

NOT For LOAN

Libraries & Information
Department of Justice

MINING AMENDMENT BILL 2000

COMMITTEE

CLAUSE BY CLAUSE NOTES

General Outline

This Bill provides an opportunity for prospectors to search for alluvial mineral deposits which may occur on land held under granted exploration licences. The system to be adopted is an extension of the existing right of holders of Miner's Rights to prospect on Crown land, but will be regulated by the operation of a permit system.

Activities will be limited to hand-held tools in respect to specified land within an exploration licence and the use of explosives will be prohibited.

The holders of affected exploration licences will be notified prior to the commencement of a permit and will be given the opportunity to advise the prospector of any concerns. Activities of prospectors will not be allowed within one hundred (100) metres of current activities being carried out by the licence holder.

Each permit issued will be subject to conditions to safeguard the environment and anyone who breaches the system will be subject to severe penalties.

The Regulations will prescribe the operation of the system which will be reviewed after twelve (12) months of operation.

Clause 1 – Short title

The title of the Act is the Mining Amendment Act 2000.

Clause 2 – Commencement

The amendments will come into effect on a day fixed by proclamation published in the Government Gazette.

Clause 3 – The Act amended

The Act amends the Mining Act 1978.

Clause 4 – Section 20 amended

At present section 20(2)(b) stipulates that the holder of a Miner's Right may not prospect on Crown land that is the subject of a granted mining tenement. This section is to be qualified to provide that the holder of a permit introduced by these amendments may prospect on Crown land within a granted exploration licence.

Clause 5 – Sections 20A, 20B and 20C inserted

Three new sections are being added:

New section 20A sets out the permit system, section 20B provides for exclusion of certain land from the system and section 20C provides a limitation on civil action that may be taken by a prospector in respect to injury or loss on the land being prospected.

Section 20A – Permit to prospect on Crown land the subject of an exploration licence

Subsection (1) provides that a Mining Registrar may issue a permit to a (non-corporate) holder of a Miners Right and up to three such persons may be included in the permit as joint holders. For flexibility, an appropriate officer at the Department in Perth will also be able to issue permits.

Subsection (2) stipulates that a permit holder may only hold one permit at a time in respect to a particular exploration licence.

Subsection (3) provides that a permit must be applied for in the prescribed form and lodged with the Mining Registrar or the Department at Perth, with a fee to be prescribed.

Subsection (4) provides that the area of land a permit is to apply to is to be specified in the permit issued.

Subsection (5) provides that a permit may be issued subject to conditions. Conditions imposed will relate to environmental considerations and restrictions placed on the operation of the permit.

Subsection (6) sets out other matters each permit is subject to:

- (a) must use hand-held tools only and the use of explosives is prohibited;
- (b) a depth restriction of two (2) metres will be prescribed in the regulations;
- (c) the existing prescribed limit of collection of 20 kilogram samples will also apply to the holder of a permit;
- (d) where exploration activities are being carried out on the licence by or on behalf of the licensee, or at any subsequent time, the holder of the permit may not prospect within 100 metres of that activity;
- (e) the permit can not be used to prospect on land that is the subject of a special prospecting licence which may be within an exploration licence.

Subsection (7) prohibits the transfer of a permit to another person.

Section 20B – Power to remove Crown land from the operation of section 20C

Subsection (1) provides that the Minister may declare that a specific exploration licence or licences or a designated area of the State is not subject to the permit system. An example of the use of this provision is where prospecting may be considered incompatible with an exploration program, for example, perhaps diamond exploration.

Subsection (2) provides that the declaration may be cancelled if the restriction is deemed no longer necessary.

Subsection (3) provides that the declaration takes effect on the date of Gazettal or such later date as may be specified.

Subsection (4) provides that if a permit has already been issued in respect to a licence or area subsequently exempted from the system the permit continues to operate.

Section 20C – Limitation on actions in tort

Subsection (1) provides that the holder of a permit can not bring a civil action against the holder of an exploration licence where the permit holder suffers injury, loss or damage as a result of either the condition of the permit land or anything lawfully done by the licence holder under the authority of the licence.

Subsection (2) qualifies subsection (1)(b) by stipulating that any action in tort is not limited if the thing was done deliberately to cause injury, loss or damage to a permit holder or with reckless disregard for the presence of the permit holder.

Subsection (3) provides that reference to anything done includes an omission to do a thing.

Subsection (4) defines “permit” and “ permit land”.

Clause 6 – Section 156 amended

Section 156 sets out offences against the operation of the Mining Act, including removing minerals from a mining tenement without authority. This clause qualifies this by adding a subsection to make it clear that removal of minerals from an exploration licence under the authority of a permit is not an offence.

Clause 7 – Section 160 amended

Section 160 provides that there is nothing in the Mining Act which takes away a right of action any person may have in respect to any action or omission not lawfully done. The section will be amended to make reference to new section 20C and the limitation of actions in tort.

Clause 8 – Section 162 amended

Section 162 provides for the making of regulations by the Governor to support the Act. This section will be amended to enable the administration of the permit system to be prescribed in the regulations. The regulations will include how the system will operate, conditions that may be imposed and the power of the Minister in respect to breaches of the permit system. The regulations may also prescribe hand tools which may be prohibited, such as powered or hydraulically driven tools, a limit to the number of permits per licence and the issuing of guidelines, if necessary.

