

WESTERN AUSTRALIA

**MINING AMENDMENT
ACT 1993**

No. 37 of 1993

AN ACT to amend the *Mining Act 1978* and the *Mining Amendment Act 1990*.

[Assented to 16 December 1993.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Mining Amendment Act 1993*.

Commencement

2. (1) The provisions of this Act, other than Part 3, come into operation on such day as is, or days as are respectively, fixed by proclamation.
- (2) Part 3 is deemed to have come into operation on 28 June 1991.

PART 2 — MINING ACT 1978

Principal Act

3. In this Part the *Mining Act 1978** is referred to as the principal Act.

[* *Reprinted as at 1 August 1988.*

For subsequent amendments, see 1992 Index to Legislation of Western Australia, Table 1, pp. 138-9.]

Section 25 amended

4. Section 25 (2) of the principal Act is amended in paragraph (b) by inserting after “first consult” the following —

“

the Minister to whom the administration of the *Fisheries Act 1905* is for the time being committed by the Governor,

”.

Section 45 amended and savings

5. (1) Section 45 of the principal Act is amended —

(a) in subsection (1) by deleting “2” and substituting the following —

“ 4 ”; and

(b) by repealing subsections (3), (4), (5) and (6).

(2) Notwithstanding subsection (1), section 45 of the principal Act as in force immediately before the commencement of this section continues to have effect in relation to —

- (a) any prospecting licence in force before that commencement; and
- (b) any application for an extension of the term of a prospecting licence lodged before that commencement.

Section 56A amended

6. (1) Section 56A (6) of the principal Act is amended in paragraph (e) by inserting after “licence” the following —

“

, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit

”.

(2) Section 56A (6a) of the principal Act is amended in paragraph (a) by inserting after “granted a” the following —

“ retention licence, ”.

(3) Section 56A (8) of the principal Act is amended by deleting “50 metres below the lowest part of the natural surface of the land and on such terms and conditions as he” and substituting the following —

“

a depth of 50 metres, or such greater depth as the Minister approves with the prior written consent of the holder of the primary tenement, below the lowest part of the natural surface of the land and on such terms and conditions as the Minister

”.

(4) Section 56A (8a) of the principal Act is amended —

(a) in paragraph (b) by inserting after “year” the following —

“

, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit

”;

and

(b) by deleting paragraph (c).

(5) Section 56A of the principal Act is amended by inserting after subsection (9) the following subsections —

“

(10) On the surrender, forfeiture or expiry of the primary tenement, a special prospecting licence in respect of any land the subject of the primary tenement immediately before the date of its surrender, forfeiture or expiry is, by virtue of this subsection, converted into a prospecting licence in respect of that land and, subject to subsection (11), the provisions of this Act relating to prospecting licences apply accordingly.

(11) For the purposes of section 45, where a special prospecting licence is converted into a prospecting licence by virtue of subsection (10), the prospecting licence shall be deemed to have been granted on the day on which the special prospecting licence was granted under this section.

(12) Subsection (10) does not apply if —

- (a) the primary tenement is amalgamated with an exploration licence under section 67A (1); or
- (b) prior to the surrender, forfeiture or expiry of the primary tenement the holder of the primary tenement applies for a mining lease or a general purpose lease and the lease is subsequently granted in respect of any land the subject of the special prospecting licence.

”.

Section 57 amended

7. Section 57 of the principal Act is amended —

- (a) in subsection (2e) by inserting after “if that land is” the following —

“

, or was when the application for the exploration licence was made,

”.

and

- (b) in subsection (2f) (c) by deleting “105 (2)” and substituting the following —

“ 67A ”.

Section 67A inserted

8. After section 67 of the principal Act the following section is inserted —

“

Holder of exploration licence may apply to amalgamate secondary tenement

67A. (1) Where a person is the holder of both an exploration licence and a secondary tenement the person or an agent of the person may, without marking out the land, apply in writing to the Minister in the prescribed manner for the secondary tenement to be amalgamated with the exploration licence.

(2) The holder of an exploration licence or an agent of the holder may, without marking out the land, apply in writing to the Minister in the prescribed manner for a secondary tenement to be amalgamated with the exploration licence where the secondary tenement —

- (a) was surrendered or forfeited, or expired, after the application for the exploration licence was made but before the exploration licence was granted; and
- (b) has not, before an application is made under this subsection, been marked out or applied for under this Act by any other person.

(3) The holder of an exploration licence or an agent of the holder may, without marking out the land, apply in writing to the Minister in the prescribed manner for a secondary tenement to be

amalgamated with the exploration licence where the secondary tenement —

- (a) is surrendered or forfeited, or expires; and
- (b) has not, before an application is made under this subsection, been marked out or applied for under this Act by any other person.

(4) On receiving an application under subsection (1), (2) or (3), the Minister may, whether or not the Minister refers the matter to the warden for a recommendation —

- (a) grant the application and amend the exploration licence to include the land the subject of the secondary tenement, in such manner and on such conditions as the Minister thinks fit; or
- (b) refuse the application.

(5) Where an application is made under subsection (1) and the term of the secondary tenement would but for this subsection expire, the secondary tenement shall continue in force with respect to the land that is the subject of the application until the application is determined.

(6) Notwithstanding anything in section 45 (2), 69 (1) or 85A (1), an application by the holder of an exploration licence who was also the holder of the secondary tenement immediately before the date of its surrender, forfeiture or expiry may be made —

- (a) under subsection (2) at any time after the granting of the exploration licence; and

- (b) under subsection (3) at any time after the surrender, forfeiture or expiry of the secondary tenement.

(7) In this section —

“secondary tenement”, in relation to an exploration licence —

- (a) means a mining tenement (other than a retention licence) situated wholly within the boundaries (whether or not any of those boundaries are common boundaries) of the land the subject of the exploration licence; and
- (b) where the exploration licence was granted in respect of an application made on or after the commencement of section 16 of the *Mining Amendment Act 1990*, includes any part of a mining tenement (other than a retention licence) situated within the boundaries (whether or not any of those boundaries are common boundaries) of the land the subject of the exploration licence.

”.

Section 70 amended

9. (1) Section 70 (6) of the principal Act is amended in paragraph (e) by inserting after “licence” the following —

“

, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit

”.

(2) Section 70 (6a) of the principal Act is amended in paragraph (a) by inserting after “granted a” the following —

“ retention licence, ”.

(3) Section 70 (8) of the principal Act is amended by deleting “50 metres below the lowest part of the natural surface of the land and on such terms and conditions as he” and substituting the following —

“

a depth of 50 metres, or such greater depth as the Minister approves with the prior written consent of the holder of the primary tenement, below the lowest part of the natural surface of the land and on such terms and conditions as the Minister

”.

(4) Section 70 (8a) of the principal Act is amended —

(a) in paragraph (b) by inserting after “year” the following —

“

, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit

”;

and

(b) by deleting paragraph (c) and “and” after that paragraph.

(5) Section 70 of the principal Act is amended by inserting after subsection (9) the following subsections —

“

(10) On the surrender, forfeiture or expiry of the primary tenement, a special prospecting licence in respect of any land the subject of the primary tenement immediately before the date of its surrender, forfeiture or expiry is, by virtue of this subsection, converted into a prospecting licence in respect of that land and, subject to subsection (11), the provisions of this Act relating to prospecting licences apply accordingly.

(11) For the purposes of section 45, where a special prospecting licence is converted into a prospecting licence by virtue of subsection (10), the prospecting licence shall be deemed to have been granted on the day on which the special prospecting licence was granted under this section.

(12) Subsection (10) does not apply if —

- (a) the primary tenement is amalgamated with an exploration licence under section 67A (1); or
- (b) prior to the surrender, forfeiture or expiry of the primary tenement the holder of the primary tenement applies for a mining lease or a general purpose lease and the lease is subsequently granted in respect of any land the subject of the special prospecting licence.

”

Part IV Division 2A inserted and consequential amendments

10. (1) After section 70 of the principal Act the following Division is inserted —

“

Division 2A — Retention Licence**Definitions**

70A. In this Division —

“**identified mineral resource**” means a deposit of minerals identified in the prescribed manner;

“**primary tenement**” means a prospecting licence, an exploration licence or a mining lease.

Grant of retention licence

70B. (1) Subject to this Act, the Minister may, on the application of the holder of a primary tenement, after receiving a recommendation of the warden in accordance with section 70D, grant to that person a licence to be known as a retention licence in respect of the whole or any part of the land the subject of the primary tenement on such terms and conditions as the Minister considers reasonable.

(2) The holder of a primary tenement may be granted more than one retention licence.

(3) Where the applicant for a retention licence is the holder of 2 or more primary tenements, a retention licence may be granted in respect of the

whole or any part of the land within the boundaries of those tenements.

(4) The land in respect of which a retention licence is granted —

(a) shall be of an area that, in the opinion of the Minister, is sufficient to include —

(i) the land in, on or under which an identified mineral resource is located; and

(ii) such other land as may be required for future mining operations in respect of that identified mineral resource;

and

(b) may be of an area that is less than the area of land in respect of which the retention licence is sought.

Application for retention licence

70C. (1) An application for a retention licence —

(a) shall be in the prescribed form;

(b) shall be accompanied by the amount of the prescribed rent for the first year of the term of the licence or portion thereof as prescribed;

(c) shall be accompanied by the prescribed application fee;

- (d) shall be lodged at the office of the mining registrar;
- (e) shall be accompanied by a statement specifying —
 - (i) the details of the programme of work (if any) proposed to be carried out in the area in respect of which the licence is sought; and
 - (ii) the estimated amount of money (if any) proposed to be expended on such work; and
- (f) shall be accompanied by a statutory declaration made by the applicant to the effect that —
 - (i) there is an identified mineral resource in the area in respect of which the licence is sought; and
 - (ii) mining of that identified mineral resource is for the time being impracticable for one or more of the reasons referred to in subsection (2) (that reason or those reasons being set out in the statutory declaration).

(2) For the purposes of subsection (1) (f) (ii) mining of an identified mineral resource may be impracticable because —

- (a) the identified mineral resource is uneconomic or subject to marketing problems although that resource may reasonably be expected to become economic or marketable in the future;

- (b) the identified mineral resource is required to sustain the future operations of an existing or proposed mining operation; or
- (c) there are existing political, environmental or other difficulties in obtaining requisite approvals.

(3) An applicant shall at the request of the mining registrar or warden furnish such further information in relation to the application, or such evidence in support of the application, as the mining registrar or warden may require but the mining registrar or warden shall not require information or evidence relating to assays or other results of any testing or sampling that the applicant may have carried out on the land the subject of the application.

(4) Within 14 days after lodging an application the applicant shall serve such notice of the application as may be prescribed on the owner and occupier of the land to which the application relates and on such other persons as may be prescribed.

(5) The application shall be made by reference to a written description of the area of the land in respect of which the licence is sought, and be accompanied by a map on which are clearly delineated the boundaries of that area.

(6) Where an application is made by the holder of a primary tenement and the term of the primary tenement would but for this subsection expire, the primary tenement shall continue in force in respect of the land the subject of the application until —

- (a) the retention licence is granted; or

- (b) if the retention licence is refused, the expiry of a period of 30 days after that refusal.

Hearing of application for retention Licence

70D. (1) An application for a retention licence shall be heard by the warden in open court on any day appointed by the warden that is at least 30 days after the receipt of the application.

(2) A person who desires to object to the granting of the application shall lodge at the office of the mining registrar a notice of objection within the prescribed time and in the prescribed manner and is entitled to be heard by the warden in opposition to the grant of the application.

(3) The warden shall as soon as practicable after the hearing of the application transmit to the Minister for consideration —

- (a) the notes of evidence and any maps or other documents referred to in those notes; and
- (b) a report recommending the granting or refusal of the retention licence and setting out the warden's reasons for that recommendation.

(4) On receipt of notes of evidence and any maps or documents transmitted under subsection (3), the Minister may, subject to subsection (5), grant or refuse the retention licence as the Minister thinks fit, and whether or not —

- (a) the warden recommends the granting of the retention licence or the refusal thereof; or

- (b) the applicant may or may not have in all respects complied with the provisions of this Act.

(5) The Minister shall not grant a retention licence unless the Minister is satisfied that mining of an identified mineral resource on the land in respect of which the retention licence is sought is for the time being impracticable for one or more of the reasons referred to in section 70C (2).

(6) Before granting or refusing a retention licence the Minister may require the applicant to furnish such further information in relation to the application, or such evidence in support of the application, as the Minister thinks fit.

(7) Before granting a retention licence the Minister may require the applicant to mark out in the prescribed manner the land in respect of which the retention licence is sought.

Term of retention licence and renewal

70E. (1) Subject to this Act, a retention licence remains in force for such period not exceeding 5 years as is specified in the licence and then expires.

(2) The Minister may, on receipt of an application made within the prescribed time and in the prescribed manner, renew or further renew a retention licence for a period not exceeding 5 years.

(3) Where an application for the renewal of a retention licence is made by the holder of the licence and the term of the licence would but for this subsection expire, the licence shall continue in force in respect of the land the subject of the application until the application is determined.

Security relating to retention licence

70F. (1) The Minister may require the applicant for a retention licence or the holder of a retention licence to lodge at the office of the mining registrar, within such period as the Minister specifies in writing, a security for compliance with —

- (a) the conditions to which the retention licence is or will, if granted, from time to time be subject; and
- (b) the provisions of this Part and the regulations.

(2) A security referred to in subsection (1) shall be in accordance with and subject to the provisions of section 126.

Survey of area of retention licence not required in first instance

70G. (1) On an application for a retention licence or on a retention licence being granted the land affected is not thereby required to be surveyed, but where a dispute arises with respect to the position of that land or the boundaries or any boundary of that land the warden or the Minister may order a survey to be made of the boundaries or the boundary in order to settle the dispute.

(2) A survey ordered under subsection (1) shall be arranged and paid for by such party or parties to the dispute as the warden or the Minister determines.

Conditions attached to retention licence

70H. (1) Every retention licence shall be deemed to be granted subject to the conditions that the holder of the licence shall —

- (a) fill in or otherwise make safe to the satisfaction of the State Mining Engineer all holes, pits, trenches and other disturbances to the surface of the land the subject of the licence which are —
 - (i) made while exploring for minerals; and
 - (ii) in the opinion of the State Mining Engineer, likely to endanger the safety of any person or animal;
- (b) take all necessary steps to prevent fire, damage to trees or other property and to prevent damage to any property or damage to livestock by the presence of dogs, the discharge of firearms, the use of vehicles or otherwise;
- (c) comply with the programme of work (if any) approved by the Minister in respect of the land the subject of the licence;
- (d) comply with the expenditure conditions (if any) applicable to such land;
- (e) not assign, underlet or part with possession of such land or any part thereof without the prior written consent of the Minister, or of an officer of the Department acting with the authority of the Minister; and

- (f) lodge with the Department at Perth such periodical reports and returns as may be prescribed.

(2) The Minister may at any time cancel or vary —

- (a) the programme of work referred to in subsection (1) (c); or
- (b) expenditure conditions referred to in subsection (1) (d).

Conditions for prevention or reduction of injury to land

70L. (1) On the granting of a retention licence, or at any subsequent time, the Minister may impose on the holder of the licence reasonable conditions for the purpose of preventing or reducing, or making good, injury to the natural surface of the land in respect of which the licence is sought or was granted, or injury to anything on the natural surface of that land or consequential damage to any other land.

(2) A condition imposed under this section may be cancelled or varied by the Minister at any time.

(3) A condition imposed under this section —

- (a) may, either in full or with sufficient particularity as to identify the recommendation or other source from which it derives, be endorsed on the licence, for which purpose the holder of the licence shall produce the licence on demand; and

- (b) whether or not so endorsed, on notice of the imposition of the condition being given in writing to the holder of the licence shall for all purposes have effect as a condition to which the licence is subject.

Rights conferred by retention licence

70J. A retention licence, while it remains in force, authorizes the holder of the licence, subject to this Act, and in accordance with any conditions to which the licence may be subject —

- (a) to enter and re-enter the land the subject of the licence with such agents, employees, vehicles, machinery and equipment as may be necessary or expedient for the purpose of further exploring for minerals in, on or under the land;
- (b) to further explore, subject to any conditions imposed under section 24 or 25, for minerals, and to carry on such operations and carry out such works as are necessary for that purpose on such land including digging pits, trenches and holes, and sinking bores and tunnels to the extent necessary for the purpose in, on or under the land;
- (c) to excavate, extract or remove, subject to any conditions imposed under section 24 or 25, from such land, earth, soil, rock, stone, fluid or mineral bearing substances in such amount, in total during the period for which the licence remains in force, as does not exceed the prescribed limit, or in such greater amount as the Minister may, in any case, approve in writing;

- (d) to take and divert, subject to the *Rights in Water and Irrigation Act 1914*, or any Act amending or replacing the relevant provisions of that Act, water from any natural spring, lake, pool or stream situate in or flowing through such land or from any excavation previously made and used for mining purposes, and, subject to that Act, to sink a well or bore on such land and take water therefrom and to use the water so taken for the holder's domestic purposes and for any purpose in connection with exploring for minerals on the land.

When retention licence liable for forfeiture

70K. A retention licence is liable to forfeiture if —

- (a) the prescribed rent or royalty in respect of the licence is not paid in accordance with this Act;
- (b) the terms and conditions of the licence, including —
 - (i) any conditions to which the licence is deemed to be subject under section 70H; and
 - (ii) any conditions imposed under section 70I,are not complied with;
- (c) the holder of the licence is convicted of an offence against this Act; or
- (d) the holder of the licence fails to comply with a notice under section 70M (2)

requiring that person to apply for a mining lease in respect of the whole or any part of the land the subject of the licence.

Holder of retention licence to have priority for grant of mining lease or general purpose lease

70L. (1) The holder of a retention licence has —

- (a) subject to this Act and to any conditions to which the retention licence is subject;
- (b) subject to satisfactory compliance with the programme of work (if any) referred to in section 70H (1) (c) and with any conditions imposed under section 70I; and
- (c) while the retention licence remains in force,

the right to apply for, and subject to section 75 (6) to have granted pursuant to section 75 (5), one or more mining leases or one or more general purpose leases or both in respect of any part or parts of the land the subject of the retention licence.

(2) Where an application for a mining lease or a general purpose lease is made by the holder of a retention licence in respect of any land and the term of the retention licence would but for this subsection expire, that licence shall continue in force in respect of the land the subject of the application until the application for a lease is determined.

Holder of retention licence to show cause why mining lease should not be applied for

70M. (1) The Minister may at any time by notice in writing require the holder of a retention licence to

show cause why a mining lease should not be applied for in respect of the whole or any part of the land the subject of the retention licence.

(2) Where —

- (a) the holder of a retention licence fails to show cause within the time specified in the notice referred to in subsection (1); or
- (b) the Minister is of the opinion that the holder of a retention licence has shown insufficient cause,

the Minister may by notice in writing require that person to apply in accordance with this Act for a mining lease in respect of the whole or any part of the land the subject of the retention licence within a period of 60 days from the giving of that notice.

Land the subject of retention licence not to be again marked out for a certain period

70N. (1) Where a retention licence is surrendered or forfeited, or expires, the land the subject of the retention licence or any part of that land shall not be marked out or applied for as a prospecting licence or an exploration licence by or on behalf of —

- (a) the person who was the holder of the retention licence immediately prior to the date of the surrender, forfeiture or expiry; or

- (b) any person who had an interest in the retention licence immediately prior to that date,

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

(2) For the purposes of subsection (1) the holding of shares in a listed public company which held the retention licence in question does not of itself constitute an interest in the retention licence.

”.

(2) The provisions of the principal Act referred to in the Table to this subsection are amended in the manner set out in that Table.

TABLE

Provision amended	Amendment
Section 8 (1)	In the definition of “mining tenement” insert after “exploration licence,” the following — “ retention licence, ”.
Sections 56A (1), 56A (8), 70 (1) and 70 (8)	In each case insert after “converted into” the following — “ a retention licence or ”.
Section 75 (5)	Delete “or” after paragraph (a).

Delete the comma at the end of paragraph (b), substitute the following —

“ ; or

(ba) a retention licence
under section 70L, ”.

Delete “or exploration licence” in paragraph (c), substitute “, exploration licence or retention licence”.

Section 96A

Repeal subsection (1), substitute the following —

“ (1) When —

(a) an exploration licence is liable to forfeiture by virtue of section 63A; or

(b) a retention licence is liable to forfeiture by virtue of section 70K,

the Minister may cause the licence to be forfeited by declaring by notice published in the *Government Gazette* that the licence is forfeited. ”.

In subsections (2) to (6) delete “exploration” wherever it occurs.

Insert after subsection (6) the following subsection —

“ (7) In this section “**licence**” means the exploration licence or the retention licence, as the case requires. ”.

Section 102 (1) Insert after “mining tenement” where it first occurs the following —

“ (other than a retention licence) ”.

Section 105 (1) Insert after “exploration licence” the following —

“ or a retention licence ”.

Section 111 Insert after “66” the following —

“ , 70J ”.

Insert after paragraph (b) the following paragraph —

“ (ba) a retention licence does not authorize the holder thereof to explore for iron on the land the subject of the retention licence; ”.

Section 126 (1) Delete “or 60”, substitute “, 60 or 70F”.

Section 83 amended

11. Section 83 of the principal Act is amended —

- (a) in subsection (1) (b) by deleting “in duplicate”; and
- (b) by repealing subsection (2) and substituting the following subsection —

“

(2) Where a mining lease has been executed under subsection (1) —

- (a) the mining lease shall be endorsed with the word “original” on its front page; and
- (b) a copy of the mining lease shall be —
 - (i) endorsed with the word “duplicate” on its front page; and
 - (ii) issued to the lessee on payment of the prescribed fee.

”.

Sections 85A and 85B inserted and consequential amendments

12. (1) After section 85 of the principal Act the following sections are inserted —

“

Land the subject of mining lease not to be again marked out for a certain period

85A. (1) Where a mining lease is surrendered or forfeited, or expires, the land the subject of the lease

or any part of that land shall not be marked out or applied for as a prospecting licence or an exploration licence by or on behalf of —

- (a) the person who was the holder of the mining lease immediately prior to the date of the surrender, forfeiture or expiry; or
- (b) any person who had an interest in the mining lease immediately prior to that date,

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

(2) For the purposes of subsection (1) the holding of shares in a listed public company which held the mining lease in question does not of itself constitute an interest in the mining lease.

Special prospecting licence on a mining lease

85B. (1) Where any land is the subject of a mining lease (in this section called “**the primary tenement**”) then, notwithstanding section 117 and whether or not the primary tenement is converted into a retention licence pending the determination of the application for a special prospecting licence, a person may at any time mark out and, in accordance with section 41, apply for a prospecting licence for gold (in this section called a “**special prospecting licence**”) in respect of any part of the land the subject of the primary tenement.

(2) An application for a special prospecting licence shall be accompanied by the written consent of the holder of the primary tenement to the granting of the special prospecting licence.

(3) Subject to this section, the warden may, if the warden is satisfied that the holder of the primary tenement has consented in writing to the granting of the special prospecting licence, grant a special prospecting licence on such terms or conditions as the warden thinks fit, but a special prospecting licence so granted —

- (a) shall not exceed 10 hectares in area;
- (b) authorizes the holder of the special prospecting licence to prospect only for gold;
- (c) does not, unless the warden otherwise directs, prevent the holder of the primary tenement from prospecting for minerals other than gold in or on the land the subject of the special prospecting licence;
- (d) does not authorize the holder of the special prospecting licence to excavate, extract or remove during the period for which the mining tenement remains in force a total amount of earth, soil, rock, stone, fluid or mineral bearing substances in excess of 500 tonnes, except in so far as the prior written approval of the Minister may otherwise permit; and
- (e) does not authorize mining to be carried out in any portion of the land that is 50 metres or more below the lowest part of the natural surface of the land the subject of the special prospecting licence, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit.

(4) A special prospecting licence —

- (a) continues in force in accordance with the provisions of section 45 notwithstanding that the holder of the primary tenement may apply for and be granted a retention licence, mining lease or general purpose lease in respect of the land; but
- (b) ceases (and the land in respect of which it was granted reverts to the holder of the primary tenement as an integral part of the mining tenement held by that person) on the surrender, forfeiture or expiry of that special prospecting licence.

(5) No legal or equitable interest in or affecting —

- (a) a special prospecting licence; or
- (b) a mining lease in respect of the land or any part of the land the subject of a special prospecting licence,

is capable of being created, affected or dealt with, whether directly or indirectly, except with the prior written consent of the holder of the primary tenement, and no person shall hold or have any beneficial interest in more than one such special prospecting licence or mining lease or legal or equitable interest therein.

(6) A reference in subsection (5) to a person includes a reference to any other person who would, for the purposes of the Corporations Law, be taken to be an associate of the firstmentioned person.

(7) When the holder of a special prospecting licence makes an application for a mining lease for

gold in respect of the land or any part of the land which is the subject of the special prospecting licence, the Minister may, if —

- (a) after being served with the prescribed notice of that application, the holder of the primary tenement does not lodge an objection against that application; or
- (b) it is proved to the satisfaction of the Minister by a report from the Director, Geological Survey, that gold exists in payable quantities on or in the land to which that application relates,

grant the application for a lease in respect of that portion of the land to which the special prospecting licence relates that is less than a depth of 50 metres, or such greater depth as the Minister approves with the prior written consent of the holder of the primary tenement, below the lowest part of the natural surface of the land and on such terms and conditions as the Minister thinks fit, and thereupon the area of land in respect of which that mining lease is granted shall be excised from the primary tenement.

(8) A mining lease granted pursuant to subsection (7) —

- (a) has effect in relation to gold and any minerals occurring in conjunction with that gold;
- (b) does not authorize the holder of the mining lease or any agents or employees of the holder to excavate, extract or remove a total amount of earth, soil, rock, stone, fluid or mineral bearing substances in excess of 750 tonnes in any year, except in so far as both the prior written consent of

the holder of the primary tenement and the prior written approval of the Minister may otherwise permit; and

- (c) ceases to have effect (and the land in respect of which it was granted reverts to the holder of the primary tenement as an integral part of the tenement held by that person) on the surrender, forfeiture or expiry of that lease.

(9) Subject to this section, the provisions of this Act relating to —

- (a) prospecting licences apply to a special prospecting licence; and
- (b) mining leases apply to a mining lease,

granted under this section.

(10) On the surrender, forfeiture or expiry of the primary tenement, a special prospecting licence in respect of any land the subject of the primary tenement immediately before the date of its surrender, forfeiture or expiry is, by virtue of this subsection, converted into a prospecting licence in respect of that land and, subject to subsection (11), the provisions of this Act relating to prospecting licences apply accordingly.

(11) For the purposes of section 45, where a special prospecting licence is converted into a prospecting licence by virtue of subsection (10), the prospecting licence shall be deemed to have been granted on the day on which the special prospecting licence was granted under this section.

(12) Subsection (10) does not apply if —

- (a) the primary tenement is amalgamated with an exploration licence under section 67A (1); or
- (b) prior to the surrender, forfeiture or expiry of the primary tenement the holder of the primary tenement applies for a mining lease or a general purpose lease and the lease is subsequently granted in respect of any land the subject of the special prospecting licence.

”.

(2) The provisions of the principal Act referred to in the Table to this subsection are amended in the manner set out in that Table.

TABLE

Provision amended	Amendment
Sections 8 (1) (paragraph (b) of the definition of “private land”), 27 (1) and 134 (1) (e)	In each case delete “section 56A or section 70”, substitute the following — “ section 56A, 70 or 85B ”.
Sections 76 and 117 (1)	In each case delete “section 56A and section 70”, substitute the following — “ sections 56A, 70 and 85B ”.

Section 96 amended

13. (1) Section 96 (3) of the principal Act is amended in paragraph (b) by inserting after “Minister” the following —

“ , a mining registrar ”.

(2) Section 96 of the principal Act is amended by inserting after subsection (3) the following subsection —

“

(3a) Where —

- (a) a mining tenement that is the subject of an application for forfeiture under this section is surrendered (other than by way of a conditional surrender or a surrender under section 26A or 65) before that application is dealt with by the warden; and
- (b) the applicant for forfeiture is not the Minister, a mining registrar or an officer of the Department authorized in writing by the Minister,

the applicant for forfeiture has, from the date on which the surrender is registered until the expiry of a period of 14 days after the date of being served with written notice of the surrender 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 surrendered mining tenement.

”

(3) Section 96 (4) of the principal Act is amended —

(a) by inserting after “Minister” where it first occurs the following —

“ , a mining registrar ”; and

(b) by inserting after “mark out” the following —

“ or apply for, or both, ”.

Section 100 repealed and a section substituted and consequential amendment

14. (1) Section 100 of the principal Act is repealed and the following section is substituted —

“

Applicant to have priority for marking out and applying for surrendered or forfeited licence or lease

100. (1) Where an exploration licence or a mining lease that is the subject of an application for forfeiture under section 98 is surrendered (other than by way of a conditional surrender or a surrender under section 26A or 65) before the application is finally dealt with under section 98 (4) or 99 (1), the applicant for forfeiture has, from the date on which the surrender is registered until the expiry of a period of 14 days after the date of being served with written notice of the surrender 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 surrendered licence or lease.

(2) Where an exploration licence or a mining lease is forfeited pursuant to section 99, the applicant for forfeiture has, for a period of 14 days after the date of the publication of the notice of forfeiture of the licence or lease in the *Government Gazette*, 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 forfeited licence or lease.

”.

(2) Section 99 (3) of the principal Act is amended by inserting after “100” the following —

“ (2) ”.

Section 103A amended

15. Section 103A (1) of the principal Act is amended by inserting after “mining tenement” the following —

“

or an instrument withdrawing an application for the grant of a mining tenement

”.

Section 105 amended

16. Section 105 (2) of the principal Act is repealed.

Section 105A amended

17. Section 105A (4) of the principal Act is amended by deleting paragraph (b) and substituting the following paragraph —

“

(b) in the case of an application for a prospecting licence, mining lease or general purpose lease —

(i) unless subparagraph (ii) or (iii) applies, to marking out the land concerned in the prescribed manner;

(ii) where the land concerned is wholly covered by the sea or the waters of any lake, pond, river or stream, to lodging that application at the office of the mining registrar;

(iii) where the land concerned is partly covered by the sea or the waters of any lake, pond, river or stream, to marking out in the prescribed manner so much of that land as is not so covered.

”.

Section 114 amended

18. Section 114 of the principal Act is amended by repealing subsection (7) and substituting the following subsection —

“

(7) Where —

- (a) a mining tenement expires or is surrendered in whole or in part or forfeited; and
- (b) at the time of that expiry, surrender or forfeiture, the person (in this subsection called “**the former holder**”) who was the holder of the mining tenement immediately before its expiry, surrender or forfeiture leaves any tailings or other mining product upon the land or part of the land that was the subject of the mining tenement,

the tailings or other mining product become or becomes the property of the Crown —

- (c) at the expiration of the prescribed period, if the former holder does not —
 - (i) remove; or
 - (ii) *bona fide* treat and continue to treat, the tailings or other mining product within that period; or
- (d) at the expiration of a period of 3 months from the time when, in the opinion of the Minister, treatment of the tailings or other mining product is discontinued, if the former holder, having commenced treatment of the tailings or other mining

product within the prescribed period, discontinues that treatment after the expiration of the prescribed period.

”.

Section 114A inserted and validation

19. (1) After section 114 of the principal Act the following section is inserted —

“

Rights conferred under mining tenement exercisable in respect of mining product belonging to Crown

114A. Where a provision of this Act confers on the holder of a mining tenement (other than a miscellaneous licence) rights in respect of land that is the subject of that mining tenement, the holder of the mining tenement may exercise those rights in respect of any tailings or other mining product left upon that land or any part of that land if —

- (a) at the time the mining tenement was granted, the tailings or other mining product were or was the property of the Crown; or
- (b) during the term of the mining tenement the tailings or other mining product become or becomes the property of the Crown,

by virtue of section 114 (7) or clause 7 (5) of the Second Schedule.

”.

(2) Any act or thing done before the commencement of this section by the holder of a mining tenement as defined in the

principal Act is, and is to be regarded as having always been, as valid, lawful and effective as it would have been if —

- (a) section 114A of the principal Act as inserted by subsection (1);
- (b) section 114 (7) of the principal Act as amended by this Act; and
- (c) clause 7 (5) of the Second Schedule to the principal Act as inserted by this Act,

had been in operation when the act or thing was done.

Section 118 amended

20. Section 118 of the principal Act is amended by deleting “14 days of the lodging of the application” and substituting the following —

“ the prescribed period ”.

Section 120A inserted

21. After the heading to Part VI of the principal Act the following section is inserted —

“

Certain surrenders not affected by this Part

120A. (1) Nothing in this Part shall be taken to prevent the registration of a surrender under section 26A or 65 which affects the subject matter of a caveat.

(2) The notification requirement under section 122 (1) (c) does not apply to an application for the registration of a surrender referred to in subsection (1), but notification of the registration of any such

surrender shall be sent by or on behalf of the Minister in the prescribed manner to the relevant caveator.

”.

Section 144 repealed and a section substituted

22. Section 144 of the principal Act is repealed and the following section is substituted —

“

Persons before whom affidavits may be sworn

144. An affidavit to be used in a warden’s court or before a warden may be sworn before —

- (a) a commissioner for taking affidavits in the Supreme Court;
- (b) a warden;
- (c) a mining registrar;
- (d) a justice of the peace; or
- (e) the holder or holders for the time being of a prescribed office or class of office in the Department.

”.

Section 161 amended

23. Section 161 of the principal Act is amended by inserting after subsection (2) the following subsection —

“

(3) In any proceedings a document purporting to be certified by a mining registrar as a correct copy of an extract from the register kept in accordance with

the regulations is evidence of the matter contained in that document.

”

Section 162 amended

24. Section 162 (2) of the principal Act is amended by inserting after paragraph (a) the following paragraphs —

“

(aa) authorize an inspector appointed under section 11 —

(i) to enter upon land where mining operations are carried out for the purpose of inspecting those mining operations;

(ii) to require any person to provide the inspector with prescribed information relating to mining operations;

(iii) to give directions to the holder of a mining tenement requiring the holder to modify or cease mining operations in prescribed circumstances;

(ab) provide for an appeal to the Minister by the holder of a mining tenement against a direction referred to in paragraph (aa) (iii) requiring the holder to cease mining operations;

”

Second Schedule amended

25. The Second Schedule to the principal Act is amended in clause 7 by inserting after subclause (4) the following subclause —

“

(5) Where a licence granted under section 112 of the repealed Act expires, any tailings or other mining

material left upon the land or any part of the land in respect of which the licence was granted become or becomes the property of the Crown —

- (a) if an application for the renewal of the licence is not made within a period of 3 months from the expiry of the licence, at the expiration of that period; or
- (b) if an application for the renewal of the licence is made within the period referred to in paragraph (a) but is subsequently refused by the Minister, at the expiration of a period of 3 months from that refusal.

”

Amendments relating to office of mining registrar

26. The provisions of the principal Act referred to in the Table to this section are amended in the manner set out in that Table.

TABLE

Provision amended

Amendment

Section 8 (1)

Insert in the appropriate alphabetical position the following definition —

“ **“the office of the mining registrar”** means —

- (a) in relation to the lodging of an application for a mining tenement, the office of the mining registrar of the mineral field or district in

which the largest portion of the land to which the application relates is situated;

(b) in relation to the lodging of an agreement, claim, notice of objection, security or any other thing in respect of a mining tenement, the office of the mining registrar of the mineral field or district to which the application for that mining tenement has been assigned; ”.

Section 41 (1) Delete paragraph (e), substitute the following paragraph —

“ (e) shall be lodged at the office of the mining registrar; ”.

Section 52 (1) Delete “with” where it first occurs, substitute “at the office of”.

Section 58 (1) Delete paragraph (d), substitute the following paragraph —

“ (d) shall be lodged at the office of the mining registrar; ”.

- Section 60 (1) Delete “with” where it first occurs, substitute “at the office of”.
- Section 61 (3) Delete “with”, substitute “at the office of”.
- Section 74 (1) Delete paragraph (d), substitute the following paragraph —
- “ (d) shall be lodged at the office of the mining registrar. ”.
- Section 97A (3) Delete paragraph (b), substitute the following paragraph —
- “ (b) shall be lodged at the office of the mining registrar; ”.
- Section 105A (3) Delete “with” in the second place where it occurs, substitute “at the office of”.
- Section 105A (4) Delete “with”, substitute “at the office of”.
- (a)
- Section 123 (3) (a) Delete “with”, substitute “at the office of”.
- Schedule 2, clause 13 Delete “with”, substitute “at the office of”.

Amendments relating to Corporations Law

27. The provisions of the principal Act referred to in the Table to this section are amended in the manner set out in that Table.

TABLE

Provision amended	Amendment
Section 8 (1)	Delete the definition of "listed public company", substitute the following definition — <p style="text-align: center;">“ “listed public company” means a corporation that is a listed corporation within the meaning of that expression in the Corporations Law; ”.</p>
Section 56A (7a)	Delete " <i>Companies (Western Australia) Code</i> , be taken to be associated with", substitute the following — <p style="text-align: center;">“ Corporations Law, be taken to be an associate of ”.</p>
Section 64 (1) (a) (ii)	Delete " <i>Companies (Western Australia) Code</i> ", substitute the following — <p style="text-align: center;">“ Corporations Law ”.</p>
Section 70 (7a)	Delete " <i>Companies (Western Australia) Code</i> , be taken to be associated with", substitute the following — <p style="text-align: center;">“ Corporations Law, be taken to be an associate of ”.</p>

Section 101

Insert after “appointed under” the following —

“ the Corporations Law, ”.

Insert after “purposes of” the following —

“ subsection (2) of section 471 of that Law (or any provision of that Law which replaces or is substituted for that subsection), ”.

Section 109A (2)
(a)

Delete subparagraph (i), substitute the following —

“ (i) an auditor, being a person who is registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Law; ”.

Section 119 (9)

Delete “Section 8 of the *Companies (Western Australia) Code*”, substitute the following —

“ Division 5 of Part 1.2 of the Corporations Law ”.

Delete “that section”, substitute the following —

“ that Division ”.

Amendments relating to surveys and savings provision

28. (1) The provisions of the principal Act referred to in the Table to this subsection are amended in the manner set out in that Table.

TABLE

Provision amended	Amendment
Section 47 (2)	Delete "The cost of the survey shall be paid", substitute the following — " A survey ordered under subsection (1) shall be arranged and paid for ".
Section 58 (2) (c)	Delete "The cost of the survey shall be paid", substitute the following — " A survey ordered under paragraph (b) shall be arranged and paid for ".
Section 74	Repeal subsection (4), substitute the following — " (4) The application shall be made by reference to a written description of the area of the land in respect of which the lease is sought, and be accompanied by a map on which are clearly delineated the boundaries of that area. ".
Section 80	Repeal subsections (2) and (3).

Section 82 (1) Insert after paragraph (b) the following —

- “ (ba) arrange and pay for a survey of such land within the prescribed time and in the prescribed manner;
- (bb) where the lease is surrendered in part, arrange and pay for a re-survey of such land within the prescribed time and in the prescribed manner; ”.

Section 162 (2) Delete the subparagraphs following (ka) subparagraph (iii), substitute the following —

- “ (iv) the correction of errors or omissions in that surveying and the completion of surveying that is uncompleted;
- (v) the lodging of reports relating to surveys with the Department;
- (vi) the entry on land by officers of the Department for the purpose of inspecting surveys. ”.

(2) Notwithstanding subsection (1), section 80 (3) of the principal Act as in force immediately before the commencement of this section continues to have effect in relation to survey fees paid under the principal Act before that commencement.

PART 3 — MINING AMENDMENT ACT 1990**Principal Act**

29. In this Part the *Mining Amendment Act 1990** is referred to as the principal Act.

[* Act No. 22 of 1990.]

***Mining Amendment Act 1990* amended and transitional**

30. (1) Section 40 (1) of the principal Act is amended —

(a) by deleting “16, 17, 18, 20 and 35” and substituting the following —

“ 15, 16, 17, 19 and 34 ”; and

(b) by inserting after “a mining lease” the following —

“ or a general purpose lease ”.

(2) Section 40 (3) of the principal Act is amended —

(a) in the definition of “block” by deleting “16” and substituting the following —

“ 15 ”; and

(b) in the definition of “commencement day” by deleting “16, 17, 18, 20 and 35” and substituting the following —

“ 15, 16, 17, 19 and 34 ”.

(3) Notwithstanding section 40 of the principal Act as amended by this section —

- (a) the amendment effected by section 19 (b) of the principal Act;
- (b) section 65 (1c) (b) and (c) of the *Mining Act 1978* as inserted by section 19 (c) of the principal Act; and
- (c) the repeal effected by section 19 (d) of the principal Act,

have effect in relation to an exploration licence referred to in section 40 (1) (a) (i) or (iii) of the principal Act.