Western Australia

Mining Amendment (Procedures and Validation) Bill 2018

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Western Australia

LEGISLATIVE ASSEMBLY

Mining Amendment (Procedures and Validation) Bill 2018

A Bill for

An Act to amend —

• the Mining Act 1978; and
• the Mining Legislation Amendment Act 2014.

The Parliament of Western Australia enacts as follows:
Part 1 — Preliminary

1. Short title

This is the Mining Amendment (Procedures and Validation) Act 2018.

2. Commencement

This Act comes into operation as follows —

(a) this Part — on the day on which this Act receives the Royal Assent;

(b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.
Part 2 — Mining Act 1978 amended

3. Act amended

This Part amends the Mining Act 1978.

4. Section 6 amended

In section 6(1a) delete “accompanied by the documentation referred to in section 74(1)(ca)(ii) —” and insert:

in respect of which the documents referred to in section 74(1AA)(b) or (c) have been lodged —

5. Section 58 amended

In section 58(1):

(a) delete paragraph (b)(i);

(b) in paragraph (b)(ii) delete “such area; and” and insert:

the first year of the term of the licence; and

(c) in paragraph (b)(iii) delete “exploration; and” and insert:

exploration in the first year of the term of the licence; and

(d) in paragraph (b)(iv) delete “applicant;” and insert:

applicant in the first year of the term of the licence;
6. Section 59 amended

Delete section 59(5) and insert:

(5) The warden must as soon as practicable after the hearing of the application forward to the Minister for the Minister’s consideration a report which recommends the grant or refusal of the exploration licence and sets out the reasons for that recommendation.

7. Section 70D amended

Delete section 70D(5) and insert:

(5) The warden must as soon as practicable after the hearing of the application forward to the Minister for the Minister’s consideration a report which recommends the grant or refusal of the retention licence and sets out the reasons for that recommendation.

8. Section 70O amended

In section 70O in the definition of *relevant mining proposal* delete paragraph (a) and insert:

(a) a mining proposal lodged in respect of the application for the mining lease; or
9. **Section 74 amended**

(1) Delete section 74(1)(ca).

(2) Delete section 74(1AA) and insert:

(1AA) An application for a mining lease is not to be dealt with or be determined under section 75 (except under section 75(1B)) unless the applicant has lodged in respect of the application within the prescribed time and in the prescribed manner —

(a) a mining proposal; or

(b) a statement in accordance with subsection (1a) and a mineralisation report; or

(c) a statement in accordance with subsection (1a) and a resource report.

(1AB) Subsection (1AA) does not prevent a notice of objection to the granting of the application from being lodged before the lodgment of a document or documents as referred to in that subsection.

(3) In section 74(1a):

(a) delete “subsection (1)(ca)(ii) and (iii)” and insert:

subsection (1AA)(b) and (c)

(b) delete paragraph (c) and insert:

(c) the location of those mining operations and the location and area of land that is likely to be required for any infrastructure associated with those mining operations.
(4) Delete section 74(5)(a) and insert:

(a) any document referred to in subsection (1AA) that is lodged in respect of the application; and

(5) In section 74(7) delete the definition of JORC Code.

(6) In section 74(7) insert in alphabetical order:

ASX means Australian Securities Exchange Limited;
current JORC Code means the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves prepared by the Joint Ore Reserves Committee of the Australasian Institute of Mining and Metallurgy, the Australian Institute of Geoscientists and the Minerals Council of Australia in the form most recently adopted by ASX before the application is made;

(7) In section 74(7) in the definition of mineralisation report after “a report” insert:

prepared by a qualified person

(8) In section 74(7) in the definition of resource report:

(a) in paragraph (b) before “JORC Code” insert:

current

(b) delete paragraph (c) and insert:

(c) that has been given to ASX.
10. **Section 74A amended**

(1) Delete section 74A(1), (2), (3) and (4) and insert:

(1) If the documents referred to in section 74(1AA)(b) are lodged in respect of an application for a mining lease, the Director, Geological Survey must prepare a report as to whether or not there is significant mineralisation in, on or under the land to which the application relates.

(2) For the purposes of preparing the report, the Director, Geological Survey may request the applicant to provide further information in relation to matters dealt with in the documents referred to in section 74(1AA)(b) and the applicant must provide that information within the prescribed time.

(3) The report must be based solely on information contained in the documents referred to in section 74(1AA)(b) and any further information provided by the applicant in response to a request under subsection (2).

(4) If the report is needed by the mining registrar or the warden in order to perform functions under section 75, the Director, Geological Survey must cause a copy of the report to be given to the mining registrar or the warden, as the case may be.

(4A) If the report states that there is no significant mineralisation in, on or under the land to which the application relates, the Director, Geological Survey must cause a copy of the report to be given to the Minister.

(2) Delete section 74A(7).
11. Section 75 amended

(1) Before section 75(1) insert:

(1AA) This section is about how an application for a mining lease (the application) is dealt with and is determined.

(2) In section 75(1) delete “an application for a mining lease shall” and insert:

the application must

(3) After section 75(1a) insert:

(1B) If compliant information is not lodged in respect of the application within the compliance time, the mining registrar must refuse the application.

(4) Delete section 75(2) and (2a) and insert:

(2) Subject to subsection (2A), if compliant information is lodged in respect of the application within the compliance time and no notice of objection is lodged within the objection time, or any notice of objection is withdrawn, the mining registrar must, unless subsection (3A)(b)(ii) applies, forward to the Minister a report which recommends the grant or refusal of the mining lease and sets out the reasons for that recommendation.

(2A) If the compliant information lodged in respect of the application consists of or includes the documents referred to in section 74(1AA)(b), the mining registrar
must not forward a report under subsection (2) unless —

(a) the mining registrar has received a copy of the section 74A report in relation to the application; and

(b) the section 74A report states that there is significant mineralisation in, on or under the land to which the application relates.

(2B) If subsection (2A) applies and the mining registrar forwards a report under subsection (2), the mining registrar must also forward to the Minister a copy of the section 74A report in relation to the application.

(5) Delete section 75(4), (4a) and (5) and insert:

(3A) Subsection (4) applies to the application if —

(a) compliant information is lodged in respect of the application within the compliance time; and

(b) a notice of objection —

(i) is lodged within the objection time; or

(ii) is not lodged within the objection time but is lodged before the mining registrar has forwarded a report to the Minister under subsection (2) and the warden is satisfied that there are reasonable grounds for late lodgment;

and

(c) the notice of objection is not withdrawn.

(4) Subject to subsection (4A), if this subsection applies to the application the warden must hear the application on a day appointed by the warden and may give any
person who has lodged a notice of objection an
opportunity to be heard.

(4A) If the compliant information lodged in respect of the
application consists of or includes the documents
referred to in section 74(1AA)(b), the warden must not
hear the application unless —
  (a) the warden has received a copy of the
      section 74A report in relation to the application;
      and
  (b) the section 74A report states that there is
      significant mineralisation in, on or under the
      land to which the application relates.

(5) The warden must as soon as practicable after the
hearing of the application forward to the Minister for
the Minister’s consideration —
  (a) a report which recommends the grant or refusal
      of the mining lease and sets out the reasons for
      that recommendation; and
  (b) if subsection (4A) applies, a copy of the
      section 74A report in relation to the application.

(6) In section 75(6) after “a report” insert:

or reports

(7) In section 75(7) delete “In the case of an application for a
mining lease” and insert:

If the application is
(8) Delete section 75(8) and insert:

(8) If the compliant information lodged in respect of the application consists of or includes the documents referred to in section 74(1AA)(b), the Minister must refuse to grant the mining lease if the section 74A report states that there is no significant mineralisation in, on or under the land to which the application relates.

(9) In section 75(9):
(a) delete “an application for a mining lease” and insert:

the application

(b) delete “that” and insert;

the

(10) Delete section 75(10) and insert:

(10) The power in section 162B(1) to extend the compliance time may only be exercised by the Minister.

(11) In this section —

compliance time means the time prescribed under section 74(1AA) for lodging compliant information or, if that time is extended under section 162B, that time as so extended;

compliant information means —

(a) the document referred to in section 74(1AA)(a); or
(b) the documents referred to in section 74(1AA)(b); or

(c) the documents referred to in section 74(1AA)(c);

*objection time* means the time prescribed under subsection (1) for lodging a notice of objection or, if that time is extended under section 162B, that time as so extended;

*section 74A report* means the report prepared if and as required under section 74A(1).

12. **Section 82A amended**

(1) Before section 82A(1) insert:

(1A) In this section —

*mineralisation report* and *resource report* have the meanings given in section 74(7).

(2) Delete section 82A(1)(b) and insert:

(b) the following were lodged in respect of the application for the mining lease —

(i) a statement in accordance with section 74(1a), as in force at the time of the application; and

(ii) a mineralisation report or a resource report.
13. **Section 84AA amended**

In section 84AA(1)(a) delete “accompanied the application for the mining lease under section 74(1)(ca),” and insert:

was lodged under section 74 in respect of the application for the mining lease,

14. **Section 90 amended**

Delete section 90(2)(b) and insert:

(b) in subsection (1AA)(b) “and a mineralisation report” was deleted.

15. **Section 97A amended**

(1) Delete section 97A(7)(b) and insert:

(b) in any other case, must as soon as practicable after the hearing of the application transmit to the Minister for the Minister’s consideration a report which recommends the grant or refusal of the application together with the warden’s reasons for the recommendation.

(2) In section 97A(8) delete “notes of evidence and any maps or documents transmitted to him” and insert:

a report transmitted

16. **Section 98 amended**

In section 98(6) delete “the notes of evidence, with”.
17. **Section 102 amended**

Delete section 102(6) and insert:

(6) The warden must as soon as practicable after the hearing of the application transmit to the Minister for the Minister’s consideration a report which recommends the grant or refusal of the application and sets out the reasons for that recommendation.

18. **Section 125B inserted**

After section 125A insert:

125B. **Compensation not affected by Part X**

The insertion of Part X by the *Mining Amendment (Procedures and Validation) Act 2018* section 21 does not —

(a) give rise to any entitlement to compensation that did not exist before the coming into operation of that section; or

(b) derogate from any entitlement to compensation that existed before the coming into operation of that section.

19. **Section 162B amended**

After section 162B(2) insert:

(3) The regulations may regulate —

(a) applications for the extension of prescribed periods or prescribed times;

(b) the exercise of the power in subsection (1).
20. **Section 162 amended**

(1) After section 162(2)(ba) insert:

(bb) providing when an amount or fee submitted in respect of an application lodged under this Act, or an instrument lodged for registration under this Act, is taken to have been received for the purposes of this Act;

(2) Delete section 162(2)(x) and insert:

(x) authorise and regulate the copying, storage, making available for public inspection, release, publication and dissemination of information contained in a mining tenement document;

(3) Delete section 162(2a) and (3A) and insert:

(2A) Subsection (2)(x) applies to information irrespective of when the mining tenement document was made, lodged, given or provided (as the case may be).

(2B) In subsections (2) and (2A) —

**mining tenement document** means any of the following —

(a) an application for or in respect of a mining tenement or a document that accompanies, or is lodged or furnished in respect of, the application;

(b) an agreement, claim, report, notice of objection, security, caveat or other document in respect of a mining tenement;
21. **Part X inserted**

After section 163 insert:

**Part X — Validation**

164. **Terms used**

(1) In this Part —

**amendment** of a mining tenement means —

(a) the amendment of the land the subject of a mining tenement to include private land; or

(b) the amalgamation of a mining tenement with another mining tenement or with a mining tenement that has been surrendered or forfeited or has expired; or

(c) the surrender of a mining tenement;

**applicable laws** means —

(a) this Act and the regulations if and as they were in force when an application for the grant, amendment or renewal of a mining tenement was lodged; or

(b) the repealed Act, and the regulations under it, if and as they were in force when an application for the grant, amendment or renewal of a mining tenement was lodged or deemed to have been lodged;

**commencement** means the coming into operation of the *Mining Amendment (Procedures and Validation) Act 2018* section 21;

**complied with** includes observed and conformed to;
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**hearing** means the substantive hearing by the warden of proceedings relating to an application for the grant, amendment or renewal of a mining tenement in relation to which an objection has been lodged;

**lodged** means —

(a) lodged with a warden; or

(b) lodged or filed with, or at the office of, a mining registrar; or

(c) lodged with the Department electronically whether by means of the Department’s website or otherwise;

**prescribed requirements** means the requirements of the applicable laws as to —

(a) an application for the grant, amendment or renewal of a mining tenement; and

(b) the determination of an application for the grant, amendment or renewal of a mining tenement including any jurisdictional requirements and requirements to be complied with in relation to the performance of functions;

**renewal** of a mining tenement includes —

(a) the further renewal of a mining tenement; and

(b) the restoration of a mining tenement; and

(c) the extension of the term of a mining tenement; and

(d) the approval of retention status for land the subject of a mining tenement;

**requirement** includes an obligation and a condition.

(2) In this Part —

(a) a reference to an application for the grant, amendment or renewal of a mining tenement includes a reference to a purported application
165. **Pending applications**

(1) Subject to this section, an application for the grant, amendment or renewal of a mining tenement lodged before the commencement can be dealt with and be determined after the commencement as if the prescribed requirements had been complied with.

(2) The prescribed application fee, if any, required for the application must be paid —

(a) in the case of an application for the grant of a mining tenement —

   (i) if there is a hearing — before the commencement of that hearing; or
   
   (ii) if there is not a hearing — before the grant of the mining tenement;
(b) in the case of an application for the amendment
or renewal of a mining tenement —

(i) if there is a hearing — before the
commencement of that hearing; or

(ii) if there is not a hearing — before the
determination of the application.

(3) Subsection (1) does not apply to the extent, if any, that
the application is for the grant of a mining tenement in
respect of private land if —

(a) under this Act the grant of the mining tenement
requires the consent in writing of the owner and
the occupier of the private land concerned; and

(b) those consents have not been given.

(4) Subsection (1) does not apply to the extent, if any, that
the application is for the amendment of the land the
subject of a mining tenement to include private land
if —

(a) under this Act the amendment requires the
consent in writing of the owner and the
occupier of the private land concerned; and

(b) those consents have not been given.

(5) Subsection (1) does not apply to an application if,
before or after the commencement, the application has
been marked in the register as being invalid.

(6) An authorised officer, as defined in section 103A, has
power, and is taken to have always had power, to mark
in the register as being invalid an application assessed
by the Department as not being in compliance with the
requirements of the applicable laws as to the
application.
Validation of grant, amendment or renewal of mining tenements and related actions

(1) Subject to this section, subsection (2) applies to the following —

(a) the grant, amendment or renewal of a mining tenement before the commencement;

(b) the grant, amendment or renewal of a mining tenement after the commencement if —
   (i) the application for the grant, amendment or renewal is dealt with and is determined under section 165(1); and
   (ii) section 165(2) is complied with.

(2) If an application for the grant, amendment or renewal of a mining tenement was lodged and the prescribed application fee, if any, required for the application was paid before the relevant event, the following are taken to be, and to have always been, valid and effective to the same extent as they would have been if the prescribed requirements had been complied with —

(a) the grant, amendment or renewal of the mining tenement;

(b) anything done or purportedly done under the mining tenement or in relation to the mining tenement.

(3) For the purposes of subsection (2) the relevant event is —

(a) in relation to the grant of a mining tenement —
   (i) if there was a hearing — the commencement of that hearing; or
   (ii) if there was not a hearing — the grant of the mining tenement;
(b) in relation to the amendment or renewal of a mining tenement —
   (i) if there was a hearing — the commencement of that hearing; or
   (ii) if there was not a hearing — the determination of the application.

(4) Where the grant, amendment or renewal of a mining tenement took place before the commencement, subsection (2)(b) applies to anything done or purportedly done before or after the commencement.

(5) Subsection (2) does not apply to the extent, if any, that the mining tenement was granted in respect of private land if —
   (a) under this Act the grant of the mining tenement required the consent in writing of the owner and the occupier of the private land concerned; and
   (b) those consents were not given.

(6) Subsection (2) does not apply to the extent, if any, that the land the subject of a mining tenement was amended to include private land if —
   (a) under this Act the amendment required the consent in writing of the owner and the occupier of the private land concerned; and
   (b) those consents were not given.

(7) Subsection (2) does not apply where a mining tenement was amalgamated with a mining tenement that had been forfeited if —
   (a) an application for the restoration of the forfeited mining tenement was made before the application to amalgamate was granted; and
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(b) the application for the restoration of the
forfeited mining tenement was granted.

(8) Subsection (2) does not affect the operation of the
condition imposed on the grant of a mining tenement
by section 105B.
Part 3 — Mining Legislation Amendment Act 2014 amended

22. Act amended
   This Part amends the Mining Legislation Amendment Act 2014.

23. Sections 4 to 7 deleted
   Delete sections 4, 5, 6 and 7.