

## EXPLANATORY MEMORANDUM

### MINING AMENDMENT BILL 2022

#### Introduction and Overview

The Mining Amendment Bill 2022 amends the *Mining Act 1978* to improve regulation by streamlining administrative processes, safeguarding the security of title and licences, and providing greater certainty for the resources sector.

The main areas of reform to the Mining Act are to:

- Modernise the geodetic datum through adoption of the GDA2020 (clauses 4 and 8);
- Allow lease conversion applications to be submitted without first marking out the land if the land cannot be accessed due to a significant event (clause 15);
- Enable fees to be prescribed for objection applications (clauses 6, 7, 9, 10, 11, 12, 13 and 14); and
- Provide minor amendments to the designated tenement contact provisions (clauses 5 and 16).

#### CLAUSE NOTES

##### Clause 1 – Short Title

The short title is the Mining Amendment Act 2022.

##### Clause 2 – Commencement

This clause identifies that clauses 1 and 2 come into operation on the day the Act receives Royal Assent, and the rest of the Act will come into operation the day after.

##### Clause 3 – Act amended

This clause specifies that the amendments relate to the *Mining Act 1978*.

##### Clause 4 – Section 9B amended

This clause inserts subsection 9B(1A) to allow a datum to be prescribed by regulation, and for multiple data to be prescribed for different purposes under the Act.

##### Clause 5 – Section 17 amended

Clause 5(1) amends subsection 17(1) to accommodate changes made by clause 5(2) and 5(3).

Clause 5(2) amends paragraph 17(1)(a) by inserting the words ‘a document, a notice or a notification’ so as to include the giving of notices and documents by electronic means.

Clause 5(3) amends subsection 17(2) by inserting the words ‘a document, a notice or notification’ so as to include the giving of notices and documents by electronic means.

#### **Clause 6 – Section 42 amended**

Clause 6(1) amends subsection 42(1) to reflect the change made by clause 6(2).

Clause 6(2) inserts subsection 42(1A) to allow the regulations to prescribe a fee for an objection against an application for a prospecting licence.

#### **Clause 7 – Section 56A amended**

Clause 7(1) replaces subsection 56A(4) to allow the regulations to prescribe a fee for an objection to a special prospecting licence located on another prospecting licence.

Clause 7(2) amends subsection 56A(4a) to reflect the change to the numbering made by clause 7(1).

#### **Clause 8 – Section 56C amended**

This clause inserts subsection 56(4A) to provide that a datum must be prescribed in the regulations.

This clause inserts subsection 56C(4B) to allow for references to one minute of latitude and longitude or a portion of one minute. This will allow the exploration grid to remain constant at GDA94, while its location on the surface of the land is described using the GDA2020, or any future datum, removing any gaps or overlaps created between the different grids.

#### **Clause 9 – Section 59 amended**

Clause 9(1) amends subsection 59(1) to reflect the change made by clause 9(2) to insert subsection 59(1A).

Clause 9(2) inserts subsection 59(1A) to allow the regulations to prescribe a fee for an objection against an application for an exploration licence.

#### **Clause 10 – Section 70 amended**

Clause 10(1) replaces subsection 70(4) to allow the regulations to prescribe a fee for an objection against an application for a special prospecting licence on an exploration licence.

Clause 10(2) amends subsection 70(4a) to reflect the change made by clause 10(1) to insert subsection 70(4).

#### **Clause 11 – Section 70D amended**

Clause 11(1) amends subsection 70D(1) to reflect the change made by clause 11(2) to insert subsection 70D(1A).

Clause 11(2) inserts subsection 70D(1A) to allow the regulations to prescribe a fee for an objection against an application for a retention licence.

#### **Clause 12 – Section 75 amended**

Clause 12(1) amends subsection 75(1) to reflect the change made by clause 12(2) to insert subsection 75(1AA).

Clause 12(2) inserts subsection 75(1AA) to allow the regulations to prescribe a fee for an objection against an application for a mining lease.

#### **Clause 13 – Section 97A amended**

This clause replaces subsection 97A(6) to reflect the amendment inserting a new subsection 97A(6A).

This clause inserts subsection 97A(6A) to allow the regulations to prescribe a fee for an objection against a restoration application following forfeiture of a mining tenement.

#### **Clause 14 – Section 102 amended**

This clause inserts subsection 102(4A) to reflect the amendment inserting a new subsection 102(4B).

This clause inserts subsection 102(4B) to allow the regulations to prescribe a fee for an objection against an application for exemption from expenditure conditions.

#### **Clause 15 – Section 105 amended**

Clause 15(1) amends subsection 105(1) to accommodate the change made by Clause 15(2) to insert subsection 105(2).

Clause 15(2) inserts subsections 105(2), 105(3), 105(4) and 105(5) to enable a licence holder to submit an application for mining tenure without first marking out the land. The new subsections apply to applications made under sections 49, 67, 70L, and 75(7), whereby a holder of a prospecting licence, exploration licence or retention licence may apply for a mining lease or general purpose lease over the land subject of the existing licence.

Applications made under sections 49, 67, 70L and 75(7) require the licence holder to mark out the area of a proposed mining lease or general purpose lease prior to lodging an application, and prior to the expiry of the underlying licence. These may be referred to as conversion applications.

While new subsections 105(2), 105(3), 105(4) and 105(5) allow for an application to be submitted without having first marked out the land, they do not remove the requirement to mark out the land. A mining lease or general purpose lease, as the case may be, will not be granted unless the land is marked out.

The new subsections inserted by clause 15(2) will allow the following:

- Subsection 105(2) allows a licence holder to submit an application for a mining lease or general purpose lease over all or part of the existing licence area without first marking out the land. The application must be supported by a statement setting out the grounds why the land cannot be accessed, with evidence to support the statement.

- Subsection 105(3) sets out circumstances under which an application for a lease may be made without first marking out the land. Circumstances include significant and exceptional events, such as a natural disaster or emergency, industrial dispute or civil disturbance.

Force majeure events that are outside of a person's control and would typically lead to a frustration of a contract are contemplated here. However, the new subsection 105(3) is much broader, providing for a number of events outside of an applicant's control. In essence, any event that prevents legal access to land (under the law of Western Australia) by an applicant, or anyone acting for the applicant, is contemplated here.

#### **Example A**

*A is the holder of an exploration licence located near Laverton. The licence is due to expire in two weeks. A plans to apply for a mining lease pursuant to section 67 by submitting an application prior to the expiry of the underlying exploration licence.*

*Two days before A is due to travel to Laverton to mark out the land, intra-state travel restrictions are declared across Western Australia as part of a state of emergency. The restrictions will prevent movement between regions and limit movement of residents within the regions to essential activities. The restrictions will remain in place for the next six weeks.*

*A lives in Perth and is unable to travel outside of the Perth and Peel regions for the next six weeks, during which time, A's exploration licence will expire.*

*A submits the mining lease application to the Mining Registrar without first marking out the land. The application is accompanied by a statement that travel restrictions are preventing access to the land to mark out. The statement is supported by evidence in the form of directions released by the Government on the closure of regional boundaries, as well as evidence that A was unable to engage anyone in the Goldfields region to mark out the land.*

*The Mining Registrar is satisfied that it is not possible for the land to be accessed for marking out and accepts A's application.*

#### **Example B**

*B lives in Marble Bar, and holds an exploration licence 100 kilometres east of the town. B plans to submit an application for a mining lease over ground covered by the existing exploration licence. The exploration licence is due to expire in two weeks.*

*The day before B is set to travel out to the exploration licence area to mark out the land, intra-state travel restrictions are declared across Western Australia as part of a state of emergency. The restrictions will remain in place for the next six weeks.*

*B is able to travel within the region, and is able to leave Marble Bar and travel to the area to mark out the land as planned.*

*As the travel restrictions do not prevent B from travelling to the exploration licence area, marking out must be done before submitting an application for the mining lease.*

### **Example C**

*C lives in Wiluna. C plans to apply for a mining lease over ground covered by the existing exploration licence. The exploration licence is due to expire in three weeks.*

*C's exploration licence is located to the south east of Wiluna, extending across the Mid-West and Goldfields regional boundaries. The intended mining lease will extend across the boundaries of the two regions.*

*Shortly before C is due to mark out the land, intra-state travel restrictions are declared across Western Australia as part of a state of emergency. The restrictions will remain in place for the next six weeks.*

*C is able to travel within the Mid-West region, but travel restrictions prevent access to the Goldfields region. C is unable to mark out of the area prior to the expiry of the exploration licence.*

*C may submit the mining lease application to the Mining Registrar without first marking out the land, accompanied with a statement that travel restrictions prevent access to part of the subject land for the purposes of marking out. C provides evidence to support the statement, in the form of directions released by the Government on the closure of regional boundaries and a map showing the location of the licence area in relation to regional boundaries. C also provides evidence that it is not possible for C to engage anyone in the Goldfields region to mark out the land.*

*The Mining Registrar is satisfied that C's statement demonstrates that it is not possible for the land to be accessed for marking out and accepts C's application.*

### **Example D**

*D holds a prospecting licence 120 kilometres east of Cue. D plans to apply for a general purpose lease over ground covered by the prospecting licence. The licence expires in three weeks.*

*On D's way to mark out the area, D stops in Cue for supplies. While D is purchasing supplies in town, severe weather hits the area, with a lightning strike igniting a catastrophic scrub fire. The fire is out of control and conditions are extremely hazardous. The Department of Fire and Emergency Services (DFES) directs that people only undertake essential travel in the area, and closes numerous roads in the vicinity. D is unable to travel to the prospecting licence area before the licence expires.*

*D submits the general purpose lease application to the Mining Registrar without first marking out the land, accompanied by a statement that travel restrictions have prevented the marking out of the land, with evidence of DFES's road closure advice to support the statement.*

*The Mining Registrar is satisfied that D's statement demonstrates that it is not possible for the land to be accessed for marking out and accepts D's application.*

An application made under subsection 105(3) does not include actions or circumstances of the individual, such as illness or personal or business commitments, or misadventure.

### **Example E**

*E holds a prospecting licence and plans to apply to convert part of the area to a mining lease prior to the expiry of the licence in four weeks.*

*E travels overseas to for a two week business trip. E misses the flight back to Australia and is unable to return for another two weeks.*

*E submits the application for the mining lease without first marking out the land. The application is supported by a statement that the land could not be accessed because E was stranded overseas. E provides details of the availability of flights and a log of E's attempts to secure a flight back to Australia as evidence.*

*The Mining Registrar considers the statement in accordance with subsection 105(3) and is not satisfied that it is not possible for the land to be accessed. Even though E was overseas, E could have hired someone to mark out the land.*

*The Mining Registrar sets a date by which marking out must be completed in accordance with subparagraph 105(4)(a)(ii).*

*If E, or someone else acting on E's behalf, does not mark out by the date set by the Mining Registrar under subparagraph 105(4)(a)(ii), the Mining Registrar will recommend the application for the mining lease for refusal.*

If a licence holder plans to apply for a mining lease or general purpose lease, but is unable to access the land, and the circumstances set out under subsection 105(3) do not apply, the licence holder may appoint someone else to mark out the land on their behalf.

#### **Example F**

*F resides in Queensland and holds an exploration licence in the West Pilbara mineral field. The licence is nearing expiry and F plans to submit an application for a general purpose lease over part of the area of the exploration licence.*

*State border closures prevent F from entering Western Australia to mark out the land before the exploration licence expires.*

*The land can still be accessed for the purposes of marking out because F can engage someone located in Western Australia to mark out the land prior to submitting the application for the general purpose lease.*

- Subsection 105(4) sets out that where a licence holder makes an application under subsection 105(2) the land must be marked out as follows:
  - Subparagraph 105(4)(a)(i) sets out that a licence holder that submits an application under subsection 105(2) must mark out the subject land as soon as practicable once the circumstances no longer prevent access.
  - Subparagraph 105(4)(a)(ii) sets out that if the Mining Registrar is not satisfied with evidence provided by the licence holder under subsection (2)(b), the Mining Registrar can set a date by which the land must be marked out. If the licence holder does not mark out the land by the date set by the Mining Registrar, the Mining Registrar recommend the refusal of the application
  - Subparagraph 105(4)(a)(iii) sets out that once the Mining Registrar is satisfied that it has become possible for the land to be accessed, the Mining Registrar can specify a date by which the licence holder must mark out the land. If the licence holder does not complete the marking out by the date set, the Mining Registrar will recommend the refusal of the application.

- Paragraph 105(4)(b) sets out that licence holder must provide the Mining Registrar with evidence that the land is marked out as soon as practicable after it has been completed.

#### **Example G**

*G holds a prospecting licence, and plans to submit an application for a mining lease before the licence expires on 12 July.*

*A major bushfire in the vicinity of the prospecting licence prevents G from accessing the area due to dangerous fire conditions and road closures.*

*G submits an application for a mining lease to the Mining Registrar without having first marked out the land. The Mining Registrar considers G's statement and evidence and accepts the application.*

*The fire is brought under control and extinguished on 20 July. Emergency services lift road closures and allow access to the area from 22 July.*

*The Mining Registrar directs G to complete the marking out of the land by 30 July.*

*G does not mark out the land until 2 August. The Mining Registrar is not bound to recommend the grant of a mining lease (under section 75), and if the Mining Registrar has information that the land has not been marked out, can recommend refusal of the application as early as 31 July.*

#### **Example H**

*H holds an exploration licence and submits an application for a mining lease under subsection 105(2). The Mining Registrar considers H's evidence and is satisfied that it demonstrates the land cannot be accessed.*

*The Mining Registrar directs H to mark out the land by the 1 June under subparagraph 105(4)(a)(ii). H marks out the land and on 25 May provides evidence to the Mining Registrar under paragraph 105(4)(b).*

*However, the Mining Registrar identifies that the area marked out by H does not match the "description of ground applied for" in Form 21 accompanying H's application.*

*H has not marked out the land in accordance with the Mining Registrar's direction.*

*H still has until 1 June to mark out the land and to provide evidence that this has been done. This is because the restriction in regulation 63 of Mining Regulations 1981 on the marking out of land within 21 days would not apply as H has already lodged an application for a mining lease.*

Clause 15(2) inserts subsection 105(5) which is a deeming provision that deems marking out activities under the new paragraph 105(4)(a) to be activities relating to prospecting. Such activities constitute mining for the purpose of any claim under section 123 for compensation for loss or damage suffered resulting or arising from marking out under paragraph 105(4)(a) and for the purposes of a Warden's Court order under subsection 124(2).

#### **Clause 16 – Section 162 amended**

Clause 16(a) inserts:

- Paragraph 162(2)(ed) to provide regulations for the giving of information, documents, notices or notifications under the Mining Act, whether they be in electronic form or not, allowing for the giving of documents electronically.
- Paragraph 162(2)(ef) to provide for regulations to be made in relation to the time information, documents, notices or notifications are given, including by electronic means.
- Paragraph 162(2)(eg) to provide for regulations to be made in relation to the means of satisfying a requirement relating to information, documents, notices or notifications given by electronic means.

Clause 16(b) amends subparagraph 162(2)(ka)(iii) to allow for the power to impose fees for objections against applications made under the Mining Act as set out in new subsections 42(1A), 56A(4), 59(1A), 70(4), 70D(1A), 75(1AA), 97A(6) and 102(4B).