any purpose connected with mining;
- (6) to use by way of an easement any unoccupied Crown land;
- (7) to erect and remove any building or structure on any Crown land lawfully occupied;
- (8) to cut and remove any live or dead timber for mining purposes from any Crown land, for his personal use, subject to the provisions of any Act relating to Crown lands and the regulations thereunder for the preservation of timber in force for the time being;
- (9) to remove any stone, clay, or gravel for his personal use in connection with mining from any Crown land not exempted from mining operations;
- (10) to take possession of and occupy, with the approval of the warden as to locality, the surface of any Crown land, not exceeding one acre, for the purpose of residence or business; but no locality within three miles from the nearest municipality or townsite shall be approved by the warden without the consent in writing of the Minister;
- (11) to take possession of and occupy, for residence or business, such portion of the surface of any Crown land as may be reserved or specially set apart for such purpose, and open to selection.

Privileges may  
be exercised jointly.

27. Any number of miners not exceeding ten may, subject to this Act and the regulations, jointly take possession of mine, and occupy Crown land as a claim or claims.

28. The undermentioned Crown lands shall be exempt from occupation by the holder of a miner's right:—

Exemption of certain lands from occupation under miner's right.

- (1) Land already occupied by virtue of a miner's right;
- (2) Land in lawful occupation as a yard, garden, orchard, or cultivated field;
- (3) Land in actual occupation on which a house or other substantial building has been erected; and
- (4) Land on which an artificial dam or reservoir has been made or a well or bore sunk:

Provided that any such land, not being a claim, may be occupied as a claim—

- (a) if the miner shall first make compensation for any improvements to the occupier of the land, such compensation to be assessed by the warden; or
- (b) for mining below the surface on conditions prescribed by the regulations.

29. Notwithstanding any provisions to the contrary, the Governor may at any time, by notice in the *Government Gazette*, exempt from occupation or further occupation by the holder of a miner's right any specified portions of Crown lands or any class of Crown lands.

Power to exempt other lands.

30. The Governor may authorise any holder of a miner's right or the holders of miners' rights generally—

Mining on reserved lands.

- (a) to occupy, for mining, any Crown land exempted from occupation under the last preceding section;
- (b) to mine upon or under any road, street, highway, navigable waters, or reserve; or
- (c) to construct drives under such land,

subject to such conditions and restrictions as may be prescribed.

The Minister on receipt of an application under this section shall cause notice thereof to be published in the prescribed manner, and no authority to mine shall be granted if, in the opinion of the Minister, any valid objection is lodged within the prescribed time after publication of such notice. The sum of five pounds shall be deposited with every application to meet the cost of publishing notice thereof, and of an inspection of and report upon the land applied for.

Where any such land is situated within a municipality, a copy of the application shall be delivered or sent by post to the mayor.

Title to land;  
under miner's  
right.

31. (1.) Any person taking up and occupying Crown land by virtue of a miner's right shall, subject to the provisions of this Act and the regulations, be deemed in law to be possessed (except as against His Majesty) of such land so taken up and occupied; and

(2.) All gold and minerals found upon any land so taken up and occupied for the purpose of mining for gold, and all minerals found upon any land so taken up and occupied for the purpose of mining for minerals, shall be the absolute property of the holder of such miner's right in lawful occupation of such land.

Exemption from  
labour.

32. A warden may, subject to the regulations, wholly or partially exempt any land held under a miner's right from the prescribed conditions of labour, occupation, or use, for any period not exceeding six months, but any application for exemption for a longer period than fourteen days shall be heard in open Court.

Devolution on  
death or  
bankruptcy.

33. A miner's right and all rights and privileges conferred thereby shall, on the death or bankruptcy of the holder thereof, devolve upon his legal personal representative, or the receiver, trustee in bankruptcy, or liquidator, as the case may be.

Compensation for  
improvements on  
land being taken  
for public purposes.

34. No right or privilege shall be acquired as against His Majesty by virtue of a miner's right, but upon any land occupied under a miner's right being exempted from further occupation and reserved for any public purpose, the holder shall be paid the value of any substantial buildings thereon *bona fide* erected and used for residential or business purposes, to be assessed in the prescribed manner and time by the warden.

Valuation of  
improvements  
on sale.

35. Upon any land *bona fide* and lawfully held under a miner's right for the purpose of residence or business, and registered as prescribed, being included in a townsite or declared open for sale, the holding may, subject to this Act and the regulations, continue until the land is sold, and prior to any sale the value of any substantial buildings erected thereon before such land was included in the townsite or declared open for sale, shall be assessed by the warden.

Miner to receive  
the value of  
improvements.

36. The value so ascertained shall be added to the upset price of the land without such buildings, and shall together

therewith be and constitute the actual upset price of the land, and if the registered holder shall bid such last-mentioned upset price or more, and shall be the highest bidder for the land, the value aforesaid shall be deducted from the amount of such bid, and the balance shall be the purchase money for the land; but if any other person than such holder shall become the purchaser of the land, and shall pay for the same, such holder shall be entitled to receive out of such purchase money the ascertained value of the improvements.

37. Where it is proved to the satisfaction of a warden that any substantial building of the prescribed value has been made upon land held under a miner's right, and actually occupied for residence or business for a period of at least twelve months, the warden may grant to the registered holder a right of pre-emption.

Miner after twelve months' possession to have right of pre-emption.

On such right being registered, the holder, in the event of the land being thrown open for sale, shall have the exclusive right of purchasing the land on which such improvement has been made, at the upset price to be determined by the Minister for Lands, for three months after the service upon such holder of notice that the land is intended to be thrown open for sale.

38. (1.) The holder of a miner's right may, at any time within thirty days before the expiration of its currency, apply to the Minister or any warden for a new miner's right, to be dated as of the date of such expiration.

Post-dating of miners' rights.

(2.) Upon production by the applicant of the expiring miner's right, and on payment of the sum ordinarily payable for a miner's right or consolidated miner's right, as the case may be, the Minister or warden may issue or cause to be issued a miner's right, dated as of the day of such expiration, which shall have the same force and efficacy as if it had been issued on that day.

39. (1.) The holder of a miner's right may, at any time within thirty days after the expiration of its currency, apply to the Minister or any warden for a new miner's right, to be dated as of the date of such expiration.

Ante-dating of miners' rights.

(2.) Upon production by the applicant of the expired miner's right, the Minister or warden may issue, or cause to be issued, a miner's right, dated as of the day of such expiration, which shall have the same force and efficacy as if it had been issued on that day.

(3.) If the application is made within seven days after such expiration, the fee payable for the new miner's right shall be the ordinary fee payable for a miner's right or consolidated miner's right, as the case may be; but if the application is made after seven days from such expiration, a fee of two shillings and sixpence shall be payable for the new miner's right or for each miner's right represented by a consolidated miner's right, in addition to the ordinary fee.

Incapacity to sue without miner's right.

40. No person shall commence any proceedings in a warden's court, or counter-claim—

- (a) to recover possession of any claim or authorised holding or any share or interest therein; or
- (b) to recover damages for, or to restrain the occupation of, or encroachment upon any such claim or authorised holding or any part thereof; or
- (c) to obtain any relief in respect of any claim or authorised holding as joint tenant, tenant in common, co-partner, or co-adventurer against his joint tenant, tenant in common, co-partner, or co-adventurer;

unless such person is the holder of a miner's right:

Provided that this section shall not extend or apply to a beneficiary who seeks to enforce the fulfilment of a trust with respect to any such claim or authorised holding.

Abandonment by non-renewal of right.

41. Any mining tenement of which any person may have taken possession by virtue of a miner's right shall, on such person ceasing to be the holder of a miner's right, be deemed abandoned.

## PART V.—MINING LEASES.

### *Division 1.—Gold Mining Leases.*

Power to grant lease.

42. The Governor may, subject to this Act and the regulations, grant to any person, not being an Asiatic or African alien, a lease of any Crown land, not exempted by the next following section, for any or all of the undermentioned purposes, that is to say—

- (1) for mining for gold, and for all purposes necessary to effectually carry on such mining operations therein or thereon;

- (2.) for cutting and constructing thereon water races, drains, dams, reservoirs, roads, and tramways to be used in connection with such mining;
- (3) for erecting thereon any buildings or machinery to be used in connection with such mining;
- (4) for boring, or sinking for, pumping, or raising water;
- (5) for residence thereon in connection with any or all of such purposes.

43. The undermentioned lands shall be exempted from lease under the powers conferred by the last preceding section—

Exemption of lands from lease.

- (1) Land which in the opinion of the Minister is likely to contain alluvial gold, except such land as in his opinion—
  - (a) has been already worked and abandoned; or
  - (b) is suitable for leasing on account of its great depth or excessive wetness, or on account of the costliness of the appliances required for its development; or
  - (c) for any sufficient reason ought not to be exempt from lease.
- (2) Land occupied by virtue of a miner's right, unless the holder consents to the leasing of such land:  
Provided that a gold-mining lease may be granted of any such land, not being a claim—
  - (a) if the person applying for the lease shall first make compensation for any improvements thereon to the holder of the land, such compensation to be assessed by the warden; or
  - (b) for mining below the surface of such land on the conditions prescribed by Division three of this Part of this Act.

44. The area of any land comprised in a gold-mining lease,—

Area of gold-mining lease.

- (1) in the case of land within paragraph (a) or (b) of subsection one of the last preceding section, shall not exceed forty-eight acres; and
- (2) in all other cases shall not exceed twenty-four acres; and the length of any such area, where practicable, shall not exceed twice the width thereof.

45. The term of any gold-mining lease shall not exceed twenty-one years from the first day of January next preced-

Term.

ing the approval thereof, but every lessee shall, at the expiration of his lease, have a right to renew the same for a further period of twenty-one years, subject to the Acts and regulations relating to gold-mining leases in force at the time of such renewal.

**Rent.** 46. The yearly rent of every gold-mining lease shall be at the rate of five shillings an acre for the first year, and of one pound an acre for every subsequent year, payable in advance at the times and in the manner prescribed; but the Governor may, if he thinks fit, on the approval of an application, require the rent to be at the rate of one pound an acre from the commencement of the lease.

In the case of any land within paragraph (a) or (b), in subsection one of section forty-three, the yearly rent may be such sum, not being less than five shillings an acre or more than one pound an acre, as the Governor may determine.

**Lessee to have exclusive right of mining.**

47. After the approval of an application for a gold-mining lease, the lessee shall have the exclusive right of mining for gold and other minerals in and on the land demised and every part thereof.

#### *Division 2.—Mineral Leases.*

**Power to grant mineral leases.**

48. The Governor may, subject to this Act and the regulations, grant to any person, not being an Asiatic or African alien, a lease of any Crown land, not exempted by the next following section, for any or all of the undermentioned purposes, that is to say—

- (1) for mining, and for all purposes necessary to effectually carry on mining operations therein or thereon for any mineral other than gold;
- (2) for cutting and constructing thereon water races, drains, dams, reservoirs, tramways and roads to be used in connection with such mining;
- (3) for erecting thereon any buildings and machinery to be used in connection with such mining;
- (4) for boring or sinking for, pumping, or raising water;
- (5) for residence thereon in connection with any or all such purposes.

49. The undermentioned lands shall be exempted from lease under powers conferred by the last preceding section—

Exemption of lands from mineral leases.

(1) Land which is proved to the satisfaction of the Minister to consist of payable alluvial ground, except such land as, in the opinion of the Minister—

(a) has been already worked and abandoned; or

(b) is suitable for leasing on account of its great depth, or excessive wetness, or on account of the costliness of the appliances required for its development; or

(c) for any sufficient reason ought not to be exempt from lease.

(2) Land occupied by virtue of a miner's right, unless the holder consents to the leasing of such land:

Provided that any such land not being a claim may be included in a mineral lease—

(a) if the person applying for the lease shall first make compensation for any improvements thereon to the holder of the land, such compensation to be assessed by the warden; or

(b) for mining below the surface on the conditions prescribed by Division three of this Part of this Act.

50. (1.) The area of any land comprised in a mineral lease shall be such as may be prescribed, but—

Area of mineral lease.

(a) in the case of land within paragraph (a) or (b) of subsection one of the last preceding section shall not exceed ninety-six acres; and

(b) in all other cases shall not exceed forty-eight acres.

(2.) The length of the area, as far as practicable, shall not exceed twice the width thereof.

(3.) This section does not apply to coal-mining leases.

51. Every mineral lease shall be granted for the working of some mineral or combination of minerals to be specified therein, and every such lease shall, subject as hereinafter provided, contain a reservation of all gold found in the land.

Lease to be granted for specified minerals.

52. Except as provided in section fifty-six, the area of land comprised in a coal-mining lease shall not exceed three hundred and twenty acres.

Area of coal-mining lease.

53. The term of any mineral lease shall not exceed twenty-one years from the first day of January next preceding the

Term.

approval thereof, but the lessee shall, at the expiration of his lease, have a right to renew the lease for a further period of twenty-one years, subject to the provisions of the Act and regulations relating to mineral leases in force at the time of such renewal.

Rent.

54. The yearly rent of every mineral lease, except a coal-mining lease, shall be at the rate of five shillings an acre, payable in advance at the time and in the manner prescribed:

But in the case of any land within paragraph (a) or (b) of subsection one of section forty-nine, the yearly rent may be any lesser sum, not being less than two shillings an acre, as the Governor may determine.

Rent for coal-mining lease.

55. The yearly rent of land leased for the purpose of mining for coal shall be at the rate of sixpence an acre, and there shall also be reserved by the lease a royalty at the rate of threepence for every ton of coal raised from the land during the first ten years of the term of the lease, and at the rate of sixpence for every ton raised during the remainder of the term.

Special privilege to discoverers of coal.

56. When a miner, being the holder of a prospecting area—

- (1) Discovers payable coal at a distance of not less than fifteen miles from any payable coal previously discovered; or
- (2) discovers a seam of payable coal at a depth of not less than six hundred feet from the surface,

he shall be entitled to a lease of six hundred and forty acres of land, if available, free of royalty for ten years, and the royalty payable thereafter in respect of coal raised shall, in the first-mentioned case as to all coal, and in the second case as to all coal raised from a depth exceeding six hundred feet, be at the rate of one penny for every ton.

In this section the term "payable" applied to coal or to a seam of coal, means coal of such quality and thickness that it can, under ordinary circumstances, be worked at a profit.

Royalty payable for gold found in combination with other minerals.

57. When gold is found associated or combined with any other mineral in land held under a mineral lease, but not in sufficient quantity, in the opinion of the Minister, to make gold the most profitable metallic product of the ore, and gold is recovered in the course of such operations, the lessee shall

pay to the Minister a royalty of one shilling for every ounce of fine gold so recovered.

58. When gold is found in any land held under a mineral lease—

Provisions applicable when gold discovered on mineral lease.

- (1) in association or combination with the mineral specified therein; or
- (2) otherwise than in association or combination with the mineral specified therein,

the lessee shall forthwith report the same to the Minister, and the Minister, if satisfied that—

- (a) gold is the most profitable product of the ore; or
- (b) the deposit of gold can be profitably worked,

may require the lessee, after thirty days' notice in writing, to surrender the mineral lease, or any part thereof, and take up a gold-mining lease or leases of the land surrendered:

But the lessee may, if he so desires, retain the mineral lease on undertaking to the satisfaction of the Minister to pay a royalty of ten shillings for every ounce of fine gold recovered from the land comprised therein.

59. If a lessee desires to mine for any mineral other than that specified in the lease, he may apply to the Minister for permission to do so, and the Minister may grant such permission subject to such royalty as he may think fit, and alter or vary the covenants and conditions of the lease so as to make them applicable to mining for such other mineral.

Permission to mine for other minerals.

If a lessee mines for any such mineral without obtaining such permission he shall, apart from the consequences of the breach of covenant, be liable to a penalty not exceeding five pounds for every day on which he shall so offend.

60. If the lessee of any mineral lease neglects to duly report the discovery of gold, or mines for gold otherwise than in association or combination with any other mineral, not being lawfully authorised to do so, the mineral lease shall be liable to forfeiture.

Penalty for mining for gold in a mineral lease.

### *Division 3.—Mining Leases of Reserves and Authorised Holdings.*

61. (1.) A mining lease may, subject to this Act and the regulations, be applied for and granted of any land comprised in a townsite, suburban area, or other reserve, or in any authorised holding.

Leases of reserves and authorised holdings.

(2.) The lessee shall not be entitled to disturb the surface of any street, road, or other reserve, or do any act which may affect the use or enjoyment thereof, except so far as he may be expressly authorised to do so by the lease, or with the permission, in writing, of the Minister, and then only upon such part of the reserve and upon such conditions as the Minister may prescribe.

(3.) The lease shall, as far as regards any land comprised in an authorised holding, be deemed to be of the mines under such land, and not of the surface of the land; but the surface may be resumed under such conditions as may be prescribed.

(4.) If the lessee does any unauthorised injury to such surface, or does any act affecting or disturbing the use and enjoyment thereof, he shall make compensation to any person entitled to the surface, or charged with the care and management thereof, for all such damage.

(5.) Any claim for compensation shall be made within three months after the right to make such claim has accrued, and shall be determined by the warden.

Covenants by  
lessee.

62. (1.) Every lease granted under this Division for mining below the surface shall contain and be subject to covenants on the part of the lessee—

- (a) not to mine within such distance of the surface of the land comprised in the lease, not being less than forty feet, as may, in the opinion of the Minister, endanger the safety of any buildings erected or that may be erected on such surface; and
- (b) to make good any subsidence caused by mining below the surface, and to pay to the person or persons entitled to the same damages for all injury caused by such subsidence.

(2.) Every such lease shall confer on the lessee only such powers and authorities as can actually or reasonably be exercised at such depth below the surface as shall be specified in the lease.

Objections.

63. Any person may object to the granting of a lease under this Division within the time and in the manner prescribed; and every objection shall be dealt with in the manner provided in Division four.

64. Any damage sustained by any person in respect of injury done to the surface of any reserve or authorised holding, and which any other person is liable to pay, may be recovered in the warden's court.

Damages recoverable in Warden's Court.

65. (1.) Every lease granted under the principal Act\* as a tailings lease shall be held under and subject to Division (3) of Part V. of the principal Act relating to mining on authorised holdings, and a tailings lease shall be deemed to be an authorised holding for the purposes of that Division.

Tailings lease.  
Inserted by No. 12 of 1923, s. 9.

(2.) The lessee of any mining lease for mining below the surface of the area comprised in a tailings lease, and any person lawfully claiming under him, may, with the approval of the warden and subject to the payment of such compensation, if any, and to such conditions as the warden may think fit to allow or impose, make use of the mining shafts, if any, on the tailings lease.

(3.) The Governor may resume from a tailings lease such rights as may have been conferred thereby on the lessee beyond the surface rights, and such other rights as are necessary for and incidental to the use and enjoyment of the demised area as a tailings lease so far as the resumption may be necessary to give effect to this section.

(4.) This section shall apply to tailing leases granted before or after the commencement of this Act.

*Division 4.—Provisions relating to Leases generally.*

66. When application is made under this Part, or Part VI. of this Act, for a lease of any land a part or the whole of which is held by the applicant under a miner's right, such interest of the applicant shall not be prejudiced by the application, or the refusal, abandonment, or failure thereof.

Effect of application for lease upon land held under miner's right.

If such lease is granted, the interest of the applicant held under his miner's right shall merge in the interest held by him under the lease.

67. (1.) Every application for a lease—

- (a) shall be made in the prescribed form;
- (b) shall be accompanied by the survey fee and the rent for the first year or portion thereof, as prescribed; and
- (c) shall be lodged with the warden of the goldfield or mineral field in which the land applied for is situated.

Application for leases—how made

(2.) In the event of more than one application being made for a lease of the same land or any part thereof, the applicant who shall have first taken possession of and marked out the land in accordance with the regulations shall have priority.

Right of entry pending application.

68. An applicant for a lease may take possession of and hold the land applied for pending the application; but, subject to the regulations, any miner may, at any time before the approval of the application for the lease, enter upon the land for the purpose only of searching for and obtaining alluvial gold or alluvial minerals.

Land applied for protected against other persons.

69. Except as provided by section sixty-eight, the entry upon, occupation of, or interference with any land of which a lease has been applied for, by any person who shall not, prior to such application, have been in the lawful occupation of such land, at any time after the lodging of such application, and unless and until such application is refused, or unless such entry, occupation, or interference is authorised by the Governor, shall be deemed a trespass.

The applicant for the lease may proceed in the warden's court for such trespass, and for damages in respect thereof, and for the recovery of any gold or mineral taken by the trespasser from the land or the value thereof; but any gold, or the value thereof, so recovered shall be held by the warden pending the application for lease, and if the lease is refused may be claimed by the Minister:

Provided that no applicant shall succeed under such procedure who fails to prove to the satisfaction of the warden that he has complied with the regulations applicable to the class of lease applied for, so far as such regulations at the time of such entry, occupation, or interference were capable of being complied with:

Provided also that an entry for the purpose only of marking out and posting notices upon the land shall not be deemed a trespass under this section.

Hearing of application.

70. Every application for a lease shall be heard by the warden in open court after the expiration of thirty days from the receipt thereof, on a day to be appointed by him.

Objections.

71. Any person who, within the prescribed time and in the prescribed manner, shall lodge at the warden's office

notice of objection, may be heard in opposition to an application.

72. When an objection has been lodged against an application, the applicant shall not be required to proceed with the survey unless, in the opinion of the warden, a survey will materially assist him in coming to a decision upon such objection.

Postponement of survey on objection being lodged.

73. Upon the hearing of the application, the warden shall take such evidence on oath as may be tendered by the applicant and by any objector, and may, if he thinks fit, take the evidence of any other person.

Evidence.

74. The warden may from time to time adjourn the hearing and may direct an inspection of the land and a report to be made by any person appointed by him.

Warden may adjourn hearing and direct inspection of land.

If such person shall report that the land is known to contain, or is likely to develop alluvial, the warden may, from time to time, postpone his recommendation for such time as he may think fit, but not exceeding in the whole twelve months.

75. Subject as aforesaid the warden shall, as soon as practicable after the hearing, transmit to the Minister, for the consideration of the Governor, the application and notices of objection (if any), with the notes of evidence and the plans and other documents referred to therein, and his report recommending the granting or refusal of the lease.

Warden to report.

76. (1.) The granting of a lease shall be in the absolute discretion of the Governor notwithstanding that the applicant may or may not have in all respects complied with the provisions of this Act and the regulations.

The granting of all leases at discretion of Governor.

(2.) No lease granted before the commencement of this Act shall be prejudiced or affected by any non-compliance, prior to the granting thereof, with the provisions of any Act or regulations in force at the time such lease was applied for.

77. On the approval or refusal by the Governor of an application for a lease, notice thereof shall be published in the *Government Gazette*, and every such notice shall be *prima facie* evidence of an agreement by the Governor to grant the lease, subject to such conditions as may be therein stated, or of the refusal thereof, as the case may be.

Notice of granting of lease to be gazetted.

Application for lease may be postponed.

78. The Governor may, instead of granting or refusing to grant a lease, postpone dealing with an application for such time as he may think fit, and grant the applicant permission in the meantime to work the reef or lode on the land applied for on all or any of the terms and conditions as to rent and otherwise as the applicant would have been subject to if a lease had been granted, but subject to the privileges conferred on miners by section sixty-eight to search for and obtain alluvial pending the application.

Alluvial reward claim may be granted on refusal of lease.

79. The applicant for a lease, in the event of the refusal of his application, and of the land applied for being exempted from lease as alluvial ground, may, subject to the regulations, obtain an alluvial reward claim for any new discovery of alluvial made by him within the boundaries of the land applied for.

Covenants and conditions of lease.

80. (1.) Every lease shall contain and be subject to the prescribed covenants by the lessee and conditions, and particularly—

- (a) a covenant to pay the rent at the prescribed times;
- (b) a covenant to use the land continuously and *bona fide* exclusively for purposes for which it is demised, and in accordance with the regulations;
- (c) a covenant to work the land demised in accordance with the regulations, unless exemption or partial exemption is granted, in such manner as may be prescribed;
- (d) a covenant not to assign, underlet, or part with possession of the land, or any part thereof, without the previous consent, in writing, of the Minister, or of an officer acting with the authority of the Minister;
- (e) a condition for the forfeiture of the lease on commission of a breach of any of the covenants by the lessee;
- (f) a proviso that the Governor may, in his discretion, upon any breach of covenant by the lessee, impose a fine not exceeding five hundred pounds as an alternative to the forfeiture of the lease.

(2.) On the lease being approved by the Governor the lessee and his assigns shall be deemed to have entered into such covenants, and to be subject to such conditions, whether the lease shall have been actually executed by the lessee or not.

81. Every lease shall be dated as of the day of the notification of the approval thereof in the *Government Gazette*, and shall be executed in duplicate by the Minister, and registered in the Department of Mines at Perth. One shall be endorsed with the word "original" and filed, and the other shall be endorsed with the word "duplicate," and shall be issued to the lessee on payment of a fee of one pound.

Registration and issue of lease.

82. (1.) A lessee or an applicant for a lease may, with the approval, in writing, of the Minister, or of an officer acting with the authority of the Minister, transfer, sub-let, mortgage, encumber, or otherwise deal with the lease or application:

Transfers.

But no transfer, sub-lease, mortgage, encumbrance, or other instrument shall be effectual to pass any estate or interest in a lease or application for a lease, or in any way charge or encumber the same, until registered in accordance with this Act and the regulations.

(2.) Every instrument presented for registration, except instruments of transfer, shall be in duplicate, and one shall be endorsed with the word "original" and filed, and the other shall be endorsed with the word "duplicate" and returned to the person presenting the instrument for registration.

(3.) If any question or dispute shall arise as to the contents of any lease or other instrument, the original, as filed, shall be conclusive.

83. There shall be kept at the Department of Mines in Perth for each goldfield a book to be called "The Register of Gold Mining Leases," and for each mineral field a book to be called "The Register of Mineral Leases," wherein shall be registered all applications for leases, transfers, sub-leases, liens, charges, and encumbrances, and other dealings or transactions.

Register of leases.

Such books and all registered instruments shall be open to public inspection on payment of the prescribed fee.

84. There shall be kept at the office of every warden an official copy of the Register of Gold Mining Leases and of the Register of Mineral Leases relating to the goldfield or mineral field in which such office is situated, and the same shall be open to public inspection on payment of the prescribed fee.

Local register

Person dealing with registered proprietor not affected by unregistered interests.

85. Except in the case of fraud, no person dealing with a registered applicant for, or holder of, a lease shall be required or in any way concerned to inquire into or ascertain the circumstances under which the registered applicant or holder or any previous holder was registered, or to see to the application of any purchase or consideration money, or be affected by notice, actual or constructive, of any unregistered trust or interest, any rule of law or equity to the contrary notwithstanding, and the knowledge that any such unregistered trust or interest is in existence shall not of itself be imputed as fraud.

Permit to erect church, etc.

86. A lessee may, with the approval in writing of the Minister, erect or permit to be erected on the land demised a church or public building, and, with the like approval, permit any person to carry on the business of an eating-house keeper for the use and convenience of the men employed on the lease.

Amalgamation of leases.

87. (1.) Two or more adjoining leases the property of the same lessee, and the aggregate area of which does not exceed ninety-six acres; may be amalgamated on application to the Minister in the prescribed form, and on payment of the prescribed fee.

(2.) After the commencement of this Act no amalgamation of leases shall be permitted if, in the opinion of the Minister, the length of reef or lode exceeds sixty-six chains in the case of a gold-mining lease, or ninety chains in the case of a mineral lease.

(3.) This section does not apply to coal-mining leases.

Amalgamation of leases under special circumstances.

88. (1.) The Minister may, in his discretion, permit the amalgamation of leases the aggregate area of which exceeds ninety-six acres, if the workings are chiefly confined to a reef or lode having an underlay, and it is shown to the satisfaction of the Minister that it is necessary, by reason of the underlay, that the lessee should hold such larger area to enable him to work, within his own boundaries, the reef or lode to a depth not exceeding three thousand feet measured on the underlay.

(2.) But the Minister may—

(a) before permitting amalgamation, require such prospecting work as he may prescribe to be carried out to his satisfaction on all or any of the leases proposed to be amalgamated, except those on which the principal workings are situated; and

- (b) from time to time impose such conditions as he may think fit as to the working of any reef or lode, or other mineral deposit proved to exist; and
- (c) from time to time restrict the area in respect of which amalgamation has been permitted, if in his opinion the underlay has so changed that the amalgamated area is in excess of that required to work the reef or lode on the underlay to a depth of three thousand feet, or if in his opinion any gold or mineral deposits discovered subsequent to the amalgamation are of such importance as to require separate working.

(3.) No amalgamation of leases shall be permitted if, in the opinion of the Minister, the length of reef or lode exceeds sixty-six chains in the case of a gold-mining lease, or ninety chains in the case of a mineral lease.

(4.) This section does not apply to coal-mining leases.

89. Two or more coal-mining leases the property of the same lessee, and the aggregate area of which does not exceed two thousand five hundred and sixty acres, or, where the seam is at a depth exceeding one thousand feet, five thousand one hundred and twenty acres, may, in the discretion of the Minister, be amalgamated on application in the prescribed form and on payment of the prescribed fee.

Amalgamation of coal-mining leases.

90. (1.) Any amalgamation of leases may be cancelled by the Minister—

Cancellation of amalgamation.

- (a) at the request of the lessee; or
- (b) on the transfer, surrender, or forfeiture of any lease included in the amalgamation.

(2.) The Minister may, in his discretion, cancel any amalgamation of leases effected before the commencement of this Act, and require the lessee to apply for an amalgamation under the provisions of this Act.

91. An amalgamation of leases shall extend only to the labour covenants of each lease so amalgamated, and the labour to be employed on the aggregate area shall be the sum of the labour required in respect of each separate lease.

Effect of amalgamation.

92. Total or partial exemption from the labour covenants of any mining lease may be granted by the Minister, when it is shown to his satisfaction by evidence taken by the warden on oath in open court, that any of the following grounds for exemption exist:—

Exemption from labour.

- (1) Want of capital, after a fair sum shall have been expended on the lease in work, labour, or material.
- (2) That time is required for the erection of machinery.
- (3) The influx or scarcity of water.
- (4) Scarcity of labour.
- (5) The collapse of the working shaft.
- (6) That the mine is, for some other cause, temporarily unworkable.
- (7) The death of the owner or one of several joint owners.
- (8) That the owner or owners require to be absent, for some sufficient reason, from the locality, or is or are unable, by reason of sickness or other sufficient cause, to work the mine.
- (9) That the title to the mine is in dispute.
- (10) That bankruptcy proceedings are pending; or
- (11) That the owner of several adjacent leases desires to concentrate on one or more of them the labour compulsory on such leases, and to obtain suspension of labour for the other leases.

Application  
for exemption.

93. (1.) Every application for exemption shall be made to the warden, or other officer authorised by the Minister, in open court, and shall be referred to the Minister with the notes of evidence and the warden or other officer's recommendation:

Provided that exemption for a period not exceeding one month may be granted without reference to the Minister.

(2.) The Minister or the warden, or any officer authorised by the Minister, may grant exemption for a period not exceeding fourteen days, without any hearing in open court; but every application to a warden or other officer for a further period of such exemption shall be heard in open court.

Exemption  
as of right.

94. A lessee, in addition to any exemption granted under the preceding sections, shall, on application to the Minister in the prescribed manner, be entitled to exemption from labour covenants for the periods hereinafter stated, that is to say—

- (1) four months' exemption shall be granted in respect of any lease the property of working miners, on proof to the satisfaction of the Minister that, for a period of eight consecutive months, such miners have, out of their own resources, continuously and *bona fide* worked the lease:

(2) three months' exemption shall be granted in respect of any lease—

(a) the property partly of working miners working such lease, and partly of persons who are not working miners but who are providing funds for working the lease; or

(b) the property of a registered company having a nominal capital not exceeding five thousand pounds,

on proof to the satisfaction of the Minister that for a period of at least nine consecutive months the lease has been continuously and *bona fide* worked;

(3) six months' exemption shall be granted in respect of any lease or group of amalgamated leases, on proof to the satisfaction of the Minister that for every twenty-four acres held under a gold-mining lease, or for every forty-eight acres held under a mineral lease, the lessee has expended in mining or mining machinery and other mining requisites at least one thousand five hundred pounds, independently of the proceeds of any gold or mineral derived from the mine; and twelve months' exemption shall, in like manner, be granted when the sum expended exceeds four thousand pounds for the above-mentioned areas; but on the removal of any machinery from any such lease or leases during the currency of the exemption, without the approval in writing of the Minister, the exemption shall become void, if such exemption has been granted in respect of expenditure on such machinery:

Provided that every such exemption may be granted on such conditions as to tribute, except in the main workings of the lease, as the Minister may prescribe, and that no exemption shall be granted under this section in respect of any expenditure incurred prior to the date of any expired exemption granted under this section.

95. (1.) Every application under the last preceding section shall be supported by a statutory declaration stating the average number of men employed, the amount expended in wages, in the purchase of mining machinery and other requisites, and otherwise in carrying on mining operations, and such other particulars as are prescribed or the Minister may require.

Evidence in support of application. 4 2

(2.) The Minister shall direct evidence to be taken by the Warden or any other officer in open court.

(3.) If a lessee or any person acting on his behalf supports any application by misleading or false information or evidence as to the ownership of the lease, or the work done or money expended, he shall be liable to a penalty not exceeding one hundred pounds, and the lease shall be liable to forfeiture by the Governor.

Exemption  
from the labour  
conditions of  
coal mines.

96. In the case of any lease granted for coal-mining the Minister may, by a license under his hand, dispense with the performance of the lessee's covenant to work the mines continuously if, upon application in the prescribed manner, he is satisfied that the lessee has made reasonable efforts to work and develop the mine, and that continued working would result in unnecessary loss to the lessee.

Any such license shall be for a period not exceeding six months, and shall be subject to such conditions as the Minister may think fit.

A license may be renewed from time to time for any further period not exceeding six months upon a fresh application, subject to similar conditions to those on which the license was granted, or different conditions.

Notice to be given  
before forfeiture.

97. A lease shall not be forfeited for breach of any covenant not relating to labour, or to the inspection of the mine or the working thereof, unless the prescribed notice shall have been given to the lessee by or on behalf of the Minister specifying the breach complained of and requiring the lessee to comply with the covenant within a time limited by such notice.

Declaration of  
forfeiture of lease.

98. In case any lease shall be liable to avoidance, cancellation, or forfeiture for breach of covenant or otherwise, the Governor may, subject to the provisions of this Act, declare such lease void, and upon publication in the *Government Gazette* of notice of such declaration all the estate and interest in the lease of the lessee and any person claiming under him shall cease and determine; and the production of the *Government Gazette* containing a notice as aforesaid shall be conclusive evidence in all courts of a breach of covenant by the lessee or other cause sufficient to authorise such declaration, and that all the estate and interest in the lease of the lessee and any person claiming under him have been lawfully determined by re-entry:

Provided that the Governor, may, for any cause which he may deem sufficient, by any subsequent notice in the *Government Gazette*, cancel any notice of voidance, cancellation, or forfeiture, and reinstate the lessee as of his former estate, and on any terms and conditions as regards the lessee and any person who, since the forfeiture, may have been in lawful possession of the land or any part thereof, or anything lawfully done or suffered since the forfeiture, as to the Governor may seem fit.

99. On the determination by the Governor to void, cancel, or forfeit a lease, and upon the page of the *Government Gazette* containing notice of such voidance, cancellation, or forfeiture being posted up in the office of the warden of the gold-field or mineral field in which the land comprised in the lease is situated, but not before such notice is so posted up, the land comprised in the lease shall be open to selection:

Publication of notice of forfeiture.

Provided that, by the direction of the Minister, the notice as published in the *Government Gazette* may be communicated by telegraph to the warden, and in such case the telegraph message posted up in the office of the warden shall be equivalent to the posting up of the page of the *Government Gazette* containing such notice.

100. (1.) Any miner who gives notice to the warden in the prescribed manner that any land held under a mining lease is not being worked in accordance with the regulations, may apply to the warden for a forfeiture of the lease.

Proceedings for forfeiture for breach of labour conditions.

(2.) Notice of such application, and of the time and place appointed for the hearing, shall be given to the lessee; and if the lessee, on being served therewith, files an answer, the warden shall require the applicant to deposit the sum of ten pounds within seven days, to be dealt with as hereinafter provided, and, in default of such deposit being made, may dismiss the application:

But if the warden, or in his absence the registrar, is satisfied that the application is made *bona fide*, or that the rent for the lease is more than thirty days in arrear, he may allow the applicant to proceed without such deposit being made.

101. An application under section one hundred of the principal Act\* for the forfeiture for breach of labour conditions of a mining tenement held by a company in process of winding-up, either voluntarily or by order of the Supreme

Application for forfeiture of mining tenement of company in process of winding-up.

\* i.e., this Act.

Inserted by No. 22  
of 1921, s. 9.

Court, shall not be deemed an action or proceeding within the meaning of section one hundred and fourteen of the Companies Act, 1893, and, notwithstanding anything contained in that Act to the contrary, any such application may be made, heard, and disposed of without the leave of the Supreme Court, and the tenement shall be liable to forfeiture accordingly.

Hearing.

102. The application shall be heard in open court, and the warden shall take such evidence on oath as may be tendered by or on behalf of the applicant and the lessee respectively, or of any other person he may think fit to examine, and may recommend the forfeiture of the lease, or the imposition of a fine in lieu of forfeiture, or may dismiss the application.

Deposit, how  
dealt with.

103. On the dismissal of an application, the warden may award the whole or any part of the deposit of ten pounds to the lessee, but if the warden recommends a forfeiture, or a fine in lieu of forfeiture, the deposit shall be returned to the applicant.

Warden to dismiss  
collusive applica-  
tion.

104. If, in the opinion of the warden, an application is made for the purpose of defeating or escaping the labour conditions of a lease, or there is collusion between the applicant and the lessee, or the servant or agent of the lessee, or any person interested in the lease, the warden shall dismiss the application, and may direct proceedings to be taken against the parties or such of them as from the evidence may appear to be implicated.

Warden to report  
to Minister.

105. Within seven days after the conclusion of the hearing of the application, the warden shall forward to the Minister the notes of evidence, with a report and his recommendation (if any) on the case; and the Minister may, before acting on any recommendation, require the warden to take further evidence or re-hear the application.

Proceedings by the  
Governor thereon.

106. The Governor may, as in his discretion he thinks fit,—

- (1) declare the lease forfeited;
- (2) impose a fine not exceeding five hundred pounds as an alternative to forfeiture, and award the whole or any part of the fine to the applicant;
- (3) determine not to forfeit the lease or impose any fine.

107. The Governor may, in his discretion, on the forfeiture of any mining lease,—

Procedure in case of forfeiture.

- (1) grant to the applicant the prior right to the exclusion of all other persons for fourteen days next after the day on which notice of forfeiture is published as hereinafter provided, to take possession and apply for a lease of the whole or any part of the land, or to occupy the same as a claim; or
- (2) Reserve the land comprised in the lease, or direct the same to be leased by auction or public tender; and
- (3) Where the land is leased by auction or public tender, direct any reasonable expenses incurred by the applicant in relation to the application for forfeiture to be paid to him.

108. The determination of the Governor under the two last preceding sections shall be published in the *Government Gazette*, and notice thereof shall also be posted up at the office of the warden:

Notice to be published.

Provided that, by the direction of the Minister, the notice as published in the *Government Gazette* may be communicated by telegraph to the warden, and in such case the telegraph message posted up in the office of the warden shall be equivalent to the posting up of the page of the *Government Gazette* containing such notice.

109. No lease shall be forfeited on the ground that the labour conditions have not been complied with if the lessee satisfies the warden in open court that he has been unable to comply with such conditions in consequence of a general strike among the persons engaged in mining in the district.

Exemption in case of strikes.

110. (1.) Whenever a lease is forfeited or declared void, the lessee or other person entitled to any plant, machinery, engines, or tools hereinafter mentioned, may, within the prescribed time, being not less than three months after the publication of the notice of the forfeiture or voidance, remove any plant, machinery, engines, or tools on or within the land comprised in such lease; but he shall not remove or destroy any timber used in and for supporting the shafts, drives, galleries, or adits in the mine, or any plant, machinery, engines, or tools purchased by the new lessee.

Removal of plant, etc.

(2.) If such plant, machinery, engines, or tools are not removed within the prescribed time, the Minister may, at any time thereafter, call upon such lessee or person to show cause, within such time as the Minister may allow, why the whole or any portion of the plant, machinery, engines, or tools should not be sold and removed.

(3.) If the said lessee or person does not, within such time, show sufficient cause, of which the Minister shall be the sole judge, the Minister may direct the plant, machinery, engines, or tools to be sold by public auction and be removed. The proceeds of the sale, after deducting the cost of selling or selling and removing the same, shall be paid to the former lessee or other person entitled to such plant, machinery, engines, or tools, of whose claim the Minister shall, prior to such payment by him of any such proceeds, have received notice in writing.

(4.) The Minister shall determine whether or not any of such plant, machinery, engines, or tools shall be allowed to remain on the land so leased, and, if so, for what period they may so remain, and what rent the former lessee shall pay to the new lessee for the use and occupation of the ground on which the same are allowed to remain.

Ownership of  
tailings after lease  
declared void.

111. When any mining lease is surrendered or expires through effluxion of time, or is forfeited or declared void, and the lessee leaves upon the land comprised in the lease any tailings or other mining material, and does not, within six months from such surrender, expiration, forfeiture, or voidance, or such extended time as the Minister may, under special circumstances, allow, either remove or *bona fide* treat, and afterwards, with all reasonable despatch, continue to treat, such tailings or other mining material, then, at the expiration of six months, or such extended time as aforesaid, such tailings or other mining material shall become the absolute property of the Crown:

Provided that this section shall not apply to any surrender made to obtain a new lease:

Provided also, that the Minister shall, upon the written application of the lessee, fix a sum to be paid by the lessee by way of rental, for such period as the Minister may think fit, for the surface of the land actually occupied by such tailings or other mining materials; and so long as the said lessee shall make due payment of the rent so fixed, the preceding provisions of this section shall not apply.

112. The Governor, in the name and on behalf of His Majesty, may grant to any person, subject to the provisions of this Act and the regulations, a license or licenses in respect of any such tailings or other mining material.

Licenses may be granted in respect of such tailings.

- (1) Such license or licenses shall confer upon the licensee the right to remove such tailings or other mining material from, or to treat the same upon, the land on which such tailings or other mining material are or is situated.
- (2) Notwithstanding the granting of any such license the Governor may grant gold-mining or mineral leases of the land on which such tailings or other mining material are situated as effectually as if such license had not been granted, subject only to the rights of the licensee under any such license.

113. (1.) When the aggregate area of two or more adjoining mining leases, owned by the same lessee and worked as one mine, or the area of any mineral lease exceeds forty-eight acres, any portion of the surface in excess of forty-eight acres may be resumed by the Governor without compensation to the lessee for residential or other purposes except mining:

Power to resume for residential purposes.

Provided that no such land shall be resumed unless—

- (a) the nearest point of such land is distant over three hundred yards from the outcrop of any reef or lode, or ore reduction works on the area of such lease or leases;
- (b) the Government geologist or the State mining engineer reports that such land is not likely to be required for mining; and
- (c) The State mining engineer or local inspector of mines reports that such land is not likely to be required by the lessee for or in connection with mining purposes.

(2.) No person occupying any such resumed land shall have any cause of action against the lessee for any nuisance caused by noxious fumes generated in the course of ore treatment, or arising from other causes due to work, or for any damage or inconvenience caused by the flow of water from the mining operations of the lessee, if such water is discharged as far as possible in its natural channel.

(3.) Nothing in this section shall apply to coal-mining leases.

Discharge of water.

114. A lessee may, with the approval of the Minister, and subject to the regulations, discharge water from the land comprised in his lease over any adjacent land through any natural channel, and shall permit any water lawfully discharged from any adjacent land to flow over the land comprised in his lease through any natural channel, and no person shall obstruct any such flow of water.

Surrender of mining lease.

115. A lessee may at any time, with the consent of the Governor, surrender his lease.

A lessee need not hold a miner's right.

116. It shall not be necessary for an applicant for or holder of a lease to be the holder of a miner's right.

#### PART VA.—MINING FOR MINERAL OIL AND TRIBUTE AGREEMENTS.

[Enacted as Parts II., III., and IV. of Act No. 50 of 1920.]

##### *Mining for Mineral Oil.*

Reservation in Crown grants. No. 50 of 1920, s. 3.

117. 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.

Power to obtain mineral oil. *Ibid* s. 4.

118. (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—

- (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.

119. (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.

Land may be resumed.  
*Ibid.*, s. 5.

(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.

120. (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:

Prospecting areas  
*Ibid.*, s. 6.

Inserted by No. 12  
of 1923, s. 2.

Provided that such right shall not extend to Crown lands below the surface of land alienated in fee simple to a limited depth.

This amendment shall apply to licenses granted before or after the commencement of this Act.

(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.

Operation by  
licensee.  
No. 50 of 1920,  
s. 7.

121. (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.

(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 and his report and recommendation thereon to the Minister, who if satisfied that it is just to do so may cancel the license.

No. 12 of 1923,  
s. 3.

Progress reports.  
No. 50 of 1920, s. 7.

(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.

(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. *Ibid.*

122. (1.) Any person who searches or attempts to search for mineral oil on land included in any license in contravention to 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 for infringing rights of licensee.  
*Ibid.* s. 8.

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.

123. (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 fifty-seven 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.

Power to reserve oil basin.  
*Ibid.*, s. 9.

(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.

124. 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

On discovery of payable mineral oil the licensee may claim a reward lease.  
*Ibid.*, s. 10.

\* *i.e.*, this Act. See No. 50 of 1920, s. 1.

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.  
*ibid.*, s. 11.

125. (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.

Provisions as to  
applications for  
leases.  
*ibid.*, s. 12.

126. (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.

(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.

Reservations and  
covenants in  
leases.  
*ibid.*, s. 13.

127. 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:—

(a) A reservation of power to authorise mining on the land for any purpose other than mineral oil;

\* *i.e.*, No. 50 of 1920.

† *i.e.*, this Act. See No. 50 of 1920, s. 1.

- (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.

128. (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.

*Inspection of books  
Ibid., s. 14.*

(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.

129. (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.

*Returns.  
Ibid., s. 15.*

(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.

Lessee not to transfer in certain cases without consent.

*Ibid.*, s. 16.

130. 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.

Licenses and leases to be granted to British subjects only.

*Ibid.*, s. 17.

131. 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.

Foreign companies not to hold leases.

*Ibid.*, s. 18.

132. (1.) A foreign company within the meaning of<sup>4</sup> 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.

(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.

Priority of application.

*Ibid.*, s. 19.

133. (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.

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

Effect of approval of application.

*Ibid.*, s. 20.

134. 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.

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.

135. 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.  
*Ibid.*, s. 21.

136. (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.

Right of pre-emption.  
*Ibid.*, s. 22.

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

137. In the event of oil or an indication of the presence of oil being discovered within an area the subject of a license under this Part of this Act by a person other than the licensee or a servant or agent of the licensee, and on such discovery being reported to the Minister, the Minister may in his discretion grant to such discoverer a reward not to exceed one half of the royalty payable by and received from a lessee of the area on which the discovery was made, during a period not exceeding five years.

Power to reward the discoverer of oil on an area of which he is not the licensee.

Inserted by No. 12 of 1923, s. 4.

Provided that in such case the lessee shall recoup the Minister on demand one half of the amount paid from time to time by way of reward to such discoverer.

Provided also that such discretion shall not be exercised if an agreement in lieu thereof is made between the licensee and the discoverer.

138. The royalties payable under leases granted pursuant to this Part of this Act are hereby determined and prescribed as follows:—

Royalties.  
Inserted by No. 12 of 1923, s. 5.

For the first five years of the term of the lease, five per centum of the output of the wells or bores on the demised area, or of the sales of the products of the demised area, as may be determined by the Minister, and for the remainder of the term of the lease, ten per centum of the output of the wells or bores on the demised area, or of the sales of the products of the demised area, as may be determined by the Minister.

\* *i.e.*, this Act. See No. 50 of 1920, s. 1. † The Act No. 50 of 1920, the provisions of which are inserted in this Part.

The ass. on oil  
basin reserve.  
Inserted by No.  
12 of 1923, s. 6.

139. On the publication of a proclamation under section one hundred and twenty-three reserving to the Crown and excepting from occupation for mining purposes an area of Crown land therein defined, the provisions of the Mining Act, 1904, relating to the authorisation of mining operations on reserved lands shall not apply; and so long as such proclamation continues in force it shall be unlawful for any miner or other person (except a licensee by whom the discovery of mineral oil was made and reported, and as hereinafter provided) to enter on the reserved area for the purpose of prospecting or mining under the Mining Act, 1904, or this Act,† or the regulations thereunder; and it shall not be competent for any miner or other person (except as aforesaid and as hereinafter provided) to acquire any mining rights within the area so reserved.

Penalty: One hundred pounds.

Provided that, with the approval of the Minister, leases may be granted under this Part of this Act within such area subject to the rights of the licensee by whom the discovery of mineral oil was made and of such conditions, including the submission of the right to acquire such leases to public auction or tender, as may be prescribed.

Rights of lessees and  
licensees extended  
to petroleum  
residues.  
Inserted by No.  
12 of 1923, s. 7.

140. The exclusive right conferred on a licensee under this Part of this Act to bore and search for mineral oil, and on a lessee to bore and search for and obtain mineral oil, shall extend to bitumen, glance pitch, asphaltum, and other residues or derivatives of petroleum within the area of the license or lease.

#### *Tribute Agreements.*

Subletting on  
tribute.  
No. 50 of 1920,  
s. 23.

141. (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.  
No. 50 of 1920,  
s. 24.  
No. 22 of 1921,  
s. 2

142. (1.) Every tribute agreement shall be in writing signed in duplicate by or on behalf of 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 approval and, subject

thereto, for registration, within twenty-eight days after the execution thereof.

Every person from time to time beneficially interested in a tribute agreement, and who is not a party to it, shall within twenty-eight days of becoming so interested register in the office of the warden a memorandum in writing containing particulars of the date, the parties to, and the number of the tribute agreement, and of the interest therein of the person registering the memorandum.

Any moneys paid as a share or part of a share of, or commission on the profits of a party to a tribute agreement to any person who has not complied with the requirements of the section, may be recovered back from him by the person who may have paid the same.

(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.

143. 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, 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.

Provisions to be contained in tribute agreements.  
No. 50 of 1920, s. 25.  
No. 22 of 1921, s. 2.

144. No tribute agreement shall be made for a lesser period than six months, but by mutual consent such agreement may be entered into for a longer period, and every tribute agreement shall continue in force for the period stated therein, and thereafter until determined by six months' notice by the lessee, unless such agreement shall become liable to cancellation under section one hundred and forty-nine.

Term of tribute agreements.  
No. 22 of 1921, s. 4.

Provided that where several tribute agreements are made in respect of the same mine, the period for which any subsequent agreement is granted may, with the approval of the warden, be less than six months if necessary to enable the respective terms of the several agreements to expire at the same time.

Inserted by No. 12 of 1923, s. 8.

Provided also that a tribute agreement may (with the approval of the warden) be varied by a subsequent agreement as regards the land to be let by amendment of the defined boundaries thereof, or the addition or substitution of other

ground, whether contiguous or not, to or for the ground as originally defined; and such variation may have effect for the residue of the period for which the original agreement is operative, or any renewal thereof.

Condition on which warden may register tribute agreement.  
No. 50 of 1920, s. 27.

145. 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:—

No. 22 of 1921, s. 5.

(a) That no tribute shall be payable unless those tributers engaged in the actual working of the ground have earned at the rate of £3 10s. per man per week for the period worked by them respectively after paying the cost and expenses of mining, treatment, and realisation, and such expenses shall be exclusive of their own wages. 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.

(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.

No. 22 of 1921, s. 5.

(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 gross proceeds of the sale of the product, after deducting the cost of treatment and realisation.

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.

Payment for development work.  
No. 50 of 1920, s. 20.

146. 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 tributer 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 tributer a proportionate part, to be determined by the warden if not agreed upon, of the cost of any such development work

147. (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.

Disputes as to manner of working. No. 50 of 1920, s. 30.

(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.

148. 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, under the provision of Part X. of the principal Act.\*

Disputes as to ground held or product won. No. 50 of 1920, s. 31. No. 22 of 1921, s. 7.

149. 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. No. 50 of 1920, s. 32.

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.

Warden's jurisdiction. No. 22 of 1921, s. 8.

150. (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. No. 50 of 1920, s. 33.

\* *i.e.*, this Act. See No. 50 of 1920, s. 1.

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

(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.

(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.  
No. 50 of 1920,  
s. 34.

151. 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.

Conditions of  
contracts for  
treatment of ore.  
No. 22 of 1921,  
s. 10.

152. In all contracts between a tributer and the owner of a treatment plant (whether the lessee of the mine under tribute or not) relating to the treatment of gold ore, the following provisions shall apply:—

- (a) It shall be obligatory on the part of the owner of such plant, when the ore is purchased on assay value, to account for all ores received by him from the tributer for treatment 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 the assayed value cannot be extracted; and
- (b) The owner of the treatment plant shall also account for and pay to the tributer not less than fifty per centum of any premium received by such owner on the sale of the gold obtained from the ore treated.

153. 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.

154. 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.

Assessors.  
No. 50 of 1920,  
s. 36.

*Miscellaneous.*

155. (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.

Regulations.  
No. 50 of 1920,  
s. 37.

(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.

156. 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.  
Inserted by No. 50  
of 1920, s. 38.

PART VI.—MINING ON PRIVATE LAND.

*Interpretation.*

157. In this Part of this Act, unless the context otherwise indicates, the following terms have the meanings set against them respectively, that is to say:—

Interpretation  
of terms.

"Minerals."—Antimony, arsenic, bismuth, chromium, cobalt, copper, lead, iron, manganese, mercury,

As amended by Proclamation published in Gazette on 15th March, 1912, 1st April, 1915, 10th November, 1916, 16th January, 1919, 14th May, 1920.

\* i.e., Part IV. of No. 50 of 1920, inserted as s.s. 141 to 154 of this compilation. Act. See No. 50 of 1920, s. 1. † i.e., the Act No. 50 of 1920.

† i.e., this

molybdenum, nickel, rare metals, silver, tantalum, tin, titanium, tungsten, uranium, zinc, and the ores and earths of these metals; gems and precious stones; alunite, amblygmite, asbestos, barytes, bauxite, carbonaceous shale, corundum, diatomaceous earth, gadolinite, glass sand, graphite, gypsum, limestone, magnesite, mica, monazite, potash, scheelite, wolfram; clays, ochres and felspars for use in the manufacture of porcelain, fine pottery or pigments; minerals to be worked for potash contents; mineral phosphates; material for cement making; coal and oil; and any mineral which the Governor may from time to time by proclamation bring under the provisions of this Part of this Act.

“Occupier.”—The person in actual occupation of any private land, or if there is no person in actual occupation, the person entitled to possession thereof.

“Owner.”—The owner or registered proprietor in fee simple of any private land, or the person who for the time being is entitled to receive the rent of any private land, or who, if the same were let to a tenant at a rent, would be entitled to receive the rent thereof; the term includes the person who is the licensee or lessee of private land under any Act relating to Crown lands with or without the right of acquiring the fee simple thereof.

“Private Land.”—Any land which has been or may hereafter be alienated from the Crown for any estate of freehold, or is or may hereafter be the subject of any conditional purchase agreement, or of any lease 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 for mining purposes, except coal mining, under the provisions of this Act, or of any Act repealed by this Act, shall be deemed to be private land within the meaning of this Part of this Act.

In relation to mining for minerals other than gold, silver, and precious metals, the term does not include land alienated before the first day of January, One thousand eight hundred and ninety-nine, except as provided in sections one hundred and ninety-six to two hundred and six of this Act.

158. In every case where, for the purposes of this Act, it is necessary to decide whether any mine on any land is or would be a gold mine or mine of other specified mineral, the question shall be determined by the fact whether gold or other specified mineral is or is not the most profitable metallic product of the ore obtained from the mine.

Nature of mine.

*Crown Ownership of Gold and Minerals.*

159. Subject to the provisions of this Act and the regulations—

Precious metals the property of Crown

(1) Gold, silver, and other precious metals on or below the surface of all land in Western Australia, whether alienated or not alienated from the Crown, and if alienated whensoever alienated, are the property of the Crown.

(2) All other minerals on or below the surface of any land in Western Australia which was not alienated in fee simple from the Crown before the first day of January, One thousand eight hundred and ninety-nine, are the property of the Crown.

Other minerals.

*Exemptions.*

160. The Governor may from time to time, by notice in the *Government Gazette*, exempt from the provisions of this Part of this Act, for such period as he thinks fit, private lands in any specified locality, or any specified portions of private land, and thereupon, during the currency of such exemption, no land so exempted shall be or be deemed to be private land within the meaning of this Part of this Act.

Private lands may be exempted.

161. Subject to the provisions hereinafter contained, no mining tenement shall be granted or occupied comprising private land—

Qualified exemption of certain private lands.

- (1) used as or at a less distance than fifty yards from a yard, garden, orchard, or cultivated field; or
- (2) of less extent than half an acre within the limits of any municipality or township; or
- (3) used as a cemetery or burial place; or
- (4) at a less distance than one hundred and fifty yards laterally from any cemetery or burial place or reservoir, or substantial improvement, unless—
  - (a) the consent, in writing, of every owner of the land in question has been first obtained; or

- (b) such grant or occupation is limited to a greater depth than one hundred feet from the lowest part of the surface of the land;
- (5) within two hundred yards laterally of the workings, whether above ground or underground, of any coal mine without the consent of the owner.

In this section the expression "Reservoir" means any natural or artificial storage or accumulation of water, and includes a spring, dam, bore, and artesian well.

In every case the Minister shall be the sole judge whether any improvement is substantial and of what constitutes a working within subsection five.

Exemption of certain lands.

162. The provisions of this Part of this Act shall not apply to the land mentioned in the Second Schedule.

#### *Resumption.*

Private land may be resumed.

163. The Governor may, from time to time, after such notice to the owner as may be prescribed, resume, on behalf of the Crown, any private land which, in his opinion, ought to be resumed for any of the purposes for which a mining lease or claim may be granted or occupied.

Compensation.

164. Upon 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, for determining compensation for land taken under that Act:

Provided that, in assessing the amount of such compensation, no allowance shall be made for any gold or minerals known or supposed to be on or under the land resumed, except coal, when the land resumed is leased for coal mining.

Effect of resumption.

165. Upon such resumption the private land so resumed shall belong absolutely to the Crown, and be Crown land subject to the provisions of this Act:

Provided that every mining lease or claim granted in respect of, or occupied upon any such land shall, notwithstanding any other provision of this Act to the contrary, be subject to such rent, royalty, or other payment to the Crown as may be determined by the Minister in each case, and the provisions as to royalty, other than as to the amount thereof, hereinafter contained shall be applicable.

*Mining Tenements.*

166. It is unlawful to enter or remain upon the surface of any private land for any of the purposes of this Part of this Act, except in pursuance of a permit in that behalf issued by the warden or by virtue of the occupation of a registered mining lease or claim. Unlawful entry.

167. The holder of a miner's right who desires to search upon private land either for gold or any mineral, or to mark out a mining lease or claim, may make application, in writing, to the warden for a permit to enter upon the land. Permit to enter.

168. Every such application shall be in the prescribed form, and shall contain such description of the land as will, in the opinion of the warden, enable it to be identified. Form of application for permit.

169. The warden, upon being satisfied that the application is made in good faith, may grant a permit, in writing, limited to such period not exceeding thirty days as he thinks proper. He may at the same time fix a sum of money and require the same to be paid to him before the issue of the permit, as and by way of security to compensate the owner and occupier of the land for any damage likely to be caused by the holder of the permit during the currency thereof. Grant and permit.

170. The warden shall pay such sum, either wholly or in part, to the owner or occupier, or partly to both owner and occupier, if they sustain any damage, or shall return the same to the holder of the permit at the expiration thereof if, in the opinion of the warden, he does no damage. Compensation for damage.

171. Such permit shall, upon demand, be produced to the owner or occupier of the private land or his agent. Permit to be produced on demand.

172. By virtue of such permit the holder thereof may enter upon the land and search for gold or any mineral, except coal where the land entered upon is leased for coal mining, and detach one or more samples of any vein or lode outcropping at the surface thereof not exceeding in the aggregate twenty-eight pounds in weight, and remove such samples for the purpose of assaying or testing the value thereof, and may mark out any mining lease or claim, but he shall not mine or otherwise disturb the surface of the land. Privilege conferred by permit.

Appeal from  
refusal of permit.

173. If in any case the warden refuses to grant any such permit, the applicant may appeal for permission to the Minister.

Mining tenements.

174. Subject to the provisions of this Act and the regulations, private land, whether within the limits of a gold-field or mineral field or elsewhere, may be applied for and occupied as a mining lease or claim.

Applications.

175. Application for a mining lease or claim of private land shall be made in the same manner as for a mining lease or claim of Crown land, and notice of such application shall be given by the applicant as prescribed to the owner and occupier of the land, or, if there is no occupier, shall be affixed in some conspicuous place on the land, and the owner and occupier shall be entitled to be heard before the application is granted.

Every applicant shall state and describe in his application the area of surface, if any, for which he applies, and the purpose for which he requires such area.

When such tenement does not confer upon the holder a right to occupy the whole of the surface thereof, he may at any time make application for an extension of the surface area. Every such application shall be made and dealt with in the same manner as the original application.

When the applicant does not apply for any surface area it shall not be necessary to mark out the tenement applied for on the surface.

Right to mine.

176. The occupation of a mining tenement for the purpose of seeking for gold or any mineral on private land shall confer upon the miner the right to mine—

- (1) on or under so much of the surface or extended surface of the tenement as is stated and described in his certificate of registration or lease, as the case may be; and
- (2) under the remainder, if any, of the surface of the tenement at a depth of not less than one hundred feet from the lowest part of such surface, or such greater depth as the Minister may in any case permit.

177. When any person other than the owner applies for a mining lease or claim in respect of private land to be mined at a greater depth than one hundred feet, and does not apply for any portion of the surface, then, if the consent of the owner has not been obtained, before any such application is granted the applicant shall prove to the satisfaction of the warden that he possesses—

Applications for mines at greater depth than 100 feet.

- (1) a mining tenement occupied for the purpose of seeking for gold or any mineral, or other land adjoining the land applied for; or
- (2) a mining tenement with such wayleaves and other rights through intermediate lands as will enable him to mine upon the land applied for.

178. So far as regards any private land in respect of which compensation is payable, the marking off, registration, or grant of a claim or mining lease shall not confer any right to mine or to make preparations for mining unless or until a certificate of registration or a lease shall be issued, and no certificate of registration or lease shall be issued unless or until the miner has paid or tendered to the owner and occupier the amount of compensation, if any, ascertained as hereinafter prescribed, or made an agreement, in writing, with such persons as to the payment of such compensation, if any.

Compensation to be paid or agreed upon before mining.

If the owner is dead or cannot be found, such payment may be made to the Minister in trust for the owner.

179. The owner of any private land may acquire a mining lease or claim of such land, or of so much thereof as is not already the subject of a mining lease or claim; and if the owner or any person to whom he has assigned the right of mining on or under such land shall, before the first day of June, one thousand nine hundred and four, make application for a mining lease or claim of such land, his application, save as hereinafter provided, shall have priority over all others.

Rights of owners and their assigns.

180. Notwithstanding anything hereinbefore or in any other Act to the contrary contained, where, on the first day of March, one thousand nine hundred and four, any person is, by virtue of any conveyance, lease, license, or other private agreement as against the owner of any private land, entitled to mine on or under such land, then if before the first day of June aforesaid such person makes application for a mining lease or claim, his application shall have priority over all

Rights of assignee of registered proprietor.

others, including that of the owner of the land, and notwithstanding any neglect or refusal on the part of the owner to consent to the application:

Provided that every lease granted under the provisions of this section shall be granted upon such conditions, for the benefit of the owner or other persons interested in the land, as the Governor may consider equitable: And for the purpose of giving effect to any such conditions the intended lessee may be required to make an agreement in writing with the owner or other persons interested, who shall be entitled to be heard before such lease is granted:

Provided further, that no such lease shall be granted or renewed for any term which would exceed the term, if any, in such conveyance, lease, license, or other private agreement specified.

Owner, etc., may inspect underground workings.

181. Owners and occupiers of private land under or adjoining which mining is authorised by this Part of this Act shall be entitled, on application to the warden, from time to time as in the opinion of the warden may be necessary, and at the expense of the lessee or miner, to inspect and survey the underground workings.

Right-of-way.

182. Every mining lease granted or claim registered under the provisions of this Part of this Act shall comprise a right of ingress and egress thereto and therefrom by a right-of-way, to be marked at the expense of the lessee or claim-holder in the prescribed manner, from the lease or claim through any land, whether occupied as a mining tenement or otherwise, to the nearest practicable point of a street or road:

Provided that, unless with the consent of the owner, no such right-of-way shall be enjoyed through any yard, garden, orchard, or cultivated field.

Miner not to use water artificially conserved, or remove rock, etc.

183. A holder of any mining tenement under the provisions of this Part of this Act shall not, without the consent of the owner and occupier of the private land whereon the tenement is situated, be entitled to use water artificially conserved by such owner or occupier, or to fell trees, strip bark, or cut timber on such land, or, except in connection with mining operations, to remove earth or rock therefrom.

Miner not to impound or molest stock belonging to the owner on land unless fenced.

184. Nothing in this Act contained shall give any holder of a mining tenement under the provisions of this Part of this Act the right to impound any stock 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 land adjoining such tenement, or to disturb or molest any such stock or other animals in any way whatever, or to prevent any such stock or other animals from depasturing on or over any such tenement, unless the land comprised therein is fenced.

185. Any surveyor acting under the authority of the Minister or warden may, with his assistants and workmen, if any, from time to time, enter upon any private land, and there execute any survey for any of the purposes of this Part of this Act, without making compensation to any person.

Survey officers may enter upon any private land.

Such surveyor and his assistants and workmen shall do as little damage as may be in the execution of the powers conferred by the said authority.

186. Save as by this Part of this Act is otherwise provided, all the provisions of this Act and the regulations and of any Act relating to the inspection of mines and collieries shall apply to mining tenements situated upon private land as if they were situated upon Crown lands, and all the powers, authority, and jurisdiction of the warden and of the warden's court, and of every other court having jurisdiction under this Act with respect to mining on Crown lands, shall extend and apply to private land, and to mining on or under such land.

Application of general provisions of Act.

187. For the purpose of preventing damage or injury to any street or road by mining operations carried on upon mining tenements under the provisions of this Part of this Act, the local authority charged with the care and control of such street or road shall be deemed to be the owner thereof.

Provisions as to streets, etc.

#### *Compensation.*

188. The applicant for any mining lease or claim may agree with the owner and occupier, respectively, of any private land as to the amount of compensation to be paid for the right to occupy such tenement.

Power to agree as to amount of compensation.

No such agreement shall be valid unless the same is in writing and signed by the parties thereto, and filed in the Department of Mines.

189. Such compensation to be made to the owner and occupier shall be compensation for being deprived of the possession of the surface or of any part of the surface of

Measure of compensation

private land, and for damage to the surface of the whole or any part thereof, and to any improvements thereon, which may arise from the carrying on of mining operations thereon or thereunder, and for the severance of such land from other land of the owner or occupier, and for rights of way, and for all consequential damages.

In assessing the amount of compensation no allowance shall be made to the owner or occupier for any gold or minerals known or supposed to be on or under the land, except where the land is held under a coal-mining lease, in which case compensation shall be allowed for any payable coal of which the owner is deprived by the granting or registration of the mining lease or claim.

Where no agreement Warden to determine compensation.

190. If within such time as may be prescribed the parties are unable to agree upon the amount of compensation to be paid, either party may, upon a plaint in that behalf, have the amount determined in the warden's court.

Compensation already received to be deducted.

191. In determining the amount of compensation, the warden shall take into consideration the amount of any compensation which the owner and occupier, or either of them, have or has 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 they would otherwise be entitled to for such damage.

Owner of land in vicinity of mining tenement entitled to compensation.

192. If any land or improvement thereon adjoining or in the vicinity of any mining tenement held under the provisions of this Part of this Act is injured or depreciated in value by any operations carried on by the lessee or miner or by reason of the occupation of any portion of the surface or the enjoyment by him of any right of way, the owner and occupier of such land or improvement shall severally 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 is hereinbefore prescribed.

Compensation for further damage.

193. If while in occupation of a mining tenement the lessee or miner causes any damage to the surface of the land comprised in such tenement, or to any land adjoining or in the vicinity of such tenement, belonging either to the same or any other owner, or to any improvement on any such land, not being damage already assessed under the provisions here-

inbefore contained, the owner and occupier of such land or improvement shall severally be entitled to compensation for the damage sustained by him, and the amount of such compensation shall be ascertained in the same manner as is here-inbefore prescribed.

*Licenses for Drives.*

194. When a mining tenement or tenements, whether situated on Crown land or on private land, is or are wholly or partially divided or separated by other land or by any road or street or by another mining tenement, the Governor may, subject to the provisions of this Act and the regulations, grant to the person or persons in occupation of such first-mentioned mining tenement, or tenements, or any of them, a license to construct a drive or drives through the land lying between or wholly or partially dividing or separating such tenement or tenements, for the purpose of enabling the whole of such tenement or tenements to be effectually worked and mined:

Governor may grant licenses to construct drives through land intervening between tenements.

Such license shall be for a term not exceeding twenty-one years, but may be renewed for a further period not exceeding twenty-one years, and shall be in such form and subject to such reservations, covenants, and provisions as the Governor may determine, and shall be granted upon such conditions, for the benefit and protection of any person interested in the land through which any such drive is intended to be constructed, as the Governor may consider equitable:

And for the purpose of giving effect to any such conditions the licensee may be required to enter into an agreement in writing with any person interested in the land, who shall be entitled to be heard before such license is granted.

*Re-entry by Owner.*

195. If mining operations have not been commenced during the twelve months following the registration of a mining lease or claim, or if after mining operations have been commenced in or upon any private land held as a mining tenement the same have wholly ceased, the Governor may, if he thinks fit, on the application of the owner of the land, authorise him to re-enter and take possession of the land.

Re-entry by owner.

*Exempted Lands.*

196. Any person may in the prescribed manner petition the Minister that any private land alienated before the first

Petition to bring land under Act.

day of January, one thousand eight hundred and ninety-nine, or the subject of any conditional purchase, agreement, or lease or concession, with or without the right of acquiring the fee simple, granted before that date, may, for the purpose of mining for minerals other than gold, silver, and precious metals, be brought within the operation of this Part of this Act.

**Inspection.**

197. On receipt of such petition the Minister may, in his discretion, authorise and instruct the Government geologist or any other professional officer to enter, inspect, and report upon such land, and it shall thereupon be lawful for the Government geologist or other officer with assistants to enter and prospect such land and do all things necessary to ascertain whether there is a reasonable probability of the land containing minerals in payable quantities.

**Power to bring land under Act.**

198. If the Government geologist or such other officer reports that there is a reasonable probability of such land containing minerals in payable quantities, the Minister may, with the approval of the Governor, by notice in the *Government Gazette*, declare that at the expiration of a time therein stated, being not less than six months from the publication of such notice (hereinafter referred to as the prescribed period), the land shall become within the operation of this Part of this Act.

A copy of such notice shall be served upon the owner of the land.

**Owner may register land for mining.**

199. At any time within the prescribed period the owner of the land may, in the prescribed manner, register in the Department of Mines a right to mine the land or any part thereof for specified minerals to the exclusion of all other persons.

Such registration shall be made of surveyed areas corresponding to the areas of mineral leases granted under this Act and the regulations.

**Subject thereto land to be within provisions of Act.**

200. Subject to the last preceding section, the land shall, at the expiration of the prescribed period, become within the provisions of this Part of this Act:

But all rent and royalties received by the Crown for any minerals won from the land shall be paid to the owner of the land less ten per centum of the amount thereof.

201. If the owner of the land registers an exclusive right to mine the land under the provisions of section one hundred and ninety-nine he shall, for the purpose of all labour conditions, be deemed to hold the land subject to a mineral lease or leases, and it shall be obligatory upon the owner to work the land in accordance with this Act and the regulations, but no rent or royalty shall be payable.

Duties of owner who has registered land for mining.

202. Any miner may give notice to the Under Secretary for Mines that any land of which an exclusive right to mine has been registered under section one hundred and ninety-nine is not being worked in accordance with this Act and the regulations, and may apply for the cancellation of such registration.

Miner may apply for cancellation of registration.

No. 50 of 1920, s. 2.

203. Notice of such application and of the time and place appointed for the hearing shall be given to the owner of the land, and if the owner, on being served therewith, files an answer, the Under Secretary for Mines may require the applicant to deposit the sum of ten pounds within seven days, to be dealt with as hereinafter provided, and in default of such deposit being made may dismiss the application.

Hearing. No. 50 of 1920, s. 2.

204. The Under Secretary for Mines or his deputy shall take such evidence on oath in open court as may be tendered by or on behalf of the applicant and the lessee respectively, and shall make such recommendation to the Minister as he may think fit.

Report. No. 50 of 1920, s. 2.

205. (1.) The Minister may, upon such report, dismiss the application or recommend the Governor to cancel the registration of the owner's exclusive right to mine.

The Minister may recommend cancellation.

(2.) On the dismissal of an application the Minister may award the whole or any part of the deposit of ten pounds to the owner; but if the Minister recommends the cancellation of the owner's exclusive right to mine, the deposit shall be returned to the applicant.

206. The Governor may, upon such recommendation, by notice in the *Government Gazette*, cancel the registration of the owner's exclusive right to mine, and may in his discretion grant to the applicant, for such time as the Governor may think fit, the prior right to the exclusion of all other persons to take possession of and apply for the land, or any part thereof, under the provisions of this Part of this Act.

Cancellation of registration and priority of applicant.

## PART VII.—THE DRAINAGE OF MINES.

## 207. In this Part of this Act—

Interpretation.

"Machinery."

"Machinery" means and includes all appliances, including tunnels used for the purpose of raising, lifting, or draining water, whether worked by steam, water, horse, or other power;

"Owner of machinery."

"Owner of machinery" includes a mortgagee in possession, and any person whether engaged in mining, or in mining in conjunction with drainage, or in drainage works only; and

"Owner of mine."

"Owner of any mine" includes any person using or occupying any mine.

Owners of pumping machinery may require contribution from owners of mines for the drainage thereof. No. 50 of 1920, s. 2.

208. The owner of any machinery already erected or hereafter to be erected may require the owner of any mine, the workings of which have reached the natural water-level drained by such machinery, to contribute a fair share of the total expense of draining or drawing the water from the mines drained by such machinery, and in default of payment, or in case of disagreement respecting the amount of such share, the owner of such machinery may summon the owner of any such mine before the warden's court, and the warden may make an order on such owner to pay such sum or sums periodically or otherwise to the owner of such machinery as the warden shall think just and reasonable: Provided that no owner of any mine shall be required to pay any contribution exceeding the amount of the benefit actually derived by him in respect of such drainage.

The warden may, upon making such order, impose on the owner of the machinery such terms with regard to the efficient working thereof for the benefit of all parties as to the warden shall seem just, and order the same to be performed, or may make such other order concerning the premises as the justice of the case may demand, and such orders from time to time may annul, vary, or alter.

The warden shall, upon making every such order as aforesaid, forward a copy thereof to the Under Secretary for Mines, who shall record the same in his office.

Calculation of expense of drainage.

209. The expense of the drainage effected by the owner of any machinery shall be arrived at by calculating—

(a) the interest on the value of machinery and plant used for drainage purposes only;

- (b) the wear and tear of such machinery and plant;
- (c) the cost of oil, grease, and packing;
- (d) the proportionate cost of fuel expended or of horses employed in drainage operations;
- (e) the wages of engine-drivers and of other persons in such proportions as such persons may be deemed to be employed in draining a mine; and
- (f) Such other expenses as the owner can prove have necessarily been incurred in respect of the drainage effected by any machinery.

210. No drainage dues shall be demanded for any period during suspension of draining operations; and in determining the cost of drainage effected by the owner of any machinery, if the whole or any part of the water raised by such machinery shall be used by the owner of such machinery for mining purposes, the value of such water shall be ascertained and deducted from the general cost of such drainage.

No drainage dues to be demanded in certain cases.

211. In determining the mines the owners of which shall be liable to contribute towards the expenses of the drainage effected by the owner of any machinery, regard shall be had to the total length of reef or lode or to the extent of lead or deposit affected by the drainage operations of such machinery, and to the amount of the benefit derived by the owners of mines from such operations; and the share to be contributed in respect of each mine drained shall be proportioned as nearly as may be to the length of such reef or lode or the extent of such lead or deposit contained within each such mine, and to the amount of benefit so derived.

Mode of calculating amount of contribution.

212. The owners of each mine liable so to contribute shall receive credit for the value of any work they shall perform in assisting to drain, and such value shall be added to the general cost of drainage.

Work done by owners.

213. Whenever any sum of money or portion of any sum of money ordered to be paid in or by any decision or order of a warden under this Part of this Act, and whether such money was ordered to be paid at one time or in periodical payments, shall remain unsatisfied in whole or in part, and whether after previous executions or not, for fourteen days or for a longer period, the warden to whom a certified copy of the said order shall be produced shall, on the application of the owner of

Enforcement of Warden's order.

machinery claiming to be entitled to the moneys of such order, or any person in his behalf, grant to the applicant a certificate in prescribed form.

The party obtaining such certificate may file the same with the mining registrar of the goldfield or mineral field in which the mine is situated, and thereupon execution may issue, and all such proceedings be had and taken to enforce payment of the moneys mentioned in such order as provided in Part X. of this Act.

In the event of any such decision or order of the warden imposing upon the owner of machinery any terms with regard to the efficient working of the machinery or otherwise, such terms may be enforced in the same manner as orders by a warden other than orders for the payment of money may be enforced under this Act; and the warden may suspend the enforcement of so much of the order as directs the payment of money to the owner of machinery until the terms in such order imposed upon such owner of machinery have been carried out.

**214.** Whenever and so soon as any order of a warden made under this Part of this Act shall have been filed with the mining registrar, the moneys directed in such order to be paid shall, so long as any part thereof remains unpaid and unsatisfied, become and be a charge, subject to prior encumbrances, upon the estate or interest of the owner of the mine in respect of which the money mentioned in such order is directed to be paid, and upon all plant and machinery thereon and all property of the owner of the mine in such land, plant, and machinery; and the warden to whom a certified copy of such order shall be produced may by his order restrain the sale or other disposal or transfer of such interest in the mine, plant, machinery, or property until such moneys have been paid:

But nothing herein contained shall be deemed in any way to lessen the right of seizure and sale of such mine, plant, machinery, and property under any execution issued for the realisation of the moneys ordered in such warden's order to be paid or contributed.

**215.** The remedies provided in the two last preceding sections shall be in addition to, and not in derogation of any of the remedies given in or by any other section of this Act, and shall not be construed to in any way lessen or take away

Certified order to be a charge on property of mine-owner.

Warden may restrain sale of such property until moneys paid.

Remedies in this division to be cumulative.

any of the jurisdiction, power, or remedies created or given in or by such last-mentioned section.

216. (1.) Whenever in the opinion of the Minister there is an inflow of water to any mine from any other mine, or such an inflow is likely to happen, the Minister may, by his servants and agents, enter upon the last mentioned mine and do all things he may think fit to discharge the water therefrom.

Drainage of mines.

Inserted by No. 27 of 1919, s. 2.

(2.) The Minister may provide plant and machinery for the purpose, and may use the pumping plant and machinery on any mine entered upon as aforesaid, or may by notice to the owner compulsorily acquire such plant and machinery, and thereupon the same shall become vested in the Crown:

Provided that such sum shall be paid by the Minister for the rent and depreciation of any plant and machinery so used, or as the value of such plant and machinery if compulsorily acquired, as may be agreed upon between the Minister and the owner thereof, or, in default of any such agreement, as may be fixed by arbitration.

(3.) All expense incurred by the Minister under this section shall be apportioned between the owners of the several mines benefited by such operations by the withdrawal or the prevention of inflow of water, in proportion to the benefits derived from such operations, and the amounts so apportioned shall be debts due from the owners of the several mines to the Crown. Such apportionment shall be made by the Minister, subject to the right of any owner to have the amounts fixed by arbitration.

(4.) Any owner of a mine may, with the consent in writing of the Minister, by himself, his servants and agents, enter upon any other mine in which operations underground have been wholly or partially suspended, and with the like consent do all things that may be deemed necessary to prevent the inflow of water therefrom to his mine, and for such purpose may, with the like consent, use any pumping plant and machinery on the mine so entered upon, subject to the payment to the owner thereof of such sum for rent and depreciation as may be agreed upon, or, in default of agreement, as may be fixed by arbitration.

(5.) Any submission to arbitration under this Act shall be to a single arbitrator to be agreed upon, or, in default of agreement, to be nominated by the warden of the goldfield in which the mines are situated.

(6.) The arbitrator shall be a mining engineer, or a mine manager of at least five years' standing.

PART VIII.—MINERS' HOMESTEAD LEASES.

Application  
for miner's  
homestead lease.

217. Any miner resident on a goldfield or a mineral field, being not less than eighteen years of age, or any incorporated company, may, subject to the regulations, apply for a lease, to be called a "Miner's Homestead Lease," of any Crown land within the limits of the goldfield or mineral field.

Application to be  
made to the  
Warden.

218. The application shall be lodged at the office of the warden of the goldfield or mineral field within which the land applied for is situated.

Area of land that  
may be leased.

219. No person may apply for a larger area of land as a miner's homestead lease, within the limits of the same goldfield or mineral field, than the following, whether held in one holding or several holdings, that is to say—

Within two miles of the nearest boundary of any townsite or suburban area, twenty acres;

Beyond two miles from such boundary, five hundred acres;

And the aggregate area applied for by any one person within the same goldfield or mineral field shall in no case exceed five hundred acres.

The warden may recommend the reservation of a townsite and the boundaries thereof before recommending the issue of any miner's homestead lease.

For the purposes of this section, and areas of land distant more than twenty miles from each other shall be deemed to form part of different goldfields or mineral fields.

Rent and survey  
fee to be paid.

220. At the time of lodging the application the applicant shall deposit at the warden's office the amount of a year's or half a year's rent, at the rate hereinafter prescribed, together with the prescribed survey fee.

Applications made between the first day of January and the first day of July in each year must be accompanied by a year's rent, and applications made between the first day of July and the first day of January by half a year's rent, and in either case the next year's rent shall be payable on or before the thirty-first day of December next ensuing.

221. If two or more persons apply at the same time for the same portion of land, the priority of right shall be determined in accordance with the provisions of section sixty-seven of this Act. Priority.

222. The applicant shall, within forty-eight hours after lodging the application, post on some conspicuous portion of the land applied for, and at the warden's office, a copy of the application; and such copy shall be kept so posted until the day of hearing the application by the warden. Posting on land of application and receipt.

223. Any holder of a miner's right or of any pastoral or timber lease may, at any time within twenty-one days after the lodging of an application, lodge at the warden's office a notice of objection to the application, specifying the grounds of objection. Objections.

224. All applications and objections thereto shall be heard by the warden in open court after personal inspection of the land by him, or the receipt of a report by a mining surveyor or inspector of mines. Hearing.

225. If the land applied for includes any claim or authorised holding, or if the granting of the application would, in the opinion of the warden, in any way interfere with mining or with the requirements of the public, the warden shall make such alterations in the area and boundaries of the land as seem advisable to him, or he may reject the application. Power for Warden to alter or reject application.

If the land contains improvements he may impose a condition that the applicant shall pay the value of such improvements, to be fixed by the warden.

226. Upon the report of the warden, the Minister may, with the approval of the Governor, grant to the applicant a miner's homestead lease, which, subject to the prescribed conditions, shall be in force so long as the lessee pays the rent as prescribed by this Act, and observes and performs the covenants of the lease. Issue of lease.

227. When an application for a lease is rejected, the applicant shall be entitled to have the amount deposited by him as rent returned to him, together with the survey fee if no survey has been made. Return of rent and survey fee.

Occupation on approval of application.

228. When a lease has been approved, notice thereof shall be published in the *Government Gazette*, whereupon the applicant shall be at liberty forthwith to enter upon and occupy the land applied for:

But if, at the expiration of six months from the notification of approval in the *Government Gazette*, the applicant has not used or occupied the said land, either by himself residing on it and by enclosing one-tenth part of it with a substantial fence, or by substantial improvements on the land, or by carrying on some manufacture upon or in connection with the land, he shall be deemed to have abandoned the land, and shall cease to be entitled to a lease thereof, and any lease already granted may be cancelled, and he shall not be entitled to a return of any moneys paid by him as rent, and the land may be immediately applied for by, and may be granted to another applicant.

Lessee to fence and improve.

229. The lessee shall, within three years from the date of the survey of the land, fence the whole of the land with a substantial fence not being a brush fence, proved to the satisfaction of the Minister to be sufficient to resist the trespass of great stock, and within five years of said date shall expend upon the land, in prescribed improvements, an amount equal to ten shillings per acre.

As to improvements on land previously held as a market garden area.

230. Where any land comprised in a miner's homestead lease shall previously have been held by the lessee under the regulations as a market garden area, any improvements thereon shall be deemed a performance of the obligations of the lessee under section two hundred and twenty-eight, so far as such improvements may extend.

Payment for improvements.

231. No improvements shall be deemed made pursuant to this Act, nor shall any payment or valuation be made in respect thereof, unless the Minister shall be satisfied that the same were made *bona fide* for the purpose of improving the land, and unless the same shall consist of wells of fresh water, reservoirs, tanks or dams, of permanent character and available for the use of stock; or of dwelling-houses or buildings for industrial purposes; or of sheds and buildings erected for farm or shearing or station purposes; or of cultivation, subdivision fences, clearing, grubbing, draining, ringbarking (at not more than two shillings and sixpence per acre), or any other improvement for maintaining or improving the agricultural or pastoral capabilities of the land.

232. The rent reserved by a miner's homestead lease for the first twenty years shall be as follows, that is to say— Rent.

- (a) if the area does not exceed twenty acres, an annual rent at the rate of two shillings for every acre or part of an acre; and
- (b) if the area exceeds twenty acres, an annual rent at the rate of sixpence for every acre or part of an acre.

Thereafter the rent payable in respect of such lease shall be an annual rent of one shilling payable on the first day of January in every year if demanded:

Provided that the minimum annual rent for the first twenty years shall not be less than ten shillings.

233. A miner's homestead lease may be transferred or sub-let with the approval of the Minister in the prescribed manner, but not otherwise: Transfer of miner's homestead lease.

Provided that no person shall be entitled to transfer any homestead lease to any person then holding the maximum area under this Act, unless such lease shall have been in existence for a period of ten years prior to the date of such transfer, and the transferee is a person otherwise qualified under this Act.

234. When a miner's homestead is taken in execution and sold, the sheriff or other proper officer shall execute a transfer of the lease to the purchaser, and upon registration of the transfer and payment of the prescribed fee the lease shall be transferred to the purchaser accordingly: Transfers on seizure in execution.

Provided that the transferee shall be the holder of a miner's right, and otherwise qualified to hold the lease.

235. A miner's homestead may be charged with or made security for the payment of a sum of money. Mortgages.

When a miner's homestead is intended to be charged, the lessee shall execute a memorandum of mortgage in the prescribed form, in duplicate, one of which shall be registered in the Department of Mines at Perth; and in case of several mortgages of the same homestead they shall take effect according to priority of registration.

A fee of five shillings shall be payable upon the registration of every memorandum of mortgage, or transfer thereof.

No mortgage shall be made in favour of or transferred to any Asiatic or African alien, nor to any person of Asiatic or African race claiming to be a British subject without the authority in writing of the Minister first obtained.

Effect of mortgage.

236. A memorandum of mortgage shall have effect only as a security for the sum of money intended to be secured by it, and shall not take effect as an assignment of the lease.

Rights of mortgagee.

237. If default is made in the payment of the money secured by a memorandum of mortgage according to the tenor thereof, or upon the happening of any event which according to the terms of the memorandum entitles the mortgagee so to do, the mortgagee may—

- (1) enter upon and take and retain possession of the miner's homestead for any period not exceeding two years;
- (2) sell the miner's homestead by public auction after not less than thirty days' notice of the intended sale published in the *Government Gazette* and a newspaper (if any) generally circulating in the district:

Provided that the purchaser shall be the holder of a miner's right, and otherwise qualified to hold the lease:

Provided also, that the Minister may extend for a further period not exceeding twelve months the time during which the mortgagee may retain possession of or sell the miner's homestead.

Transfer on sale.

238. Upon a sale of a miner's homestead under the power of sale hereby conferred upon a mortgagee, he may transfer the lease to the purchaser in manner hereinbefore prescribed, and the transfer shall be registered upon payment of the fee of five shillings.

Rights of miners to work leased land.

239. Any miner may mark off, apply for, and take up for mining purposes, in accordance with the provisions of this Act and the regulations, any land comprised in a miner's homestead lease in the same manner as if the land were unoccupied Crown land.

Mining leases may be granted thereof.

240. A mining lease may be granted under this Act of land comprised in a miner's homestead lease; but in such case the lease shall be of the mines under such land only, and not of the surface of the land.

241. When land comprised in a miner's homestead lease is taken up for mining purposes, or is included in a mining lease, the person entitled to mine thereon or therein shall be entitled to erect, maintain, and remove buildings and machinery, sink shafts, and carry on all necessary mining operations upon the surface of the land comprised in the claim or mining lease, and shall also be entitled to access to the mines through the residue of the land comprised in the miner's homestead.

Machinery, plant, access, etc.

242. (1.) In any of the cases in the last preceding section mentioned the lessee of the miner's homestead may require the warden to assess the amount of the damage likely to be done to any improvements upon his homestead, and the warden after such assessment may require the miner or applicant for a lease working or about to work upon the land to deposit in his hands the amount thereof; and until such payment is made the miner or applicant for a lease shall not be entitled to work upon the land.

Compensation for land.

(2.) Upon receipt of the amount so required to be deposited the warden shall pay the same to a trust account, to be paid either wholly or in part to the lessee, if he sustains any damage, or to be returned to the miner or mining lessee on his leaving the land if he does no damage.

Warden to hold deposit as security.

(3.) In assessing such damage only actual injury to improvements shall be taken into account, and no compensation shall be allowed for the value of the land or the lessee's interest therein.

Injury to improvements.

(4.) When a lessee has received any money by way of compensation for injury to improvements, he shall not afterwards be entitled to claim compensation in respect of the same improvements, but shall be entitled to claim for additions made to them after the time when he received such compensation.

Claim for additional injury to improvements.

243. When a miner or lessee of a mining lease has put up any building or other erection, or put down a shaft upon land comprised in a miner's homestead, and afterwards leaves the land, the lessee of the homestead shall not remove or destroy such building, erection, or shaft without the sanction of the warden.

Protection of mining improvements.

Any lessee offending against the provisions of this section shall be liable to a penalty not exceeding one hundred pounds.

**Resumption.** 244. The Governor may, after six months' notice to the lessee, resume the whole or any part of a miner's homestead.

**Amount of compensation.** Subject to the powers of resumption reserved by the lease upon any such resumption the lessee shall be entitled to compensation for improvements to be determined by the warden as sole arbitrator.

**Miners' homesteads not subject to Part VI.** 245. No land held as a miner's homestead under this Part of this Act shall be deemed to be private land within the meaning of Part VI. of this Act.

**Application of this part.** 246. The provisions of this Part of this Act shall only apply to such goldfields and mineral fields or to such portions thereof respectively as the Governor may from time to time declare by notice in the *Government Gazette*.

#### PART IX.—PURCHASE AND SALE OF GOLD.

[*Repealed by No. 28 of 1921, s. 2.*]

#### PART X.—ADMINISTRATION OF JUSTICE.

##### *The Warden's Court.*

**Establishment of Wardens' Courts.** 247. The Governor may, by Order in Council, establish warden's courts at such places as he deems necessary, and may assign to any warden's court such goldfields and mineral fields or districts as he thinks fit.

**Alteration of locality or discontinuance thereof.** 248 (1.) The Governor may, in like manner, alter the place at which a warden's court is established, or order that any warden's court shall be discontinued, or that any goldfield or mineral field or district shall cease to be assigned to such court, and be assigned to another court.

(2.) When a warden's court is discontinued, or any goldfield or mineral field or district ceases to be assigned to such court, the proceedings pending therein, and the records thereof, or such of the proceedings and records as relate to such goldfield, mineral field, or district shall be transferred to and continued in such other warden's court as the Governor may direct.

**Continuance of existing courts.** 249. Wardens' courts shall be deemed to have been, and, until the Governor otherwise orders, shall remain and be established at the several places at which existing wardens' offices and registrars' offices are situated.

And, until the Governor otherwise orders, the several existing goldfields and mineral fields shall be deemed to have been assigned to the several courts to which the existing wardens' and registrars' offices for such goldfields and mineral fields respectively belong.

250. Every warden's court shall be a court of record, and for every court there shall be a seal.

Warden's Court  
a court of record.

All summonses, judgment orders, warrants, and other process issued out of the court shall be signed by the warden or mining registrar.

251. Every warden's court may be held before the warden at such times as the warden from time to time appoints.

Time and place  
for holding Court.

252. In the absence for any reason of the warden usually presiding in a court, any other warden may preside and otherwise act and perform all his duties in his stead, and the fact of any other warden so presiding or acting shall be conclusive evidence of his authority so to do.

Power for Warden  
to perform duties  
of another Warden.

*Jurisdiction.*

253. The warden's court shall have jurisdiction to hear and determine all such actions, suits, and other proceedings cognisable by any court of civil jurisdiction as arise within the district concerning the following matters, that is to say:—

Matters in respect  
of which Warden's  
Court to have  
jurisdiction.

- (1) Area, dimensions, and boundaries of mining tenements;
- (2) Title to and ownership or possession of mining tenements or the products of mining;
- (3) Questions or disputes relating to water or water rights;
- (4) Encroachments upon, infringement of, or injuries to mining tenements;
- (5) Specific performance of contracts relating to mining tenements or mining;
- (6) Transfers and other dispositions of or charges upon mining tenements;
- (7) Trusts relating to mining tenements or mining;
- (8) Partnerships relating to mining tenements or mining, the formation and dissolution thereof, the taking of accounts connected therewith, and the determination of all questions arising between the partners;

- (9) As to contribution between joint lessees or holders or persons holding shares in any mining tenement towards the rent of or expenses of prospecting or mining the land;
- (10) Encroachment upon or injury to land by reason of mining whether held under the provisions of this Act or otherwise howsoever;
- (11.) Encroachments upon, injuries to, and the determination of all questions concerning roads, tramways, railroads, or fences constructed, held, or occupied under any Act relating to mining:
- (12.) And generally concerning all contracts, torts, questions, or disputes of any kind relating to mining tenements or mining, or to any matter in respect whereof jurisdiction is elsewhere by this Act conferred upon the court or the warden, whether the parties thereto are or are not engaged in mining operations.

Recovery of penalties.

254. Whenever by this Act or the regulations a penalty is imposed for any breach thereof (not being a penalty in lieu of the forfeiture of a mining tenement), the proceedings for the recovery of such penalty may be taken in a summary way in the warden's court, and according to the provisions of the Justices Act, 1902, which provisions shall apply in like manner as if the warden were sitting as a resident magistrate under that Act, or before any two justices in petty sessions.

Venue.  
No. 60 of 1920,  
s. 2.

255. Every warden's court shall have jurisdiction throughout the whole of Western Australia:

Provided that when the hearing of any action, suit, or other proceeding involves the trial of a right to any land or mining tenement or share therein, or any money due in respect thereof, or contributions or calls made or apportioned by and between any persons for the purpose of carrying on the business of mining, or in any way connected therewith, the same shall take place in the warden's court next hereinafter appointed, that is to say,—

- (a) when such land or mining tenement is situated within the limits of a goldfield or mineral field, or district, assigned to any warden's court, then in the warden's court to which such goldfield or mineral field or district is so assigned; and

- (b) in all other cases in the warden's court held by the Under Secretary for Mines under the provisions of section two hundred and ninety-two:

And provided further that, if the warden is satisfied that any action, suit, or other proceeding pending in his court has been erroneously brought before such court, or could more conveniently be dealt with in another court, he may order the mining registrar to transmit a copy of the record of the proceedings to the mining registrar of such other court, and to give notice thereof to the parties; and upon the receipt of any such transmitted record, the mining registrar receiving the same shall appoint a day for the hearing or further hearing or other consideration of the action, suit, or proceeding, and shall give notice thereof to the parties, and such action, suit, or proceeding shall be heard or considered accordingly.

*Procedure.*

256. The procedure of the warden's court shall be in accordance with this Act and the regulations: Procedure.

But the warden, or in his absence the mining registrar may, in his discretion, at the request in writing of the parties concerned, hear and determine any question in dispute within his jurisdiction summarily and without requiring any formal proceeding to be commenced, and the decision of the warden or mining registrar may be entered upon and enforced as an order of the court, and shall be final and conclusive.

257. With respect to all proceedings in the warden's court, the following provisions shall apply:— Mode of trial ; costs.

- (1.) The hearing shall be in open court, at the time and place appointed in that behalf:  
Provided that if for any reason the court cannot be held at the time and place appointed, the mining registrar may adjourn it to some other time or place as the warden or, in the absence of the warden, as the mining registrar appoints in that behalf.
- (2) The hearing may be adjourned by the court from time to time, or from place to place, in such manner and on such terms as to costs or otherwise as the court thinks fit.
- (3) The warden may administer oaths.
- (4) Every witness shall be examined on oath.

- (5.) If any person, being duly summoned to attend as witness, fails to duly attend at the time and place named in the summons, or, attending, refuses to be sworn or to answer any lawful question put to him, the court may forthwith inflict on him a penalty not exceeding ten pounds unless reasonable cause for such failure or refusal is made to appear to the court.
- (6) The court, upon such terms as to costs or otherwise as it thinks fit, may by order grant time to any party for any purpose, add or strike out parties, and generally do whatever it deems expedient for the purpose of effectively disposing of the matter before it, according to the substantial merits of the case.
- (7) The costs shall be in the discretion of the warden, and he shall fix them, or may direct them to be taxed.

Persons under  
twenty-one may  
sue and be sued.

258. Any person under the age of twenty-one years may sue and be sued in the warden's court in the same manner in all respects as if he were of full age.

#### *Powers of the Court.*

Powers of Court.

259. At any stage of any proceeding, the court, of its own motion, or on the application of any of the parties, and on such terms as to costs or otherwise as it thinks fit, may exercise any of the following powers:—

- (1) It may order any person having the possession, custody, or control of gold, mineral, or any other chattels whatsoever to deposit the same with such person, within such time and in such place as are named in the order, there to abide the further order of the court.
- (2) It may cause all such gold, mineral, or chattels to be valued.
- (3) It may cause all or any such gold, mineral, or chattels to be delivered up to be ratably apportioned amongst the persons found by the court to be entitled thereto.

- (4) It may order such gold, mineral, or chattels, or a sufficient part thereof according to the value ascertained as aforesaid, belonging to any party against whom an order has been made by the court for the payment of money to any other party, to be delivered to such other party in or towards satisfaction of such order.
- (5) It may order money deposited with the mining registrar to be held to abide the future order of the court or warden.
- (6) If the default is made by duly complying with any such order for the deposit, valuation, or delivery of gold, mineral, or other chattels, the court may cause them to be seized and held by the bailiff or other officer until the further order of the court.
- (7) It may order any mining operations to be suspended until the further order of the court, or to be carried on by or under the direction and control of a person appointed by the court.
- (8) If any order under subsection six hereof is made on the application of any party to the proceedings, such party may be subsequently ordered to pay such reasonable compensation (if any) as the court directs to any other party who suffers damage by the operation of the order.
- (9) It may order a survey, plan, or measurement of any land or mining tenement, or any part thereof, to be made by any duly authorised mining surveyor.
- (10) It may inspect any land, mine, or mining tenement, or order the same to be inspected, and may take judicial notice of anything observed in the course of such inspection.
- (11) When making any order under this section, the court may require such one or more of the parties as it names in that behalf to deposit with the mining registrar such sum as the court thinks reasonable in respect of the expenses of and incident to the carrying out of such order.
- (12) Such expenses shall be fixed by the court, and shall ultimately be payable by such parties and in such manner as the court directs.

Power to authorise entry and inspection.

260. (1.) The court may, at any stage of proceedings before it, of its own motion, or on the application of any party to the proceedings, and on such terms as to costs, expenses, or otherwise as to the court may seem fit, by order authorise any person to enter on any land, mine, or mining tenement to ascertain whether any encroachment exists, or there is any influx of water therefrom, or any accumulation of water thereon, or for any other purpose.

(2.) Every person so authorised may thereupon enter upon the land, mine, or mining tenement described in the order, descend any mine or shaft, and make such examination, and, if a licensed mining surveyor, such survey, sections, and plans as he may deem necessary, and avail himself of the engines, machinery, and appliances used in the ordinary operations of the mine.

(3.) If any such person shall, except as a witness in a court of justice, without the consent, in writing, of the owner or occupier of the land, mine, or mining tenement to be entered upon, divulge to any person whomsoever any information obtained upon or by such entry, otherwise than for the purposes thereof, he shall be liable to the penalties for an infringement of this Act.

When such powers may be exercised.

261. The powers by the last preceding section conferred upon the court may, subject to the regulations, be exercised on the application of any person prior to the actual commencement of an action or other proceeding if the court is satisfied that the applicant is or *bona fide* claims to be entitled to any land, mine, or mining tenement, and believes that the same is or may be encroached upon, or that there is any influx of water therefrom, or any accumulation of water thereon.

General powers of Court.

262. In all matters within its jurisdiction the court shall have power to enforce contracts, award damages, appoint receivers, grant prohibitions, injunctions, attachment orders, and charging orders; to add, join, substitute, or strike out parties; to impose penalties; to cause gold, metals, minerals, and other chattels to be restored to any person or place whence they have been improperly or unlawfully taken or removed, or to be deposited for safe custody with any person or in any place, or to be summarily seized; to summon witnesses, award costs, and generally make such orders and give such judgments as it deems proper.

263. If by reason of the pressing emergency of any particular case it shall seem proper to the warden so to do, he may, on the application of any party to any action or other proceeding, without notice to any other party, grant an interim injunction to be in force for a period not exceeding seven days, or until the same shall be sooner discharged.

Interim  
injunction.

264. Upon the granting of any injunction relating to any lease the warden shall at once notify by telegraph or, if there is no telegraph, by letter to the Under Secretary for Mines the fact of such injunction being granted and the particulars thereof, and on receipt of such notice an entry of such injunction shall be made in the register of gold-mining or mineral leases, as the case may be, against the lease affected thereby.

Notice of injunction  
to be given to the  
Under Secretary  
for Mines.  
No. 50 of 1920.  
s. 2.

265. If any action or proceeding in a warden's court shall be for the possession or recovery of any land or mining tenement, or any gold, mineral, or earth, or any share or interest therein, the court shall determine the right to the same, and may fix the boundaries of any land if necessary so to do for the purpose of terminating the dispute, and shall determine whether any and what sum, in the nature of mesne profits, may be paid to the complainant:

Order for  
possession.

And the warden may order possession of such land, mining tenement, gold, mineral, or earth to be delivered to the complainant, and any such sum to be paid to him, and may cause the complainant to be put in possession of any land or mining tenement and any defendant or his servants to be ejected therefrom.

266. Subject to the express provisions of this Act in that behalf, every judgment, decision, or order of the court in civil proceedings may be carried out and enforced in like manner in all respects as if it had been given or made in civil proceedings in a local court; and every conviction or order of the court in criminal proceedings, or proceedings imposing a penalty, shall be carried out and enforced in like manner in all respects as if it had been obtained or made in summary proceedings before justices of the peace.

How judgments  
and convictions  
to be enforced.

267. Every warrant, order, or other process of the court may be served or executed and put in force by any bailiff of any warden's court or local court without it being necessary for him to be specifically named therein, or by any other

By whom warrants  
may be served.

person to whom it is, whether before or after issue, specially directed by any warden, mining registrar, or clerk of any such court.

No proceedings  
to be dismissed  
for informality.

268. No action or proceeding shall be dismissed or vitiated because of any informality; nor shall any objection be taken or allowed on the ground of any alleged defect or misnomer or inaccurate description, or of any variance between the relief claimed and the relief which the claimant appears to be entitled to, or between the complaint and the evidence adduced in support thereof; but in every instance the proceedings shall be amended by the court so that the actual subject matter in dispute may plainly appear and be re-adjudicated upon according to the substantial rights of the parties:

Provided that, whenever it appears that any of the parties is deceived or misled, or that any injustice would be done by proceeding at once with the hearing, the court may adjourn the proceedings upon such terms as to costs or otherwise as it thinks fit.

Record and formal  
drawing up of  
judgments.

269. With respect to every judgment, conviction, or order of the court, the following provisions shall apply:—

- (1) A minute thereof shall be entered in a register kept for the purpose, and no other record thereof shall be necessary.
- (2) If any of the parties so requests, or if the warden thinks fit, or if notice of appeal is given, it may at any time thereafter be formally drawn up under the hand of the warden or mining registrar.
- (3) It shall not be void, quashed, or vacated for want of form.

Additional powers  
of Court.

270. For the purpose of enabling the court the more effectually to exercise the jurisdiction and powers conferred upon it by this Act, and to enforce obedience to its judgments and orders and to punish disobedience thereof, it is hereby declared that, in so far as no sufficient provision in that behalf is elsewhere contained in this Act, the court and the warden thereof shall be deemed to have and may exercise all the powers of the Supreme Court, or a judge thereof.

Orders may be  
enforced by  
commitment

271. For the purpose of enforcing compliance with any judgment or order of the court directing not the payment of

money but the doing or refraining from the doing of any act, the following provisions shall apply:—

- (1) If any person makes any default in complying with any such judgment or order, or in any way impedes or prevents the compliance therewith, he commits an offence, and is liable to a penalty not exceeding twenty pounds, and to be imprisoned in default of payment, or to be imprisoned without the infliction of any such penalty, and the court may issue a warrant of commitment accordingly.
- (2) The person named in such warrant shall be taken to some convenient prison named therein, and delivered to the keeper of such prison, who shall there detain him until he pays such penalty (if any) and gives security to the satisfaction of the court that he will refrain from repeating such offence, or until he is released by order of the court:

Provided that no person shall be imprisoned under this section for any term exceeding six months.

**272.** Whenever, in the course of any proceedings before the court, any person insults the warden or any officer of the court, or interrupts the proceedings, or in any other manner is guilty of contempt in the face of the court, the following provisions shall apply:—

Punishment of persons guilty of contempt.

- (1) Such person may, by written or verbal direction of the court, be taken into custody by the bailiff or any police officer or constable, with the assistance, if necessary, of other persons, and be detained until the rising of the court.
- (2) Instead of discharging such person at the rising of the court, the warden may inflict any penalty not exceeding five pounds, and in default of payment commit him to prison for any term not exceeding seven days, or may commit him to prison for any such term without inflicting any such penalty.

**273.** If any claim shall be made to or in respect of any goods or chattels taken in execution under process from a warden's court, or in respect of the proceeds or value thereof by any person, not being the party against whom such process shall have issued, the warden may, upon application of the officer charged with the execution of such process, as well

Interpleader.

before as after any action brought against such officer, issue a summons calling before the warden as well the party issuing such process as the party making such claim:

Thereupon any action which shall have been brought in any court in respect of such claim shall be stayed, and the court in which such action shall have been brought, on proof of the issue of such summons and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings taken therein after the service upon him of such summons, and the warden shall adjudicate upon such claim and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit.

Who may take affidavits.

274. Any affidavit to be used in any warden's court or before a warden may be sworn before any judge of the Supreme Court or any commissioner for taking affidavits, or before any warden, mining registrar, or justice of the peace.

Copies of decision or order to be supplied.

275. Any person may, on payment of the prescribed fee, obtain a copy of any judgment, decision, or order of a warden.

Proof of decision of Warden's Court.

276. A document purporting to be a copy of a judgment, order, or decision of a warden, or of any document filed by, or of any entry in a register kept by a mining registrar, and certified by the mining registrar as a true copy thereof, shall be admitted in all courts as sufficient evidence of such judgment, order, decision, document, or entry, and the signature of every warden and mining registrar to any document shall be judicially noticed.

*Special cases reserved.*

Special case may be reserved for Supreme Court.

277. At any stage of any civil proceedings before it the warden's court may reserve any question of law for the opinion of the Supreme Court, and with respect to every question so reserved the following provisions shall apply:—

- (1) The warden shall prepare a special case, setting forth the question so reserved, and shall transmit such case to the Master of the Supreme Court.
- (2) The master shall set a special case down for argument before a judge of the Supreme Court, and the judge's opinion on the special case shall, when given, be drawn up and transmitted by the master to the warden.

- (3) The costs of the proceedings shall be in the discretion of the judge.
- (4) Upon receipt of such opinion the warden's court shall act in accordance therewith, and in the meantime no judgment or order of the court shall affect the question so reserved.
- (5) When reserving any such question, or at any time before acting on the judge's opinion thereon, the warden, on the application of any party to the proceedings, and on such terms as he thinks fit, may make such order for an injunction or a receiver, or for payment of money into court or for giving security for damages and costs, or otherwise, and on such terms as he may think fit.

*Appeals.*

278. Except as provided by section two hundred and eighty-seven, an appeal at the instance of any party aggrieved shall lie to the Supreme Court from any final judgment or order of the warden's court.

Appeal to  
Supreme Court.

279. Every such appeal may, as the appellant thinks fit, be on matter of fact alone, or of law alone, or of both fact and law:

Appeal on fact  
or law.

Provided that there shall be no appeal on matter of fact from any summary conviction imposing a penalty, except as provided by the Justices Act, 1902.

280. With respect to every appeal, the following provisions shall apply:—

Notice and grounds  
of appeal.

- (1) Within ten days after the decision to be appealed from has been given, the appellant shall file in the warden's court and serve on the other party notice of intention to appeal, and shall lodge with the warden, as deposit by way of security for the costs of appeal, the sum of twenty pounds.
- (2) Such notice of appeal shall specify whether the appeal is on matter of fact alone, or of law alone, or of both fact and law, and shall also state briefly the matters of law (if any) forming the grounds of appeal.

Setting down  
appeal.

**281.** If the appeal is on matter of fact alone, or both fact and law, the appellant shall, within fourteen days after notice of appeal was filed, set down the appeal for hearing by filing with the Master of the Supreme Court a copy of the notice of appeal, the notes of evidence and exhibits in the original proceedings, and the judgment or order appealed from, certified as correct under the hand of the warden or mining registrar.

Appeal on question  
of law.

**282.** If the appeal is on matter of law alone, the following provisions shall apply:—

(1) The appeal shall be in the form of a special case to be agreed on by the parties, or if within seven days after notice of appeal they cannot agree, then to be settled by the warden at the request of either of them.

(2) The special case, when agreed on or settled as aforesaid, shall be transmitted to the master by the appellant, who shall also, within thirty days after the notice of appeal was filed as aforesaid, set the special case down for re-hearing, and give notice thereof to the other party.

Appeal may be by  
way of re-hearing.

**283.** If the appeal is on matter of fact alone, or of both fact and law, and the Supreme Court so orders, or the parties agree, the appeal shall be by way of re-hearing; but otherwise the appeal shall be heard and determined upon the evidence and proceedings before the warden.

When appeal  
deemed to be  
abandoned.

**284.** The appeal shall in every case be deemed to be abandoned if the appellant—

(1) fails to duly file or serve such notice of appeal, or to duly lodge such deposit, within the time hereinbefore limited in that behalf; or

(2) fails to duly set down the appeal or special case for hearing within the time hereinbefore respectively limited in that behalf, or such extended time as the Supreme Court or a judge thinks fit to grant, on application made by the appellant before the expiration of the time limited as aforesaid.

Proceedings  
when appeal  
abandoned.

**285.** Whenever an appeal is abandoned, the same proceedings may be had and taken in respect of the judgment or order appealed against as if no notice of appeal had been given.

286. With respect to the proceedings on the appeal, the following provisions shall apply:— Order of appellate Court and costs.

- (1) The Supreme Court, after hearing the appeal, shall make such order reversing or varying the decision appealed against, or dismissing the appeal, as it thinks fit.
- (2) Such order may also contain such directions with respect to the costs of the appeal and of the original proceedings as the court thinks fit.
- (3) Every appeal to the Supreme Court shall be heard by a single judge, and the decision of the court shall be final and conclusive, except where the appeal is on the question of law, in which case there shall be a further right of appeal to the Full Court, whose decision shall be conclusive and final.

287. There shall be no appeal—

No appeal in certain cases.

- (1) in any case where, at or before the hearing, the parties, by a memorandum in writing lodged in the warden's office, agree that the decision of the court shall be final;
- (2) from any judgment or order of the warden's court where the value of the subject matter or interest in dispute shall not exceed two hundred pounds, except by leave of the Supreme Court or a judge;
- (3) from any decision, order, or recommendation of the warden upon any application for a mining tenement, the forfeiture thereof, or exemption from labour or other conditions.

#### PART XI.—GENERAL PROVISIONS.

288. Nothing in this Act contained, except so far as is herein expressly enacted, shall be deemed to abridge or control the prerogative rights and powers of His Majesty in respect of gold or silver mines. Saving of prerogative

289. No Crown land situated within a goldfield or mineral field shall be leased, granted, or disposed of under the provisions of the Land Act, 1898, or any amendment thereof, without the approval of the Minister for the time being charged with the administration of this Act. Leases, etc., to be approved by Minister.

Reward areas  
may be granted.

290. The Minister may, with the approval of the Governor and subject to the regulations, grant a reward area by way of lease or otherwise to the discoverer of gold or minerals.

Applications for  
mining tenements  
to be made in  
local Warden's  
office.

291. (1.) Every application for a mining tenement shall be made at the office of the warden of the goldfield or mineral field or district in which the land applied for is situated.

(2.) Where a doubt exists as to the exact position of any land the subject of an application for a mining tenement, the applicant, having in all other respects complied with the regulations, may make his application at the warden's office nearest to such land.

(3.) If after survey it is ascertained that any land, the subject of an application, is situated partly within the boundaries of any two or more goldfields or mineral fields or districts, the Minister shall determine to which goldfield, mineral field, or district the land shall be assigned.

Applications, etc.,  
relating to land  
not within goldfield  
or mineral field.  
No. 50 of 1920,  
s. 2.

292. (1.) For all the purposes of and incidental to applications for and dealings with Crown land not situated within the boundaries of any goldfield or mineral field, the Under Secretary for Mines shall have jurisdiction as warden, and the office of the Under Secretary for Mines in Perth shall be deemed to be a warden's court and mining registrar's office.

(2.) The Under Secretary for Mines may temporarily delegate his powers under this section to any resident magistrate or other officer in outlying districts.

Application for  
lease or claim to  
state number of  
shares.  
No. 50 of 1920,  
s. 2.

293. In every application for a mining lease or for registration of a claim the applicant shall state—

- (a) the number of shares or units into which the lease or claim is to be divided, and, where an application is made by two or more persons, the number of shares or units to be held by each person; and
- (b) the name by which the lease or claim is to be known, such name being subject to the approval of the warden.

No alteration in the number of shares or units, the division, or name of any lease shall be made without the consent of the Under Secretary for Mines, or in the case of a claim without the consent of the warden, and no transfer or other dealing affecting less than one share or unit shall be registered:

Provided that no authorised holding or miner's home-stead lease shall be divisible into shares or units.

294. Every mining tenement, and every share and interest therein, shall be deemed and taken in law to be a chattel interest, and, subject to this Act and the regulations, the holder may transfer and encumber the same:

Mining tenements to be deemed chattels.

But no person shall acquire any interest under any transfer of a mining tenement held under a miner's right, unless such person is the holder of a miner's right.

295. Every mining tenement, and every share and interest therein, shall, on the death or bankruptcy of the holder thereof, devolve on his personal representative or trustee in bankruptcy or liquidator, and shall be liable to seizure and sale under any execution issued from the Supreme Court, or any warden's court, local court, or other court.

Devolution of mining tenements.

The sheriff or other officer appointed to sell the same shall have full power to give an effectual transfer thereof.

296. The Governor may, by notice in the *Government Gazette*, declare any reserve to be open for mining, and thereupon, and until such notice is revoked such reserve shall be deemed Crown land within the meaning of this Act.

Reserves may be declared open for mining.

297. The Minister and, pending a recommendation to the Minister, a warden, may temporarily reserve any Crown land from occupation, and the Minister may at any time cancel such reservation: Provided that if such reservation is not confirmed by the Governor within twelve months, the land shall cease to be reserved.

Temporary reserves.

The Minister may, with the approval of the Governor, authorise any person to temporarily occupy any such reserve on such terms as he may think fit.

298. It shall not be lawful for the owner, lessee, or occupier of any mining tenement lying under any railway reserve, or under land resumed for railway or tramway purposes, to mine under such reserve or resumed land without giving at least fourteen days' previous notice, in writing, to the Minister.

No person to mine under railway reserve except on certain condition.

The Minister may impose upon such owner, lessee, or occupier such terms, if any, as the Minister thinks necessary for the public safety, and in that case such mining shall only be carried on in accordance therewith.

A condition for the observance of this section by the lessee of every existing and future mining lease shall be deemed to be contained therein. The Governor may, if he thinks fit, at the request and cost of any such owner, lessee, or occupier, cause or require the deviation of any railway or tramway so far as may be necessary for the working of any lode or reef.

Power to construct tramways and erect electric lines.

299. Subject to the approval and consent in writing of the Minister, any person may enter upon any mining tenement and break up the soil thereof, and

- (1) erect poles and posts thereon, and carry over-head, across, or along the same electric lines, and from time to time repair, alter, or remove such poles, posts, and lines; and
- (2) make or construct any tramways thereon, and from time to time repair, alter, or remove the same.

Permission to be subject to conditions and general regulations.

300. (1.) The exercise of the powers conferred by the last preceding section shall be subject to such conditions and stipulations as the Minister may impose, and such regulations as may from time to time be prescribed, and particularly with regard to the following matters:—

- (a) Securing the safety of the public from personal injury or from fire or otherwise;
- (b) Authorising and regulating inspection and inquiry from time to time by the Minister.

(2.) The contravention, non-performance, or non-observance of any conditions or stipulations imposed by the Minister as aforesaid shall be deemed an offence against this Act, and be punishable by fine, not exceeding fifty pounds, or ten pounds for every day during which such contravention, non-performance, or non-observance shall continue, and upon any conviction, the consent of the Minister may be cancelled.

Laying pipes, etc., over leases.

301. The warden may permit any person to make or construct any road, race, or drain, or to lay water pipes under, over, across, or through any mining tenement.

But before any such permission is granted, fourteen days' notice shall be given by the person applying for permission to any person lawfully in possession of such mining tenement and by advertisement in a newspaper circulating in the district.

If any question of compensation shall arise, the amount (if any) shall be determined by the warden, whose decision shall be final, and who shall have power to examine competent persons as to the amount of actual damage, injury, or loss which may be incurred by the works made or constructed under the permission granted.

Any permission granted under this section may be withdrawn by the warden on proof to his satisfaction that the privilege conferred is no longer exercised by the grantee.

**302.** With respect to mining partnerships, the following Mining partnerships. provisions shall apply:—

- (1) Whenever two or more persons acquire any mining tenement, or engage in lawfully working or using it, or jointly employ others to do so for them, a mining partnership, shall be deemed to exist between such persons in respect of such mining tenement. What constitutes a mining partnership.

A mortgagee in possession shall be deemed to be a partner.

- (2) Every mining tenement owned by partners in mining, or worked or used by or for them, whether purchased with partnership funds or not, shall be deemed to be partnership property. Partnership property.
- (3) A member of a mining partnership shall share in the profits and losses thereof in the proportion which his share or interest in the partnership mining tenement bears to the whole of the shares or interests therein. Proportionate shares of profits and losses.
- (4) Each member of a mining partnership shall be deemed to have, as against every other member, a lien on the partnership property for all partnership debts paid by him, and for money advanced by him for its use; and such lien may, in the prescribed manner, be registered, enforced, and discharged: Lien of member for partnership debts paid by him.

Provided that such registered lien shall be subject to review by the warden on the application of any person aggrieved, and for that purpose the warden may, by order, confirm or cancel the registration or amend the lien in such respect as he deems equitable.

Purchaser becomes partner from date of purchase.

- (5) A partner's interest in the mining partnership may be sold or assigned without dissolving the partnership, and without the consent of the other members, and from the date of such sale or assignment the purchaser or assignee shall be deemed to be a member of the partnership:

Provided that he shall be deemed to take such interest subject to all such liens existing in favour of the partners as are registered, but not further.

Purchase of retiring partner's share.

- (6) If any partner gives notice to the other partners of his intention to determine the partnership, such notice shall not determine the partnership as between the other partners, if, within thirty days thereafter, they, by notice to the retiring partner, elect to purchase his interest in the partnership at a valuation to be assessed by the warden.

Decision of majority binding as to business.

- (7) The decision of the members owning a majority, of two-thirds at least, of the shares or interest in a mining partnership shall bind all the members of the partnership in the conduct of their business.

Grounds for dissolution.

- (8) It shall be a ground for dissolution of a mining partnership if any member—

(a) where it is his duty to pay or satisfy any assessment of the partnership liabilities, neglects or refuses so to do for thirty days after being served with notice so to do from any other member; or

(b) neglects, when notified in writing by any other partner so to do, to perform any labour or discharge any liability which it is his duty to perform or discharge, or to represent his share or interest in any partnership mining tenement.

Partners may sue to be put in possession of unrepresented share.

- (9) In any case where any member of a mining partnership, whose duty it is to occupy or represent his interest or share in any partnership mining tenement, fails or neglects so to do for thirty days at any one time, the other members may institute proceedings in the warden's court to be put in possession of such share or interest as though such member had never been a partner, and the court may decree accordingly, or make such other order as it deems equitable.

(10) If at any time any interest or share in any partnership mining tenement is unrepresented for forty-eight hours, and such non-representation prevents the proper and profitable working or use thereof, the following provisions shall apply:—

Wages may be put on for unrepresented share.

(a) Any member of such partnership, or any person in charge of such mining tenement, may employ any person or persons, at current rate of wages, to represent and work such share or interest.

(b) Every person so employed shall have a lien for his wages upon such share or interest.

(c) Any such member or person in charge as aforesaid may, out of any profits accruing to such share or interest, pay such wages.

(d) In case there are no such profits, or the profits are insufficient to pay such wages, such member or person in charge may himself pay the same, and, to the extent of the moneys so paid, shall have a lien on such share or interest.

(e) where practicable the member or person in charge who employs any person as aforesaid shall, within seven days thereafter, give notice in writing thereof to the absent member or his agent;

(f) any such lien for wages may be registered, enforced, and discharged under and subject to the provisions hereinbefore provided in the case of members of a mining partnership.

(11) Whenever in any suit for the dissolution of a mining partnership the warden's court might order a sale of the partnership property but does not deem it expedient so to do, the following provisions shall apply, with the view of avoiding the necessity of such sale:—

Partnership suits.

(1) The court may cause the accounts of the partnership to be taken, and the share and interest of each partner to be valued; and may authorise any one partner to buy out any other at the price ascertained by such valuation.

- (2) If the buying and selling partners cannot be determined by agreement between themselves, the court may, as between such of the partners as are willing to buy, determine by lot who shall buy, and from whom.
- (3) The court may direct all proper persons to execute such instruments and do such things as it deems necessary for the purpose of fully effectuating every such sale and purchase:

Provided that this section shall not apply to any incorporated company or association registered under any statute.

Exemption of registered companies.

Lien for wages.

303. The amount for the time being due to all managers, clerks, miners, artisans, and labourers employed in or about any mining tenement, by or on behalf of the owner thereof, in respect to their wages or other earnings in relation thereto, not exceeding four weeks' wages or earnings to each such person, shall be a first charge upon the mining tenement in priority to any mortgage charge or other encumbrance:

And in the winding-up of a company, the amount due at the date of the winding-up order to such persons in respect of such wages or earnings, not exceeding four weeks' wages or earnings to each such person, shall be paid in priority to all other debts, secured or unsecured, of the company:

But until the expiration of one year from the commencement of this Act, such lien shall not prevail against any mortgage charge or other encumbrance entered into or incurred and registered before the commencement of this Act.

Such first charge shall include all costs awarded against any person or company in any proceedings before a court to recover such wages or earnings, and any costs, charges, or expenses properly incurred in enforcing such order.

The debts so charged upon a mining tenement and the debts so payable in priority to all other debts of a company shall rank equally amongst themselves, and if necessary shall abate in equal proportions between themselves.

Caveats may be lodged.

304. Any person claiming any interest in a lease or other registered mining tenement may, on payment of the prescribed fee, lodge a caveat, in the prescribed form, forbidding the registration of any transfer or other instrument affecting such

interest, but subject to the regulations and the following conditions:—

- (1) If the caveat relates to a claim or authorised holding, it shall be lodged at the office of the warden of the goldfield or mineral field in which such claim or authorised holding is situated; and if the caveat relates to a lease or application for a lease, it may be lodged at the office of the warden of the goldfield or mineral field in which the land leased or applied for is situated, or with the mining registrar at the Department of Mines in Perth.
- (2) Every caveat shall state the name and address of the person by whom or on whose behalf the same is lodged, and shall be signed by the caveator or his agent.
- (3) No caveat shall be received by the warden unless an address within the goldfield or mineral field in which the mining tenement is situated is appointed at which notices and proceedings relating thereto may be served; and no caveat shall be received at the Department of Mines unless an address within the city of Perth is appointed at which notices and proceedings relating thereto may be served.
- (4) Every notice relating to a caveat, and any proceedings in respect thereof, if left at or sent by post to the address appointed as aforesaid, shall be deemed to be duly served.
- (5) Upon the receipt of a caveat the warden or mining registrar shall send a notification to the lessee, applicant, shareholder, or miner against whose mining tenement or interest therein such caveat has been lodged, by registered letter sent by post to the last known address of such lessee, applicant, or shareholder.
- (6) The lessee, applicant, shareholder, or miner may summon the caveator to attend before a judge of the Supreme Court in Chambers or the warden of the goldfield or mineral field in which the mining tenement is situated, to show cause why such caveat should not be removed, and the judge or warden may, upon proof that the caveator has been summoned, and after hearing the evidence in support of the application, make such order as to the judge or warden may seem fit.

- (7) Every caveat shall be deemed to have lapsed upon the expiration of fourteen days after notice given to the caveator that application has been made for the registration of a transfer of or other dealing with the mining tenement, the subject of such caveat. The said notice shall be deemed to be duly given if sent by post to the caveator in a letter addressed to the caveator at the address stated in the caveat, and the notice shall be presumed to have been received by the caveator at the time when, by the ordinary course of post, the letter would have been delivered.
- (8) A caveat shall not be renewed by or on behalf of the same person in respect of the same estate or interest, except by the leave of a judge or warden.
- (9) If, before the expiration of a caveat, the caveator or his agent appears before a judge in chambers or the warden of the goldfield or mineral field in which the mining tenement is situated and gives such undertaking or security, or lodges such sum in court as the judge or warden may consider sufficient to indemnify every person against any damage that may be sustained by reason of any disposition of the property being delayed, the judge or warden may direct the registrar to delay registering any dealing with the mining tenement for a further period to be specified in such order, or may make such other order as may be just.

**Caveat by consent.**

**305.** When a contract for the sale of a lease or other mining tenement or of the interest of an applicant for any land applied for as a lease shall have been made, the parties to the contract may, on payment of the prescribed fee, register a caveat in the prescribed form, together with a copy of the agreement embodying the contract for sale, and such caveat shall remain in force for the full term specified in such agreement so long as such agreement shall continue in operation, unless sooner removed with the consent of all parties thereto.

**Effect of caveats.**

**306.** So long as any caveat shall remain in force, no change in the proprietorship of the estate or interest in respect to which such caveat may be lodged shall be registered, and no transfer or other instrument purporting to transfer or otherwise deal with or effect the same shall be lodged.

307. No contract relating to any mining lease or application therefor, or any share or interest therein respectively, shall be enforceable by any action or other legal proceeding unless some note or memorandum in writing of the contract is made and signed by the party to be charged, or his agent authorised in writing in that behalf.

Contracts relating to leases to be in writing.

308. The demand or acceptance of rent in respect of any mining tenement on behalf of His Majesty shall not be deemed a waiver of the right of His Majesty or the Minister to enforce the observance of any covenant, condition, or regulation under which such mining tenement is held, or the forfeiture of such mining tenement for breach of any such covenant, condition, or regulation committed before the receipt of such rent.

Acceptance of rent not to be deemed waiver of breach of covenant.

309. Any banker, gold-dealer, or other person whomsoever, exporting any gold, gold ore, gold dust, or gold bullion, if such gold, gold ore, or gold dust, or gold contained in such bullion shall have been found in or procured from the soil of the State, shall declare the weight and value of the same at the time of export at the Customs or before the Under Secretary for Mines in Perth, or the resident magistrate at the port of export.

Declaration as to gold for exportation. No. 50 of 1920, s. 2.

Any person failing to comply with this section shall be liable, on summary conviction, to a penalty not exceeding one hundred pounds, and to forfeiture of the undeclared gold, gold ore, gold dust, or gold bullion, or the value thereof:

Provided that no person shall be required to make a declaration under this section in respect of any coin of the realm or article manufactured of gold, or in respect of any alluvial or specimen gold of a less value than ten pounds.

310. Any person, not being the holder of a miner's right, found to be—

Penalty for unauthorised mining.

- (a) engaged in mining on any Crown land; or
- (b) in the unauthorised occupation of Crown land within a goldfield or mineral field,

shall be liable for every such offence to a penalty not exceeding twenty pounds, and may be forcibly ejected by a police officer or constable, or by any person authorised by the warden:

Provided that nothing in this section shall apply to any person working in or upon any mine for wages only.

Asiatic or African alien prohibited.

311. Any Asiatic or African alien found mining on any Crown land may, by order of the warden, be removed from any goldfield or mineral field, and whether such person has or has not been convicted of an offence against the last preceding section; and no Asiatic or African alien shall be employed as a miner or in any capacity whatever in or about any mine, claim, or authorised holding.

Aboriginal labour.

312. The labour of any aboriginal native of Australia shall not be accounted *bona fide* work in fulfilment of the labour conditions upon any mining tenement, except with the permission in writing of the warden.

Proceeding and penalty for mining or removing minerals without authority from mining tenements.

313. Any person found mining upon or removing gold or mineral ores from the mining tenement of any other person without the permission of such other person, may be forcibly ejected by a police officer or constable, or by any person authorised by the warden, and on summary conviction thereof shall be liable to a penalty not exceeding fifty pounds.

Removing minerals, etc., from claims, incruy.

314. Any person who takes or removes gold, minerals, or mineral ore from the mining tenement of any other person, shall be deemed to have stolen the same, unless he proves that he had the permission of such other person to do so; and any person receiving the same with knowledge of such facts shall be deemed to have received the same knowing them to have been stolen.

Selling mines.

315. Any person who shall place or deposit, or be accessory to the placing or depositing of any metal, ore, or mineral in any spot or place for the purpose of misleading any person as to the payable nature of such spot or place, or who shall mingle or cause to be mingled with any sample of gold, silver, or other metal-bearing ore, any valuable metal or substance whatsoever that will increase the value or in any way change the nature of the said ore, with an intention to deceive, cheat, or defraud any person, shall be guilty of a misdemeanour, and liable, on conviction, to imprisonment with or without hard labour for a period not exceeding three years.

Penalty for collusive application for forfeiture.

316. If any person, being the owner of a mining tenement or otherwise interested therein, is privy to any application for forfeiture thereof, made for the purpose of defeating or avoiding the labour conditions thereof, he shall be liable, on summary conviction, to a penalty not exceeding one hundred pounds.

Assault on warden  
and other offences

317. Any person who—

- (1) assaults, obstructs, or resists any warden, or any person duly authorised by any warden, or any bailiff or other officer, or any clerk or assistant of such bailiff or officer, or other person in lawfully entering upon any land or mining tenement, or in the performance of any act or duty, or in the exercise of any powers under this Act or the regulations; or
- (2) after being removed under the provisions of this Act from any land or mining tenement forcibly or clandestinely takes or retains, or endeavours to retake or retain possession thereof, or of any portion thereof, or of any share therein; or
- (3) after any decision of a warden that any complainant is entitled to use for mining purposes or to divert any water, resists such complainant or his agents in such use or diversion; or
- (4) upon or in consequence of the decision of any warden's court assaults, or threatens to assault, any person in whose favour such decision shall have been made,

shall be liable, on summary conviction, to a penalty not exceeding fifty pounds, and, in default of payment, to imprisonment not exceeding six months.

318. The owner or manager of every mining tenement in respect of which royalties are payable shall, during the first week of every month, forward to the Under Secretary for Mines a return showing the amount of gold or minerals obtained from such mine during the last preceding month, and the value thereof, together with the amount due as royalty thereon.

Returns to be  
furnished.  
No. 50 of 1920,  
s. 2.

319. Any officer appointed for that purpose by the Minister shall at any time have access to the books and accounts of any such mining tenement, and may examine the same for the purpose of ascertaining the amount of royalty payable in respect of the gold or minerals raised from such mining tenement.

Officers may  
examine books, etc.

320. If the amount of royalty due upon any gold or minerals obtained from any such mine is not paid within thirty days after such amount has been ascertained, any officer

Payment of  
royalty, how  
enforced.

appointed for that purpose by the Minister may seize and take possession, on behalf of His Majesty, of any gold or minerals obtained from such mine, and the lease or registration of such mine may be cancelled by the Governor.

Penalties.  
No. 50 of 1920,  
s. 2.

321. Any owner or manager who neglects or refuses to furnish returns to the Under Secretary for Mines as hereinbefore required, or who wilfully makes a false return, and any person who impedes or obstructs any officer appointed by the Minister to perform any duty under the last preceding section shall be liable to a penalty not exceeding one hundred pounds.

Statistical returns.

322. The owner or manager of any mining tenement, or of any works, battery, or other apparatus for the extraction of gold or other minerals from earth or ore, shall furnish the Department of Mines with such returns as to the gold or minerals obtained from such mining tenement, or treated at such works, or by such battery or other apparatus, and with any plans, sections, statistics, and particulars, in such form and at such times as may be prescribed.

Penalty for neglect  
to make statistical  
returns.

323. Any person neglecting or refusing to comply with any of the provisions of the last preceding section or with any regulation relating to statistical returns, shall, for every offence, be liable to a penalty not exceeding fifty pounds.

Service of  
notice.  
No. 50 of 1920  
s. 2.

324. (1.) Except where otherwise provided, any notice, order, process, or other document, under the provisions of this Act or any regulation, required or authorised to be given or served to or upon any person, may be served—

- (a) by delivering the same to such person; or
- (b) by leaving the same at his usual or last known place of abode or business; or
- (c) by forwarding the same by post in a prepaid letter addressed to such person at his usual or last known place of abode or business.

(2.) Any such document, if addressed to the owner or occupier of any mining tenement or land, may be served by delivering the same, or a true copy thereof, to some person, apparently over the age of sixteen years, on the premises, or, if there is no person on the premises who can be so served, by fixing the same on some conspicuous part of the premises.

(3.) Where a notice is required to be given to a person whose name and address is unknown, the notice may, by leave of the warden or Under Secretary for Mines, be served by publishing it in the *Government Gazette* and a newspaper three times, at intervals of not less than one week between any two publications.

(4.) Any notice by this Act required to be given to the owner or occupier of any mining tenement or land may, if the name of the owner or occupier is not known, be addressed to him by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given, without further name or description.

(5) Any document forwarded by post shall be deemed to have been given at the last moment of the day on which the same ought to be delivered at its destination in the ordinary course of post, and in proving service it shall be sufficient to prove that the document was properly stamped and addressed and put into the post.

325. Any person who shall infringe any of the provisions of this Act or the regulations, for the infringement whereof no other penalty is prescribed, shall, on summary conviction thereof, be liable to a penalty not exceeding fifty pounds, and in default of payment to imprisonment, with or without hard labour, for any period not exceeding six months.

Penalty for breach of regulation not otherwise provided for.

326. All fees, charges, and sums of money which shall or may be imposed or made payable, and all penalties incurred under this Act or the regulations, for which no other mode of recovery is prescribed, may be recovered, carried out, or enforced by any warden in the manner in which justices of the peace are now by law authorised to enforce any conviction or order of a court of petty sessions.

Fees, penalties, etc., how recoverable and applied.

## PART XII.—REGULATIONS.

327. The Governor may from time to time make, alter, and repeal regulations, not being contrary to the provisions of this Act, for all or any of the matters following (that is to say) :—

Power to make regulations.

- (1) For determining the dimensions, boundaries, form, position, and extent of any lease, claim, or other mining tenement or class of mining tenements, and

Dimensions, etc. of tenements.

the subsequent adjustment of the same where necessary, and the time when such determination shall be deemed to take effect, and the number and extent and classes of mining tenements which any one person or any two or more persons may take possession of.

Marking out.

(2) For determining the manner in which persons desirous of taking possession of or acquiring leases, claims, and other mining tenements on all lands coming within the operation of this Act shall mark out the same, and the requirements to be complied with by such persons.

Exemptions.

(3) For defining the method or manner in and the conditions on which applications to occupy land exempted from occupation for mining purposes may be so occupied.

Reward areas.

(4) For regulating the granting of reward areas, and the conditions on which such areas may be granted.

Objections.

(5) For regulating the time or times within which, and the method by which any objection may be lodged, and the manner of dealing with the same.

Registrations.

(6) For providing for the registration and the mode of obtaining and effecting the registration of mining tenements and any share or interest therein, and of the transfer, assignment, or sub-lease thereof, and of any share or interest therein, and of any lien or encumbrance thereon, and of the discharge of any such lien or encumbrance thereon, and for providing for the registration, and the mode of effecting and obtaining the registration, of any such mining tenement, share, interest, lien, encumbrance, transfer, assignment, or sub-lease in the case of death, bankruptcy, or insanity, or of sale under the decree, judgment, or order of any court.

Labour conditions and exemptions.

(7) For prescribing the labour and other conditions not hereinbefore provided for, subject to which any mining tenement or class of mining tenements shall be held, and the condition on which exemption from the performance thereof may be applied for, granted, and obtained, and generally for prescribing the manner in which and with what incidents, rights, and obligations any mining tenements or class of mining tenements shall be taken possession of, held, occupied, used, worked, or enjoyed.

- (8) For determining the events on which the title to any mining tenement or any share therein shall become forfeited, and for imposing any penalty on the happening of any one or more of such events in lieu of any such forfeiture, and for determining what shall constitute exemptions from or suspensions of such forfeiture, and what persons shall be entitled to enforce such forfeiture or penalty, and whether there shall be any order of priority of right in any persons to enforce any such forfeiture or penalty, and if so, what shall be such order unless where hereinbefore provided for. Forfeiture, penalty, exemption.
- (9) For limiting the time within which and prescribing the mode in which proceedings for any such forfeiture or penalty must be taken. Proceedings for forfeiture, etc.
- (10) For determining whether and under what circumstances any person who shall have obtained an adjudication of any such forfeiture shall, as a condition precedent to his obtaining possession of the forfeited tenement, pay to the person as against whom the same shall be adjudged forfeited any sum as compensation for any property upon such mining tenement. Compensation on forfeiture.
- (11) For regulating the cutting, constructing, use, and maintenance of races, dams, and reservoirs. Water-races, etc.
- (12) For determining whether and under what circumstances and subject to what conditions the holders of miners' rights entitled to the use of any water shall have amongst themselves any priority of supply of such water, and if so, how, or according to what system such supply is to be regulated, and when the events upon the order of priority of which any such priority is to depend shall be deemed to have occurred. Water supply.
- (13) For determining what shall constitute relinquished, abandoned, or deserted, as distinguished from forfeited mining tenements or shares therein, and by what person lawfully competent thereto, and in what mode and under what circumstances it shall be ascertained whether any particular mining tenement or share therein is relinquished, abandoned, or deserted within the meaning so determined, and whether and under what circumstances any person Abandonment, etc.

shall be permitted to relinquish without being liable to any consequences as for the forfeiture of any mining tenement.

Transfer,  
encumbrance,  
subletting.

- (14) For determining the mode in which any mining tenement or any share therein which may be transferred, assigned, sublet, or encumbered, may be so transferred, assigned, sublet, or encumbered, and in which any lien or encumbrance may be assigned or discharged and for determining the rights and obligations of any assignee, lienee, or encumbrancee of or upon any mining tenement or share therein, and the order of priority of any two or more such lienees or encumbrancees.

Exercise of rights.

- (15) For regulating the mode in which the rights, privileges, and interests of the owners of mining tenements may be exercised or enjoyed, and for limiting, qualifying, or restricting the exercise and enjoyment of such rights, privileges, and interests, and generally for the protection of such owners in the exercise and enjoyment of such rights, privileges, and interests;

Sludge, tailings, etc.

- (16) For preventing the accumulation of, and for the removal to some convenient place of sludge, tailings, and other waste and refuse matter oozing or flowing from or connected with any mining tenement, and of waste water; and for the making of such channels as shall be necessary for any of the purposes aforesaid, and for otherwise regulating and preventing the allowance of such oozing, flowing and running to waste, with or without any condition for payment of money or otherwise.

Injury to works,  
etc.

- (17) For the protection from injury, destruction, and unlawful removal of any machinery, and of races, drains, dams, and reservoirs, and of the water therein, and of pegs, posts, fences, and notices, and of any plant or appliances used for or in connection with mining and for the protection from obstruction of such races and dams, and of channels, drains, creeks, and rivers used for mining purposes.

Embankments,  
dams, etc.

- (18) For regulating the mode of construction and materials and strength of embankments of dams and reservoirs used or constructed for mining purposes.

- (19) For the construction and keeping in repair of suitable bridges or other crossings over races, channels, or drains used for mining purposes and cut across roads or thoroughfares or over such races, channels, or drains over which roads or thoroughfares shall be carried, and for making proper approaches to such bridges or crossings, and for determining the width of such bridges, crossings, and approaches. Bridges, etc.
- (20) For making and keeping in repair and for regulating the width and formation of private ways and passages used for mining purposes over any land, claims, or areas used in connection with mining or business, and for regulating and imposing conditions on the right to change the direction of any such way or passage, and for the protection of the same from injury or obstruction. Private ways, etc.
- (21) For the prevention of nuisances in or about any mining tenement, and for cleansing and keeping clean the same. Nuisances.
- (22) For securing the bailing of water from mines so as to prevent injury from such water to any mining workings. Bailing.
- (23) For preventing the defiling or wasting of water used for domestic purposes, and for determining whether any and what waterhole, spring, or other depository of water shall be reserved for domestic use, and the mode of such reservation. Water for domestic purposes.
- (24) For determining the cases in which land exempted from occupation for mining purposes shall cease to be so exempted. Exemption from occupation.
- (25) For prescribing the manner in which compensation shall be ascertained and paid under the provisions of this Act and the regulations. Ascertainment of compensation.
- (26) For determining the distance and enforcing the same at which shafts and other mining workings are to be kept from public and private roads, ways, and passages, and from private land, dwellings, and other buildings. Workings near roads, etc.
- (27) For enabling persons to enter on land for the purpose of erecting electric telegraph or telephone posts or wires. Telegraphs.

- Travelling stock. (28) For regulating the travelling of stock on goldfields or in mineral districts, and limiting the period during which any travelling or other stock may camp and remain at any conserved or natural water.
- Mode of action. (29) For defining the manner of doing or performing anything by this Act required to be done or performed.
- Registers. (30) For prescribing the manner in which registers shall be kept.
- Survey. (31) For prescribing the survey of any land or mining tenement, and the manner in which the same are to be surveyed.
- Duties of officers. (32) For defining the powers and duties of wardens, mining registrars, surveyors, inspectors, and engineers and clerks, officers, bailiffs, and assistants appointed or deemed to have been appointed under the provisions of this Act in all cases where such powers and duties have not been defined by this Act.
- Applications for leases, etc. (33) For prescribing the mode of making and investigating and determining upon applications for and objections to the granting of mining tenements, and the amount of deposit (if any) to be paid by applicants and objectors, respectively, in connection with such determination.
- Priority of applications. (34) For prescribing the manner of dealing with cases when two or more applications are made in respect of the same land.
- Forms. (35) For prescribing the forms of leases, licenses, certificates, applications, objections, notices, and other documents granted, issued, or used under or for the purposes of this Act.
- Covenants, etc. (36) For prescribing the covenants, conditions, reservations, and exceptions to be inserted in leases granted under this Act, and the manner in which such leases shall be registered.
- Royalty. (37) For determining the time and mode of ascertaining the amount of any royalty, and the time for payment thereof.
- Returns. (38) For prescribing returns to be furnished by owners and managers of mines and works for the treatment of gold or other minerals.
- Liens. (39) For enabling persons claiming to be entitled to any lien, mortgage, or encumbrance, to register same.

- (40) For regulating the practice and procedure in warden's courts; the sittings of such courts; the duties of the officers; the fees and costs of the proceedings therein and of appeals therefrom and the allowances to witnesses. Practice.
- (41) For defining the manner or method in or by which any document or notice required to be posted, served on, or given to any person shall be posted, served, or given, and to limit the time or times for so doing. Service notices.
- (42) For prescribing the manner in which applications for licenses to deal in gold shall be made. Gold-dealers' licenses.
- (43) For prescribing the nature of the particulars which shall be recorded by licensed gold buyers, and to be made known to the parties appointed to receive same. Records.
- (44) For prescribing the fees (if any) which shall be payable for the several matters hereinafter mentioned:— Fees.
- (a) The inspection of any register kept under the provisions of this Act.
  - (b) Applications, surveys, travelling expenses, and processes, and exemptions from performance of labour conditions, or conditions of use or occupation, or otherwise.
  - (c) The registration of any amalgamation, union, or subdivision of leases or mining tenements, or of any mortgage, lien, or encumbrance, or any transfer or discharge thereof, or of any underlease, assignment, or transfer or of any rules or agreements.
  - (d) The filing of any declaration of the loss of any document.
  - (e) The registration of transmission by death, or under the laws relating to bankruptcy or insanity.
  - (f) The registration of any other matter or thing required by the Act or regulations to be registered.
- (45) For prescribing rules for the management of gold-fields and mineral fields, and for the regulation of mining generally, and for all other matters and things that may be necessary to give effect to this Act. Regulations generally.

Regulations to be published in *Gazette*.

328. Such regulations; unless the contrary is expressed, shall apply throughout the State, but may be limited to any part thereof, and shall be published in the *Government Gazette*, and after publication therein shall have the force of law, and shall be judicially noticed in every court of justice.

Regulations may impose penalties.

329. Such regulations may impose, for any breach thereof, or for any disobedience of a lawful order of a warden or other authorised officer, a fine not exceeding fifty pounds, and, in default of payment, imprisonment with or without hard labour for any period not exceeding six months.

Copies to be laid before Parliament.

330. Copies of all regulations made under this Act shall be laid before both Houses of Parliament within fourteen days of 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.

Regulations under repealed Acts to remain in force.

331. The regulations and forms made under any of the repealed Acts and in force and use at the commencement of this Act shall, except when they are inconsistent with the provisions of this Act, continue to be in force under this Act unless and until rescinded by the Governor.

Section 4.

The First Schedule.

Date of Act.	Short Title.	Extent of Repeal.
17 Vict., No. 17	An Ordinance to provide for the preservation of order in cases of any discovery of gold in Western Australia	The whole.
55 Vict., No. 3	The Mineral Lands Act, 1892 ... ..	The whole.
57 Vict., No. 30	The Mineral Lands Act, 1892, Amendment Act, 1893	The whole.
59 Vict., No. 40	The Goldfields Act, 1895 ... ..	The whole.
60 Vict., No. 36	The Goldfields Act Amendment Act, 1896 ...	The whole.
62 Vict., No. 16	The Goldfields Act Amendment Act, 1898 ...	The whole.
62 Vict., No. 29	The Mining on Private Property Act, 1898 ...	The whole, except sections 56 to 62, inclusive, and the Schedule.
63 Vict., No. 31	The Mining on Private Property Act Amendment Act, 1899	The whole.
63 Vict., No. 48	The Mineral Lands Act Amendment Act, 1899	The whole.
64 Vict., No. 23	The Goldfields Act Amendment Act, 1900 ...	The whole.

The Second Schedule.

East Location	36	...	...	...	...	Acroage.	Section 162
	36	...	...	...	...	6,375	
Do.	41	...	...	...	...	3,995	
Do.	48	...	...	...	...	27,349	
Do.	51	...	...	...	...	6,389	
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	

