EXPLANATORY MEMORANDUM

MINING AMENDMENT BILL 2025

OVERVIEW

The Mining Amendment Bill 2025 (Bill) amends the *Mining Act 1978* (Mining Act) to update tenement application requirements and make other minor changes that will improve the efficiency of resource tenure processes and the Mining Act.

The update to application requirements protects the security of tenure for prospective applications in light of *Forrest & Forrest Pty Ltd v Wilson and Ors* [2017] HCA 30 (*Forrest*). In *Forrest,* the High Court held that a failure to strictly comply with the technical lodgement requirements of the Mining Act invalidates an application, and that there is no jurisdiction to progress such an application through to grant (the *Forrest* principle). Since the High Court judgement, several decisions of the wardens and of the Supreme Court of Western Australia have expounded on the *Forrest* principle, heightening the need for legislative amendments.

These amendments in the Bill include:

- removing contemporaneity requirements for supporting documents (such as mineralisation reports for mining lease applications) to applications;
- deleting obsolete requirements for the warden to forward to the Minister maps and notes of evidence;
- clarifying requirements for supporting documents for exploration licences and mining leases;
- updating the assessment requirements for mineralisation reports;
- expanding the definition of ‘mining tenement document’ to facilitate electronic lodgements;
- creating a power to make regulations that prescribe ways of complying with requirements for a fee or other consideration to accompany an application;
- a new section 165 provides authority to determine pending applications affected by the Forrest principle;
- updating the wording used in section 57 of the Mining Act regarding land that is “unavailable” for exploration and clarifying its application;
- modifying the requirement for a statement to be lodged for an application for an exploration licence;
- clarifying of the procedural elements of expenditure exemption processes;
- vesting certain administrative decisions regarding enforcement with the Minister rather than the warden, ensuring a consistent decision point across all tenure types; and

- making any additional consequential amendments needed to support the above changes.

The second aspect of the Bill is amendment to Part 2 of the *Mining Legislation Amendment Act 2014* which has not yet been proclaimed pending the development of supporting regulations.

CLAUSE NOTES

PART 1 – Preliminary

Clause 1. Short title

1. The short title is the Mining Amendment Act 2025.

Clause 2. Commencement

2. This clause provides for the commencement of the Act; Part 1 comes into operation on the day on which the Act receives Royal Assent, and the rest of the Act comes into operation as proclaimed.

3. A proclamation date allows for tenure processes, forms and applications to be amended following the passing of the bill.

PART 2 – *Mining Act 1978* amended

Clause 3. Act Amended

4. Clause 3 identifies the *Mining Act 1978* (Mining Act) as the Act being amended in Part 2 of the Bill.

Clause 4. Section 6 amended

5. Clause 4 reflects the proposed amendments to section 74, under which reports will be lodged “as part of” rather than accompany a mining lease application.

Clause 5. Section 8 amended

6. Clause 5(1) amends section 8(1) of the Mining Act to insert a definition of “Department’s Website” - a website maintained by or on behalf of the Department.

7. Clause 5(2) amends the definition of “mining development and closure proposal” by stating it is to be lodged “as part of” an application for a mining lease.

Clause 6. Section 19 amended

8. This clause amends section 19(1) of the Mining Act to replace the requirement that a section 19 instrument is made “in writing under his hand” with a requirement that the section 19 instrument be published on the Department’s website. This allows both the instrument and the execution of the instrument to be done digitally and published on the Department’s website.

9. It amends section 19(1) of the Mining Act to replace a comma with a full stop and deletes the last words of section 19(1) that used to require publication of a section 19 document in the Government Gazette.

10. It amends section 19(1) of the Mining Act to remove the requirement that a section 19 instrument be published in the Government Gazette. Publication in the Government Gazette is no longer necessary because section 19 instruments will be published on the Department’s website.

11. It amends section 19(2) of the Mining Act to delete and replace section 19(2) with a new provision allowing the instrument to specify a time and date of commencement. Previously, a section 19 instrument only specified the date of commencement.

12. It amends section 19(2a) of the Mining Act to insert the word “exemption” before the word “instrument”. This is consistent with the amendment to section 19(1) where section 19 instruments are now called “exemption instruments”.

13. It amends section 19(2b) of the Mining Act to insert the word “exemption” before the word “instrument”. This is consistent with the amendment to section 19(1) where section 19 instruments are now called “exemption instruments”.

14. It amends section 19(2b) of the Mining Act to update a reference to section 19(2C) consistent with the new style guide for legislative drafting.

15. It amends section 19(2c) of the Mining Act to delete and replace section 19(2c) with two new provisions (2C) and (2CA). Subsection (2C) extends the maximum term of an instrument from two to five years and subsection (2CA) extends the maximum term of an extension instrument term from two to five years.

Clause 7. Section 40 amended

16. Clause 7 inserts a new provision section 40(1A) into the Mining Act which will enable the Minister to cancel or vary terms or conditions placed upon a prospecting licence if the Minister is satisfied that that it is necessary to do

so, if the term or condition contains an error, or if the cancellation or variation is without detriment to the holder of the licence.

Clause 8. Section 49 amended

17. Clause 8 amends section 49 of the Mining Act by updating references from section 75(9) and section 75(7) to section 75B(3) and section 75B(2) respectively. This change reflects the structural amendments to section 75 that aim to enhance clarity and coherence.

Clause 9. Section 56A amended

18. Clause 9 amends section 56A(8aa) of the Mining Act by updating a reference from section 74A and 75 to section 75, 75A and 75B. The change reflects structural amendments to section 75 that aim to enhance clarity and coherence.

Clause 10. Section 57 amended

19. Clause 10(1) inserts a new provision section 57(1A) into the Mining Act which will enable the Minister to cancel or vary terms or conditions placed upon an exploration licence if the Minister is satisfied that that it is necessary to do so, if the term or condition contains an error, or if the cancellation or variation is without detriment to the holder of the licence.

20. Clause 10(2) amends section 57(2c), (2d) and (2e) of the Mining Act to delete and replace them with section 57(2C)(a)-(c) which provides for applications where there are a number of blocks or parts of a block in the application.

21. The rule in section 57(2C), that an exploration licence can be granted for a part of a block where that part is not suitable for exploration, is augmented in (2C)(a)-(c).

22. Section 57(2C)(a) provides that this discretion may be exercised where part of the applied-for graticular block is already the subject of an existing mining tenement, other than an exploration licence or a miscellaneous licence.

23. Section 57(2C)(b) further allows the Minister to exercise this discretion where part of the applied-for graticular block is subject to an undetermined application for another mining tenement, other than an exploration licence or a miscellaneous licence.

24. Section 57(2C)(c) allows the Minister to grant an exploration licence over less than the applied-for graticular block, where the Minister considers prior to grant, that part of the land is not suitable (rather than unavailable) for exploration.

25. Land that is ‘not suitable’ for exploration is intended to cover circumstances where the inherent characteristics of the land render it inappropriate for exploration, such as the presence of heritage, indigenous and environmental consideration. In addition, it covers land intentionally excluded by the Minister.

26. Such limitations on access are inherently temporary and subject to the expiry, surrender, or forfeiture of the relevant licence, at which point the land may again become available for exploration.

27. Clause 10(4) inserts a new section 57(2I) and 57(2J) into the Mining Act. The new section 57(2I) governs a situation where more than one applicant has applied for the same graticular block or blocks. In such cases, an applicant may amend their application to remove all blocks that are subject to competing applications. This allows the exclusion of contested ground, enabling the earlier determination of uncontested applications.

Clause 11. Section 58 amended

28. Clause 11(a) deletes the word “licence” and replaces it with “licence must”. This amendment introduces a stylistic change to modernise the drafting language.

29. Clause 11(b) inserts the words “be in the prescribed form” and lodged in the prescribed manner to clarify that, in addition to using the correct form, the action must also be carried out in the manner prescribed by regulation. It also amends section 58 of the Mining Act which provides for a supporting statement for an exploration licence application to contain certain information.

30. The obsolete requirement in section 58(1)(b)(i) to provide information in respect to a method of exploration is deleted. As a consequence of the deletion of section 58(1)(b)(i), the remaining subparagraphs (ii), (iii), and (iv) are renumbered as (i), (ii), and (iii) respectively. In order for a mining registrar to determine whether an applicant can effectively explore the land, providing the ‘details of the programme of work’ provides sufficient information for an assessment.

31. The three remaining elements of the supporting statement specify that the details of the programme of work proposed to be carried out, the estimated amount of money proposed to be spent on the exploration, and the technical and financial resources available to the applicant are only required in respect to the first year of term of the exploration licence.

32. The amendment to section 58 of the Mining Act also speaks to the interpretations of section 58(1) that have, in effect, conflated the two separate steps in the determination of an exploration licence application.

The two separate steps are found in section 58(1) and in section 57(3). They are independent of each other and should not be conflated.

33. The first step is to determine whether a statement complies with section 58(1). This step does no more than it says. That is, section 58(1) requires the applicant to furnish certain information. The question is merely whether section 58(1) information was furnished or not. If it is not furnished, the mining registrar or warden (as the case may be) can contact the applicant and provide a time by which a statement compliant with section 58(1) must be lodged. If the applicant still does not lodge a statement compliant with section 58(1), the mining registrar or warden (as the case may be) can recommend that the application be refused.

34. The information in a section 58(1) statement is information related to a point in time – namely, the time when the application is made. For example, if an applicant's section 58(1) statement discloses and estimated $6 million on a drilling program in its first year, that is the estimated amount of money expected at the time of the application to be spent on the proposed programme of work. The requirements of section 58(1)(b)(ii) and (iii) are satisfied. In the same way, section 58(1)(b)(iii) is satisfied when an applicant furnishes a statement specifying the financial resources available at the time of application. If after grant of the exploration licence, the applicant does something different, that does not matter as far as section 58(1) is concerned.

35. The second step is in section 57(3) requiring the mining registrar or warden (as the case may be) to be satisfied that the applicant can effectively explore the land.

36. The difference in the two steps can be illustrated by an example where an applicant lodges a section 58(1) statement specifying that the financial resources available to the applicant amount to $100. This satisfies the requirements of section 58(1)(b)(iv). That is, the first step is satisfied.

37. Then the second step needs to be considered. Given that the prescribed expenditure requirements in regulation 21(1b)(a) of the *Mining Regulations 1981* are a minimum of $10,000 for a one block exploration licence, the mining registrar or warden (as the case may be) needs to be satisfied under section 57(3) that the applicant can effectively explore the land. In order to satisfy himself or herself under section 57(3), the mining registrar or warden (as the case may be) should in such a case request further information from the applicant pursuant to section 58(3) of the Mining Act.

38. It is vital for the proper administration of the Mining Act that the two steps are kept separate. The mining registrar or warden (as the case may be) can use the section 58(1) statement in satisfying himself or herself under section 57(3). A section 58(1) statement is certainly one of the things that can inform a mining registrar or a warden whether the applicant can effectively explore the land. However, it would be improper for a mining registrar or warden (as the case may be) as an administrative decision maker to rely solely on the section 58(1) statement in satisfying himself or herself under section 57(3) if other relevant information is available or can be obtained under section 58(3). This is because, as an administrative decision maker, the mining registrar or warden (as the case may be) is obliged to consider all relevant information – and that includes information outside the section 58(1) statement.

39. The amendment also allows the section 58(1) statement to be lodged within the prescribed time and prescribed manner. This is consistent with amendments made to sections 70O and 74.

40. Clause 11C-E deletes the word “shall” from (c) and (e) for consistency with the stylistic amendment to section 58(1)(a) that modernises the drafting language. This clause also deletes subsection (d), which required applications to be lodged in the prescribed manner, as the requirements relating to prescribed form and manner are now consolidated under subsection (a).

Clause 12. Section 59 amended

41. Clause 12(1) amends section 59(1A)(a) to replace “prescribed time” with “prescribed period” and reordering the phrasing to refer first to the manner of lodgement. This amendment also supports the insertion of new subsection (1AA).

42. Clause 12(2) inserts a new section 59(1AA) into the Mining Act. The new subsection (1AA) allows a notice of objection to be lodged prior to the lodgement of a section 58(1)(b) statement. The intent behind (1AA) is to enhance the flexibility of the exploration licence application process.

43. Clause 12 (3) and (4) delete the word “time” and insert “period of under subsection (1AA)” as consequential amendments in subclause (1) and (2) above.

44. Clause 12(5) amends section 59 of the Mining Act to delete the obsolete requirements in section 59(5)(a) and (b) for the warden to forward to the Minister, maps and notes of evidence after hearing applications for an exploration licence. The new section 59(5) retains the requirement in former section 59(5)(c) that the warden will forward to the Minister a report which

recommends the grant or refusal of the exploration licence and setting out the reasons for that recommendation.

Clause 13. Section 63A amended

45. This clause amends the Mining Act by deleting section 63A. Section 63A sets out the grounds on which an exploration licence is liable to forfeiture. The grounds for forfeiture, which were previously dispersed throughout the Act, have been consolidated under the new forfeiture provisions to enhance clarity and coherence, in line with the current legislative drafting style guide. This amendment forms part of a broader effort to improve decision-making consistency and alignment within the forfeiture provisions.

Clause 14. Section 67 amended

46. This clause amends section 67(1) of the Mining Act by updating references from section 75(9) and section 75(7) to section 75B(3) and section 75B(2) respectively. The change reflects the structural amendments to section 75 that aim to enhance clarity and coherence.

Clause 15. Section 70 amended

47. Clause 15 amends section 70(8aa) of the Mining Act by updating a reference from section 74A and 75 to section 74A, 74B, 75, 75A and 75B. The change reflects structural amendments to section 75 that aim to enhance clarity and coherence.

Clause 16. Section 70B amended

48. Clause 16 inserts a new provision section 70B(1A) into the Mining Act which will enable the Minister to cancel or vary terms or conditions placed upon a retention licence if the Minister is satisfied that that it is necessary to do so, if the term or condition contains an error, or if the cancellation or variation is without detriment to the holder of the licence.

Clause 17. Section 70D amended

49. This clause amends section 70D of the Mining Act to delete the obsolete requirements in section 70D(5)(a) and (b) for the warden to forward to the Minister, maps and notes of evidence after hearing applications for a retention licence. The new section 70D(5) retains the requirement in former section 70D(5)(c) that the warden will forward to the Minister a report which recommends the grant or refusal of the retention licence and setting out the reasons for that recommendation.

Clause 18. Section 70K amended

50. This clause amends the Mining Act by deleting section 70K. Section 70K sets out the grounds on which a retention licence is liable to forfeiture. The grounds for forfeiture, which were previously dispersed throughout the Act, have been consolidated under the new forfeiture provisions to enhance clarity and coherence, in line with the current legislative drafting style guide. This amendment forms part of a broader effort to improve decision-making consistency and alignment within the forfeiture provisions.

Clause 19. Section 70L amended

51. This clause amends section 70L(1) of the Mining Act by updating references from section 75(9) and section 75(7) to section 75B(3) and section 75B(2) respectively. The change reflects structural amendments to section 75 that aim to enhance clarity and coherence.

Clause 20. Section 70O amended

52. This clause amends section 70O of the Mining Act by introducing revised terminology to reflect a broader legislative intent to enhance flexibility in both the timing and manner of lodgement within the application process.

53. It introduces the new definition of “compliance period”. This definition refers to the timeframe within which an applicant for a mining lease must lodge one of the three sets of documents specified in section 74(1AA). It also includes any extension of that period granted under section 162B.

54. A definition of “compliance document” is also inserted into the Mining Act. This definition refers to one of the three sets of documents required under section 74(1AA).

55. The definition of “objection period” is added. This definition refers to the period prescribed under the new section 74B(2)(a), relocated from section 75(1AA), for lodging a notice of objection. It also includes any extension of that period granted under section 162B.

56. Additionally, a new definition of “section 74A report” is included. The term is defined to mean the report prepared by the Director, Geological Survey under section 74A(1) regarding the presence or absence of significant mineralisation. This definition has been relocated from section 75(10).

Clause 21. Section 71 amended

57. Clause 21(1) amends section 71 of the Mining Act by renumbering the current provision as the new subsection 71(1) and revising references to align with the restructured section 75.

58. Clause 21(2) amends section 71 of the Mining Act by inserting a new provision 71(2) into the Mining Act which will enable the Minister to cancel or vary terms or conditions placed upon a mining lease if the Minister is satisfied that that it is necessary to do so, if the term or condition contains an error, or if the cancellation or variation is without detriment to the holder of the lease.

Clause 22. Section 74 amended

59. Clause 22(1) amends section 74 of the Mining Act by deleting subsection 74(1)(ca) and restating (1)(a)-(c) with modernised language, replacing "shall" with "must" and "portion thereof" with "prescribed portion".

60. It amends section 74 by moving the requirements under the old section 74(1)(ca), which sets out the requirements for a threefold path in applying for a mining lease, to the new section 74(1AA). The threefold path refers to the requirement to provide a mining development and closure proposal lodged in accordance with section 103AN(2), or a mineralisation report and statement, or a resource report and statement.

61. It allows any threefold path documentation to be lodged "as part of" the application" within the prescribed time and prescribed manner and inserts new subsection (1AB) which states section 103AN(3)(b), (d) and (e) apply in relation to a proposal lodged under section (1AA)(a).

62. Subclause 22(2) amends section 74(1a) of the Mining Act to ensure that the reference to the deleted section 74(1)(ca) is replaced by a reference to the new section 74(1AA).

63. Subclause 22(2)(b) amends section 74(1a) of the Mining Act by deleting section 74(1a)(c) and replacing it with new section 74(1a)(c) and (d). This clarifies that the statement provided with either the mineralisation report or the resource report is to include information in respect to the location of proposed mining operations and the location and area of land that is likely to be required for any infrastructure associated with those proposed mining operations.

64. Subclause 22(3) deletes section 74(5) of the Mining Act and replaces it with a new section 74(5). This amendment updates the reference to the deleted section 74(1)(ca) by replacing it with a reference to the new section 74(1AA).

65. Subclause 22(4) deletes the definition of "JORC Code" in section 74(7) of the Mining Act. The requirement that a resource report complies with the JORC Code is removed, because it is sufficient that the resource report has been lodged with the Australian Stock Exchange. This is consistent with the amendment to the definition of "resource report".

66. Subclause 22(5) amends the definition of “mineralisation report” in section 74(7) of the Mining Act. The requirement that a mineralisation report be prepared by a qualified person was formerly found in the deleted section 74(1)(ca). That is now in the definition of “mineralisation report”.

67. Subclause 22(6) amends the definition of “resource report” in section 74(7) of the Mining Act by deleting paragraphs (b) and (c). The requirement that a resource report complies with the JORC Code is removed, because it is sufficient that the resource report has been given to the Australian Stock Exchange Limited.

Clause 23. Section 74A amended

68. Subclause 23 amends section 74A of the Mining Act by deleting the existing section 74(1)-(4) and replacing them with new section 74(1)-(4).

69. These amendments revise the assessment of a mineralisation report by the Director, Geological Survey into a more logical and practical process and improves the information available for decision-making.

70. The new section 74A(1) updates the reference to the deleted section 74(1)(ca) by a reference to the new section 74(1AA). There is also a change in wording to reflect the fact that the mineralisation report no longer accompanies an application but can be lodged within a prescribed time and in a prescribed manner.

71. The new section 74A(2) also contains a reference to the new section 74(1AA). The new section 74A(2) differs from the deleted section 74A(2) by referring to both the mineralisation report and statement (being the documents referred to in section 74(1AA) as opposed to just the mineralisation report as in the old section 74A(2).

72. The new section 74A(3) also contains a reference to the new section 74(1AA). The new section 74A(3) differs from the deleted section 74A(3) by allowing the Director’s report to be based on both the mineralisation report and statement (being the documents referred to in section 74(1AA) as well as the information obtained under section 74A(2) as opposed to just a mineralisation report and the information obtained under section 74A(2).

73. The new section 74A(4) replaces the old section 74A(4). The old section 74A(4) required the Director of the Geological Survey to provide the report to the mining registrar and the warden. The new provision provides more detail in that the report is provided to the mining registrar or warden in order to perform functions under section 75, as the case may be.

74. Clause 23 (2) amends section 74A of the Mining Act by deleting the definition of “mineralisation report”. This term is no longer referred to in section 74A. Instead, reference is made to the documents referred to in section 74(1AA).

Clause 24. Section 75 replaced

75. This clause amends section 75 of the Mining Act by deleting the section 75 and replacing it with new sections 74B, 75, 75A and 75B. Section 75 has been restructured to delineate more clearly the distinct heads of power and procedural pathways applicable to mining lease applications. It also updates the linguistic style in line with the current legislative drafting style guide. This restructuring is not intended to alter the substantive legal effect of former section 75, but to improve procedural clarity and introduce greater flexibility in the application process. In particular, the need to lodge certain documents contemporaneously has been removed. These documents can now be lodged “as a part” of the application.

76. It amends the Mining Act by inserting new section 74B, which consolidates the provisions relating to objections to mining lease applications into a standalone section. This structural change is intended to enhance the clarity and coherence of the former section 75. This clause replaces the deleted section 75(1)-(1B) with new section 74B(1)-(5).

77. This amendment deletes section 75(1)-(1B) which are replaced by new section 74B(1)-(5). This clause extracts the provisions relating to the lodgement of objections to the grant of a mining lease from section 75 and restructures them in a separate section to clarify the objection process. It relocates section 75(1)-(1AA) to new section 74B(1)-(2); section 75(1A) to new section 74B(4); section 75(1B) to new section 74B(5) and inserts new section 74B(3) which allows a notice of objection to be lodged prior to the lodgement of a document referred to in section 74(1AA)(a) to (c). The intent behind (3) is to enhance the flexibility of the mining lease application process.

78. It also deletes section 75(2)-(3) and replaces them with new section 75(1)-(6). This amendment extracts the provisions governing the mining registrar’s function under existing section 75 and restructures them in a separate section to clarify the mining registrar’s recommendation process. It relocates section 75(2) to new section 75(1) and (2). It also relocates section 75(3) to new section 75(3) and section 75(2a) to section 75(4).

79. Additionally, section 75(4)-(5) are deleted and replaced with new section 75A. This amendment extracts the provisions governing the warden’s function under existing section 75 and restructures them in a separate section to clarify the warden’s recommendation process. It relocates section 75(4) to new section 75A(1) and (2). New section 75A(1)(a) clarifies

that the applicant must have lodged the relevant compliance documents within the compliance period. This requirement aligns with the new definitions in section 70O(1) and is intended to provide greater flexibility within the application process. The change also relocates section 75(4a) to new section 75A(3) and section 75(5) to new s ection75A(4). The obsolete requirement for the warden to forward to the Minister, maps and notes of evidence after hearing an application for a mining lease is deleted.

80. Lastly, this clause deletes section75(6)-(10) and replaces them with the new section 75B. This amendment extracts the provisions governing the Minister's function under existing section 75 and restructures them in a separate section to clarify the Minister's decision-making process. It relocates section 75(6) to new section 75B(1); section 75(7) to new section 75B(2) and section 75(8)-(9) to section 75B(3). It also relocates the definition under section 75(10) to section 70O.

Clause 25. Section 78 amended

81. The amendments to section 78 of the Mining Act distinguish between the timing for lodging a first renewal of a mining lease compared to a second or further renewal of a mining lease. They provide greater flexibility to industry by enabling the regulations to prescribe the time and manner for lodging an application.

82. This clause deletes section 78(1)(b) and replaces it with new section 78(1)(b)(i)-(ii) which clarifies the operation of section 78 in relation to first renewals by updating the language, introducing a reference to "the further term" and restructuring the provision. It replaces the reference to renewal "during the final year of the term" with a requirement that the application be made "in the prescribed manner and within the prescribed period," and separates the conditions for renewal as of right into discrete subparagraphs. The renewal window for first renewals is intended to remain consistent with existing practice, subject to any future variation by regulation. The prescribed time will reflect this position.

83. Clause 25(2) deletes section 78(2) and replaces it with new section 78(2) and (2A), New section 78(2) contains the rule in section 78(1)(b) that a mining lease renewed for a further term is subject to the provisions of the Act as in force at renewal. New section 78(2A) restates the rule in section 78(2), providing that the Minister may grant second and further renewals where the lease was first renewed under new section 78(1)(b)(i), However, it clarifies that second and further renewal applications be made "in the prescribed time and manner". The prescribed time will provide for a longer lodgment period.

Clause 26. Section 82 amended

84. Clause 26 amends the Mining Act by deleting paragraph (g) as its subject matter is addressed in section 96(2)(d).

85. Additionally, it deletes subsections (2) and (3) as their substance is captured by sections 96 and 96A.

Clause 27. Section 85B amended

86. This clause amends section 85B of the Mining Act by updating a reference in section 85B(7a) from section 74A and 75 to section 74A, 74B, 75A and 75B. This change reflects structural amendments to section 75 that aim to enhance clarity and coherence.

Clause 28. Section 86 amended

87. Clause 27 amends section 86 of the Mining Act by inserting a new provision 86(1A) into the Mining Act which will enable the Minister to cancel or vary terms or conditions placed upon a general purpose lease if the Minister is satisfied that that it is necessary to do so, if the term or condition contains an error, or if the cancellation or variation is without detriment to the holder of the lease.

Clause 29. Section 88 amended

88. Clause 28 amends section 88 of the Mining Act by inserting a new provision 88(2A) into the Mining Act which will enable the Minister to cancel or vary terms or conditions placed upon a general purpose lease if the Minister is satisfied that that it is necessary to do so, if the term or condition contains an error, or if the cancellation or variation is without detriment to the holder of the lease.

89. This clause operates when general purpose leases are renewed.

Clause 30. Section 90 amended

90. Clause 30(1) amends section 90 of the Mining Act by deleting section 90(2)(b) and replacing it with a new section 90(2)(b) which updates a reference from section 74(1)(ca)(ii) to new section 74(1AA)(b) in line with the structural amendments to former section 75.

91. Clause 30(2) amends section 90 by deleting section 90(3) and replacing it with new section 90(3) and (3A). The amendment updates the reference to section 75 following structural changes to that section. It also rearticulates the rule that amendments made to section 75 by section 31 of the *Mining Amendment Act 2004* do not apply to an application for a general purpose lease.

Clause 31. Section 91B amended

92. Clause 31 amends section 91B of the Mining Act by inserting a new section 91(3A) into the Mining Act which will enable the Minister to cancel or vary terms or conditions placed upon a miscellaneous licence if the Minister is satisfied that that it is necessary to do so, if the term or condition contains an error, or if the cancellation or variation is without detriment to the holder of the licence.

Clause 32. Section 94 amended

93. Clause 32 amends section 94 of the Mining Act by inserting a new section 94(2A) into the Mining Act which will enable the Minister to cancel or vary terms or conditions placed upon a miscellaneous licence if the Minister is satisfied that that it is necessary to do so, if the term or condition contains an error, or if the cancellation or variation is without detriment to the holder of the licence.

Clause 33-35. Section 96 (deleting sections 96, 96A, 97, 97A, 98, 99 and 100)

94. These clauses amend the Mining Act by deleting sections 96, 96A, 97, 97A, 98, 99 and 100, as they are replaced with new sections 96, 96A, 96B, 96C, 96D, 96E, 97 and 97A.

95. The substantive intent of these amendments is to modify the forfeiture regime by transferring ultimate decision-making authority from the warden to the Minister, thereby establishing a consistent decision-making point across all tenure types. Apart from this change, the restructuring of the forfeiture provisions is intended to enhance procedural clarity and coherence, without altering their substantive legal effect.

96. New section 96 vests the Minister with the discretion to declare the forfeiture of mining tenements, thereby removing the warden's former power to make a forfeiture order. Except for the ground of non-compliance with expenditure conditions, this amendment consolidates the grounds for forfeiture which were previously dispersed throughout the Act. It also updates related references accordingly and requires the Minister to publish notice of a forfeiture declaration on the Department's website.

97. New section 96A vests the Minister with the discretion to impose penalties as an alternative to declaring forfeiture, thereby removing the warden's former authority. It sets maximum penalty amounts, allows all or part of the penalty to be awarded to an eligible party, and provides that failure to pay the penalty within the specified period results in automatic forfeiture. Notice of such forfeiture must now be published on the Department's website.

98. Section 96B permits a person to apply to the warden for a recommendation that a prospecting licence or a miscellaneous licence be forfeited on grounds other than non-compliance with expenditure conditions. The warden must provide the recommendation, with reasons, to the Minister for determination.

99. Section 96C permits a person to apply to the warden for a recommendation that a mining tenement be forfeited on the ground of non-compliance with expenditure conditions. The warden must provide the recommendation, with reasons, to the Minister for determination.

100. Section 96D consolidates an applicant's priority rights to apply for or mark out land following the surrender or forfeiture of a prospecting or miscellaneous licence linked to a forfeiture application.

101. Section 96E consolidates an applicant's priority rights to apply for or mark out land following the surrender or forfeiture of an exploration licence or mining lease linked to a forfeiture application.

102. Section 97 vests the Minister with discretion to cancel a declaration of forfeiture and restore the mining tenement, thereby thereby replacing the warden's former authority to do so. It also permits the Minister to impose further or alternative conditions on the tenement following its restoration.

103. The shift from "restoration of a mining tenement" to "cancellation of forfeiture" emphasises that the operative mechanism is the Minister's decision to cancel the forfeiture. This process constitutes an administrative reversal of forfeiture decision.

104. Section 97A restates the process by which a former tenement holder may apply to have a forfeiture cancelled and the tenement restored. While final decision-making power rests with the Minister, the section provides that the application must be heard by the warden, who must then give a recommendation to the Minister on whether forfeiture should be cancelled.

Clause 36. Section 101

105. The clause updates reference in sections 101(1) and (2) from sections 96 and 98 to section 96C. This change reflects the restructured forfeiture provisions.

Clause 37-39. Section 102, 102A & 103 amended

106. This clause amends section 102 and section 102A to implement three policy objectives aimed at modernising and clarifying the exemption process.

107. First, the amendment removes the requirement to issue paper certificates of exemption. Exemption grants will now be issued and recorded digitally, streamlining administrative processes for both internal and external stakeholders.

108. Second, the amendment removes the requirement for applicants to specify the amount of expenditure to be exempted. This rectifies a long-standing flaw in the exemption process, where applicants often submit applications based on estimated expenditure early in the reporting period. If actual expenditure reported in the Operations Report (known in industry as a Form 5 report) later differs, this discrepancy can expose applicants to penalties or forfeiture.

109. Third, the amendment clarifies that the provision of reasons by ways of a statutory declaration is a jurisdictional prerequisite for determining an exemption application. This requirement ensures that all reasons for exemption are adequately disclosed, reinforcing the Act's self-policing framework and promoting certainty in the decision-making process.

110. In addition, the amendment deletes the obsolete requirements for the warden to forward to the Minister, maps and notes of evidence after hearing applications for exemption from the expenditure condition. Instead, the warden must, as soon as practicable after the hearing of the application, give to the Minister a report which recommends the grant or refusal of the application and sets out the reasons for that recommendation.

Clause 40. Section 109A amended

111. This clause amends the Mining Act by updating a reference in section 109A(6) from section 97 to section 96(1)(d)(i). This amendment reflects the restructured forfeiture provisions.

Clause 41. Section 111A amended

112. This clause amends the Mining Act by updating the reference to section 78, replacing it with references to sections 78(1)(b) and 78(2A) to reflect the restructured provision. It also deletes the phrase "except that it was not made during the final year of the term of the lease" and substitutes "prescribed, but not within the period prescribed" to align with the new regulatory framework governing the timing of renewal applications.

Clause 42. Part IX heading replaced

113. Clause 42 amends the Mining Act by deleting the old heading “Part IX – Miscellaneous and regulations” and replacing it with a new heading “Part 9 – General”.

114. Clause 42 also inserts a new division heading: “Division 1 – Miscellaneous and regulations”.

115. The reason for this change is because sections 153-163 of the Mining Act, which comprised the old Part IX of the Mining Act, are going to form a new Division 1.

116. There is also a style change with Roman numerals (Part IX) being replaced by Arabic numerals (Part 9).

Clause 43. Section 162B amended

117. This clause amends the Mining Act by inserting new section 162B(3), which enables regulations to be made governing the exercise of the Minister’s or warden’s power to extend a prescribed period of time. This includes prescribing circumstances in which that power must not be exercised, maximum extension periods, and exclusions from the operation of the extension provisions.

Clause 44. Section 162 amended

118. Clause 44(1)(a) amends section 162(2) of the Mining Act by inserting a new regulation making power section 162(2)(bb). This amendment enables regulations to be made to prescribe ways of complying with a requirement of the Act that a fee or other amount must accompany an application. This is necessary in order to facilitate electronic lodgement and allow flexibility to adapt to new payment facilities that may become available in the future.

119. Clause 44(1)(b) amends section 162(2) of the Mining Act by inserting a new regulation making power section 162(2)(eh). This amendment allows regulations to be made to exclude the extension of period or time provisions of section 162B of the Mining Act in prescribed cases and enable certain time periods to be done before an “excluded day”. “Excluded day” is a term used in section 61(2) of the *Interpretation Act 1984* as “Saturday, Sunday, public service holiday, and a bank holiday or public holiday throughout the State or in that part of the State which is relevant to the event, act, thing or proceeding concerned”.

120. Subclause 44(1)(c) amends section 162(2) of the Mining Act by deleting the old section 162(2)(x) and replacing it with a new section 162(2)(x).

This amendment enables regulations to be made to authorise and regulate the publication and dissemination of information contained in a "mining tenement document". This amendment was previously made, but not proclaimed, in Part 2 of the Mining Legislation Amendment Act 2014. The Bill amends section 162 of the Mining Act instead of making further amendments to an unproclaimed Act.

121. Subclause 44(2) amends section 162 of the Mining Act by deleting section 162(2a) and (3A) and replacing them with new section 162(2A) and (2B).

122. The definition of "mining tenement document" in section 162(2B) is also expanded to reflect the amendment made to section 74 of the Mining Act which provides for compliance information to be "as part of" a mining lease application rather than "accompany" a mining lease application. The expanded definition of "mining tenement document" will also allow regulations to be made in respect to the public release of a broader range of documents.

Clause 45. Part IX Division 2 inserted

123. Clause 45 amends the Mining Act by inserting a new Division 2 into Part 9 of the Mining Act. The new Division 2 is called "Compliance with prescribed requirements". It consists of three new sections: sections 164-166.

124. The new Division 2 is inserted into the Mining Act to address the implications of the *Forrest* decision. It restores what was the commonly understood status quo prior to the High Court decision. It also deals with pending applications that may be affected by the *Forrest* decision. It relates to applications for mining tenements as well as private land matters, amalgamations, extensions of term, retention status, restoration and surrenders which may be affected by the *Forrest* decision.

125. The new section 164 defines certain words and phrases used in the new Division 2 of Part 9 of the Mining Act. These are "amendment", "applicable laws", "complied with", "hearing", "lodged", "prescribed requirements", "relevant time", "renewal", "requirement".

126. The new section 165(1) provides those pending applications for the grant, amendment or renewal of a mining tenement, which were lodged before the commencement of the Bill, can be dealt with and be determined after the commencement as if the prescribed requirements of the Mining Act or the repealed Act (whichever applicable) had been complied with. The effect of this provision is to ensure the Minister, mining registrar or warden (as the case may be) obtains jurisdiction to deal with the application –

a jurisdiction that was lacking due to the *Forrest* principle. This enables the Minister, mining registrar or warden (as the case may be) to deal with the applicant.

127. The new section 165(2) clarifies that the mining registrar or warden (as the case may be) can request further information, including documents such as section 58 statements, and section 74 documents in order to determine the application.

128. The new section 165(3) provides that the prescribed application fee must have been paid before the commencement of a hearing, if there was one, or before the grant of the mining tenement or the determination of the application.

129. The new section 165(4) and (5) provide that the validation in section 165(1) does not apply to the extent that that consents by the occupier and owner of private land have not been given (where such consents are required).

130. The new section 166(6) provides an exception to the validation in section 165(1), for applications that have been marked invalid in the register before the relevant time.

131. The new section 166 provides that an authorised officer (as defined in section 103A) has power, and is taken to have always had power, to mark in the register an application as being invalid. So, if an application has been marked in the register as invalid before the Bill commenced, the application is not validated under section 165(1). This means that section 165(1) does not validate mining lease applications that were not compliant with the *Forrest* principle and that were denoted accordingly in the register.

Clause 46. Second Schedule Division 3A inserted

132. Section 25A ensures continuity by treating existing exemption certificates and pending applications under former sections 102 and 102A as if made under the amended provisions, allowing the updated framework to apply without disruption.

133. Section 25B ensures that the new provisions relating to partial grants and amendment of exploration licence applications apply to applications lodged before, but not yet determined at, commencement. This allows pending applications to benefit from the increased flexibility provided by sections 57(2C), 57(2I), and 57(2J).

134. Section 25C provides transitional regulation-making power to address unforeseen issues arising from the implementation of the *Mining Amendment Act 2025*.

PART 3 – Mining Legislation Amendment Act 2014 amended

Clause 47. Act amended

135. Clause 47 identifies the *Mining Legislation Amendment Act 2014* as the Act being amended in Part 3 of the Bill.

Clause 48. Sections 4 to 7 deleted

136. Clause 48 deletes sections 4, 5, 6 and 7 of the *Mining Legislation Amendment Act 2014*, which are awaiting proclamation.

137. Sections 4 and 5 of the *Mining Legislation Amendment Act 2014* change the terminology of 'programme of work' lodged in respect to exploration licence and retention licence applications to distinguish it from environmental programmes of work. These changes are being deleted by the Bill as the change in terminology is no longer necessary.

138. Section 6 of the *Mining Legislation Amendment Act 2014* removes the requirements in respect to the Director General of Mines ensuring mining lease application information is available for public inspection from the Act into the Regulations. This change is being deleted by the Bill and the obligation will remain in the Mining Act.

139. Section 7 of the *Mining Legislation Amendment Act 2014* amends the regulation-making power in section 162 of the Mining Act in respect to the public release of information. As this includes an amendment to the definition of "mining tenement document" which is also being amended in the Bill, the Bill amends section 162 of the Mining Act instead of making further amendments to an unproclaimed Act.