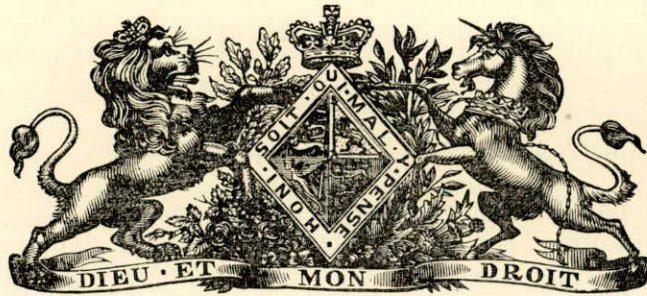


This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 9 March, 1893.* }

F. W. WEBB,
Clerk of the Legislative Assembly.

New South Wales.



ANNO QUINQUAGESIMO SEXTO

VICTORIÆ REGINÆ.

No. .

An Act to provide for Mining on Private Lands; to obtain Rents and Royalties therefrom, and to dispose of the same in certain cases; to validate certain Crown grants; to make better provision in connection with mining on Crown Lands in certain particulars; to effect amendments in such Statutes as may be necessary to give same full force and effect; and for other purposes incidental thereto.

WHEREAS from time to time since the establishment of the Preamble. Colony of New South Wales Crown lands within the said Colony have been alienated, subject to various reservations in the Crown grants with respect to gold and minerals other than gold, and
5 in the public interest it is now deemed necessary to give legal effect to such reservations: And whereas certain other lands have from time to time been alienated without express reservation of any minerals which might afterwards be found therein, but having regard to the well established laws of England whereby it has been held from time
10 immemorial that the royal metal gold does not pass from the Crown unless by express conveyance in the grant of such lands: And whereas, for the well being of the State, it is now deemed necessary that all such lands should be made available for the operations of mining thereon or thereunder for such gold as may be found therein:
15 And whereas it is deemed expedient to define the royalties and rents

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to be derived under the operations of this Act on behalf of the Crown as hereinafter provided: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Mining on Private Lands Short title.
Act."

2. In this Act the following terms shall, if not inconsistent Interpretation of terms.
with the subject matter or context, have the respective meanings
10 hereby assigned to them (that is to say):—

"Governor"—The Governor with the advice of the Executive Council.

"Minister"—The Minister for Mines for the time being.

15 "Gold"—As well any gold as any earth or rock containing gold, or having gold intermixed therewith.

"Coal"—Bituminous coal, anthracite, lignite, kerosene shale, and natural coke.

20 "Minerals other than gold"—Coal and any of the following metals, or any ore containing the same, viz.:—Platinum, silver, mercury, nickel, bismuth, copper, tin, cobalt, antimony, lead, manganese, and iron, or any other substance which may from time to time, by proclamation of the Governor, published in the *Gazette*, be declared a "mineral" within the meaning of this Act.

25 "All Minerals"—The minerals, metals, or ores of metals enumerated in the three immediately preceding subsections.

30 "Owner"—The owner or conditional purchaser of any land included within the provisions of this Act, whether such title is completed or not, or any trustee for such land, if vested in trust.

"Occupier"—The person in occupation of such land, whether as conditional lessee, the applicant for a conditional lease, or a tenant.

35 "Applicant"—The person applying for a mining lease under this Act.

"Lessee"—The holder of a lease under this Act, or his executors, administrators, or assigns.

40 "Private land"—Any land included within the provisions of this Act, whether alienated or in process of alienation, or vested in trust, or demised by lease under any of the forms hereinafter referred to, and under the provisions of the "Crown Lands Act of 1884," or any Act Amending the same, or land held under any valid application for such lease.

45 "Mining," or "To mine"—To sink shafts, construct drives, adits, tunnels, or surface excavations, or to remove earth, rock, metals, or ores, or to wash, crush, smelt, or conduct any operation in connection with mining.

50 "Mining-race"—Any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus; also the natural bed of any creek or gully in which water or detritus is conducted in connection with mining.

55 "Warden"—Any Warden appointed under the Act thirty-seventh Victoria number thirteen, or any Act relating to mining, who may be in charge of the mining district or division denoted by the context where the expression is used, or any Warden acting for him or in his stead, or (if none such is denoted) any Warden.

"Prescribed"—

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“Prescribed”—Prescribed by this Act or any regulation made thereunder.

“Royalty”—The share or duty claimed by the State on the produce of the mine held by lease under this Act.

- 5 3. From and after the passing of this Act all lands alienated on or prior to the twenty-fourth day of January, in the year one thousand eight hundred and fifty, whether the Crown grants thereof had issued at that date or otherwise, shall, subject to the provisions of this Act, be open to mine therein or thereunder for gold or such minerals other than gold as have been reserved in the Crown grant issued therefor, save and except coal. And all lands alienated after the twenty-fourth day of January, one thousand eight hundred and fifty, and prior to the eighteenth day of October, one thousand eight hundred and sixty-one, whereof the grants contain a reservation of all minerals to the Crown, shall, subject to the provisions of this Act, be open to mine thereon or thereunder for all minerals, including gold: Provided that where the said grants contain no reservation of minerals the mining on such lands herein specially referred to shall be confined to mining for gold only.
- 10
- 15
- 20 4. All Crown grants issued, or purporting to be issued, under the provisions of the “Crown Lands Alienation Act of 1861,” or any Act amending the same, including all grants issued by virtue of volunteer land orders as well as grants issued, or purporting to be issued, under the provisions of the “Crown Lands Act of 1884,” or any amendment thereof, shall be deemed to have been and to be good and valid in law for all purposes of this Act.
- 25
- 30 5. All lands alienated or in process of alienation under the provisions of the “Crown Lands Alienation Act of 1861,” or any Act amending the same, as well as all lands alienated or in process of alienation, under the provisions of the “Crown Lands Act of 1884,” or any amendment thereof, shall be subject to the operations of mining under the provisions of this Act to the following extent, but no further:—
- 35 (a) If the grant for such land contains, or would, under the provisions of the said Acts, or any amendments thereof, contain, when issued, a reservation to the Crown of all minerals which the said land contains, then such land shall be open under the provisions of this Act for mining for gold, and for all minerals other than gold.
- 40 (b) If the grant for such land contains, or would contain when issued, a reservation to the Crown of any mineral or minerals particularly specified therein, then such lands shall be open under the provisions of this Act for mining for gold, as well as for the particular mineral or minerals specified in such reservation, but for no other mineral whatsoever.
- 45 (c) If such land shall have been alienated, or be in process of alienation under the nineteenth section of the “Crown Lands Alienation Act of 1861,” or shall have been selected under the thirteenth or fourteenth sections of the said Act, or having been held under mineral lease, and in either such case having been converted into a mineral conditional purchase, then such lands shall be open under the provisions of this Act for mining for gold only, or for any ore, the chief and most profitable metallic product of which is gold.
- 50
- 55 (d) If the grant for such land contains, or would contain when issued, no reservation of minerals, then in every such case the land shall be open under the provisions of this Act for mining for gold only, or for any ore, the chief and most profitable metallic product of which is gold.

Lands alienated prior to “Crown Lands Act of 1861” open to mining under the provisions of this Act.

Reservations in grants good and valid.

Lands alienated under “Crown Lands Acts of 1861 and 1884” may be mined upon under provisions of this Act.

What lands open to mining for all minerals.

Lands open to mine for gold as well as certain specified minerals.

Lands open to gold-mining only.

If no reservations in grants to be open to gold-mining only.

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6. After the passing of this Act, and notwithstanding any other Acts to the contrary, all lands granted or vested in trust for irrigation purposes or for the purposes of a race-course, cricket ground, recreation reserve, park, or permanent common, irrespective of whether the deed of grant if any contains a reservation of minerals or the contrary, and whether such lands shall have been vested under any special Act or otherwise; and all lands applied for or held under Conditional, Special, Residential, Tramway or Irrigation leases, or leases for Water Supply, whether granted under any special Act or otherwise, shall, subject to the provisions of this Act, be open for mining thereon or thereunder for gold or minerals other than gold: Provided that nothing in this Act shall be held to apply to alienated lands situated within the boundaries of any town or village, or to lands vested in trust for or dedicated to any public purpose, other than those hereinbefore mentioned, unless the Governor shall have first proclaimed in the *Government Gazette* that any such lands particularised in such proclamation shall be subject to the provisions of this Act. And in all cases, whether on private lands or Crown lands, wherever a lease is granted to mine under such land only and without the right of mining on the surface thereof, the Governor may stipulate at what vertical depth from the surface such lease shall commence.
7. Every grant hereafter issued for land alienated or which shall be alienated under any Act or vested in trust for any public purpose shall contain a reservation to the Crown of all minerals which such lands shall at any time be found to contain. And such minerals are hereby expressly so reserved, and the land so alienated or vested in trust shall be subject to all the provisions of this Act with respect to mining thereon or thereunder.
8. The Governor shall, as soon as practicable, provide a Register of Crown grants of all lands alienated prior to the passing of this Act other than lands within towns or villages, alienated or vested in trust for public purposes. And such Register shall specify such lands according to the mineral reservations contained in such grants, and shall have a copy of each form of reservation at the head of the various divisions thereof, and such Register shall be divided into so many parts as there are Land Districts, and a copy of such part appertaining to each district shall be kept at the respective Land Offices, and be open to inspection of the public in the prescribed manner. And in case the grant of any land other than those herein exempted shall not be found included in such Register it shall be taken as *primâ facie* evidence that such land has been alienated since the passing of this Act and is therefore available for mining thereon or thereunder for all minerals including gold, subject to the provisions herein contained.

Lands vested in trust or under lease may be mined upon.

Town and village lands not open.

Depth from surface at which underground leases shall commence.

All minerals to be reserved in grants issued for future alienations.

a Register of reservations in Crown grants to be provided.

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PART II.

Proceedings in connection with Mining.

9. It shall be lawful for the Warden of any mining district to grant to any person an authority to enter into and upon any private land which is declared to be subject to the operations of mining under the provisions of this Act, and on exhibiting such authority to the owner or occupier thereof, such person shall either personally or by his agent be entitled to search and examine the surface of such land, but shall not be entitled to commence mining operations until after the amount of compensation, to be ascertained as hereinafter provided, shall have been paid or tendered to the owner and occupier, and a lease from the Governor shall have been first obtained. And any person applying for authority to examine the surface of such private land, or for a mining lease thereof, shall (if the Register of Crown grants has been provided but not otherwise) accompany such application with a certified copy of the form of mineral reservation contained in the grant of such land, and such certified copy shall be supplied by the Land Agent of the district wherein such land is situated, and shall be a correct extract from the Register of Crown grants, or shall certify that a grant of such land is not included in such Register.

Authority to examine surface may be granted by the Warden.

10. Any person so authorised, desiring to obtain a lease for mining purposes of such private land, or any portion thereof, as is declared by this Act to be open to lease, may, on the production of such authority, without incurring any liability for trespass, enter upon such land, either personally or by an agent, and in the prescribed manner, define the boundaries of the portion intended to be applied for. And any owner, occupier, or other person who shall obstruct such authorised person in the performance of any such act, or who shall interfere with, remove, destroy, or deface any boundary mark so made or any necessary notice posted in connection therewith, shall, on conviction thereof, be liable for the first offence to a penalty not exceeding ten pounds, or on conviction of a second or any subsequent offence, to a penalty not exceeding fifty pounds. And in like manner any surveyor with his assistants may enter upon any private land for the purpose of defining the boundaries of the portion sought to be leased, or for any other purpose under this Act, in pursuance of and bearing an order of the Minister or of a Warden.

Owner or occupier obstructing applicant.

11. The Governor, in the name and on behalf of Her Majesty, shall have power under the provisions of this Act to grant to any person a lease of such private lands, to be effectual either on and below the surface, or on one or more limited portions of the surface and below the whole area, or below the surface only, for the purpose of mining thereon or thereunder, either for gold only, or for all minerals, or for any specified mineral or minerals other than gold, regard being had to the reservations (if any) contained in the Crown grants thereof, except in the case of certain lands vested in trust and referred to in section six hereof, but in the case of lands alienated prior to or on the twenty-fourth day of January, in the year one thousand eight hundred and fifty, regard shall be had to the proclamation of His Excellency Sir Charles Augustus Fitzroy, Governor, published in the *Government Gazette*, on the twenty-ninth day of January, in the year aforesaid, whereby all reservations of coal, with the rights of the Crown incident thereto, were, by His Excellency's command, for ever abandoned. And such lease shall confer the right of cutting and constructing on the lands thereby demised races, drains, dams, reservoirs, or tramways, and erecting thereon buildings

Governor may grant lease.

Regard must be had to reservations in grants.

Lease gives right to occupy for all purposes connected with mining.

and

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and machinery in connection with such mining, but not otherwise, and generally for doing all such acts and things as shall be requisite for efficiently mining the said land; but such lease shall in nowise give the lessee the right to use water artificially conserved by the owner of such land, or to fell trees, strip bark, or cut timber on such land, or to depasture horses, cattle, or sheep thereon, or to remove earth or rock therefrom, except in connection with such mining operations, without the consent of the owner and occupier: Provided that the power herein given to grant leases shall not, except with the consent of the owner, extend to within one hundred yards on the surface of any land which is *bonâ fide* in use as a garden, orchard, or pleasure ground, or to either the surface or below the surface of any particular part of such land whereon is erected or constructed any substantial building, bridge, dam, reservoir, well, or other substantial improvement: Provided further that it shall be for the Minister to determine whether any improvement referred to in this section is of a substantial character.

Not to approach within 100 yards of garden, &c., without owner's consent.

12. Within one month from the date of such aforementioned authority such authorised person may in the prescribed manner apply to the Minister for a lease of such land, and on receipt of such application, accompanied by the prescribed sum by way of rent and fees, the Minister shall cause a notice to be served on the owner and occupier of such land. And in case the whole or any part of the surface thereof is required, such notice shall so state, and if a part only is required, such notice shall define such part, and shall also request from the owner and occupier respectively such particulars of their estate and interest therein as the Minister shall deem necessary for carrying out the objects and intentions of this Act, and within one month therefrom such owner or occupier shall give such particulars to whomsoever such notice shall direct.

Notice to owner and occupier.

13. All notices required by this Act to be served upon the owner or occupier of any private land shall either be served personally on such persons or left at their usual place of abode (if any such can after diligent inquiry be found), and in case the owner shall be absent from the Colony or he or his agent cannot after diligent inquiry be found, such notices shall be left with the occupier of such land, or if there be no such occupier, shall be affixed upon some conspicuous part of such land, and in the latter case such notice shall be advertised in two issues of a newspaper circulating in the district in which such land is situated. And the affixing of such notices in addition to the aforementioned advertisements shall be deemed service of notice on the owner and occupier.

Service of notices.

14. The Governor shall appoint mining appraisers as may from time to time be found necessary, who may also hold other offices in the Public Service, and shall be paid such salaries or fees as the Governor shall direct, and any such mining appraiser, on being authorised by the Minister so to do, shall assess the amount of compensation to be made to the owner and occupier respectively of such lands for the loss which he or they may sustain by reason of being deprived for a limited period of the use of the surface thereof, or of any part of such surface as the case may be, and for damage to such lands or any building, erection, or structure thereon, which may arise from mining operations thereon or thereunder, provided such compensation with respect to the land as aforesaid shall in no case exceed the then ascertained market value for other than mining purposes of that portion of the land applied for (not being less than one acre) of which a lease of the surface is required.

Appraisers to be appointed who shall assess surface damages.

15. On receipt of an application for a lease or claim, unless such application shall be accompanied by an agreement signed by the applicant and

Either party may appeal to Minister.

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and the owner and occupier (if any) or their respective agent or agents, evidencing that they have mutually agreed as to the amount of compensation to be paid by the applicant, to the owner and occupier, the Minister shall authorise a mining appraiser to assess the amount of compensation
 5 to be paid to the owner and occupier respectively, and it shall be the duty of such mining appraiser, without loss of time, to forward his assessment to the Minister, who shall thereupon, by notices of even date, acquaint the applicant and the owner and occupier (if any) with the amount of such assessment, and shall specify the time within which
 10 the same shall be paid. And in the event of the applicant or the owner or occupier being dissatisfied with such assessment, either party may, within twenty-one days of the date of such notices, apply to the Minister to have such assessment reviewed, and the Minister shall thereupon refer such matter to the Warden, who shall fix a time and place
 15 for holding an inquiry, not being more than thirty days from the receipt of such reference, and shall give due notice thereof to all the parties interested therein, and at the time and place so appointed shall hear, receive, and examine such evidence as shall be produced by any of the parties, and shall thereupon determine the amount of compensation to
 20 be paid to such owner or occupier in respect of his or their respective claim or claims, and may specify the time within which and to whom the same shall be paid; and the Warden may make an order for the payment of such costs of Court as shall appear to him just: Provided always that the Warden may upon cause shown, adjourn the hearing
 25 to any other time or place. When the amount of compensation so awarded shall have been paid, a lease for mining under the provisions of this Act may in due course be issued by the Governor.

Warden to determine amount of compensation.

16. In the event of the applicant for a lease failing to pay the
 the amount of compensation within the time specified, all moneys
 30 accompanying the application for such lease shall thereupon become forfeited to the Crown, and shall be paid into the Consolidated Revenue. And in the event of such owner or occupier refusing or neglecting to supply the particulars of his estate and interest in such land as requested so to do by the Minister, such refusal or neglect shall in no
 35 way act as a bar to an award being made by such mining appraiser or a final decision of the Warden being arrived at. On the amount of such compensation being paid into Court, the Warden shall in due course pay to the owner or occupier the amount to which he is entitled. And
 in case such owner or occupier shall for the space of three months
 40 refuse or fail to accept or claim the amount of compensation so assessed or determined, such amount shall be passed to the Treasury Suspense Account and be held in trust for such owner or occupier, but without interest accruing thereon, and if not claimed within six years from the time of the receipt thereof by the Treasury such amount
 45 shall be paid into the Consolidated Revenue.

Applicant failing to pay award.

Owner or occupier failing to accept award.

17. During the progress of such mining operations the lessee
 having a lease of below the surface only of such land; may apply to the
 Minister for a lease of a portion or any number of additional portions
 of the surface thereof: Provided that such lessee shall if required in
 50 writing so to do by the owner or occupier without delay cause a secure fence to be erected around the shafts, machinery, or other works in connection with such mining: Provided also that if at any time the surface of any part of such land or any building, erection, or structure thereon belonging to such owner or occupier for which full compensa-
 55 tion has not been previously paid shall be damaged by reason of such mining operations, the Minister, on application by the owner or occupier, accompanied by such fees as may be prescribed, shall cause an assessment of such damages to be made by a mining appraiser, who shall have power to assess both the amount of damage (if any) and also
 the

Lessee must fence if requested.

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the costs of such assessment. And if the cause of such damage be Appraiser may award further damages. disputed by either party, such mining appraiser may, if necessary, call in the aid of a mining engineer or surveyor, who, as well as such appraiser, shall have power to examine the surface or underground
 5 workings of such mine. And the lessee shall, within a reasonable time, comply with any request of such mining appraiser, engineer, or surveyor to furnish the usual appliances and aid necessary for descending to and ascending from such underground workings, and for examining thereinto as often as may reasonably be found necessary,
 10 and in the event of any lessee refusing or neglecting so to do, such lease shall be liable to forfeiture by the Governor in Council. And within twenty-one days from the date of the notice of such assessment either party may appeal to the Minister; and such appeal shall be dealt with by the Warden, as in the case of ascertaining
 15 surface damages at the time of application for a lease; and should the lessee fail for the space of one month after the date of the notice informing him of the assessment—if no appeal shall have been made, or of the final decision of the Warden, as the case may be—to pay the amount assessed to whomsoever such notice shall direct, such amount
 20 shall be recoverable by the owner or occupier under the ordinary process of law.

18. Nothing herein contained shall be construed as rendering Not obligatory to grant leases. it obligatory on the Governor to grant any such lease to any person applying for the same, notwithstanding that he may have complied with
 25 the provisions of this Act and the regulations hereunder, but in case his application shall be refused he shall be informed of the reasons for such refusal. And a lease may be granted notwithstanding that the person applying for the same may not in every respect have complied with such regulations, and the Minister may alter, amend, and modify any appli-
 30 cation for a lease, and may reduce or increase the area of land of which a lease is applied for either on or below or both on and below the surface, or may direct a Warden to hold an inquiry in open Court with reference to any matter touching an application for a lease
 35 on oath.

19. In any case where *bonâ fide* mining operations were being Special leases may be granted. carried on under agreement upon any private land on the sixth day of October, one thousand eight hundred and ninety-two, a joint applica-
 40 tion by the parties to such agreement, or by their representatives, for a special lease, if made within two months after this Act comes into force, and if accompanied by an attested copy of such agreement, shall have priority over all other applications, or in the event of such joint application not being made, it shall be competent for any lessee, tributor, or owner, under such existing agreement as aforesaid, to
 45 apply to bring such agreement under the provisions of this Act for the unexpired period of such agreement. And such private agreement Existing agreements protected. then existing shall in no way be disturbed or interfered with by the operations of this Act, except with respect to any royalty payable to the Crown which the land may be subject to and which in all cases
 50 shall be chargeable as if such land was leased under the provisions of this Act. And in the event of mining operations being carried on by the owner of such land at the time of the passing of this Act, any such application made by him shall, if made within two months as aforesaid, have a like priority, and be subject in the same manner to
 55 such royalty as hereinafter provided; or in any case where active mining operations have not been commenced, and the owner has obtained from the Governor a permit to mine for, win, and remove gold or minerals other than gold from such private land, such owner may within two months after the passing hereof apply in the prescribed
 manner

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manner to convert such permit into a lease under this Act; and in all cases hereinbefore referred to in this section, such leases shall not be subject to the payment of rent, but the royalties reserved to the Crown shall be those provided for in this Act and none other.

Permits may be converted into leases.

5 20. Any person who prior to the passing of this Act shall have obtained a permit from the Secretary for Lands or the Secretary for Mines to dig and search for gold or minerals other than gold in any private land may, within two months as aforesaid, apply for and in such event shall have a preferent claim for a lease under
10 this Act, but such lease shall with respect to rent and other matters be subject to all the provisions of this Act: Provided that two months after the passing of this Act all such permits shall become extinguished and inoperative, and the power of granting such permits is hereby repealed, all other Acts to the contrary notwithstanding. And if the
15 holder of such permit shall have failed for the period of two months as aforesaid to apply for the conversion thereof into a lease under this Act, any other person may thereafter apply for a lease of such land, and the Governor may grant the same as if such permit had not been granted.

Permit to dig and search gives preferent claim to lease.

20 21. The owner of any private land may at any time apply for a lease of such land for mining purposes; but except as hereinbefore provided, he shall have no preferential right to such lease as against any other application of prior or even date. In the event of there being no conflicting application, or of such conflicting application having
25 been refused, the Minister may dispense with the preliminary proceedings, applicable in other cases, and may grant such lease, subject to the provisions of this Act with respect to royalty, but free from the charge of any rent: Provided that in all other respects such lease shall be granted, subject to all the provisions of this Act and the
30 regulations thereunder, as if the lessee were not the owner of such land.

Owner may obtain a lease.

22. The term for which a lease may be granted under this Act shall not exceed twenty years, but may, if the Governor so approve, be renewed for a further period not exceeding twenty years, and the
35 yearly rental reserved to the Crown in respect of such leases, shall be one shilling per acre for land whereof the mining will be confined to minerals other than gold, and two shillings and sixpence per acre for land applied for for gold mining purposes, and such rents shall be payable half-yearly in advance. The area leased shall not in any case
40 exceed ten acres for gold, forty acres for other minerals excepting coal or shale, and for coal or shale six hundred acres. Where practicable such leases shall be granted in conformity with the existing divisions of such land, but in all other cases such leases shall be measured in the prescribed form. The areas and rents herein specified
45 shall apply to leases whether for only below the surface or for both on and below the surface.

Duration of lease.

Rents payable.

23. Any person having received authority from the Warden to examine the surface of such private land for mining purposes shall be deemed to be in possession as against other applicants for the same
50 land for a period of one month from the date of such authority to the full extent of the area allowed in such class of lands to be leased: Provided that such authorised person if requested so to do by other authorised persons desirous of occupying the adjoining land shall approximately define the boundaries of such area.

Authorised person considered first applicant.

55 24. In the event of more than one application being made for the same land, or any part thereof, the application, except as hereinbefore provided, which shall have been first received in manner prescribed shall have priority, and in the event of two or more applications for the same land being received at one time it shall be determined

Applications how dealt with.

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determined by lot which application shall take precedence. And except when the lease applied for will cover the whole of a measured portion all such areas shall be surveyed before the issue of a lease, and in the event of any applicant refusing or neglecting to execute
 5 such lease for the space of one month after notice shall have been given him of such lease being ready for execution such lease shall be liable to forfeiture, with all moneys paid thereon, and all such leases shall, within one month after execution thereof, be registered
 10 such leases or of any portion thereof shall be so registered within one month after the date of such transfer.

25. All leases granted under the authority of this Act shall be granted subject to such royalties as are hereinafter set forth on the metals and minerals obtained from such land, and the value thereof
 15 shall be taken to mean their value, in the case of coal, at the pit mouth; and in the case of metalliferous ores and gold, their value shall be estimated in such way as shall be prescribed. And every lessee under this Act shall keep a correct set of books, and shall enter therein the value of all metals or minerals won from the mine,
 20 and the amount of royalty payable thereon; and such books shall at all times be open to the inspection of such person as the Minister may from time to time appoint, and an abstract of the same, which shall have been previously verified by statutory declaration
 25 shall, in the months of June and December in each year be published in the *Government Gazette* and in a newspaper circulating in the district wherein such mine is situated.

26. The amount of royalty payable to the Crown shall be paid into the Treasury or to such public officer as the Minister shall direct
 30 at least once in every half year. And any lessee or the director or manager of any company holding a lease under this Act, who shall neglect or fail to pay such amount during the half-year within which the same becomes payable, or within one month thereafter, shall be deemed guilty of a misdemeanour. And in the event of any lessee
 35 or director or manager of such company who shall fail to enter or to cause to be entered in books kept for that purpose the full value of all minerals obtained from such private land, and the amount of royalty payable thereon, or shall make false entries in such books or cause such books to be falsified, shall be deemed guilty of a misdemeanour;
 40 and the lease on account of which such royalty was payable, with all moneys paid thereon, shall be absolutely forfeited if the Governor shall think fit. And after the expiration of six months from the coming into operation of this Act, any person who shall, contrary to the provisions of this Act, take, mine, or remove any gold or minerals
 45 other than gold from any such private land, shall be deemed guilty of a misdemeanour. Any person convicted of an offence declared by this section to be a misdemeanour shall be liable to a penalty not exceeding fifty pounds, or may be imprisoned at the discretion of the Court for any term not exceeding three months.

50 27. Notwithstanding anything to the contrary in any other Act provided, after the passing of this Act no royalties shall be charged on behalf of the Crown on any metals or minerals obtained from alienated lands, or lands in process of alienation other than those hereinafter set forth. All leases granted under the provisions of this Act shall
 55 be subject to the following royalties, that is to say:—

(a) Whether on gold or on minerals other than gold, one and a half per centum on the value of all gold or other minerals mined or won from such private lands; and all royalties accruing

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accruing for the preceding six months shall be payable in the prescribed manner at the end of June and the end of December respectively.

- 5 (b) All rents shall commence from the date of the approval of the lease and shall be paid half-yearly in advance: Provided that whenever the amount of royalty accruing to the Crown for any half year shall exceed the sum payable by the lessee in the form of rent, the amount of rent so paid in advance may be deducted from the amount otherwise payable as royalty. When rents payable.
Rent may converge into royalty.
- 10 (c) It shall not be necessary for the owner or occupier, or for the applicant for a lease or the lessee or his employee to be the holder of a miner's right or mineral license to establish or maintain a title to a lease under this Act. Miner's rights and mineral license not necessary.
- 15 28. Adjoining lands or lands disconnected by roads only and held under separate leases may be worked conjointly as one mine, provided such subjoined areas shall not in the aggregate exceed the area allowed respectively for leases under this Act, and except as hereinafter provided such mines shall be continuously worked according to the practice of efficient mining. And every lease granted under the authority of this Adjoining lands may be worked as one area.
- 20 Act shall contain a provision that if the lessee, his executors, administrators, or assigns fail at any time during the term of such lease to fulfil the conditions and covenants therein contained, or to use the land *bonâ fide* for the purposes for which it shall be demised, such lease shall for any such failure be voidable at the option of the Failing to fulfil conditions lease may be forfeited.
- 25 Governor: Provided that if at any time the mine shall become unworkable from any cause which, in the opinion of the Minister, would necessitate a suspension of mining operations, he may grant such suspension for a period not exceeding six months, and, in the event of operations having wholly ceased in connection with such mine for Possession how recovered.
- 30 a period of twelve months, the lease shall thereupon become absolutely void and determined.
- 35 29. The lessee shall be entitled at any time, with the consent of the Governor, to surrender his lease. And in case any such lease shall become forfeited, or determined by any breach of covenant or condition or otherwise, or in case the term thereby granted shall have expired, possession of the land thereby demised may be recovered in such manner as may be set forth by any of the provisions of the lease, or if there be no such provision, it shall be lawful for the Attorney-General, on behalf of Her Majesty, to bring Former lessee may remove machinery.
- 40 a suit in any Court of competent jurisdiction to recover possession of such land, and such suit may be commenced and carried on, and the proceedings therein may be the same and the judgment enforced in like manner as in the case of any other suit in such Court. Land, possession to which has been so recovered, or which has been Former lessee may remove machinery.
- 45 abandoned, forfeited, or surrendered by the lessee, or of which the lease has expired by effluxion of time, shall revert to the owner or occupier thereof, but may at any time thereafter be again mined upon or mined under, subject to the provisions contained herein: Provided also that in the event of any such lease being forfeited for any breach of the condi-
- 50 tions, or covenants contained therein, or in the event of such lease having expired by effluxion of time or being otherwise determined, or in the event of the owner of such land having by the authority of the Governor re-entered and taken possession of such land, the former lessee, his executors, administrators, or assigns shall be at Former lessee may remove machinery.
- 55 liberty within six months thereafter to remove all machinery and buildings erected over the same, and all appliances, tools, and material (other than material already used for the purpose of keeping open the shafts, adits, or mine) belonging to such former lessee, his executors, administrators, or assigns.

Mining on Private Lands.

30. The jurisdiction, powers, and authorities conferred by or under the "Mining Act, 1874," or any Act amending or repealing the said Act, upon Wardens or Inspectors of Mines shall apply to and may be exercised in respect of all private lands the subject of any agreement or lease under this Act, and in respect of all questions affecting such lands or interests therein, or matters in dispute arising out of or connected with mining upon or under such land; and for that purpose the said Act shall be read in connection with, and as forming part of, this Act. And the word land as used in the said Mining Act shall be deemed to comprise any private land the subject of an agreement or lease under this Act. And the provisions of the said Mining Act relating to appeals from the decisions of Wardens and Mining Appeal Courts shall be read and construed as forming part of this Act.

Jurisdiction of Wardens.

Appeals.

31. The Governor may in like manner and subject to the same conditions, except as to mining thereon or royalties to be derived therefrom, grant a mining-race lease of any private land, whether alienated or only in process of alienation, or whether held under lease or only an application for lease, as well as lands vested in trust for irrigation purposes or for the purposes of a race-course, cricket ground, recreation reserve, park, or permanent common, and irrespective of any mineral reservations or otherwise with respect to such lands, for the purpose only of cutting mining-races thereon and conveying water or detritus through or over such land to or from any mine, whether such mine be held under the provisions of this Act, or under the provisions of the "Mining Act of 1874," or any Act amending the same.

Leases may be granted through which to carry mining-races.

PART III.

32. Notwithstanding anything to the contrary in Part II of this Act, the Warden may grant a prospecting license to any person being the holder of a miner's right or a mineral license, and subject to the provisions of Part I hereof with respect to the several mineral reservations contained in the Crown grants; such license shall entitle the holder to enter upon any private land which is declared to be subject to the operations of mining under the provisions of this Act, and to mark off and occupy any area as provided for in any Mining Act or regulations in force for the time being and appertaining to Crown lands, and such prospector shall have the right within such prospecting area to dig and search for gold or minerals other than gold as the case may be—

Where alluvial deposits occur.

(a) Whenever alluvial deposits containing gold, tin, or gem-stones of a payable character are discovered such discovery shall forthwith be reported to the Warden, who shall report the same to the Minister, who on being satisfied of the payable nature of such discovery shall have power to resume such land or any part thereof for mining purposes, and on notification of such resumption appearing in the *Gazette*, the owner thereof shall be entitled to compensation for the value of such land, and in the event of there being a tenant or rightful occupier of such land, other than the owner, such occupier shall be entitled to compensation for the loss of his interest therein. All such compensation shall be appraised by the Local Land Board subject to appeal to the Land Appeal Court, and shall comprise the value of the land for other than mining purposes, and the value of any improvements on such land,

Land may be resumed.

Mining on Private Lands.

land, and the amount so appraised shall be paid by the Minister for Mines from moneys to be annually voted by Parliament for that purpose.

5 (b) On the appearance of such notification in the *Gazette* of the resumption of any land for mining purposes, such land shall thereupon become Crown land, and without any further notification shall be reserved from sale and from occupation for other than mining purposes until such reservation be revoked by the Governor; and whenever such revocation shall take place, the former owner or occupier other than 10 tenant of the land or his transferee shall be entitled to re-purchase or re-lease such land at a price or rental to be determined by the Minister for Lands after appraisalment by the Land Board, and failing such re-purchase or re-lease the land shall be dealt with as ordinary Crown lands.

Former owner to have preferent right to re-purchase.

15 (c) Before authorising any person to enter upon such private land for prospecting purposes, the Warden shall hold an inquiry, of which due notice shall be given to the owner and occupier (if any), as well as the applicant, and shall thereat 20 assess the amount of money to be deposited by the applicant for a prospecting license towards covering the damage to the surface of such land likely to be caused by mining operations being conducted thereon; and the Warden may make such stipulations and conditions with respect to such mining operations as shall appear to him necessary and expedient, and shall have power to enforce the same in all cases.

Deposit to cover surface damage.

25 (d) Whenever a notification of resumption as aforesaid shall appear in the *Gazette*, such authorised prospector, in the event of his being the discoverer of such payable deposits, shall be deemed to be the first applicant for a prospecting claim under his miner's right or mineral license; and the date of such application shall be reckoned as the date of publication of such notification in the *Gazette*; but in all other respects as to area, labour conditions, and other matters, such application shall be dealt with subject to the regulations in force for the time being authorising the occupation of Crown lands for mining purposes.

Prospector to have preferent right to claim.

30 (e) Whenever any mineral other than those described in subsection (a) hereof shall be discovered in such prospecting area, the holder or holders thereof shall, within thirty days from the date of such discovery, be entitled to apply for a lease of such land in accordance with the provisions of section twelve of this Act, and he or they shall be deemed to be the first applicant or applicants as the case may be.

If other minerals are discovered, prospector may apply for a lease.

35 40 45 50 55 33. It shall be lawful for the Governor from time to time to make regulations not being inconsistent or contrary hereto for effectually carrying out the provisions of this Act, and to amend or cancel the same, provided that no amendment or cancellation shall in any manner affect any right, title, or interest obtained, or affect any liability or obligation incurred under any regulation existing previous to such amendment or cancellation. And no such regulation, amendment, or cancellation thereof shall have any force or efficacy until twenty-one days after the same shall have been published in the *Government Gazette*. And every such regulation, amendment, or cancellation shall be laid before both Houses of Parliament within fourteen days after the making thereof respectively, if Parliament be then sitting, and if Parliament be not then sitting, then within fourteen days after the then next meeting of Parliament.

Governor may make regulations.

REPORT ON THE PROGRESS OF WORK DURING THE YEAR 1911

BY

ROBERT A. MILLIKAN

AND

WALTER D. HARKER

CHICAGO, ILL., 1912

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This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 9 March, 1893.* }

F. W. WEBB,
Clerk of the Legislative Assembly.

New South Wales.



ANNO QUINQUAGESIMO SEXTO

VICTORIÆ REGINÆ.

No. .

An Act to provide for Mining on Private Lands; to obtain Rents and Royalties therefrom, and to dispose of the same in certain cases; to validate certain Crown grants; to make better provision in connection with mining on Crown Lands in certain particulars; to effect amendments in such Statutes as may be necessary to give same full force and effect; and for other purposes incidental thereto.

WHEREAS from time to time since the establishment of the Preamble. Colony of New South Wales Crown lands within the said Colony have been alienated, subject to various reservations in the Crown grants with respect to gold and minerals other than gold, and
5 in the public interest it is now deemed necessary to give legal effect to such reservations: And whereas certain other lands have from time to time been alienated without express reservation of any minerals which might afterwards be found therein, but having regard to the well established laws of England whereby it has been held from time
10 immemorial that the royal metal gold does not pass from the Crown unless by express conveyance in the grant of such lands: And whereas, for the well being of the State, it is now deemed necessary that all such lands should be made available for the operations of mining thereon or thereunder for such gold as may be found therein:
15 And whereas it is deemed expedient to define the royalties and rents

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to be derived under the operations of this Act on behalf of the Crown as hereinafter provided: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Mining on Private Lands" Short title.
Act."

2. In this Act the following terms shall, if not inconsistent with the subject matter or context, have the respective meanings hereby assigned to them (that is to say):— Interpretation of terms.

"Governor"—The Governor with the advice of the Executive Council.

"Minister"—The Minister for Mines for the time being.

15 "Gold"—As well any gold as any earth or rock containing gold, or having gold intermixed therewith.

"Coal"—Bituminous coal, anthracite, lignite, kerosene shale, and natural coke.

20 "Minerals other than gold"—Coal and any of the following metals, or any ore containing the same, viz.:—Platinum, silver, mercury, nickel, bismuth, copper, tin, cobalt, antimony, lead, manganese, and iron, or any other substance which may from time to time, by proclamation of the Governor, published in the *Gazette*, be declared a "mineral" within the meaning of this Act.

25 "All Minerals"—The minerals, metals, or ores of metals enumerated in the three immediately preceding subsections.

30 "Owner"—The owner or conditional purchaser of any land included within the provisions of this Act, whether such title is completed or not, or any trustee for such land, if vested in trust.

"Occupier"—The person in occupation of such land, whether as conditional lessee, the applicant for a conditional lease, or a tenant.

35 "Applicant"—The person applying for a mining lease under this Act.

"Lessee"—The holder of a lease under this Act, or his executors, administrators, or assigns.

40 "Private land"—Any land included within the provisions of this Act, whether alienated or in process of alienation, or vested in trust, or demised by lease under any of the forms hereinafter referred to, and under the provisions of the "Crown Lands Act of 1884," or any Act Amending the same, or land held under any valid application for such lease.

45 "Mining," or "To mine"—To sink shafts, construct drives, adits, tunnels, or surface excavations, or to remove earth, rock, metals, or ores, or to wash, crush, smelt, or conduct any operation in connection with mining.

50 "Mining-race"—Any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus; also the natural bed of any creek or gully in which water or detritus is conducted in connection with mining.

55 "Warden"—Any Warden appointed under the Act thirty-seventh Victoria number thirteen, or any Act relating to mining, who may be in charge of the mining district or division denoted by the context where the expression is used, or any Warden acting for him or in his stead, or (if none such is denoted) any Warden.

"Prescribed"—

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- “Prescribed”—Prescribed by this Act or any regulation made thereunder.
- “Royalty”—The share or duty claimed by the State on the produce of the mine held by lease under this Act.
- 5 3. From and after the passing of this Act all lands alienated on or prior to the twenty-fourth day of January, in the year one thousand eight hundred and fifty, whether the Crown grants thereof had issued at that date or otherwise, shall, subject to the provisions of this Act, be open to mine therein or thereunder for gold or such minerals other
10 than gold as have been reserved in the Crown grant issued therefor, save and except coal. And all lands alienated after the twenty-fourth day of January, one thousand eight hundred and fifty, and prior to the eighteenth day of October, one thousand eight hundred and sixty-one, whereof the grants contain a reservation of all minerals
15 to the Crown, shall, subject to the provisions of this Act, be open to mine thereon or thereunder for all minerals, including gold: Provided that where the said grants contain no reservation of minerals the mining on such lands herein specially referred to shall be confined to mining for gold only.
- 20 4. All Crown grants issued, or purporting to be issued, under the provisions of the “Crown Lands Alienation Act of 1861,” or any Act amending the same, including all grants issued by virtue of volunteer land orders as well as grants issued, or purporting to be issued, under
25 the provisions of the “Crown Lands Act of 1884,” or any amendment thereof, shall be deemed to have been and to be good and valid in law for all purposes of this Act.
5. All lands alienated or in process of alienation under the provisions of the “Crown Lands Alienation Act of 1861,” or any Act
30 amending the same, as well as all lands alienated or in process of alienation, under the provisions of the “Crown Lands Act of 1884,” or any amendment thereof, shall be subject to the operations of mining under the provisions of this Act to the following extent, but no further:—
- (a) If the grant for such land contains, or would, under the
35 provisions of the said Acts, or any amendments thereof, contain, when issued, a reservation to the Crown of all minerals which the said land contains, then such land shall be open under the provisions of this Act for mining for gold, and for all minerals other than gold.
- 40 (b) If the grant for such land contains, or would contain when issued, a reservation to the Crown of any mineral or minerals particularly specified therein, then such lands shall be open under the provisions of this Act for mining for gold, as well as for the particular mineral or minerals specified in
45 such reservation, but for no other mineral whatsoever.
- (c) If such land shall have been alienated, or be in process of
50 alienation under the nineteenth section of the “Crown Lands Alienation Act of 1861,” or shall have been selected under the thirteenth or fourteenth sections of the said Act, or having been held under mineral lease, and in either such case having been converted into a mineral conditional purchase, then such lands shall be open under the provisions of this Act for mining for gold only, or for any ore, the chief and most profitable metallic product of which is gold.
- 55 (d) If the grant for such land contains, or would contain when issued, no reservation of minerals, then in every such case the land shall be open under the provisions of this Act for mining for gold only, or for any ore, the chief and most profitable metallic product of which is gold.

Lands alienated prior to “Crown Lands Act of 1861” open to mining under the provisions of this Act.

Reservations in grants good and valid.

Lands alienated under “Crown Lands Acts of 1861 and 1884” may be mined upon under provisions of this Act.

What lands open to mining for all minerals.

Lands open to mine for gold as well as certain specified minerals.

Lands open to gold-mining only.

If no reservations in grants to be open to gold-mining only.

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6. After the passing of this Act, and notwithstanding any other Acts to the contrary, all lands granted or vested in trust for irrigation purposes or for the purposes of a race-course, cricket ground, recreation reserve, park, or permanent common, irrespective of whether the deed of grant if any contains a reservation of minerals or the contrary, and whether such lands shall have been vested under any special Act or otherwise; and all lands applied for or held under Conditional, Special, Residential, Tramway or Irrigation leases, or leases for Water Supply, whether granted under any special Act or otherwise, shall, subject to the provisions of this Act, be open for mining thereon or thereunder for gold or minerals other than gold: Provided that nothing in this Act shall be held to apply to alienated lands situated within the boundaries of any town or village, or to lands vested in trust for or dedicated to any public purpose, other than those hereinbefore mentioned, unless the Governor shall have first proclaimed in the *Government Gazette* that any such lands particularised in such proclamation shall be subject to the provisions of this Act. And in all cases, whether on private lands or Crown lands, wherever a lease is granted to mine under such land only and without the right of mining on the surface thereof, the Governor may stipulate at what vertical depth from the surface such lease shall commence.
7. Every grant hereafter issued for land alienated or which shall be alienated under any Act or vested in trust for any public purpose shall contain a reservation to the Crown of all minerals which such lands shall at any time be found to contain. And such minerals are hereby expressly so reserved, and the land so alienated or vested in trust shall be subject to all the provisions of this Act with respect to mining thereon or thereunder.
8. The Governor shall, as soon as practicable, provide a Register of Crown grants of all lands alienated prior to the passing of this Act other than lands within towns or villages, alienated or vested in trust for public purposes. And such Register shall specify such lands according to the mineral reservations contained in such grants, and shall have a copy of each form of reservation at the head of the various divisions thereof, and such Register shall be divided into so many parts as there are Land Districts, and a copy of such part appertaining to each district shall be kept at the respective Land Offices, and be open to inspection of the public in the prescribed manner. And in case the grant of any land other than those herein exempted shall not be found included in such Register it shall be taken as *prima facie* evidence that such land has been alienated since the passing of this Act and is therefore available for mining thereon or thereunder for all minerals including gold, subject to the provisions herein contained.

Lands vested in trust or under lease may be mined upon.

Town and village lands not open.

Depth from surface at which underground leases shall commence.

All minerals to be reserved in grants issued for future alienations.

Register of reservations in Crown grants to be provided.

Mining on Private Lands.

PART II.

Proceedings in connection with Mining.

9. It shall be lawful for the Warden of any mining district to grant to any person an authority to enter into and upon any private land which is declared to be subject to the operations of mining under the provisions of this Act, and on exhibiting such authority to the owner or occupier thereof, such person shall either personally or by his agent be entitled to search and examine the surface of such land, but shall not be entitled to commence mining operations until after the amount of compensation, to be ascertained as hereinafter provided, shall have been paid or tendered to the owner and occupier, and a lease from the Governor shall have been first obtained. And any person applying for authority to examine the surface of such private land, or for a mining lease thereof, shall (if the Register of Crown grants has been provided but not otherwise) accompany such application with a certified copy of the form of mineral reservation contained in the grant of such land, and such certified copy shall be supplied by the Land Agent of the district wherein such land is situated, and shall be a correct extract from the Register of Crown grants, or shall certify that a grant of such land is not included in such Register.

Authority to examine surface may be granted by the Warden.

10. Any person so authorised, desiring to obtain a lease for mining purposes of such private land, or any portion thereof, as is declared by this Act to be open to lease, may, on the production of such authority, without incurring any liability for trespass, enter upon such land, either personally or by an agent, and in the prescribed manner, define the boundaries of the portion intended to be applied for. And any owner, occupier, or other person who shall obstruct such authorised person in the performance of any such act, or who shall interfere with, remove, destroy, or deface any boundary mark so made or any necessary notice posted in connection therewith, shall, on conviction thereof, be liable for the first offence to a penalty not exceeding ten pounds, or on conviction of a second or any subsequent offence, to a penalty not exceeding fifty pounds. And in like manner any surveyor with his assistants may enter upon any private land for the purpose of defining the boundaries of the portion sought to be leased, or for any other purpose under this Act, in pursuance of and bearing an order of the Minister or of a Warden.

Owner or occupier obstructing applicant.

11. The Governor, in the name and on behalf of Her Majesty, shall have power under the provisions of this Act to grant to any person a lease of such private lands, to be effectual either on and below the surface, or on one or more limited portions of the surface and below the whole area, or below the surface only, for the purpose of mining thereon or thereunder, either for gold only, or for all minerals, or for any specified mineral or minerals other than gold, or for gold and any specified mineral or minerals other than gold, regard being had to the reservations (if any) contained in the Crown grants thereof, except in the case of certain lands vested in trust and referred to in section six hereof, but in the case of lands alienated prior to or on the twenty-fourth day of January, in the year one thousand eight hundred and fifty, regard shall be had to the proclamation of His Excellency Sir Charles Augustus Fitzroy, Governor, published in the *Government Gazette*, on the twenty-ninth day of January, in the year aforesaid, whereby all reservations of coal, with the rights of the Crown incident thereto, were, by His Excellency's command, for ever abandoned. And such lease shall confer the right of cutting and constructing on the lands thereby demised races, drains, dams, reservoirs, or tramways, and erecting thereon buildings

Governor may grant lease.

Regard must be had to reservations in grants.

Lease gives right to occupy for all purposes connected with mining.

and

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and machinery in connection with such mining, but not otherwise, and generally for doing all such acts and things as shall be requisite for efficiently mining the said land; but such lease shall in nowise give the lessee the right to use water artificially conserved by the owner 5 of such land, or to fell trees, strip bark, or cut timber on such land, or to depasture horses, cattle, or sheep thereon, or to remove earth or rock therefrom, except in connection with such mining operations, without the consent of the owner and occupier: Provided that the power herein given to grant leases shall not, except with the consent 10 of the owner, extend to within one hundred yards on the surface of any land which is *bonâ fide* in use as a garden, orchard, or pleasure ground, or to either the surface or below the surface of any particular part of such land whereon is erected or constructed any substantial building, bridge, dam, reservoir, well, or other substantial improve- 15 ment: Provided further that it shall be for the Minister to determine whether any improvement referred to in this section is of a substantial character.

Not to approach within 100 yards of garden, &c., without owner's consent.

12. Within one month from the date of such aforementioned authority such authorised person may in the prescribed manner apply 20 to the Minister for a lease of such land, and on receipt of such application, accompanied by the prescribed sum by way of rent and fees, the Minister shall cause a notice to be served on the owner and occupier of such land. And in case the whole or any part of the surface thereof is required, such notice shall so state, and if a part 25 only is required, such notice shall define such part, and shall also request from the owner and occupier respectively such particulars of their estate and interest therein as the Minister shall deem necessary for carrying out the objects and intentions of this Act, and within one month therefrom such owner or occupier shall give such particulars 30 to whomsoever such notice shall direct.

Notice to owner and occupier.

13. All notices required by this Act to be served upon the owner or occupier of any private land shall either be served personally on such persons or left at their usual place of abode (if any such can after diligent inquiry be found), and in case the owner shall be absent from 35 the Colony or he or his agent cannot after diligent inquiry be found, such notices shall be left with the occupier of such land, or if there be no such occupier, shall be affixed upon some conspicuous part of such land, and in the latter case such notice shall be advertised in two issues of a newspaper circulating in the district in which such land is 40 situated. And the affixing of such notices in addition to the aforementioned advertisements shall be deemed service of notice on the owner and occupier.

Service of notices.

14. The Governor shall appoint mining appraisers as may from time to time be found necessary, who may also hold other offices in the 45 Public Service, and shall be paid such salaries or fees as the Governor shall direct, and any such mining appraiser, on being authorised by the Minister so to do, shall assess the amount of compensation to be made to the owner and occupier respectively of such lands for the loss which he or they may sustain by reason of being deprived for a limited 50 period of the use of the surface thereof, or of any part of such surface as the case may be, and for damage to such lands or any building, erection, or structure thereon, which may arise from mining operations thereon or thereunder, provided such compensation with respect to the land as aforesaid shall in no case exceed the then ascertained 55 market value for other than mining purposes of that portion of the land applied for (not being less than one acre) of which a lease of the surface is required.

Appraisers to be appointed who shall assess surface damages.

15. On receipt of an application for a lease or claim, unless such application shall be accompanied by an agreement signed by the applicant 60 and 65

Either party may appeal to Minister.

Mining on Private Lands.

and the owner and occupier (if any) or their respective agent or agents, evidencing that they have mutually agreed as to the amount of compensation to be paid by the applicant, to the owner and occupier, the Minister shall authorise a mining appraiser to assess the amount of compensation
 5 to be paid to the owner and occupier respectively, and it shall be the duty of such mining appraiser, without loss of time, to forward his assessment to the Minister, who shall thereupon, by notices of even date, acquaint the applicant and the owner and occupier (if any) with
 10 the amount of such assessment, and shall specify the time within which the same shall be paid. And in the event of the applicant or the owner or occupier being dissatisfied with such assessment, either party may, within twenty-one days of the date of such notices, apply to the Minister to have such assessment reviewed, and the Minister shall thereupon refer such matter to the Warden, who shall fix a time and place
 15 for holding an inquiry, not being more than thirty days from the receipt of such reference, and shall give due notice thereof to all the parties interested therein, and at the time and place so appointed shall hear, receive, and examine such evidence as shall be produced by any of the parties, and shall thereupon determine the amount of compensation to
 20 be paid to such owner or occupier in respect of his or their respective claim or claims, and may specify the time within which and to whom the same shall be paid; and the Warden may make an order for the payment of such costs of Court as shall appear to him just: Provided always that the Warden may upon cause shown, adjourn the hearing
 25 to any other time or place. When the amount of compensation so awarded shall have been paid, a lease for mining under the provisions of this Act may in due course be issued by the Governor.

Warden to determine amount of compensation.

16. In the event of the applicant for a lease failing to pay the
 30 the amount of compensation within the time specified, all moneys accompanying the application for such lease shall thereupon become forfeited to the Crown, and shall be paid into the Consolidated Revenue. And in the event of such owner or occupier refusing or neglecting to supply the particulars of his estate and interest in such land as requested so to do by the Minister, such refusal or neglect shall in no
 35 way act as a bar to an award being made by such mining appraiser or a final decision of the Warden being arrived at. On the amount of such compensation being paid into Court, the Warden shall in due course pay to the owner or occupier the amount to which he is entitled. And
 40 in case such owner or occupier shall for the space of three months refuse or fail to accept or claim the amount of compensation so assessed or determined, such amount shall be passed to the Treasury Suspense Account and be held in trust for such owner or occupier, but without interest accruing thereon, and if not claimed within six years from the time of the receipt thereof by the Treasury such amount
 45 shall be paid into the Consolidated Revenue.

Applicant failing to pay award.

Owner or occupier failing to accept award.

17. During the progress of such mining operations the lessee
 50 having a lease of below the surface only of such land, may apply to the Minister for a lease of a portion or any number of additional portions of the surface thereof: Provided that such lessee shall if required in writing so to do by the owner or occupier without delay cause a secure fence to be erected around the shafts, machinery, or other works in connection with such mining: Provided also that if at any time the surface of any part of such land or any building, erection, or structure thereon belonging to such owner or occupier for which full compensa-
 55 tion has not been previously paid shall be damaged by reason of such mining operations, the Minister, on application by the owner or occupier, accompanied by such fees as may be prescribed, shall cause an assessment of such damages to be made by a mining appraiser, who shall have power to assess both the amount of damage (if any) and also
 the

Lessee must fence if requested.

Mining on Private Lands.

the costs of such assessment. And if the cause of such damage be disputed by either party, such mining appraiser may, if necessary, call in the aid of a mining engineer or surveyor, who, as well as such appraiser, shall have power to examine the surface or underground workings of such mine. And the lessee shall, within a reasonable time, comply with any request of such mining appraiser, engineer, or surveyor to furnish the usual appliances and aid necessary for descending to and ascending from such underground workings, and for examining thereinto as often as may reasonably be found necessary, and in the event of any lessee refusing or neglecting so to do, such lease shall be liable to forfeiture by the Governor in Council. And within twenty-one days from the date of the notice of such assessment either party may appeal to the Minister; and such appeal shall be dealt with by the Warden, as in the case of ascertaining surface damages at the time of application for a lease; and should the lessee fail for the space of one month after the date of the notice informing him of the assessment—if no appeal shall have been made, or of the final decision of the Warden, as the case may be—to pay the amount assessed to whomsoever such notice shall direct, such amount shall be recoverable by the owner or occupier under the ordinary process of law.

Appraiser may award further damages.

18. Nothing herein contained shall be construed as rendering it obligatory on the Governor to grant any such lease to any person applying for the same, notwithstanding that he may have complied with the provisions of this Act and the regulations hereunder, but in case his application shall be refused he shall be informed of the reasons for such refusal. And a lease may be granted notwithstanding that the person applying for the same may not in every respect have complied with such regulations, and the Minister may alter, amend, and modify any application for a lease, and may reduce or increase the area of land of which a lease is applied for either on or below or both on and below the surface, or may direct a Warden to hold an inquiry in open Court with reference to any matter touching an application for a lease under this Act, and at all such inquiries the evidence shall be taken on oath.

Not obligatory to grant leases.

19. In any case where *bond fide* mining operations were being carried on under agreement upon any private land on the sixth day of October, one thousand eight hundred and ninety-two, a joint application by the parties to such agreement, or by their representatives, for a special lease, if made within two months after this Act comes into force, and if accompanied by an attested copy of such agreement, shall have priority over all other applications, or in the event of such joint application not being made, it shall be competent for any lessee, tributor, or owner, under such existing agreement as aforesaid, to apply to bring such agreement under the provisions of this Act for the unexpired period of such agreement. And such private agreement then existing shall in no way be disturbed or interfered with by the operations of this Act, except with respect to any royalty payable to the Crown which the land may be subject to and which in all cases shall be chargeable as if such land was leased under the provisions of this Act. And in the event of mining operations being carried on by the owner of such land at the time of the passing of this Act, any such application made by him shall, if made within two months as aforesaid, have a like priority, and be subject in the same manner to such royalty as hereinafter provided; or in any case where active mining operations have not been commenced, and the owner has obtained from the Governor a permit to mine for, win, and remove gold or minerals other than gold from such private land, such owner may within two months after the passing hereof apply in the prescribed manner

Special leases may be granted.

Existing agreements protected.

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manner to convert such permit into a lease under this Act; and in all cases hereinbefore referred to in this section, such leases shall not be subject to the payment of rent, but the royalties reserved to the Crown shall be those provided for in this Act and none other.

Permits may be converted into leases.

5 20. Any person who prior to the passing of this Act shall have obtained a permit from the Secretary for Lands or the Secretary for Mines to dig and search for gold or minerals other than gold in any private land may, within two months as aforesaid, apply for and in such event shall have a preferent claim for a lease under
10 this Act, but such lease shall with respect to rent and other matters be subject to all the provisions of this Act: Provided that two months after the passing of this Act all such permits shall become extinguished and inoperative, and the power of granting such permits is hereby repealed, all other Acts to the contrary notwithstanding. And if the
15 holder of such permit shall have failed for the period of two months as aforesaid to apply for the conversion thereof into a lease under this Act, any other person may thereafter apply for a lease of such land, and the Governor may grant the same as if such permit had not been granted.

Permit to dig and search gives preferent claim to lease.

20 21. The owner of any private land may at any time apply for a lease of such land for mining purposes; but except as hereinbefore provided, he shall have no preferential right to such lease as against any other application of prior or even date. In the event of there being
25 no conflicting application, or of such conflicting application having been refused, the Minister may dispense with the preliminary proceedings, applicable in other cases, and may grant such lease, subject to the provisions of this Act with respect to royalty, but free from the charge of any rent: Provided that in all other respects such lease shall be granted, subject to all the provisions of this Act and the
30 regulations thereunder, as if the lessee were not the owner of such land.

Owner may obtain a lease.

22. The term for which a lease may be granted under this Act shall not exceed twenty years, but may, if the Governor so approve, be renewed for a further period not exceeding twenty years, and the
35 yearly rental reserved to the Crown in respect of such leases, shall be one shilling per acre for land whereof the mining will be confined to minerals other than gold, and two shillings and sixpence per acre for land applied for for gold mining purposes, and such rents shall be payable half-yearly in advance. The area leased shall not in any case
40 exceed ten acres for gold, forty acres for other minerals excepting coal or shale, and for coal or shale six hundred acres. Where practicable such leases shall be granted in conformity with the existing divisions of such land, but in all other cases such leases shall be measured in the prescribed form. The areas and rents herein specified
45 shall apply to leases whether for only below the surface or for both on and below the surface.

Duration of lease.

Rents payable.

23. Any person having received authority from the Warden to examine the surface of such private land for mining purposes shall be deemed to be in possession as against other applicants for the same
50 land for a period of one month from the date of such authority to the full extent of the area allowed in such class of lands to be leased: Provided that such authorised person if requested so to do by other authorised persons desirous of occupying the adjoining land shall approximately define the boundaries of such area.

Authorised person considered first applicant.

24. In the event of more than one application being made for the same land, or any part thereof, the application, except as hereinbefore provided, which shall have been first received in manner prescribed shall have priority, and in the event of two or more applications for the same land being received at one time it shall be
55

Applications how dealt with.

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determined by lot which application shall take precedence. And except when the lease applied for will cover the whole of a measured portion all such areas shall be surveyed before the issue of a lease, and in the event of any applicant refusing or neglecting to execute
 5 such lease for the space of one month after notice shall have been given him of such lease being ready for execution such lease shall be liable to forfeiture, with all moneys paid thereon, and all such leases shall, within one month after execution thereof, be registered with the Mining Registrar in Sydney, and thereafter all transfers of
 10 such leases or of any portion thereof shall be so registered within one month after the date of such transfer.

25. All leases granted under the authority of this Act shall be granted subject to such royalties as are hereinafter set forth on the metals and minerals obtained from such land, and the value thereof
 15 shall be taken to mean their value, in the case of coal, at the pit mouth; and in the case of metalliferous ores and gold, their value shall be estimated in such way as shall be prescribed. And every lessee under this Act shall keep a correct set of books, and shall
 20 enter therein the value of all metals or minerals won from the mine, and the amount of royalty payable thereon; and such books shall at all times be open to the inspection of such person as the Minister may from time to time appoint, and an abstract of the same, which shall have been previously verified by statutory declaration made before a justice of the peace or a commissioner for affidavits,
 25 shall, in the months of June and December in each year be published in the *Government Gazette* and in a newspaper circulating in the district wherein such mine is situated.

26. The amount of royalty payable to the Crown shall be paid into the Treasury or to such public officer as the Minister shall direct
 30 at least once in every half year. And any lessee or the director or manager of any company holding a lease under this Act, who shall neglect or fail to pay such amount during the half-year within which the same becomes payable, or within one month thereafter, shall be deemed guilty of a misdemeanour. And in the event of any lessee
 35 or director or manager of such company who shall fail to enter or to cause to be entered in books kept for that purpose the full value of all minerals obtained from such private land, and the amount of royalty payable thereon, or shall make false entries in such books or cause
 40 such books to be falsified, shall be deemed guilty of a misdemeanour; and the lease on account of which such royalty was payable, with all moneys paid thereon, shall be absolutely forfeited if the Governor shall think fit. And after the expiration of six months from the coming into operation of this Act, any person who shall, contrary to the provisions of this Act, take, mine, or remove any gold or minerals
 45 other than gold from any such private land, shall be deemed guilty of a misdemeanour. Any person convicted of an offence declared by this section to be a misdemeanour shall be liable to a penalty not exceeding fifty pounds, or may be imprisoned at the discretion of the Court for any term not exceeding three months.

27. Notwithstanding anything to the contrary in any other
 50 Act provided, after the passing of this Act no royalties shall be charged on behalf of the Crown on any metals or minerals obtained from alienated lands, or lands in process of alienation other than those hereinafter set forth. All leases granted under the provisions of this Act shall
 55 be subject to the following royalties, that is to say:—

- (a) Whether on gold or on minerals other than gold, one and a half per centum on the value of all gold or other minerals mined or won from such private lands; and all royalties accruing

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accruing for the preceding six months shall be payable in the prescribed manner at the end of June and the end of December respectively.

- 5 (b) All rents shall commence from the date of the approval of the lease and shall be paid half-yearly in advance: Provided that whenever the amount of royalty accruing to the Crown for any half year shall exceed the sum payable by the lessee in the form of rent, the amount of rent so paid in advance may be deducted from the amount otherwise payable as royalty. When rents payable.
Rent may converge into royalty.
- 10 (c) It shall not be necessary for the owner or occupier, or for the applicant for a lease or the lessee or his employee to be the holder of a miner's right or mineral license to establish or maintain a title to a lease under this Act. Miner's rights and mineral license not necessary.
- 15 28. Adjoining lands or lands disconnected by roads only and held under separate leases may be worked conjointly as one mine, provided such subjoined areas shall not in the aggregate exceed the area allowed respectively for leases under this Act, and except as hereinafter provided such mines shall be continuously worked according to the practice of efficient mining. And every lease granted under the authority of this Adjoining lands may be worked as one area.
- 20 Act shall contain a provision that if the lessee, his executors, administrators, or assigns fail at any time during the term of such lease to fulfil the conditions and covenants therein contained, or to use the land *bonâ fide* for the purposes for which it shall be demised, such lease shall for any such failure be voidable at the option of the Failing to fulfil conditions lease may be forfeited.
- 25 Governor: Provided that if at any time the mine shall become unworkable from any cause which, in the opinion of the Minister, would necessitate a suspension of mining operations, he may grant such suspension for a period not exceeding six months, and, in the event of operations having wholly ceased in connection with such mine for Possession how recovered.
- 30 a period of twelve months, the lease shall thereupon become absolutely void and determined.
29. The lessee shall be entitled at any time, with the consent of the Governor, to surrender his lease. And in case any such lease shall become forfeited, or determined by any breach of covenant Possession how recovered.
- 35 or condition or otherwise, or in case the term thereby granted shall have expired, possession of the land thereby demised may be recovered in such manner as may be set forth by any of the provisions of the lease, or if there be no such provision, it shall be lawful for the Attorney-General, on behalf of Her Majesty, to bring Former lessee may remove machinery.
- 40 a suit in any Court of competent jurisdiction to recover possession of such land, and such suit may be commenced and carried on, and the proceedings therein may be the same and the judgment enforced in like manner as in the case of any other suit in such Court. Land, possession to which has been so recovered, or which has been Former lessee may remove machinery.
- 45 abandoned, forfeited, or surrendered by the lessee, or of which the lease has expired by effluxion of time, shall revert to the owner or occupier thereof, but may at any time thereafter be again mined upon or mined under, subject to the provisions contained herein: Provided also that in the event of any such lease being forfeited for any breach of the conditions, or covenants contained therein, or in the event of such lease Former lessee may remove machinery.
- 50 having expired by effluxion of time or being otherwise determined, or in the event of the owner of such land having by the authority of the Governor re-entered and taken possession of such land, the former lessee, his executors, administrators, or assigns shall be at Former lessee may remove machinery.
- 55 liberty within six months thereafter to remove all machinery and buildings erected over the same, and all appliances, tools, and material (other than material already used for the purpose of keeping open the shafts, adits, or mine) belonging to such former lessee, his executors, administrators, or assigns.

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30. The jurisdiction, powers, and authorities conferred by or under the "Mining Act, 1874," or any Act amending or repealing the said Act, upon Wardens or Inspectors of Mines shall apply to and may be exercised in respect of all private lands the subject of any agreement or lease under this Act, and in respect of all questions affecting such lands or interests therein, or matters in dispute arising out of or connected with mining upon or under such land; and for that purpose the said Act shall be read in connection with, and as forming part of, this Act. And the word land as used in the said Mining Act shall be deemed to comprise any private land the subject of an agreement or lease under this Act. And the provisions of the said Mining Act relating to appeals from the decisions of Wardens and Mining Appeal Courts shall be read and construed as forming part of this Act.

Jurisdiction of Wardens.

Appeals.

31. The Governor may in like manner and subject to the same conditions, except as to mining thereon or royalties to be derived therefrom, grant a mining-race lease of any private land, whether alienated or only in process of alienation, or whether held under lease or only an application for lease, as well as lands vested in trust for irrigation purposes or for the purposes of a race-course, cricket ground, recreation reserve, park, or permanent common, and irrespective of any mineral reservations or otherwise with respect to such lands, for the purpose only of cutting mining-races thereon and conveying water or detritus through or over such land to or from any mine, whether such mine be held under the provisions of this Act, or under the provisions of the "Mining Act of 1874," or any Act amending the same.

Leases may be granted through which to carry mining-races.

PART III.

32. Notwithstanding anything to the contrary in Part II of this Act, the Warden may grant a prospecting license to any person being the holder of a miner's right or a mineral license, and subject to the provisions of Part I hereof with respect to the several mineral reservations contained in the Crown grants; such license shall entitle the holder to enter upon any private land which is declared to be subject to the operations of mining under the provisions of this Act, and to mark off and occupy any area as provided for in any Mining Act or regulations in force for the time being and appertaining to Crown lands, and such prospector shall have the right within such prospecting area to dig and search for gold or minerals other than gold as the case may be—

Where alluvial deposits occur.

(a) Whenever alluvial deposits containing gold, tin, or gem-stones of a payable character are discovered such discovery shall forthwith be reported to the Warden, who shall report the same to the Minister, who on being satisfied of the payable nature of such discovery shall have power to resume such land or any part thereof for mining purposes, and on notification of such resumption appearing in the *Gazette*, the owner thereof shall be entitled to compensation for the value of such land, and in the event of there being a tenant or rightful occupier of such land, other than the owner, such occupier shall be entitled to compensation for the loss of his interest therein. All such compensation shall be appraised by the Local Land Board subject to appeal to the Land Appeal Court, and shall comprise the value of the land for other than mining purposes, and the value of any improvements on such land,

Land may be resumed.

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land, and the amount so appraised shall be paid by the Minister for Mines from moneys to be annually voted by Parliament for that purpose.

- 5 (b) On the appearance of such notification in the *Gazette* of the resumption of any land for mining purposes, such land shall thereupon become Crown land, and without any further notification shall be reserved from sale and from occupation for other than mining purposes until such reservation be revoked by the Governor; and whenever such revocation shall take place, the former owner or occupier other than tenant of the land or his transferee shall be entitled to re-purchase or re-lease such land at a price or rental to be determined by the Minister for Lands after appraisalment by the Land Board, and failing such re-purchase or re-lease the land shall be dealt with as ordinary Crown lands. Former owner to have preferent right to re-purchase.
- 10
- 15 (c) Before authorising any person to enter upon such private land for prospecting purposes, the Warden shall hold an inquiry, of which due notice shall be given to the owner and occupier (if any), as well as the applicant, and shall thereat assess the amount of money to be deposited by the applicant for a prospecting license towards covering the damage to the surface of such land likely to be caused by mining operations being conducted thereon; and the Warden may make such stipulations and conditions with respect to such mining operations as shall appear to him necessary and expedient, and shall have power to enforce the same in all cases. Deposit to cover surface damage.
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- 25 (d) Whenever a notification of resumption as aforesaid shall appear in the *Gazette*, such authorised prospector, in the event of his being the discoverer of such payable deposits, shall be deemed to be the first applicant for a prospecting claim under his miner's right or mineral license; and the date of such application shall be reckoned as the date of publication of such notification in the *Gazette*; but in all other respects as to area, labour conditions, and other matters, such application shall be dealt with subject to the regulations in force for the time being authorising the occupation of Crown lands for mining purposes. Prospector to have preferent right to claim.
- 30
- 35 (e) Whenever any mineral other than those described in subsection (a) hereof shall be discovered in such prospecting area, the holder or holders thereof shall, within thirty days from the date of such discovery, be entitled to apply for a lease of such land in accordance with the provisions of section twelve of this Act, and he or they shall be deemed to be the first applicant or applicants as the case may be. If other minerals are discovered, prospector may apply for a lease.
- 40
- 45 33. It shall be lawful for the Governor from time to time to make regulations not being inconsistent or contrary hereto for effectually carrying out the provisions of this Act, and to amend or cancel the same, provided that no amendment or cancellation shall in any manner affect any right, title, or interest obtained, or affect any liability or obligation incurred under any regulation existing previous to such amendment or cancellation. And no such regulation, amendment, or cancellation thereof shall have any force or efficacy until twenty-one days after the same shall have been published in the *Government Gazette*. And every such regulation, amendment, or cancellation shall be laid before both Houses of Parliament within fourteen days after the making thereof respectively, if Parliament be then sitting, and if Parliament be not then sitting, then within fourteen days after the then next meeting of Parliament. Governor may make regulations.
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