

MINING DEVELOPMENT ORDINANCE 1939-1959.*

1591

AMENDED 26/64.

An Ordinance to Encourage the Development of Mining.

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Mining Development Ordinance 1939-1959*.* Short title.
Short title amended:
No. 17, 1938,
s. 4.

2. This Ordinance shall come into operation on a day to be fixed by the Administrator by notice in the *Gazette*.† Commence-
ment.

3. The *Encouragement of Mining Ordinance 1913*, the *Encouragement of Mining Ordinance 1926* and the *Encouragement of Mining Ordinance 1932* are repealed. Repeal.

4. This Ordinance is divided into Parts, as follows:— Parts.
Amended by
No. 2, 1957,
s. 3.
 - Part I.—Preliminary.
 - Part II.—Advances for Development Mining.
 - Part III.—Assistance for Prospecting.
 - Part IV.—Establishment of Plant for Crushing, Ore-dressing, Cyaniding or Smelting.
 - Part V.—Assistance for Boring.
 - Part VI.—Miscellaneous.

* The *Mining Development Ordinance 1939-1959* comprises the *Mining Development Ordinance 1939* as amended. Particulars of the Principal Ordinance and of the amending Ordinances are set out in the following table:—

Ordinance.	Number and Year.	Date notified in Commonwealth Gazette.	Date of Commencement.
<i>Mining Development Ordinance 1939</i>	No. 5, 1939	5th April, 1939 ..	1st August, 1939
<i>Mining Development Ordinance 1940</i>	No. 7, 1940	9th May, 1940 ..	9th May, 1940
		Date of Assent by Administrator.	
<i>Mining Development Ordinance 1955</i>	No. 12, 1955	8th June, 1955 ..	8th June, 1955
<i>Mining Development Ordinance 1957</i>	No. 2, 1957	12th April, 1957 ..	20th June, 1957
<i>Mining Development Ordinance 1958</i>	No. 12, 1958	21st July, 1958 ..	21st July, 1958
<i>Administrator's Council Ordinance 1959</i>	No. 22, 1959	7th July, 1959 ..	28th April, 1960

† The day fixed was 1st August, 1939—see table above.

Definitions.
Sub-section (1.)
amended by
No. 2, 1957,
s. 4.

5.—(1.) In this Ordinance, unless the contrary intention appears—

- “applicant” means a person who has made application under section seven of this Ordinance and whose application has not been granted, refused or withdrawn;
- “borrower” means a person with whom the Administrator has entered into an agreement under section ten of this Ordinance and who has not repaid in full an amount advanced under the agreement and the interest on that amount;
- “company” means any incorporated company registered under “*The Companies Act, 1892*” of the State of South Australia in its application to the Territory or under any enactment amending that Act or in substitution therefor;
- “development mining” means mining operations which, in the opinion of the Director of Mines, are necessary for the purpose of determining the size and value of an ore body and for the subsequent development of workings to facilitate the economic extraction of ore from the ore body;
- “gold” means any gold or gold-containing mineral ore deposit or concentrate the principal intrinsic value of which is in the gold;
- “inspector” means an inspector appointed under the *Mines Regulation Ordinance 1939*;
- “mineral” means any metal, metallic ore, coal, oil or other mineral deposit;
- “mine” means any land held or occupied under “*The Northern Territory Mining Act, 1903*”, the *Mining Ordinance 1939*, the *Encouragement of Mining Ordinance 1913*, the *Mineral Oil and Coal Ordinance 1922*, or any Ordinance amending that Act or any of those Ordinances respectively or in substitution therefor, and on which mining operations are carried on;
- “miner” means any holder of a miner’s right;
- “mining area” means an area which is a gold-field or a mineral field within the meaning of the *Mining Ordinance 1939*;
- “mining operations” are operations upon any mine for the purpose of obtaining or prospecting for gold or minerals;

“ mining registrar ” means a mining registrar appointed and holding office under the *Mining Ordinance 1939-1956*;

“ prospect ” means do work which, in the opinion of the Director of Mines, is involved in the search for and location of an ore body and subsequent preliminary work, not being development mining, which, in the opinion of the Director of Mines, is necessary to test the potentialities of economic production of ore from the ore body;

“ the Director of Mines ” means the Director of Mines appointed under the *Mining Ordinance 1939-1956*, and includes an Acting Director of Mines so appointed.

* * * * *

Sub-section (2.)
omitted by
No. 2, 1957,
s. 4.

6. All moneys advanced, granted or expended pursuant to this Ordinance shall be provided out of moneys appropriated or lawfully available for the purpose.

Appropriation
of moneys.

PART II.—ADVANCES FOR DEVELOPMENT MINING.

Heading
substituted by
No. 2, 1957,
s. 5.

7. A person may apply to the Director of Mines for an advance by way of loan for—

Purposes of
advances.

- (a) carrying on development mining;
- (b) procuring, erecting and connecting machinery, plant or appliances for carrying on development mining; or
- (c) providing other works and things which, in the opinion of the Director of Mines, are necessary for carrying on development mining.

Substituted by
No. 2, 1957,
s. 6.

8—(1.) Every application for an advance shall be in accordance with the prescribed form and shall be accompanied by—

Applications
for advances.
Sub-section (1.)
amended by
No. 2, 1957,
s. 7.

- (a) a description of the mine on which the mining operations are to be performed, and of all workings thereon, and an accurate plan and sections of those workings;
- (b) a description and valuation of all machinery, plant and effects on the mine;
- (c) a statement of the encumbrances (if any) affecting the mine, machinery, plant or effects;

- (d) a statement showing the development mining proposed to be performed, the object thereof, the probable cost thereof, and of any machinery, plant and effects proposed to be purchased in connexion therewith;
- (e) a statement showing the manner in which, and the work on which, it is proposed to expend the advance, and the period of time during which that expenditure will be incurred, and the time when, and amounts in which, the advance will be required; and
- (f) if the application is made by a company—
 - (i) evidence of the incorporation and registration of the company, and a copy of its memorandum and articles of association; and
 - (ii) particulars as to the amount of uncalled capital of the company, and of its assets and liabilities.

Amended by
No. 2, 1957,
s. 7.

(2.) An applicant shall also furnish to the Director of Mines such further evidence, documents or information as that officer, by notice in writing to the applicant, requires.

Amended by
No. 2, 1957,
s. 7.

(3.) An applicant shall verify all such evidence, statements and information by statutory declaration.

Applications
may be
referred to
inspector, &c.
Sub-section (1.)
amended by
No. 2, 1957,
s. 8.

9.—(1.) The Director of Mines may refer any application for an advance to an inspector or a person thereto authorized by the Administrator, for report.

Amended by
No. 2, 1957,
s. 8.

(2.) A report under this section shall be made after personal examination of the mine to which the application relates, and shall—

- (a) fully describe the character of the mine and of the lead, lode, reef, vein, seam or other mineral formation contained therein;
- (b) state whether the performance of the proposed mining operations would or would not, in the opinion of the person reporting, be development mining;
- (c) state whether, in the opinion of the person reporting, there is reasonable probability of such mining operations proving to be of a remunerative character, giving the reasons and grounds for that opinion;

- (d) state whether the machinery, working plant and appliances are of a character and description properly adapted to the proposed mining operations; and
- (e) give such other information as is prescribed or as the Director of Mines requires.

10.—(1.) After considering all the evidence and reports relating thereto, the Director of Mines may recommend to the Administrator the grant of the application, with or without modification.

Agreement with applicant for repayment of advance by instalments.

(2.) The Administrator may, thereupon, on behalf of the Commonwealth, enter into an agreement with the applicant undertaking, subject to this Ordinance and the Regulations, to advance, by way of loan to the applicant, any sum or sums not exceeding in the whole Two thousand pounds or such larger amount as the Minister, in a particular case, approves.

Amended by No. 12, 1955, s. 2; and No. 2, 1957, s. 9.

(3.) The advance shall be payable in instalments of such amount and at such times as are specified in the agreement.

(4.) No instalment shall be paid until it is proved to the satisfaction of the Administrator that—

Amended by No. 2, 1957, s. 9.

(a) for every pound to be advanced the borrower has, out of his own capital, actually and properly expended on mining operations on the mine a like sum of One pound; and

(b) the borrower has properly expended, in mining operations on the mine, all previous instalments advanced by the Administrator, and has paid all interest (if any) due on any such instalments.

(5.) The borrower shall pay to the Administrator interest on the amount of the advance, calculated from the dates of payment of the respective instalments, at such rate as is charged from time to time by the Commonwealth Trading Bank on overdrafts, by half-yearly payments, on dates to be specified in the agreement.

Amended by No. 12, 1955, s. 2.

(6.) The agreement shall contain all such covenants, conditions, restrictions and provisions consistent with this Ordinance as the Administrator requires.

11. No instalment of an advance shall be paid until the borrower has provided the Commonwealth at his own cost with such security as the Administrator considers adequate to secure the repayment of the advance and interest and the due performance of the terms of the agreement and the provisions of this Ordinance.

Borrower to provide security for repayment of advance.
Substituted by No. 2, 1957, s. 10.

Dividends, &c.,
not to be paid
until agreement
performed.

12.—(1.) A company to which an advance has been made under this Part of this Ordinance shall not, until it has performed all the terms of the agreement pursuant to which the advance was made, pay, credit or distribute, amongst all or any of its members, by way of dividend or otherwise, any of its money, property or assets.

(2.) Where any company contravenes the provisions of the last preceding sub-section, each director of that company with whose consent the payment, crediting or distribution was made shall be guilty of an offence.

Penalty: Imprisonment for six months.

(3.) Where any money, property or assets of a company has been paid, credited or distributed to any person in contravention of sub-section (1.) of this section, that money and the value of that property or those assets shall be a debt due and payable to the company by that person.

Administrator
may sue for
moneys
advanced.

13. All moneys advanced to or payable by a borrower under an agreement shall, when due and payable, be a debt due and payable to the Commonwealth, and payment thereof may be enforced by the Administrator suing in his official name in any court of competent jurisdiction.

Provisions
applicable
until moneys
advanced
have been
paid.

Amended by
No. 2, 1957,
s. 11.

14. Until all moneys advanced under an agreement to a borrower have been repaid, and the terms of the agreement have been complied with, the following provisions shall, in addition to the provisions of the agreement, apply:—

- (a) The Administrator may appoint any person to inspect and report upon the progress of the works, and upon the state and condition of the property and plant of the borrower;
- (b) The borrower shall, when so required by any person appointed by the Administrator, allow full inspection of, and copies and extracts to be taken from, all or any of the books, documents or records belonging or relating to the business of the borrower;
- (c) The borrower shall, within fourteen days, supply such information as the Administrator demands in relation to the borrower, or to the property, assets, undertaking, work and operations of the borrower, and shall, if required, verify such information by statutory declaration;
- (d) In case of default by the borrower the Administrator may give notice to the borrower of his intention to enforce the security provided by the borrower under section eleven of this Ordinance;

- (e) If, after the expiration of fourteen days from the service of a notice under the last preceding paragraph, the default continues, the Administrator may take such steps as he thinks fit to enforce the security provided by the borrower under section eleven of this Ordinance; and
- (f) Where, under the last preceding paragraph, the Administrator appoints a person to enter into possession of property and assets of the borrower being all or part of the subject matter of the security, on entering into possession the person shall have and may exercise the powers and authorities of a receiver and manager of that property and those assets, and may, with such assistants as are necessary, carry on any business of the borrower being all or part of that property or those assets, and, if so directed by the Administrator, may cause all or any of that property and those assets to be sold by public auction, by tender or by private contract, and the moneys thereby realized shall, after payment of all expenses incurred by the Administrator, be applied towards the payment of all moneys payable by the borrower to the Administrator and the balances, if any, shall be paid to the borrower.

15.—(1.) During the absence of the borrower (not being a company) from the mine for any period of more than three days, the borrower shall appoint, and at all times keep appointed, an agent who resides or works daily at the mine.

Appointment
of agent by
borrower.

(2.) If the borrower is a company, it shall appoint, and at all times keep appointed, some person as its agent who resides or works daily at the mine.

(3.) The service of any order, demand, notice or requirement pursuant to this Ordinance or the regulations on any person appointed as an agent by the borrower shall be deemed to be service on the borrower.

(4.) If the borrower (not being a company) is absent from the mine for a period of more than three days and has not appointed an agent who resides or works daily at the mine, or if the borrower (being a company) has not appointed an agent who resides or works daily at the mine, the posting of any order, demand, notice or requirement pursuant to this Ordinance or the regulations at a conspicuous place on the mine shall be deemed to be service of that order, demand, notice or requirement on the borrower.

Non-compliance with Ordinance or regulations to constitute default.

16. Any non-compliance by a borrower or his agent, or, if the borrower is a company, by the company, or by any of its officers or agents, with any of the provisions of this Ordinance or the regulations, or with any order, demand, notice or requirement of the Administrator or any person appointed by him pursuant to this Ordinance or the regulations, shall constitute a default of the agreement by the borrower.

PART III.—ASSISTANCE FOR PROSPECTING.

Application for advance for prospecting.

Amended by No. 2, 1957, s. 12.

17. A person may apply in accordance with the prescribed form to the Director of Mines or officer appointed by him to receive applications, for an advance for the purpose of prospecting and shall, if he so applies, on request by the Director of Mines, supply information in regard to his qualifications to receive such an advance.

Administrator may approve application.

Amended by No. 2, 1957, s. 13.

18. The Administrator may, on the recommendation of the Director of Mines, approve of the application, and, subject to the person entering into the prescribed agreement, make an advance to that person.

Approved applicant to sign agreement.

Substituted by No. 2, 1957, s. 14.

19. A person whose application under this Part is approved shall not receive an advance under this Part until he has entered into an agreement which includes conditions—

- (a) that he will, during the term specified in the agreement, prospect to the satisfaction of the Director of Mines; and
- (b) that he will pay to the Administrator, from any gold or mineral obtained by him as a result of prospecting during the term so specified, such percentage of gold or mineral so obtained as is specified in the agreement.

Approved applicant to prospect to satisfaction of Director of Mines.

Amended by No. 2, 1957, s. 15.

20. A person whose application under this Part is approved shall, upon receipt of an advance or portion thereof, prospect to the satisfaction of the Director of Mines and shall forward to the Director of Mines or to an inspector or mining registrar regular monthly reports of the work done in so prospecting.

Method of making advances.

Amended by No. 2, 1957, s. 16.

21. An advance may be issued to a person whose application under this Part is approved in such instalments and in such manner or form as the Administrator determines.

PART IV.—ESTABLISHMENT OF PLANT FOR CRUSHING,
ORE-DRESSING, CYANIDING OR SMELTING.

22. For the purpose of this Part of this Ordinance, “ plant ” means plant for testing the value of, or treating, metalliferous material, and includes any machinery and appliances for—

- (a) mechanically reducing any rock, gangue, matrix, ore or other vein stuff, for the purposes of obtaining gold or mineral therefrom;
- (b) classifying or dressing rock, gangue, matrix, ore or other vein stuff, and separating therefrom the gold or mineral therein contained; or
- (c) extracting gold or minerals from such rock, gangue, matrix, ore or other vein stuff by any process whatever.

23. The Administrator may—

- (a) purchase or hire and erect and operate plant; or
- (b) subsidize companies or persons who are willing to erect and work plant for the public at such rates as are agreed upon between the Administrator in Council and the company or person.

Plant for testing value of or treating metalliferous material.
Amended by No. 22, 1959, s. 6 and First Schedule.

24.—(1.) Plant purchased or hired by the Administrator shall be erected only in places in which, from the report of the Director of Mines, an inspector or a person thereto authorized by the Administrator, the Administrator is satisfied that—

- (a) large deposits of metalliferous ores exist; and
- (b) plant and appliances for testing or treating such deposits in bulk at reasonable rates are not available; and
- (c) the establishment of plant is necessary for the development of mining.

Plant to be erected only in certain places.
Sub-section (1.) amended by No. 2, 1957, s. 17.

(2.) A subsidy under paragraph (b) of section twenty-three of this Ordinance shall not be granted in respect of the erection or working of plant at any place other than a place at which plant purchased by the Administrator may, under this Ordinance, be erected.

25.—(1.) The rates charged by the Administrator for testing or treating metalliferous material shall be as prescribed or as are determined by the Administrator in Council by notice in the *Gazette*.

Rates for testing and treating.
Sub-section (1.) amended by No. 22, 1959, s. 6 and First Schedule.

(2.) The rates charged by a subsidized person or company for testing or treating metalliferous material shall be the rates agreed upon with the Administrator in Council under section twenty-three of this Ordinance.

Amended by No. 22, 1959, s. 6 and First Schedule.

Stealing from plant.

Inserted by No. 7, 1940, s. 2.

25A.—(1.) Any person who takes or removes any gold, gold amalgam or concentrates from any plant shall be deemed to have stolen the gold, gold amalgam or concentrates unless he proves that such taking or removal was with the permission of the person operating the plant, and any person receiving the gold, gold amalgam or concentrates with knowledge of its or their unpermitted removal from the plant shall be deemed to have received the gold, gold amalgam or concentrates knowing it or them to have been stolen.

(2.) In any information or complaint charging any person with stealing any gold, gold amalgam or concentrates from any plant, it shall be sufficient to lay the property in the said gold, gold amalgam or concentrates in the person operating the plant from which the gold, gold amalgam or concentrates were stolen.

PART V.—ASSISTANCE FOR BORING.

Administrator may pay whole cost of boring for gold, minerals or water.

Amended by No. 2, 1957, s. 18.

26. The Administrator may pay the whole cost of boring for gold, minerals or water in any locality if satisfied, after receiving the report of the Director of Mines, an inspector or a person thereto authorized by the Administrator, that such boring is in the general interest of the Territory.

Agreement to pay portion of cost of boring.

Substituted by No. 2, 1957, s. 19.

27. The Administrator may enter into an agreement with a person under which the Administrator agrees to pay a portion, being not greater than one-half, of the total cost of boring for gold, minerals or water.

PART VI.—MISCELLANEOUS.

Purchase and hire of boring plant.

28. The Administrator may purchase any boring plant and accessories, and may hire plant and accessories in accordance with the regulations.

Advance or expenditure of money for certain purposes.

Sub-section (1.) amended by No. 7, 1940, s. 3; No. 2, 1957, s. 20; and No. 12, 1958, s. 2.

29.—(1.) The Administrator may advance or expend moneys—

- (a) to drain any mining area;
- (b) to assist mining by sinking or crosscutting for a further make of stone;
- (c) to make roads in any mining area; and
- (d) to assist mining development by granting subsidies on ore crushed by means of plant operated by the Administrator or approved from time to time by the Administrator for the purposes of this section.

(1A.) The Administrator may advance moneys on ore concentrates produced in the Northern Territory.

(2.) Any advance made under this section shall be made on such terms and conditions as the Administrator determines.

Inserted by No. 2, 1957, s. 20.

Amended by No. 2, 1957, s. 20.

30. The Administrator may make regulations not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance, and, in particular, for prescribing penalties not exceeding Fifty pounds for any breach of the regulations. Regulations.