

**MINING LEGISLATION AMENDMENT
AND VALIDATION ACT 2007**

COMMITTEE

EXPLANATORY MEMORANDUM

Western Australia

MINING LEGISLATION AMENDMENT AND VALIDATION ACT 2007

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MINING LEGISLATION AMENDMENT AND VALIDATION ACT 2007

General Outline

The purpose of this Amendment Act is to:

- (a) validate miscellaneous licences made for purposes pursuant to regulation 42B(n),
- (b) validate the extension of term of certain exploration licences lodged at the incorrect office of the Department, and
- (c) amend section 19 of the *Mining Amendment Act 2004* to provide for the lodgement of the extension of term of exploration licences and compulsory surrenders at any office of the Department.

Part 1 – Preliminary

Clause 1 – Short title

The short title for the amending legislation is the *Mining Legislation Amendment and Validation Act 2007*.

Clause 2 – Commencement

This clause provides that Parts 1 and 2 shall come into operation on the day after the day on which the Act receives the Royal Assent.

Part 3 shall come into operation on a day fixed by proclamation. Different days may be fixed for different provisions. The proclamation will be published in the *Government Gazette*. Part 3 requires that amendments be made to the *Mining Regulations 1981*, hence the different commencement date to Parts 1 and 2.

Clause 3 – Terms used in this Act

Subclause (1)

This subclause provides, for the purpose of this Amendment Act, unless the contrary intention appears the meanings of “**miscellaneous licence**” and “**relevant licence**”.

Subclause (2)

This subclause provides that the meaning given to terms in section 8 of the *Mining Act 1978* have the same meaning in this Amendment Act.

Part 2 – Provisions relating to exploration licences **Division 1 – *Mining Amendment Act 2004* amended**

Clause 4 – The Act amended

The amendments contained in this Division are to the *Mining Amendment Act 2004*.

Clause 5 – Section 19 amended

Section 19 is a transitional and savings provision and provides that despite amendments made by Part 2 of the *Mining Amendment Act 2004* the old provisions continue to apply, with some exceptions, to exploration licences:

- (a) granted and in force immediately before the commencement (commencement of Part 2), and
- (b) granted after the commencement in respect to an application made before the commencement.

Subclause (1)(a) – Reference to section 61(3) inserted

Section 61 of the *Mining Act 1978* provides for the term of an exploration licence and that the Minister may extend its term. Section 61(3) provides the place for the lodgement of extension applications and prior to its amendment extension applications were required to be lodged at the office of the mining registrar, i.e. in Leonora (only) if the licence came within the surrounding Mineral Fields. The *Mining Amendment Act 2004* amended section 61(3) by providing that extension applications in respect to “new” exploration licences, i.e. applied for and granted after the commencement of the Amendment Act, be made in the prescribed manner with supporting regulations providing that the extension application be lodged at an office of the Department, i.e. at any of the Department’s ten mining registrar’s offices. This resulted in there being different places of lodgement for extensions of the ‘old’ licences as distinct from ‘new’ licences.

The inclusion of the reference to “61(3)”, together with the amendment in subclause (2) hereunder, provides that the place for the lodgement for all extension applications, whether they relate to “old” or “new” exploration licences, will be the same i.e. at an office of the Department.

Subclause (1)(b) – Reference to section 65(1c) inserted

Section 65 of the *Mining Act 1978* provides that the holder of an exploration licence must surrender portion of the licence. Section 65(1c) provides the place for the lodgement of these compulsory surrenders and prior to its amendment these surrenders were required to be lodged at the Department at Perth. The *Mining Amendment Act 2004* amended section 65 by providing that such surrenders in respect to “new” exploration licences, i.e. applied for and granted after the commencement of the Amendment Act, be made at the office of the mining registrar or at the Department at Perth (see new regulation 84A).

The inclusion of the reference to “65(1c)”, together with the amendment in subclause (3) hereunder, provides that the place for the lodgement for surrenders under section 65, whether they relate to “old” or “new” exploration licences, will be the same, i.e. at the office of the mining registrar or at the Department at Perth.

Subclause (2) – Inserts new subsection (2a)

This new subsection clarifies the place for the lodgement of an extension of term in respect to a relevant exploration licence referred to in section 19(1) of the *Mining Amendment Act 2004*, i.e. the place for the lodgement of such extension applications is prescribed in the regulations and is at an office of the Department.

Subclause (3) – Inserts new subsection (7)

This new subsection clarifies the place for the lodgement of a surrender under section 65 in respect to a relevant exploration licence referred to in section 19(1) of the *Mining Amendment Act 2004*, i.e. the place for the lodgement of such surrenders is prescribed in the regulations and is at the office of the mining registrar or at the Department at Perth.

Division 2 – Validation and pending applications

Clause 6 – Validation of extension of term of certain exploration licences

This Clause will validate the term of an exploration licence if that term was extended as a result of an extension application lodged at an incorrect office of the department following the commencement of the *Mining Amendment Act 2004* on 10 February 2006.

The *Mining Amendment Act 2004* amended the *Mining Act 1978*, inter alia, to provide that an extension of the term of an exploration licence shall be made in the prescribed manner. Supporting regulations provided that the application is lodged at an office of the Department.

The Amendment Act however contained transitional and savings provisions that preserved the previous lodgement procedure for exploration licences applied for prior to the *Mining Amendment Act 2004* coming into force, i.e. that these applications be lodged at the office of the mining registrar (restricted to lodging at the relevant regional mining registrar's office). This savings provision was inadvertently overlooked and a number of extension applications were lodged at an incorrect office of the department (and later granted) thereby bringing into question the validity of the grant.

Clause 7 – Pending applications for extension of term

This Clause will allow all applications for the extension of term of an exploration licence made at an incorrect office of the department since the commencement of the *Mining Amendment Act 2004* to be dealt with and determined as if the application was made at a correct office of the Department.

Part 3 – Provisions relating to miscellaneous licences

Clause 8 – Validation of grant of certain miscellaneous licences

This Clause will validate all miscellaneous licences granted for a purpose approved or specified by the Director General of Mines as if that purpose was prescribed in accordance with section 91(1) of the *Mining Act 1978* at the time of the grant of the licence.

Section 91(1) provides that a miscellaneous licence may be granted for any one or more of the purposes prescribed. In 1991 regulation 42B(e) (reconstituted as regulation 42B(n) in a later amendment) was inserted to provide power for the Director General of Mines to be able to approve of a purpose for a miscellaneous licence. Over the years a number of purposes were approved by the Director General of Mines, however, in a recent court case a miscellaneous licence was refused for the reason that regulation 42B(n) is ultra vires. Legal opinion supports the court's finding of invalidity and therefore the grant of miscellaneous licences made for purposes approved by the Director General of Mines is at risk.

Clause 9 – Pending applications for miscellaneous licences

This Clause will allow all applications for miscellaneous licences made for one or more purposes approved or specified by the Director General of Mines to be dealt with and determined as if that purpose was prescribed in accordance with section 91(1) of the *Mining Act 1978*.

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