

MINING.

No. 33 of 1970.

AN ACT to amend the Mining Act, 1904-1969.

[Assented to 27th May, 1970.]

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

Short title
and citation.

1. (1) This Act may be cited as the *Mining Act Amendment Act, 1970.*

Reprinted
in Vol. 20 of
the
Reprinted
Acts and
amended by
Acts No. 53
of 1968 and
No. 17 of 1969.

(2) In this Act the Mining Act, 1904-1969 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Mining Act, 1904-1970.

2. Section 3 of the principal Act is amended— S. 3 amended.

(a) by adding after the interpretation “Claim” the following interpretation—

“Clerk of the council” has the same meaning as in section six of the Local Government Act, 1960. ;

(b) by deleting the interpretation “Mineral Oil”; and

(c) by adding after the interpretation “Minister” the following interpretation—

“Municipal District” has the same meaning as in section six of the Local Government Act, 1960. .

3. Section 140 of the principal Act is repealed and re-enacted with amendments, as follows— S. 140 repealed and re-enacted.

140. (1) Except with the consent in writing of the owner and the occupier of the land, no mining tenement shall be granted or occupied comprising private land— Qualified exemption of certain private land.

(a) that is in *bona fide* and regular use as a yard, garden, orchard, vineyard, plant nursery, plantation or land under cultivation;

(b) that is used as a cemetery or burial place;

(c) that is used as a reservoir;

(d) on which there is erected a substantial improvement; or

(e) of less than one-half acre in extent,

unless the grant or occupation is limited to a greater depth than one hundred feet from the lowest part of the surface of the land.

(2) Without affecting the provisions of subsection (1) of this section, no mining tenement shall be granted or occupied comprising private land that is situated—

- (a) within fifty yards of any land referred to in paragraph (a) of subsection (1) of this section; or
- (b) within one hundred and fifty yards laterally from any land referred to in paragraph (b), (c) or (d) of subsection (1) of this section,

unless—

- (c) the consent in writing of the owner and the occupier of the land so referred to in paragraph (a), (b), (c) or (d) of subsection (1) of this section, as the case requires, has been obtained; or
- (d) the grant or occupation is limited to a greater depth than one hundred feet from the lowest part of the surface of the land.

(3) Without affecting the provisions of subsections (1) and (2) of this section, no mining tenement shall be granted or occupied comprising private land that is situated within two hundred yards of the workings, whether above ground or underground, of any coal mine without the consent of the owner of the coal mine.

(4) In this section—

“land under cultivation” includes—

- (a) land being used for the purpose of cropping or pasturing;
- (b) land, whether cleared or un-cleared, used for the agistment of stock in the ordinary course of management of the owner's land of which the land so used forms the whole or any part;

“reservoir” means any natural or artificial storage or accumulation of water, and includes a spring, dam, bore or artesian well.

(5) The Minister shall, in every case, be the sole judge of whether any improvement is substantial for the purposes of subsections (1) and (2) of this section and of what constitutes a working for the purposes of subsection (3) of this section. .

4. Section 145 of the principal Act is amended S. 145 amended. by adding after the word, “unlawful” in line one, the words, “for any person not being the owner in occupation of the private land concerned”.

5. Section 147 of the principal Act is amended— S. 147 amended.

(a) by adding after the word, “shall” in line one, the words, “be made in the prescribed manner and”; and

(b) by adding after the word, “identified” in line four, the words, “and contain such particulars as will enable the warden to determine if the land is private land”.

6. Section 148 of the principal Act is amended S. 148 amended by adding after the word, “proper” in line four, the words, “and subject to such conditions as he thinks fit”.

7. Section 150 of the principal Act is repealed and re-enacted as follows— S. 150 repealed and re-enacted.

150. (1) The holder of a permit or his duly authorised agent shall hand a copy of the permit to the occupier of the private land over which the permit has been granted on the first occasion that the holder or his agent enters upon that land after the issue of the permit,

Holder of permit to give notice to owner and occupier.

but if the occupier is not present on the private land on that occasion, the holder of the permit or his agent shall—

- (a) before leaving the land on that occasion, place a copy of the permit in a prominent position on the occupier's dwelling, if that dwelling is situated on the private land; and
- (b) in any event, within forty-eight hours of his first entering the land after the issue of the permit, cause a copy of the permit to be sent by prepaid registered post to the occupier at his last known place of abode or business.

(2) Where the occupier of the private land is also the owner or one of the owners of that private land, no further notice other than that required by subsection (1) of this section is required to be served on that owner or any of the other owners of that land for the purposes of subsection (3) of this section.

(3) Where none of the owners of any private land is also in occupation of that land, the holder of a permit granted over that private land shall cause a copy of the permit to be sent, within forty-eight hours of the issue thereof, by prepaid registered post to one of those owners at—

- (a) in the case of an owner which is a body corporate—the registered office of the body corporate; or
- (b) in the case of an owner who is not a body corporate—to his last known place of abode or business. .

S. 151
amended.

8. Section 151 of the principal Act is amended by adding after the word, "thereof" in line six, the passage, "and such other samples as may be agreed by the owner or, where the owner is not in occupation of the land, the occupier of the land,".

9. Section 154 of the principal Act is amended by deleting the words, "the owner and" in line five, and substituting the passage, "the clerk of the council of the municipal district in which the land is situated, to the owner of the land and to the".

S. 154
amended.

10. The principal Act is amended by adding after section 249 a section as follows—

S. 249A
added.

249A. (1) Where an application for a mining tenement over private land is heard by the warden and a person who is the owner of the private land objects, at the hearing, to the granting of the mining tenement, the warden may, if in the circumstances of the case he considers it proper so to do, and irrespective of the manner in which the application for the mining tenement is disposed of, order that the applicant pay to that objector such sum by way of costs as the warden orders.

Warden may
allow costs in
certain cases.

(2) Nothing in this section limits or otherwise affects the powers of a warden under this Act. .

11. The principal Act is amended by adding after section 267, the following section—

S. 267A
added.

267A. (1) Where the Minister is of opinion that an area to which an application for a mining tenement relates, should not, in the public interest, be disturbed, he may, by notice served on the warden to whom the application has been made, refuse the application irrespective of whether the application has been heard by the warden.

Minister may
refuse appli-
cations not
in public
interest.

(2) Notwithstanding anything contained in this Act, upon service of a notice given by the Minister under subsection (1) of this section, the application to which the notice refers ceases to have any effect for the purposes of this Act. .

S. 270A
added.

12. The principal Act is amended by adding after section 270 the following section as follows—

Notice of
application
to be given
to pastoral
lessee.

270A. Where any land comprised in an application for a mining tenement is held under a pastoral lease under any Act or regulation relating to Crown lands, the applicant shall, within forty-eight hours of the lodging of the application, post a copy of the application by pre-paid registered post to the pastoral lessee at his usual or last known place of abode or business.

S. 276A
added.

13. The principal Act is amended by adding after section 276 the following section—

Reservation
of certain
lands.

276A. (1) In this section—

“Reserve No. 5338H” means the reserve numbered 5338H made by the Minister on the third day of February, nineteen hundred and seventy under the provisions of section two hundred and seventy-six of this Act by which, *inter alia*, all Crown land situated within the State, excepting those areas in respect of which a mining tenement had been granted or in respect of which an application for a mining tenement had been lodged on or before the date thereof, was expressed to be temporarily reserved from occupation;

“Reserve No. 5351H” means the reserve numbered 5351H made by the Minister on the twenty-fourth day of March, nineteen hundred and seventy under the provisions of section two hundred and seventy-six of this Act by which, *inter alia*, all Crown land previously so reserved by Reserve No. 5338H was expressed to be temporarily reserved from occupation;

“the relevant day” means the third day of February, nineteen hundred and seventy.

(2) It is hereby declared—

- (a) that all land which was expressed to be reserved from occupation by Reserve No. 5338H is hereby reserved from occupation by force of this section and is deemed for all purposes to have been reserved from occupation by force of this section on and from the relevant day;
- (b) that any application for a prospecting area over land referred to in paragraph (a) of this subsection made on or after the relevant day and any grant of a prospecting area over any such land made on or after that day shall not be regarded as being invalid or ineffectual for any purposes by reason only of the provisions of section two hundred and seventy-six of this Act, Reserve No. 5338H or Reserve No. 5351H;
- (c) that any application for a mining tenement for coal and any grant of a mining tenement for coal made or granted, as the case requires, on or after the relevant day over land referred to in paragraph (a) of this subsection shall not be regarded as being invalid or ineffectual for any purposes by reason only of the provisions of section two hundred and seventy-six of this Act, Reserve No. 5338H or Reserve No. 5351H; and
- (d) that any application for a mining tenement over land referred to in paragraph (a) of this subsection, other than an application referred to in paragraph (b) or (c) of this subsection, made after the relevant day is invalid and of no effect for any of the purposes of this Act, irrespective of whether the application was or is so made before, on or after the date of

the coming into operation of the Mining Act Amendment Act, 1970, unless the land applied for in the application has ceased to be reserved from occupation pursuant to subsection (3) of this section.

(3) The Minister may from time to time, by notice published in the *Gazette*, declare that any land which has been reserved from occupation pursuant to subsection (2) of this section shall cease as from the date of the publication of the notice in the *Gazette* or such later date as is specified in the notice to be so reserved from occupation.

(4) The provisions of this section have effect notwithstanding any other provision of this Act. .

s. 277
amended.

14. Subsection (2) of section 277 of the principal Act is amended by deleting the words, "the preceding section" in lines one and two and substituting the words, "section two hundred and seventy-six of this Act".

s. 308
amended.

15. Section 308 of the principal Act is amended by adding after paragraph (40) the following paragraph—

(40a) For any purpose for which regulations are required or convenient for giving effect to section two hundred and seventy-six A of this Act. .