

EXPLANATORY MEMORANDUM

MINING AMENDMENT BILL 2023

Introduction and Overview

The Mining Amendment Bill 2023 makes amendments to the *Mining Act 1978* to address objections by carbon farmers to applications for mining tenements that would serve as a de-facto exclusion of mining activity over the ground over which there is an objection. The proposed changes will reduce this risk.

Background and Policy Intent

Resource activity, specifically, exploration for and extraction of critical minerals as well as carbon capture and storage is a critical part of the State's decarbonisation strategy. Resources activities have historically been the economic mainstay of the State of Western Australia. Mining accounted for 47% of Western Australia's gross state product in the 2021-2022 financial year and the exploration and mining sector provide over 125,000 jobs and \$12.5 billion in royalties.

The economic benefits to the State of the resource industry are reflected in the policy that the Crown land of the State is available for resource industry activity, most importantly, for exploration and discovery of new mineral resources in the State that are critical to building the infrastructure for the clean energy transition.

Crown land is subject to multiple land uses, which coexist in conjunction with resource industry uses and with each other.

The policy intent of non-exclusive tenure and multiple land uses for broad-based land tenure such as diversification leases would be defeated where carbon farmers could object to proposed mining tenure on the basis that it adversely affects the carbon farming use. The amendments do not preclude the carbon farmer from seeking compensation for an adverse impact due to mining activities.

Objections can prevent an application from progressing or delay progression for years while they are resolved through proceedings before the mining warden.

Currently there is no limitation on objections against applications for certain mining tenure including:

- prospecting licences
- exploration licences
- retention licences

- mining leases
- general purpose lease
- miscellaneous licences

However, objections are limited (though this is currently being tested before the mining wardens) in other circumstances including for:

- Special prospecting licence on prospecting licences – objection rights are limited to the holder of the prospecting licence: s 56A; and
- Special prospecting licence on exploration licences – objection rights are limited to the holder of the exploration licence: s 70

Determination provisions for prospecting licences (s 42), exploration licences (s 59), retention licences (s 70D) and mining leases (s 75) mirror each other in that they provide for an objection to the warden and for the warden to determine, or recommend, as the case may be, the application where such an objection exists.

For general purpose leases (s 90), the same rules as for mining leases apply, that is, the ability under s 75 to make an objection.

Similarly, for miscellaneous licences (s 92), the same rules as for prospecting licences apply, that is, the ability under s 42 to make an objection.

There is also the ability to object to the restoration of a mining tenement following forfeiture (s 97A). The same limitation of objection grounds is required in this provision, as for the provisions governing objections against grant of tenements.

CLAUSE NOTES

Clause 1 – Short Title

The short title is the *Mining Amendment Act 2023*.

Clause 2 – Commencement

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

Clause 3 – Act amended

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

Clause 4(1) – Section 8 amended

Section 8 identifies terms used in the Act.

The following additional defined term has been included:

offsets project means

- (a) an eligible offsets project as defined in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Commonwealth) section 5; or
- (b) an offsets project, as defined in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Commonwealth) section 5, in respect of which an application under section 22 of that Act has been made but not determined.

The Commonwealth Act governs carbon farming projects aimed at carbon abatement through soil and vegetable sequestration that require vast areas of land. This wording picks up on the definition of “offsets project” under the Commonwealth Act. Such projects will fall into the definition of “offsets project” under the Commonwealth Act.

Clause 4(2) – Section 8 amended

This clause amends section 8(2) to ensure gender-neutral language is used.

Clause 5 – Section 42 amended

A new subsection (1B) is inserted to provide that a person is not entitled to lodge a notice of objection if the basis for the objection is that the prospecting licence, or activities authorised by it, would affect an offsets project.

A new subsection (1C) is inserted to provide that the new subsection (1B) does not apply to offsets projects located on freehold land. Freehold land has its general law meaning.

This provision also applies to objections against applications for miscellaneous licences, by virtue of section 92 of the Act.

Clause 6 – Section 59 amended

A new subsection (1B) is inserted to provide that a person is not entitled to lodge a notice of objection if the basis for the objection is that the exploration licence, or activities authorised by it, would affect an offsets project.

A new subsection (1C) is inserted to provide that the new subsection (1B) does not apply to offsets projects located on freehold land. Freehold land has its general law meaning.

Clause 7 – Section 70D amended

A new subsection (1B) is inserted to provide that a person is not entitled to lodge a notice of objection if the basis for the objection is that the retention licence, or activities authorised by it, would affect an offsets project.

A new subsection (1C) is inserted to provide that the new subsection (1B) does not apply to offsets projects located on freehold land. Freehold land has its general law meaning.

Clause 8 – Section 75 amended

Clause 8 deletes subsection 75(1a), and rewrites in the a new paragraph 75(1A)(a).

A new subsection (1A) is inserted to provide that a person is not entitled to lodge a notice of objection if the basis for the objection is that –

- (a) There is no significant mineralisation in, on or under the land to which the application relates; or
- (b) The mining lease, or activities authorised by it, would affect an offsets project.

A new subsection (1B) is inserted to provide that the new subsection (1A) does not apply to offsets projects located on freehold land. Freehold land has its general law meaning.

This provision also applies to objections against applications for general purpose leases, by virtue of subsection 90(3) of the Act.

Clause 9(1) – Section 97A amended

This clause amends subsection 97A(1) to ensure gender-neutral language is used.

Clause 9(2) – Section 97A amended

This clause amends subsection 97A(5) to ensure gender-neutral language is used.

Clause 9(3) – Section 97A amended

A new subsection (6B) is inserted to provide that a person is not entitled to lodge a notice of objection if the basis for the objection is that the mining tenement, or activities authorised by it, would affect an offsets project.

A new subsection (6C) is inserted to provide that the new subsection (6B) does not apply to offsets projects located on freehold land. Freehold land has its general law meaning.

Clause 9(4) – Section 97A amended

This clause amends subsection 97A(7) to ensure gender-neutral language is used.

Clause 9(5) – Section 97A amended

This clause amends subsection 97A(8) to ensure gender-neutral language is used.

EXAMPLES

Example 1

Bluff Pty Ltd holds a pastoral lease on which it conducts a human induced regeneration project which falls into the definition of an offsets project under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth). Ezekiel Pty Ltd has lodged an application for an exploration licence which overlaps a part of Bluff's carbon farm on which there is a carbon estimation area. Bluff wants to object to Ezekiel's application under section 59(1) of the *Mining Act 1978*.

Bluff is not entitled to object to Ezekiel's application on the grounds that the exploration licence, if granted to Ezekiel, would affect Bluff's carbon farm.

Bluff and Ezekiel could negotiate an access agreement and ensure that Bluff is compensated for any damage directly caused by Ezekiel's exploration activities. It is noted that secondary approvals for exploration programme of works are subject to rigorous approval processes and are linked to a specific area within the exploration licence.

Example 2

Xerex Pty Ltd holds a diversification lease on which it conducts a human induced regeneration project which falls into the definition of an offsets project under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth). Minuette Pty Ltd has lodged an application for an exploration licence which overlaps a part of Xerex's carbon farm on which there is a carbon estimation area. Xerex wants to object to Minuette's application under section 59(1) of the *Mining Act 1978*.

The proposed section 59(1B) states that "is not entitled to lodge a notice of objection if the basis for the objection is that the exploration licence, or activities authorised by it, would affect an offsets project". This means that Xerex cannot object to Minuette's exploration licence application on the basis that it would affect Xerex's carbon farm.

This does not impact Xeres' ability to seek compensation for loss of carbon credits. It is noted that any native vegetation clearing proposed by Minuette under its exploration program would be subject to the rigorous environmental approval processes.

Example 3

Jeremiah Pty Ltd has a carbon farm on its freehold farm. The carbon farm is an offsets project under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth). Rock Pty Ltd has applied for an exploration licence which overlaps a part of Jeremiah's carbon farm on which there is a carbon estimation area. Jeremiah wants to object to Rock's application under section 59(1) of the *Mining Act 1978*.

Jeremiah can object to Rock's application on any grounds, subject to the general law rules that have developed around objections. Irrespective of whether any objections were lodged to Rock's application, this application would still be subject to the private land provisions of the *Mining Act 1979*, including the requirement of land owner consent for certain categories of land and agreed compensation.