

Legislation Committee

From: Chris <chris@mk2consulting.com.au>
Sent: Thursday, 24 March 2016 4:45 PM
To: Legislation Committee
Subject: Mining Legislation Amendment Bill 2015 | Submission for Consideration by the Legislation Committee

Dear Members,

I would like to make the following submission available to the Committee in relation to the unintended consequences of the provisions of **Clause 17 of the Bill**:

I have had cause to review Clause 17 of the Bill and am concerned regarding the unintended consequence of drafting by Parliamentary Counsel.

In particular the amendment as read has no 'sunset clause' in terms of the requirement for a person to obtain the consent of the Minister to re-apply for a defined 'exploration area' that has been the subject of a prior application for an exploration licence that did not proceed to grant or refusal; and notwithstanding the application having been withdrawn.

The object of the amendment is to put a stop to 'land-banking'. Under the current legislation a person is not precluded from re-applying for ground at any time after making the initial exploration licence application, as was evidenced in a case that came before the warden in the Perth Warden's Court in 2012. In that case there was evidence of multiple successive applications by a person or related corporate entity of that person over a number of years which effectively postponed indefinitely the grant of title, by simply 'resetting of the clock'. Clearly, this is contrary to the spirit and intent of the legislation and not in the State's interest for advancing exploration and development of its mineral resources.

The above amendment seeks to close this loop-hole by amending s.58 of the *Mining Act 1978*. However, the amendment as it stands has force and effect for all time for the person, or a related party of that person in respect of the subject exploration area (defined under the Bill as being any part of the initial exploration licence application) irrespective of whether the exploration licence application was subsequently withdrawn.

As the proposed legislation stands there is in effect a total embargo on any future application by the same person or a related party of that person irrespective of timeframe and the cyclical nature of commodity price (e.g. evidence gold & base metals - v- iron ore market) in respect of any part of the previously defined exploration area without Ministerial consent. So a person could well have a situation where a bona fide exploration licence for one target commodity was withdrawn and is subsequently included in part an exploration licence application lodged, say 12 months later for a differing alternate target commodity, therefore attracting the embargo provisions of the Bill.

Clearly, this goes beyond the intent of the amendment as set out in the following extract of the Explanatory Memorandum to the Mining Legislation Amendment Bill 2015, viz:

Clause 17 - Section 58 amended

New subsections are being added to address an anomaly that has arisen with processing exploration licence applications. Some applicants have been applying for more than one application over the same or substantially the same ground, then withdrawing the initial application. This has the effect of tying up the ground to the detriment of other applicants.

The new subsections clarify that this cannot occur unless the Minister agrees there are special circumstances for doing so.

Furthermore, the embargo imposed on applications as proposed by the Bill is more onerous than the existing moratorium provision of s.69 of the Act which provides a three (3) embargo on re-applying for surrendered land formerly comprising an exploration licence:

s.69. Land the subject of exploration licence not to be again marked out for a certain period

- (1) When an exploration licence is surrendered or forfeited, or expires, or any part of the land the subject of the licence is surrendered in accordance with section 65, the land the subject of the licence or the part so surrendered shall not be marked out or applied for as a prospecting licence or an exploration licence —
- (a) by or on behalf of the person who was the holder of the exploration licence immediately prior to the date of the surrender, forfeiture or expiry; or
- (b) y or on behalf of any person who had an interest in the exploration licence immediately prior to that date; or
- (c) by or on behalf of any person who is related to a person referred to in paragraph (a) or (b),

within a period of 3 months from and including that date.

It would be my suggestion that consideration be given Clause 17 of the Bill being amended (if plausible) before passage - using the Legislative Council review process - in respect of the proposed s.58(2)(1A) by inclusion of a new sub-clause (c):

(1A) Subsection (1B) applies if —

- (a) a person (the *original applicant*) has lodged an application referred to in subsection (1) for an exploration licence in respect of an area (*the exploration area*); and
- (b) the Minister has not determined the application by granting or refusing the exploration licence under section 59(6),

and applies even if the application has been withdrawn;

or

- (c) *the person has withdrawn the application referred to in subsection (1) for an exploration licence then for a period of 3 months from and including the date the application is withdrawn.*

Kind Regards,

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