

APPROVALS AND RELATED REFORMS (No. 2) (MINING) BILL 2009

EXPLANATORY MEMORANDUM

OVERVIEW OF BILL

The Bill consists of 43 clauses and incorporates two proposals.

Mine closure plans

The Bill provides that mine closure plans are required to be submitted with mining proposals and reviewed on a regular basis to ensure that they are up to date. The amendment will raise the level of compliance with mine closure planning requirements and reduce the State's financial risk associated with operators not adequately providing for their mine rehabilitation and closure obligations.

Lodgement anywhere and electronic lodgement

The Bill also provides that mining tenement documents can be lodged at any office of the mining registrar, including Perth, rather than at the office where the mining tenement is located. A further option is for the lodgement of those mining tenement documents to be lodged electronically through a nominated departmental online portal.

CLAUSE NOTES

The following is a brief description of the clauses of the Approvals and Related Reforms (No. 2) (Mining) Bill 2009.

Part 1 – Preliminary matters

Clause 1 – Short title

Clause 1 cites the short title of the Act.

Clause 2 – Commencement

Clause 2 provides for the commencement of the Act:

- (a) Part 1 commences on the day of Royal Assent; and
- (b) the rest of the Act - different provisions may come into operation on such days as may be fixed by proclamation.

Part 2 – Mine closure plans, and other measures to minimise damage to land, under *Mining Act 1978*

Clause 3 – Act amended

Clause 3 identifies the *Mining Act 1978* as the Act being amended.

Clause 4 – Section 6 amended

Clause 4 inserts new sub-section (3) to ensure that compliance with the requirements under a mine closure plan will not exempt a company's obligations under the *Contaminated Sites Act 2003*.

Clause 5 – Section 46A amended

Clause 5 makes it clear that conditions may be imposed on the holder of a prospecting licence for the purpose of preventing or reducing, or making good injury not just to the surface of the land but also below the surface of the land.

Clause 6 – Section 63AA amended

Clause 6 makes it clear that conditions may be imposed on the holder of an exploration licence for the purpose of preventing or reducing, or making good injury not just to the surface of the land but also below the surface of the land.

Clause 7 – Section 70I amended

Clause 7 makes it clear that conditions may be imposed on the holder of a retention licence for the purpose of preventing or reducing, or making good injury not just to the surface of the land but also below the surface of the land.

Clause 8 – Section 70O amended

Clause 8(1) inserts, in alphabetical order, two new definitions "***mine closure plan***" and "***relevant mining proposal***".

Clause 8(2) amends the definition of "***mining proposal***" by stating that the mining proposal contains a mine closure plan.

Clause 9 – Section 82 amended

Clause 9 provides that it shall be a condition of every mining lease that the lessee shall in accordance with new section 84AA (refer Clause 10);

- (a) review the mine closure plan, and
- (b) obtain the written approval for the reviewed mine closure plan.

The lease will be liable for forfeiture if the lessee is in breach of this condition.

Clause 10 – Section 84AA inserted

Clause 10 inserts new section 84AA which provides for the review of mine closure plans.

New sub-section (1) provides that the mine closure plan must be reviewed no later than:

- (a) in the case of a mining proposal lodged with the lease application under section 74(1)(ca), no later than three years after the lease is granted;

- (b) in the case of a mining proposal approved under section 82A(2)(b), no later than three years after that approval; or
- (c) no later than such other time as may be approved in writing.

New sub-section (2) provides that a mine closure plan must be further reviewed after three years from its most recent review or such other time as may be approved in writing.

New sub-section (3) provides that the lessee must ensure that a reviewed mine closure plan is lodged for approval in the prescribed manner and within the prescribed time.

Clause 11 – Section 84 amended

Clause 11 makes it clear that conditions may be imposed on the holder of a mining lease for the purpose of preventing or reducing, or making good injury not just to the surface of the land but also below the surface of the land.

Clause 12 – Section 123 amended

Clause 12 provides that compensation may be payable for damage done to any land including below the surface of the land.

Part 3 – Lodgment of documents under *Mining Act 1978*

Clause 13 – Act amended

Clause 13 identifies the *Mining Act 1978* as the Act being amended.

Clause 14 – Section 8 amended

Clause 14 deletes the definition of “*the office of the mining registrar*”. With changes being made that will allow documents to be lodged at any office of the mining registrar this definition is no longer necessary.

Clause 15 – Section 20A amended

Clause 15(a) deletes the specific reference as to where an application for a permit may be lodged and inserts that it is to be lodged “in the prescribed manner”. This change will allow regulations to provide that an application for a permit may be lodged at any mining registrar’s office or electronically through a nominated departmental online portal.

Clause 15(b) is a consequential drafting change.

Clause 16 – Section 41 amended

Clause 16(a) deletes the specific reference as to where an application for a prospecting licence may be lodged and inserts that it is to be lodged “in the prescribed manner”. This change will allow regulations to provide that an

application for a prospecting licence may be lodged at any mining registrar's office or electronically through a nominated departmental online portal.

Clause 16(b) is a consequential drafting change.

Clause 17 – Section 42 amended

Clause 17 deletes the specific reference as to where a notice of objection may be lodged. This section already contains reference that it is to be lodged "in the prescribed manner". This change will allow regulations to provide that a notice of objection may be lodged at any mining registrar's office or electronically through a nominated departmental online portal.

Clause 18 – Section 51 amended

Clause 18 deletes the specific reference as to where a report of work and expenditure may be lodged. This section already contains reference that it is to be lodged "in such manner as may be prescribed". This change will allow regulations to provide that a report may be lodged at any mining registrar's office or electronically through a nominated departmental online portal.

Clause 19 – Section 52 amended

Clause 19(1) deletes the specific reference as to where a security may be lodged and inserts that it is to be lodged "in the prescribed manner". This change will allow regulations to provide that an application for a security may be lodged at any mining registrar's office or electronically through a nominated departmental online portal.

Clause 19(2) is a similar amendment to that above but applies to additional securities for compliance with conditions imposed under section 46A.

Clause 20 – Section 56A amended

Clause 20 deletes the specific reference as to where the consent of the primary tenement holder may be lodged and inserts that it is to be lodged "in the prescribed manner". This change will allow regulations to provide that the consent may be lodged at any mining registrar's office.

Clause 21 – Section 58 amended

Clause 21(1)(a) deletes the specific reference as to where an application for an exploration licence may be lodged and inserts that it is to be lodged "in the prescribed manner". This change will allow regulations to provide that an application for an exploration licence may be lodged at any mining registrar's office or electronically through a nominated departmental online portal.

Clause 21(1)(b) is a consequential drafting change.

Clause 21(1)(c) is a consequential drafting change.

Clause 21(2) deletes section 58(1a). The provisions relating to the lodgement of mining tenement applications at the same time are being dealt with in the changes to section 105A (refer Clause 36).

Clause 22 – Section 59 amended

Clause 22 deletes the specific reference as to where a notice of objection may be lodged. This section already contains reference that it is to be lodged “in the prescribed manner”. This change will allow regulations to provide that a notice of objection may be lodged at any mining registrar’s office or electronically through a nominated departmental online portal.

Clause 23 – Section 60 amended

Clause 23(1) deletes the specific reference as to where a security may be lodged and inserts that it is to be lodged “in the prescribed manner”. This change will allow regulations to provide that an application for a security may be lodged at any mining registrar’s office or electronically through a nominated departmental online portal.

Clause 23(2) is a similar amendment to that above but applies to additional securities for compliance with conditions imposed under section 63AA.

Clause 24 – Section 67A amended

Clause 24 changes the reference from “at the office of the mining registrar” to “in the prescribed manner”. The change does not alter the meaning of “compliance with the initial requirement” as set out in section 105A(4).

Clause 25 – Section 68 amended

Clause 25 deletes the specific reference as to where a report of work and expenditure may be lodged. This section already contains reference that it is to be lodged “in such manner as may be prescribed”. This change will allow regulations to provide that a report may be lodged at any mining registrar’s office or electronically through a nominated departmental online portal.

Clause 26 – Section 70 amended

Clause 26 deletes the specific reference as to where the consent of the primary tenement holder may be lodged and inserts that it is to be lodged “in the prescribed manner”. This change will allow regulations to provide that the consent may be lodged at any mining registrar’s office.

Clause 27 – Section 70C amended

Clause 27(1)(a) deletes the specific reference as to where an application for a retention licence may be lodged and inserts that it is to be lodged “in the prescribed manner”. This change will allow regulations to provide that an

application for a retention licence may be lodged at any mining registrar's office or electronically through a nominated departmental online portal.

Clause 27(1)(b) is a consequential drafting change.

Clause 27(1)(c) deletes section 70C(1)(f). This paragraph is being deleted as statutory declaration cannot accompany a document lodged electronically. New sub-section (2A) (refer Clause 27(2)) provides that the statutory declaration is to be lodged at a later time.

Clause 27(1)(d) is a consequential drafting change.

Clause 27(2) inserts new sub-section (2A). A statutory declaration is required to be lodged to support that the retention licence contains an identified mineral resource. Since retention licence applications can be lodged by electronic means the statutory declaration can be lodged at a later time.

Clause 28 – Section 70D amended

Clause 28 deletes the specific reference as to where a notice of objection may be lodged. This section already contains reference that it is to be lodged "in the prescribed manner". This change will allow regulations to provide that a notice of objection may be lodged at any mining registrar's office or electronically through a nominated departmental online portal.

Clause 29 – Section 70F amended

Clause 29(1) deletes the specific reference as to where a security may be lodged and inserts that it is to be lodged "in the prescribed manner". This change will allow regulations to provide that an application for a security may be lodged at any mining registrar's office or electronically through a nominated departmental online portal.

Clause 29(2) is a similar amendment to that above but applies to additional securities for compliance with conditions imposed under section 70I.

Clause 30 – Section 70H amended

Clause 30 deletes the specific reference as to where reports and returns may be lodged and inserts that they are to be lodged "in the prescribed manner". This change will allow regulations to provide that the reports and returns may be lodged at any mining registrar's office or electronically through a nominated departmental online portal.

Clause 31 – Section 74 amended

Clause 31(1)(a) deletes the specific reference as to where an application for a mining lease may be lodged and inserts that it is to be lodged "in the prescribed manner". This change will allow regulations to provide that an

application for a mining lease may be lodged at any mining registrar's office or electronically through a nominated departmental online portal.

Clause 31(1)(b) is a consequential drafting change.

Clause 31(2) inserts new sub-section (1AA). A mining proposal is required to accompany an application for a mining lease. Since mining lease applications can be lodged by electronic means there may be difficulties in lodging the mining proposal electronically and therefore as an alternative it can be lodged at a later time.

Clause 32 – Section 75 amended

Clause 32 deletes the specific reference as to where a notice of objection may be lodged. This section already contains reference that it is to be lodged "in the prescribed manner". This change will allow regulations to provide that a notice of objection may be lodged at any mining registrar's office or electronically through a nominated departmental online portal.

Clause 33 – Section 82 amended

Clause 33 deletes the specific reference as to where reports and returns may be lodged and inserts that they are to be lodged "in the prescribed manner". This change will allow regulations to provide that the reports and returns may be lodged at any mining registrar's office or electronically through a nominated departmental online portal.

Clause 34 – Section 84A amended

Clause 34(1) deletes the specific reference as to where a security may be lodged and inserts that it is to be lodged "in the prescribed manner". This change will allow regulations to provide that an application for a security may be lodged at any mining registrar's office or electronically through a nominated departmental online portal.

Clause 34(2) is a similar amendment to that above but applies to additional securities for compliance with conditions imposed under section 84.

Clause 35 – Section 97A amended

Clause 35(1)(a) deletes the specific reference as to where an application for the restoration of a mining tenement may be lodged and inserts that it is to be lodged "in the prescribed manner". This change will allow regulations to provide that such an application may be lodged at any mining registrar's office or electronically through a nominated departmental online portal.

Clause 35(1)(b) is a consequential drafting change.

Clause 35(2) deletes the specific reference as to where a notice of objection may be lodged. This section already contains reference that it is to be lodged

“in the prescribed manner”. This change will allow regulations to provide that a notice of objection may be lodged at any mining registrar’s office or electronically through a nominated departmental online portal.

Clause 36 – Section 105A amended

Clause 36(1)(a) the term “same time” is being extended to include “or within the prescribed period”. This will allow certain periods for tenements applications to be deemed to be lodged at the same time.

Clause 36(1)(b) deletes the specific reference as to where an agreement as to the priority between tenement applications may be lodged and inserts that it is to be lodged “in the prescribed manner”. This change will allow regulations to provide that such agreements may be lodged at any mining registrar’s office.

Clause 36(2) changes the reference from “at the office of the mining registrar” to “in the prescribed manner”. The change relates to but does not alter the meaning of “compliance with the initial requirement”.

Clause 36(3)(a) changes the reference from “at the office of the mining registrar” to “in the prescribed manner”. The change relates to but does not alter the meaning of “compliance with the initial requirement”.

Clause 36(3)(b) changes the reference from “at the office of the mining registrar” to “in the prescribed manner”. The change relates to but does not alter the meaning of “compliance with the initial requirement”.

Clause 37 – Section 115A amended

Clause 37 deletes the specific reference as to where a mineral exploration report may be lodged and inserts that it is to be lodged “in the prescribed manner”. This change will allow regulations to provide that the report may be lodged at any mining registrar’s office or electronically through a nominated departmental online portal.

Clause 38 – Section 115B amended

Clause 38 deletes the specific reference as to where an audit statement may be lodged and inserts that it is to be lodged “in the prescribed manner”. This change will allow regulations to provide that the audit statement may be lodged at any mining registrar’s office or electronically through a nominated departmental online portal.

Clause 39 – Section 122A amended

Clause 39(1) deletes the specific reference as to where a caveat may be lodged.

Clause 39(2) deletes the specific reference as to where a caveat may be lodged.

Clause 39(3)(a) inserts a new paragraph that provides for a caveat to be lodged “in the prescribed manner”. This change will allow regulations to provide that a caveat may be lodged at any mining registrar’s office or electronically through a nominated departmental online portal.

Clause 39(3)(b) is a consequential drafting change.

Clause 40 – Section 123 amended

Clause 40 deletes the specific reference as to where a claim for compensation may be lodged and inserts that it is to be lodged “in the prescribed manner”. This change will allow regulations to provide that the claim may be lodged at any mining registrar’s office.

Clause 41 – Section 136 amended

Clause 41 provides that the rules of a warden’s court may provide for matters to be lodged, issued or served in an electronic form.

Clause 42 – Section 162 amended

Clause 42(1) inserts two new paragraphs to provide that regulations may be made to provide for:

- (a) matters relating to the lodgement of mining tenement documents in electronic form, and
- (b) the time that a mining tenement document is taken to have been lodged.

Clause 42(2) deletes reference that survey reports are to be lodged “with the department”.

Clause 42(3) inserts a new paragraph to provide that regulations may be made to provide that documents for use in Part IV proceedings may be lodged, issued or served in an electronic form.

Clause 42(4) inserts a definition for “*mining tenement documents*”.

Clause 43 – Second Schedule clause 13 amended

Clause 43 makes it clear as to the place for lodging certain applications. This change is required because the definition of “*the office of the mining registrar*” is being deleted in clause 14.