

Western Australia

Mining Amendment Act 2002

As at 08 Jul 2002

No. 15 of 2002

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Mining Amendment Act 2002

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Western Australia

Mining Amendment Act 2002

No. 15 of 2002

An Act to amend the *Mining Act 1978*.

[Assented to 8 July 2002]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Mining Amendment Act 2002*.

2. Commencement

- (1) This Act, other than section 23, comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.
- (3) Section 23 is deemed to have come into operation immediately after the *Corporations Act 2001* of the Commonwealth came into operation.

3. The Act amended

The amendments in this Act are to the *Mining Act 1978**.

[* *Reprinted as at 7 September 2001.*]

4. Section 8 amended

- (1) Section 8(1) is amended as follows:
 - (a) by deleting the definition of “minerals” and inserting the following definition instead —

“

“minerals” means naturally occurring substances obtained or obtainable from any land by mining operations carried out on or under the surface of the land, but does not include —

- (a) soil;
- (b) a substance the recovery of which is governed by the *Petroleum Act 1967* or the *Petroleum (Submerged Lands) Act 1982*;
- (c) a meteorite as defined in the *Museum Act 1969*; or
- (d) any of the following substances if it occurs on private land —
 - (i) limestone, rock or gravel;

- (ii) shale, other than oil shale;
- (iii) sand, other than mineral sand, silica sand or garnet sand; or
- (iv) clay, other than kaolin, bentonite, attapulgite or montmorillonite;

”;

- (b) in the definition of “mining registrar” by deleting “the office of Director, Mining Registration Division, of” and inserting instead —

“ a prescribed office or position in ”;

- (c) by inserting in the appropriate alphabetical position the following definition —

“

“**related**” has a meaning affected by subsection (4);

”.

- (2) After section 8(3) the following subsection is inserted —

“

- (4) For the purposes of this Act a person is related to —

- (a) an individual, if the person is —

- (i) the spouse or de facto spouse (as defined in section 9 of the Corporations Act);
- (ii) a parent or remoter linear ancestor;
- (iii) a son, daughter or remoter issue; or
- (iv) a brother or sister,

of the individual; and

- (b) a body corporate, if the person is a related entity (as defined in section 9 of the Corporations Act) in relation to the body corporate.

”.

5. Section 20 amended

Section 20(5) is amended by deleting “unless the warden in relation to any land other than land referred to in paragraph (c) by order otherwise directs, but” and inserting instead —

“

unless —

- (ea) the warden in relation to any land other than land referred to in paragraph (c) by order otherwise directs; or
- (eb) in the case of mining, it is carried out not less than 30 metres below the lowest part of the natural surface of the land,

but

”.

6. Section 43 inserted

After section 42 the following section is inserted —

“

43. Prospecting licence not to include land already the subject of a mining tenement

- (1) Where an application for a prospecting licence relates to land that is, or was when the application was made, the subject of a mining tenement, any prospecting licence granted in respect of that application shall not include that land.
- (2) Subsection (1) does not apply in relation to a special prospecting licence under section 56A.

”.

7. Section 44 amended

Section 44 is amended by deleting “A” and inserting instead —

“ Subject to section 43, a ”.

10. Section 57 amended

Section 57(2e) is amended by inserting after “tenement” —
“ (other than a miscellaneous licence) ”.

11. Section 58 amended

(1) Section 58(1)(b)(iv) is amended by inserting after “and” —
“ , subject to subsection (1aa), ”.

(2) After section 58(1) the following subsection is inserted —
“

- (1aa) The statement under subsection (1)(b) does not have to specify the financial resources available to the applicant if —
- (a) the applicant is a natural person;
 - (b) the application is in respect of not more than 4 blocks; and
 - (c) the statement specifies that the applicant intends to utilise his or her own labour to carry out the programme of work referred to in subsection (1)(b)(ii).

”.

12. Section 65 amended

Section 65(6) is repealed and the following subsection is inserted instead —

“

- (6) Notwithstanding that a surrender has taken effect under this section any land the subject of the surrender shall not be —
- (a) marked out in connection with a mining tenement unless and until notification has been given in the prescribed manner of the proposed

- endorsement of plans for the purposes of paragraph (b); or
- (b) included in an application for a mining tenement unless and until the plans referred to in subsection (5) have been endorsed in the prescribed manner.

”.

13. Section 67A amended

- (1) Section 67A(2) is amended by deleting the passage beginning “secondary tenement —” and ending “any other person.” and inserting instead —

“

secondary tenement was surrendered or forfeited, or expired, after the application for the exploration licence was made but before the exploration licence was granted.

”.

- (2) Section 67A(3) is amended by deleting the passage beginning “secondary tenement —” and ending “any other person.” and inserting instead —

“

secondary tenement is surrendered or forfeited, or expires.

”.

- (3) After section 67A(6) the following subsection is inserted —

“

- (6a) Section 105A applies, with all necessary changes, in relation to a person who makes an application under subsection (2) or (3) as if a reference in that section —

- (a) to an applicant included a reference to such a person;

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- (b) to an application for a mining tenement included a reference to an application under subsection (2) or (3);
- (c) to compliance with the initial requirement included, in relation to an application under subsection (2) or (3), a reference to lodging the application at the office of the mining registrar.

”.

14. Section 69 amended

Section 69(1) is amended by deleting the passage beginning “exploration licence by” and ending “that date.” and inserting instead —

“

exploration licence —

- (a) by or on behalf of the person who was the holder of the exploration licence immediately prior to the date of the surrender, forfeiture or expiry;
- (b) by or on behalf of any person who had an interest in the exploration licence immediately prior to that date; or
- (c) by or on behalf of any person who is related to a person referred to in paragraph (a) or (b),

within a period of 3 months from and including that date.

”.

15. Section 70 amended

- (1) Section 70(1) is amended by deleting “and whether or not the primary tenement is converted into a retention licence or a mining lease pending the determination of the application for a special prospecting licence”.

(2) After section 70(9) the following subsection is inserted —

“

(9a) Where, before the determination of an application for a special prospecting licence in respect of land, the primary tenement is surrendered or forfeited or expires, the application is, by virtue of this subsection, converted into an application for a prospecting licence in respect of that land and the provisions of this Act relating to such applications apply accordingly.

”.

(3) Section 70(12) is amended by deleting “Subsection (10) does” and inserting instead —

“ Subsections (9a) and (10) do ”.

(4) Section 70 is amended in the provisions listed in the Table to this subsection by deleting “exploration licence” and inserting instead —

“ primary tenement ”.

Table

subsection (1)(a)	subsection (4)
subsection (1)(b)	subsection (5)
subsection (2)	subsection (6)(c) (2 places)
subsection (3)	subsection (8)(a)

16. Section 85A amended

Section 85A(1) is amended as follows:

- (a) after paragraph (a) by deleting “or”;
- (b) after paragraph (b) by deleting the comma and inserting —

“

; or

- (c) any person who is related to a person referred to in paragraph (a) or (b),

”.

17. Section 85B amended

- (1) Section 85B(1) is amended by deleting “and whether or not the primary tenement is converted into a retention licence pending the determination of the application for a special prospecting licence”.
- (2) After section 85B(9) the following subsection is inserted —
“
 - (9a) Where, before the determination of an application for a special prospecting licence in respect of land, the primary tenement is surrendered or forfeited or expires, the application is, by virtue of this subsection, converted into an application for a prospecting licence in respect of that land and the provisions of this Act relating to such applications apply accordingly.”.
- (3) Section 85B(12) is amended by deleting “Subsection (10) does” and inserting instead —
“ Subsections (9a) and (10) do ”.

18. Section 91 amended

Section 91(9) is amended by deleting “at least 10 days before that determination” and inserting instead —
“ within the prescribed time ”.

19. Section 94A amended

- (1) Section 94A(1) is amended by inserting after “27” —
“ , 43 ”.
- (2) Section 94A(2) is amended by inserting after “section” —
“ 43 or ”.

20. Section 95A inserted

After section 95 the following section is inserted —

“

95A. Exploration licence – surrender of part of block

- (1) In this section —
“**block**” has the same meaning as it has in Part IV Division 2.
- (2) The holder of an exploration licence shall not, under section 95(1), surrender part of a block that is subject to the licence without the prior approval of the Minister or an officer of the Department authorised by the Minister to give such approval.
- (3) Where part of a block that is subject to an exploration licence is surrendered under section 95(1), the rest of the block that remains subject to the licence is deemed to be a block for the purposes of this Act.

”.

21. Section 96 amended

After section 96(3a) the following subsection is inserted —

“

- (3b) Where —
 - (a) a prospecting licence that is the subject of an application for forfeiture under this section has continued in force under section 49(2) or 70C(6) pending the determination of an application referred to in that section (the “**tenement application**”);
 - (b) the applicant for forfeiture is not the Minister, a mining registrar or an officer of the Department authorised in writing by the Minister; and

- (c) the tenement application is withdrawn in accordance with the regulations before the application for forfeiture is dealt with by the warden,

the applicant for forfeiture has, from the date on which the tenement application is withdrawn until the expiry of a period of 14 days after the date of being served with written notice of the withdrawal by an officer of the Department, a right in priority to any other person to mark out or apply for, or both, a mining tenement upon the whole or any part of the land that was the subject of the prospecting licence.

”.

22. Section 100 amended

After section 100(1) the following subsection is inserted —

“

(1a) Where —

- (a) an exploration licence or a mining lease that is the subject of an application for forfeiture under section 98 has continued in force under section 67(2) or 70C(6) pending the determination of an application referred to in section 67(2) or 70C(6), as the case requires (the “**tenement application**”); and
- (b) the tenement application is withdrawn in accordance with the regulations before the application for forfeiture is dealt with by the warden,

the applicant for forfeiture has, from the date on which the tenement application is withdrawn until the expiry of a period of 14 days after the date of being served with written notice of the withdrawal by an officer of the Department, a right in priority to any other person to mark out or apply for, or both, a mining tenement

upon the whole or any part of the land that was the subject of the licence or lease.

”.

23. Section 101 amended

Section 101(2) is amended as follows:

- (a) by deleting “417B” and inserting instead —
“ 471B ”.
- (b) by inserting after “winding” —
“ up ”.

24. Section 102 amended

- (1) Section 102(1) is amended by inserting after “an application” —
“ (an “**application for exemption**”) ”.
- (2) After section 102(1) the following subsection is inserted —
“
(1a) An application for exemption may relate to more than one mining tenement.
”.
- (3) Section 102(5) is amended by deleting “a certificate of”.

25. Section 102A amended

After section 102A(1) the following subsection is inserted —

“

- (1a) An application referred to in subsection (1) may relate to more than one exploration licence.

”.

26. Section 105A amended

After section 105A(5) the following subsection is inserted —

“

- (6) For the purposes of subsection (5) an application for a mining tenement is to be taken to have been lodged by

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or on behalf of a party if it is lodged by or on behalf of a person who is related to that party.

”.

27. Section 140 amended

After section 140(5) the following subsection is inserted —

“

- (6) A warrant of execution issued for the purposes of this section may be directed to a bailiff of a warden’s court or Local Court.

”.

28. Various penalties amended

The provisions listed in the Table to this section are amended as set out in that Table.

Table

Provision amended	Amendment
s. 82(2)	Delete “\$5 000”, insert instead — “ \$50 000 ”.
s. 96(3)(a)	Delete “tenement, not exceeding \$5 000;”, insert instead — “ tenement — (i) not exceeding \$10 000, in a case where expenditure conditions have not been complied with; (ii) not exceeding \$50 000, in any other case;

”.

- s. 96A(5)(a) Delete “\$5 000”, insert instead —
“ \$50 000 ”.
- s. 97(5)(a) Delete “\$5 000”, insert instead —
“ \$50 000 ”.
- s. 98(4)(a) Delete “\$5 000”, insert instead —
“ \$10 000 ”.
- s. 99(1)(b) Delete “\$5 000”, insert instead —
“ \$10 000 ”.
- s. 154(2) Delete “\$5 000”, insert instead —
“ \$10 000 ”.
Delete “\$500”, insert instead —
“ \$1 000 ”.
- s. 155(1) Delete “\$10 000”, insert instead —
“ \$100 000 ”.
Delete “\$1 000”, insert instead —
“ \$10 000 ”.
- s. 157 Delete “\$5 000”, insert instead —
“ \$10 000 ”.
- s. 162(3) Delete “\$5 000”, insert instead —
“ \$10 000 ”.

