No. 1267.

An Act to amend the Mining on Private Property Act, 1909.

[Assented to, November 16th, 1916.]

Be it enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited alone as the "Mining on Private Property Act Amendment Act, 1916."

(2) The Mining on Private Property Act, 1909 (hereinafter referred to as "the principal Act") and this Act may be cited together as the "Mining on Private Property Acts, 1909 and 1916."

2. This Act is incorporated with the principal Act, and that Act and this Act shall be read as one Act.

3. Section 3 of the principal Act is amended by substituting for the definition of "private land" therein the following definition:

"Private land" means any land the metals, minerals, precious stones, metalliferous ores, coal, shale oil, salt or gypsum on or under which have at any time heretofore been, or at any time hereafter are, alienated from the Crown by grant in fee simple:

and adding after the definition of "Claim" therein the following definition:

"Daytime" means the period between the hours of six o'clock ante meridiem and six o'clock post meridiem.

4. Subdivision
Amendment of section 5 of principal Act—Lands to which Act not to apply.

4. Subdivision v. of section 5 of the principal Act is amended by substituting the words "one hundred and fifty yards" for the words "two hundred yards" in the first line.

Amendment of section 8—Conditions precedent to resumption of lands.

5. Subdivision i. of section 8 of the principal Act is amended so as to read as follows:—

1. An inspector has certified in writing to the Minister that he has examined such land, and that he is of opinion that there is a reasonable prospect of mining such land at a profit, and is of opinion that such land should be resumed for the purpose of mining.

Substitution of other provisions for section 25—Authority to enter private land and peg out claim or prospect.

6. Subsection (1) of section 18 is amended by striking out the words "refer to the existence of payable alluvial metal instead of to the existence of payable reef metal," and inserting in lieu thereof the words "state that he is of opinion that there is a reasonable prospect of alluvial mining on such land at a profit."

7. Section 25 of the principal Act is repealed, and the following provisions are hereby enacted and substituted therefor:—

25. (1) Any holder of a miner's right who desires to obtain a claim on, or a lease of, any private land, or to prospect thereon, shall first obtain from the Minister or a warden or mining registrar a written authority to enter upon such land, of the granting of which authority notice shall be given to the owner before making entry.

(2) The Minister or a warden or mining registrar is hereby authorised to grant such authority upon being satisfied by the declaration of the applicant therefor, made before a Justice, that there are reasonable grounds (which shall be shortly stated in such declaration) for supposing that such land is mineral bearing: Provided that no such authority shall be issued before the applicant has deposited with the Minister or such warden or registrar such sum as is agreed upon between the applicant and the owner and the occupier of such land, or, if no such agreement has been arrived at within seven days of the making of the application for such authority, such sum as the Minister or such warden or registrar thinks proper, by way of security for compensating the owner or occupier of such land for any damage caused by the exercise by the applicant of his rights under this section.

(3) The holder of any such authority shall, before his first entry upon such land in pursuance of such authority, give to the owner and also to the occupier of such land at least three clear days' notice in writing of his intention so to enter.

(4) The holder of any such authority having given notice as required by subsection (3) of this section shall, subject to this section and to any limitations expressed in such authority, and not
not doing any unnecessary damage, be entitled to exercise all
or any of the following powers, viz.:—

1. He may at all reasonable times in the daytime enter
upon such land, with any other persons (not exceeding
three at any one time) to assist him, for the purpose
of exercising any or all of the powers hereunder men-
tioned:

11. He may peg out any portion of such land which he desires
to have included in a claim or lease:

111. He may prospect, for a period not exceeding fourteen
days, on the portion of such land (not exceeding one
square mile) defined in such authority; and may, in his
search for minerals, make trenches and sink holes in and
otherwise mine on the portion of land so defined,
provided the area of the surface broken by such
operations does not exceed one hundred square feet
in the aggregate; and may remove mineral samples from
the portion of land so defined for the purpose of ascer-
taining their value, provided that no one sample exceeds
twenty-eight pounds avoirdupois in weight.

(5) The powers mentioned in subsection (4) hereof shall be
exercised in accordance with anything prescribed.

(6) Nothing done pursuant to this section by the holder of
any such authority, or by any person assisting him as
mentioned in subsection (4) hereof, shall be deemed to be a
trespass.

(7) The holder of any such authority shall, if required so to
do, produce such authority to the owner of the land or his
agent, and to the occupier thereof or his agent, on or before
entering upon such land.

(8) The Minister may, at any time, give to the owner or
occupier of the land in respect of which a deposit has been
made as mentioned in subsection (2) hereof notice in writing
requiring him to show, within two months from the giving of
such notice, cause why the amount of such deposit, or any
balance thereof, should not be repaid to the applicant; and if
such owner or occupier fails to show good cause to the con-
trary to the satisfaction of the Minister within such time, the
Minister shall repay such amount or balance to the applicant.
In all other respects such amount shall be applied by the
Minister for the purposes for which it was deposited.

8. Section 26 of the principal Act is amended—

1. by striking out the passage "subsection (4) of" in the
second line thereof; and

11. by inserting the passage "(except as mentioned in that
section)" after the word "land" in the fourth line
thereof.

9. Subsection
9. Subsection (2) of section 27 of the principal Act is amended so as to read as follows:

(2) The warden in making his determination shall take into consideration the damage which would probably be done to the land in consequence of the granting of a mining lease under Part V., any probable damage to any adjoining land of the same owner or occupier, and any other probable consequential damage, such damage in each case being of a permanent nature; and his determination shall be final and not subject to any appeal.

10. Provisos 'i. and 'ii. to paragraph (b) of section 32 of the principal Act are amended so as to read as follows:

1. In assessing the rent the Local Court shall take into consideration the deprivation of the possession of the surface of the land, and the probable damage to the land, any probable damage to any adjoining land of the same owner, and any other probable consequential damage, such damage in each case being of a temporary nature:

11. The Local Court, besides assessing the rent, shall fix the amount or amounts of compensation to be paid for the damage which will probably be done to the land in consequence of the granting of the lease, for any probable damage to any adjoining land of the same owner or occupier, and for any other probable consequential damage, such damage in each case being of a permanent nature. The Court shall order that the amount or amounts so fixed be paid by the applicant by way of compensation prior to the granting of the lease; and the lease shall not be executed (unless by the owner) until such compensation is paid.

11. Section 33 of the principal Act is amended—

1. by striking out the words “payable metal exists therein” in subdivision (a) of subsection (2) thereof, and inserting in lieu thereof the words “there is a reasonable prospect of mining such land at a profit”;

11. by striking out the word “nor” at the end of subdivision (a), and the whole of subdivisions (b) and (c) of subsection (2) thereof; and

111. by adding thereto the following subsection:

(3) The provisions of paragraph (b) of section 32 (except the first five lines) shall apply to a mining lease granted or to be granted by the Minister under this section: Provided that—

(a) The rent to be reserved shall be assessed by a warden on the application of the applicant for the lease; and

(b) In
(b) In lieu of the provisos to the said paragraph (b) the following provisions shall apply:—

1. In assessing the rent the warden shall take into consideration the deprivation of the possession of the surface of the land, and the probable damage to the land, any probable damage to any adjoining land of the same owner, and any other probable consequential damage, such damage in each case being of a temporary nature:

11. If the amount or amounts of compensation to be paid by the said applicant have not been fixed as provided by section 27, the warden shall, besides assessing the rent, determine such amounts in accordance with that section:

111. There shall be an appeal to the Local Court against the assessment or determination of the warden:

1v. If the applicant for the lease is dissatisfied with the rent assessed, or is unwilling to pay the compensation determined by the warden, he shall give notice in the prescribed form to the owner of the land abandoning his claim to the lease:

v. The costs of all proceedings before the warden or the Local Court in respect of the matters herein referred to, shall be paid by the applicant.

12. (1) In fixing the amount of compensation pursuant to section 27 or to section 32 or 33 of the principal Act, the warden or Local Court (as the case may be), instead of fixing an amount to be paid in respect of the whole of the land to be comprised in the claim or lease and any other land which will probably be damaged, may fix separate amounts and allot the same respectively to separate portions of the land to be comprised in the claim or lease, such portions being defined by the warden or Court, or may fix the compensation at a specified amount or amounts per acre of the land to be comprised in the claim or lease.

(2) When the warden or Court fixes amounts in either of the ways permitted by subsection (1) of this section, he or it shall state the particular portion or portions of land in respect of which compensation is to be paid before any mining takes place or before the granting of the lease (according to the nature of the case), and shall fix the amount of the compensation so to be paid.

(3) Payment
(3) Payment or tender of the amount fixed as mentioned in subsection (2) of this section shall be sufficient compliance with section 28 of the principal Act or with proviso ii. to paragraph (b) of section 32 of that Act, according to the nature of the case.

(4) When separate amounts of compensation have been fixed, as permitted by subsection (1) of this section, no mining in pursuance of the principal Act or of the lease shall take place on any portion of the land until the amount or amounts of compensation allotted to that portion have been paid or tendered to the person or persons entitled thereto.

(5) When compensation has been fixed at a specified amount or amounts per acre, as permitted by subsection (1) of this section, no mining in pursuance of the principal Act or of the lease shall take place on any portion of the land, until the amount or amounts of compensation so fixed for land of the area of that portion have been paid or tendered to the person or persons entitled thereto.

13. All applications made to a warden, and all proceedings of or taking place before a warden, under or for the purposes of the principal Act or this Act, shall be made and taken in manner prescribed by regulations: Provided that, until otherwise so prescribed, such applications and proceedings shall be made and taken in the manner prescribed by Part II. of the Mining Act, 1893, with regard to the suits therein mentioned and the proceedings in such suits.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

H. L. GALWAY, Governor.