



ELIZABETHAE SECUNDAE REGINAE

No. 15 of 1976

An Act to amend the Mining Act 1968–1974 in certain particulars

[ASSENTED TO 15TH APRIL, 1976]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Mining Act Amendment Act 1976*.

(2) In this Act the *Mining Act 1968–1974* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Mining Act 1968–1976*.

2. Amendment of s. 5. Section 5 of the Principal Act is amended by—

(a) inserting in the first paragraph of subsection (2) after the words “commencement of this Act” the words “or a lessee under a coal-mining lease or a special coal-mining lease, in either case subsisting at the date of commencement of the *Mining Act Amendment Act 1976*,”;

(b) inserting in the first paragraph of subsection (3) after the words "*Mining Act and Another Act Amendment Act 1974*" the words "unless it is deemed to be a mining lease under the provisions of subsection (2) of this section".

3. Amendment of s. 16. Section 16 of the Principal Act is amended by—

(a) numbering the existing provisions as subsection (1);

(b) adding the following subsection:—

"(2) For the purposes of subsection (1) of this section, the holder of a miner's right does not, and it is hereby declared never did, cease to be the holder of a miner's right upon the expiration of that right, if prior to or immediately upon such expiration that person is issued with a fresh miner's right."

4. Amendment of s. 37. Section 37 of the Principal Act is amended by—

(a) in subsection (2) omitting the word "shall" where it first occurs and substituting the word "may".

(b) omitting subsection (3) and substituting the following subsection:—

"(3) Upon receipt of an appropriate document that gives effect to an exercise of a power referred to in subsection (1) and—

(a) where the Minister has indicated he will approve of that exercise of power, upon compliance with all conditions indicated as conditions to which his approval is to be subject; or

(b) where no application has been made under subsection (2) in relation to that exercise of power, upon the approval of the Minister,

the Minister shall cause particulars of that exercise of power to be entered in the appropriate register or, as the case may require, such other steps to be taken as are necessary to give effect to or evidence that exercise of power."

(c) omitting from subsection (4) the word "Any" and substituting the following words "Subject to subsection (5), any";

(d) adding at the end thereof the following subsection:—

"(5) Where, prior to the commencement of the *Mining Act Amendment Act 1976* particulars of an exercise of a power referred to in subsection (1) have been entered in the appropriate register or other steps have been taken that are necessary to give effect to or evidence that exercise of power, the validity of the exercise of that power and of the entry in the register or other such steps shall not be affected by reason that—

(a) an application referred to in subsection (2) had not been made; or

(b) the applicant had not been informed in the terms of paragraph (a) of subsection (2)."

5. New s. 70B. The Principal Act is amended by inserting after section 70A the following section:—

"**70B. Payment of Royalty on coal not the property of the Crown.**

(1) Subject to this section, a person who after the date of commencement of the *Mining Act and Another Act Amendment*

Act 1974 wins from any land coal that is not the property of the Crown shall pay to the owner of that coal royalty as prescribed for the time being in respect of that coal.

(2) The Governor in Council, by regulations made pursuant to section 106, may prescribe that royalties payable to the owners of coal under the provisions of subsection (1) of this section shall be calculated at the rate or rates, in such manner and on such basis or bases as he, in his unfettered discretion, thinks fit.

A regulation prescribing royalties payable under this section, shall specify therein a date, after the date of the commencement of the *Mining Act and Other Act Amendment Act 1974*, on and from which those royalties are payable and from that date the royalties prescribed shall be so payable notwithstanding that the date specified is prior to the making of the regulation.

(3) Subsection (1) does not apply in respect of—

- (a) coal won under the authority of a coal-mining lease or a special coal-mining lease which, by section 5 (3) of this Act, continues in force subject to an Act or Acts deemed to continue in force in relation to the lease; or
- (b) coal won under the authority of a mining lease granted or renewed or deemed to be granted or renewed under this Act for as long as there subsists an agreement made prior to the commencement of the *Mining Act Amendment Act 1976* with the owner of the coal or his predecessor in title as to the royalty to be paid to the owner in respect of the coal won or where such an agreement has, in accordance with any of its terms, been renewed, whether before or after the commencement of the *Mining Act Amendment Act 1976* for as long as there subsists a renewal of such an agreement.”.

6. New ss. 98A, 98B. The Principal Act is amended by adding after section 98 the following new sections:—

“98A. **Seizure of vehicles, machinery, equipment, etc., being used with respect to unauthorized mining.** (1) A Warden or other person authorized in that behalf by the Warden may, if he believes on reasonable grounds that any vehicle, machinery, equipment or thing of whatever description is used by any person in contravention of any of the provisions of section 98, without further authority, seize that vehicle, machinery, equipment or thing (in this section and section 98B called the “seized property”) whereupon the seized property shall be taken to be in the custody of the Warden.

The Warden or other person so authorized in that behalf may remove dismantle and do all such things as he thinks necessary to transport the seized property to a place of safe keeping.

If the seized property is not removed to a place of safe keeping, the Warden or such other person may do all such things as are prescribed or if not prescribed as he thinks fit, to show that the seized property has been so seized and is in the custody of the Warden.

(2) The owner of the seized property or a person acting on his behalf or claiming a right to possession of the seized property may apply in writing to the Warden who has the custody of the seized property for the release of the seized property.

(3) Subject to subsection (5), the Warden may release the seized property upon:—

- (a) an application under subsection (2); or
- (b) the final determination of proceedings (if any) instituted for breaches of the provisions of section 98 alleged to have been committed by the person from whom the seized property was seized at the time of such seizure; or
- (c) the expiration of 3 months from the date of seizure of the seized property,

whichever shall first occur.

If the seized property is not released under provision (a) of this subsection, then, as soon as practicable after the time referred to in provision (b) or (c) of this subsection which first occurs, the Warden shall cause to be served by post upon the owner of the seized property, if he can be ascertained, at his last place of address known to the Warden notice in writing that the seized property may be collected.

The Warden may, if he considers it desirable, give public advertisement to the owner in one or more newspapers circulating in the locality in which the seized property was seized or in other localities.

(4) (a) If within one month from the date of service or advertisement of the notice, whichever shall last occur, the owner of the seized property or a person acting on his behalf or claiming a right to the possession of the seized property has not obtained possession of the seized property in accordance with the provisions of this section, the Warden may—

- (i) by notice published in a newspaper circulating in the locality in which the seized property was seized and in a newspaper circulating in such other locality as he thinks desirable, advertise that he will offer the seized property for sale by public auction at the place and time stated in the advertisement;
- (ii) at the time on the day stated in the advertisement (which day shall be not earlier than fourteen days after the date when the advertisement was first published) and at the place stated in the advertisement, offer the seized property for sale by public auction unless the owner thereof or a person acting on his behalf or claiming a right to possession thereof has sooner obtained possession of the seized property in accordance with the provisions of this section;

(b) The proceeds of the sale or disposal of the seized property shall be applied as follows:—

- (i) firstly, in payment of the expenses of the sale or disposal;
- (ii) secondly, in payment of the cost of seizure of, removal of and holding the seized property and the service and advertisement of any notice served or advertised under this section;
- (iii) thirdly, in payment of the balance of the proceeds to the owner of the seized property or, if after reasonable enquiry, he cannot be ascertained, to The Public Curator of Queensland as unclaimed moneys and the provisions of the *Public Curator Act 1915-1973* with respect to unclaimed moneys shall apply thereto.

(5) Seized property in the custody of the Warden pursuant to this section shall not be delivered to the owner thereof, or to another person acting on his behalf or claiming a right to the possession thereof unless the following provisions of this paragraph have been complied with:—

- (i) the owner or person acting on his behalf or claiming a right to possession of the seized property has applied in writing signed by him to the Warden for the release of the seized property;
- (ii) the applicant has furnished proof to the satisfaction of the Warden of ownership or right to possession of the seized property and, in the case of the applicant being a person acting on behalf of the owner, has furnished proof to the satisfaction of the Warden, of his authority to so act;
- (iii) the applicant has paid all expenses incurred by the Warden and not waived pursuant to the provisions of this subsection in connexion with the seizure of, removal of and holding the seized property and the service or advertisement of any notice served or advertised by the Warden in relation to the availability for collection or intended sale of the seized property;
- (iv) the applicant has signed a receipt for the delivery of the seized property to him.

If the Warden considers that special circumstances exist, he may waive payment of the whole or part of the expenses referred to in provision (iii).

A person who takes delivery, or obtains possession of or removes or attempts to remove from or interferes in any way with seized property which is in the custody of a Warden pursuant to the provisions of subsection (1) except in accordance with the provisions of this section commits an offence against this Act.

(6) In this section the term “seized property” includes any part of the seized property.

(7) It is the duty of every member of the Police Force to assist a Warden or other authorized person to do all things permitted or directed to be done by this section, when called upon so to do.

(8) A Warden who has seized or authorized the seizure of any seized property under the provisions of subsection (1) shall be disqualified from hearing any complaint laid against the persons from whom the seized property was seized for a breach of section 98 alleged to have been committed at or about the time of such seizure or authorization.

98B. Protection from liability. The Crown, Warden, member of the Police Force and any other person authorized to act under section 98A shall not be civilly liable on account of—

- (a) anything done by such Warden, member of the Police Force or other person pursuant to that section or so done in good faith for the purposes of that section; or
- (b) any loss or deterioration of or damage to the seized property occasioned or suffered whilst the seized property is in the custody of the Warden pursuant to that section.

A Warden, member of the Police Force and other person authorized to act under section 98A shall not be criminally liable on account of anything done by him pursuant to that section or done by him in good faith for the purposes of that section.

This section shall not be construed to protect any officer of the Public Service of Queensland from his liability to be dealt with pursuant to the *Public Service Act 1922-1973* on account of any contravention of or failure to comply with any provision of that Act committed by him.”.

7. Amendment of s. 103. Section 103 of the Principal Act is amended by omitting from subsection (1) the expression “\$2 000” and substituting the expression “\$5 000”.

8. Amendment of s. 109. Section 109 of the Principal Act is amended by omitting from subsection (2) the words “coal-mining licence,”.