

ACTS AMENDMENT (MINING).

No. 122 of 1982.

**AN ACT to amend the Mining Act 1978-1982 and the
Town Planning and Development Act 1928-1981.**

[Assented to 10 December 1982.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY.

1. This Act may be cited as the *Acts Amendment (Mining) Act 1982*. Short title.

2. (1) Subject to subsection (2) of this section, this Act shall come into operation on the day on which it is assented to by the Governor. Commence-
ment.

(2) Paragraph (d) of section 30 of this Act shall be deemed to have come into operation on 1 January 1982.

PART II—MINING ACT 1978-1982.

Principal Act and citation.

3. (1) In this Part the Mining Act 1978-1982 is referred to as the principal Act.

Reprinted as approved 11 December 1981 and amended by Act No. 10 of 1982.

(2) The principal Act as amended by this Act may be cited as the Mining Act 1978-1982.

Section 7 repealed.

4. Section 7 of the principal Act is repealed.

Section 8 amended.

5. Section 8 of the principal Act is amended in the definition of “minerals” in subsection (1) by deleting paragraph (a) and substituting the following paragraphs—

“ (a) soil;

(aa) any substance the recovery of which is governed by the Petroleum Act 1967 or the Petroleum (Submerged Lands) Act 1967; or ” .

Section 20 amended.

6. Section 20 of the principal Act is amended—

(a) by repealing subsection (4);

(b) in subsection (5) by deleting—

(i) “does not entitle the holder thereof to enter on” and substituting the following—

“ or Miner’s Right does not entitle the holder thereof to prospect, explore, mine ” ; and

- (ii) "otherwise directs." and substituting the following—

“ otherwise directs, but nothing in this subsection prevents such a holder from passing and repassing over any Crown land that is situated within—

- (f) 100 metres of any Crown land that is—

(i) for the time being under crop;

(ii) used as a yard, stockyard, garden, cultivated field, orchard, vineyard, plantation, airstrip or airfield;

(iii) in actual occupation and on which a house or other substantial building is erected; or

(iv) the site of any cemetery or burial ground;

or

- (g) 400 metres of any Crown land that is the site of any water works, race, dam, well or bore,

in order to gain access to other land (not being Crown land referred to in paragraph (f) or (g) of this subsection), for the purpose of prospecting on, exploring, mining or marking out that other land. ” ;

(c) by inserting, after subsection (5), the following subsections—

“ (5a) The holder of a mining tenement or Miner’s Right who passes or repasses over any Crown land that is situated within—

(a) 100 metres of any Crown land referred to in subsection (5) (f); or

(b) 400 metres of any Crown land referred to in subsection (5) (g),

of this section in order to gain access to the other land referred to in subsection (5) of this section for the purpose referred to therein shall—

(c) before so passing or repassing, take all reasonable and practicable steps to notify the occupier of the Crown land so situated of his intention to do so;

(d) when so passing or repassing—

(i) 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 or otherwise;

(ii) cause as little inconvenience as possible to the occupier of the Crown land so situated;

and

- (iii) comply with any reasonable request made by the occupier of the Crown land so situated in relation to the manner in which that holder so passes or repasses;
- (e) restrict the number of occasions on which he so passes or repasses to the minimum necessary for the purpose of prospecting on, exploring, mining or marking out that other land; and
- (f) make good any damage caused by that passing or repassing to any improvements or livestock on the Crown land so situated,

and the occupier of the Crown land so situated is entitled to be compensated by that holder for any damage referred to in paragraph (f) of this subsection that is not made good by that holder.

(5b) The amount of any compensation payable under subsection (5a) of this section by the holder of the mining tenement or Miner's Right concerned to an occupier of Crown land referred to in that subsection shall be determined—

- (a) by agreement between that holder and that occupier; or
- (b) in default of agreement referred to in paragraph (a) of this subsection, by the Warden's Court on the application of that holder or that occupier.

(5c) A determination made by the Warden's Court under subsection (5b) of this section is, for the purposes of section 147 (1), a final determination of the Warden's Court. " ; and

(d) in subsection (6) by inserting, after "make an order", the following—

" under subsection (5) of this section " .

Section 24
amended.

7. Section 24 of the principal Act is amended—

(a) in subsection (1) by deleting paragraph (f) and substituting the following paragraph—

" (f) land to which Part III of the Aboriginal Affairs Planning Authority Act 1972 applies; and " ;

and

(b) in subsection (7) by inserting after paragraph (b) the following paragraph—

" (c) The giving by the Minister of his consent under this subsection in relation to land referred to in subsection (1) (f) of this section does not prevent or in any way affect the application of section 31 of the Aboriginal Affairs Planning Authority Act 1972 to any person acting under that consent. " .

Section 40
amended.

8. Section 40 of the principal Act is amended by repealing subsection (3) and substituting the following subsection—

" (3) A person may be granted more than one prospecting licence. " .

Section 41
amended.

9. Section 41 of the principal Act is amended in subsection (1) by deleting paragraph (d).

10. Section 43 of the principal Act is repealed. Section 43
repealed.

11. Section 45 of the principal Act is amended by repealing subsection (3) and substituting the following subsections— Section 45
amended.

“ (3) Notwithstanding anything in subsection (1) of this section, the Minister shall, subject to subsection (4) of this section and if the holder of a prospecting licence (not being a prospecting licence for gold or precious stones or both referred to in section 56A or 70)—

(a) applies to him before the expiry of that prospecting licence for an extension of the term thereof by lodging that application with the mining registrar; and

(b) has during the term of that prospecting licence substantially complied to the satisfaction of the Minister with the requirements of this Act in relation to that prospecting licence and with any conditions to which that prospecting licence is subject,

extend the term of that prospecting licence for a further period of 2 years.

(4) The Minister shall not extend the term of a prospecting licence under subsection (3) of this section if that term has previously been extended under that subsection.

(5) A prospecting licence to which an application made under subsection (3) of this section before the expiry of the prospecting licence relates continues, notwithstanding anything in subsection (1) of this section but otherwise subject to this Act, to remain in force until that application is finally disposed of.

(6) The further period for which the term of a prospecting licence is extended under subsection (3) of this section shall be deemed to have commenced on the date on which that term would, but for—

(a) the operation, if any, of subsection (5) of this section; and

(b) that extension,

have expired under subsection (1) of this section. ” .

Section 49
repealed
and
substituted.

12. Section 49 of the principal Act is repealed and the following section is substituted—

Holder of
prospe-
cting
licence
to have
priority for
grant of
mining
leases or
general
purpose
leases.

“ 49. (1) The holder of a prospecting licence has—

(a) subject to this Act and to any conditions to which the prospecting licence is subject; and

(b) while the prospecting licence continues in force,

the right to apply for and have granted to him 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 prospecting licence.

(2) The land the subject of an application referred to in subsection (1) of this section is not, while that application is pending, open for mining to any person other than—

(a) the applicant; or

(b) the holder of a prospecting licence granted under section 56A in respect of any part of that land. ” .

Section 52
amended.

13. Section 52 of the principal Act is amended in subsection (1) by deleting “he shall lodge with the application” and substituting the following—

“ he shall, within 28 days after lodging the application, lodge, ” .

14. Sections 53, 54 and 55 of the principal Act are repealed. Sections 53, 54 and 55 repealed.

15. Section 56 of the principal Act is repealed and the following section is substituted— Section 56 repealed and substituted.

“ 56. (1) Where the warden refuses to grant an application for a prospecting licence under section 40 or grants the application on conditions the applicant considers unreasonable, the applicant may within the time and in the manner prescribed appeal to the Minister against such refusal or conditions as the case may be. Appeal against refusal to grant prospecting licence.

(2) The Minister may dismiss the appeal or uphold the appeal and grant the application on such conditions as he considers reasonable. ”

16. Division 1 of Part IV of the principal Act is amended by inserting, after section 56, the following section— Section 56A inserted.

“ 56A. (1) Notwithstanding section 117, a person may, at any time after the expiry of 12 months from the date on which a prospecting licence is granted, mark out and apply for in accordance with section 41 a prospecting licence for gold or precious stones or both (in this section called a “special prospecting licence”) in respect of any part of the land the subject of the first-mentioned prospecting licence. Prospecting licences for gold and/or precious stones may be granted on a prospecting licence.

(2) The applicant for a special prospecting licence under subsection (1) of this section shall serve notice of his application on the

holder of the prospecting licence first-mentioned in that subsection as if that holder were the occupier of the land to which that application relates.

(3) If, after being served with notice of an application for a special prospecting licence, the holder of the prospecting licence first-mentioned in subsection (1) of this section does not lodge an objection against that application, the warden may, subject to this Act, grant that application as provided in subsection (6) of this section.

(4) If the holder of the prospecting licence first-mentioned in subsection (1) of this section lodges an objection to an application for a special prospecting licence, the warden shall obtain a report from the Director, Geological Survey, on whether or not the prospecting for gold or precious stones or both on the land to which that application relates could be carried on without detriment to the prospecting being carried on by that holder.

(5) After hearing an objection referred to in subsection (4) of this section, the warden may refuse the application for the special prospecting licence concerned or he may recommend that application to the Minister, who may—

(a) refuse that application; or

(b) subject to this Act, grant that application as provided in subsection (6) of this section,

but, if the warden refuses an application under this subsection, the applicant may within the time and in the manner prescribed appeal to the Minister against that refusal and the Minister may dismiss that appeal or uphold that appeal and grant that application as provided in subsection (6) of this section.

(6) Subject to this section, the warden or the Minister may grant an application for a special prospecting licence on such terms and conditions as he thinks fit, but a special prospecting licence so granted—

- (a) shall not exceed 10 hectares in area;
- (b) shall authorize the holder thereof to prospect only for gold or precious stones or both;
- (c) shall not, unless the warden otherwise directs, prevent the holder of the prospecting licence first-mentioned in subsection (1) of this section from prospecting for minerals other than gold or precious stones in or on the land the subject of the special prospecting licence.

(7) A person shall not hold or have any beneficial interest in more than one special prospecting licence.

(8) When the holder of a special prospecting licence makes an application for a mining lease for gold or precious stones or both in respect of the land or any part thereof 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 prospecting licence first-mentioned in subsection (1) of this section 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 or precious stones or both exist in payable quantities on or in the land to which that application relates,

grant that application on such terms and conditions as he thinks fit, and thereupon the area of land in respect of which that mining lease is granted shall be excised from the prospecting licence first-mentioned in subsection (1) of this section.

(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) In this section—

“precious stones” includes any stone ordinarily obtained by mining operations for the purpose of being cut, ground, polished or similarly treated for ornamental or display purposes or lapidary work. ” .

Section 57
amended.

17. Section 57 of the principal Act is amended by inserting, after subsection (2), the following subsection—

“ (2a) A person may be granted more than one exploration licence. ” .

Section 61
amended.

18. Section 61 of the principal Act is amended by inserting, after subsection (2), the following subsection—

“ (3) A person making an application for the extension of the term of an exploration licence under subsection (2) of this section shall lodge that application with the mining registrar. ” .

19. Section 67 of the principal Act is repealed and the following section is substituted—

Section 67
repealed and
substituted.

- “ 67. (1) The holder of an exploration licence has—
- (a) subject to this Act and to any conditions to which the exploration licence is subject; and
 - (b) while the exploration licence continues in force,

Holder of
exploration
licence to
have
priority
for grant
of mining
leases or
general
purpose
leases.

the right to apply for and have granted to him 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 exploration licence.

(2) The land the subject of an application referred to in subsection (1) of this section is not, while that application is pending, open for mining to any person other than—

- (a) the applicant; or
- (b) the holder of a prospecting licence granted under section 70 in respect of any part of that land. ” .

20. Section 71 of the principal Act is amended by deleting “may determine.” and substituting the following—

Section 71
amended.

“ considers reasonable. ” .

21. Section 75 of the principal Act is amended—

Section 75
amended.

- (a) in subsection (4) by inserting, after “the Minister may”, the following—

“ , subject to subsection (5) of this section, ” ; and

(b) by inserting, after subsection (4), the following subsections—

“ (5) In the case of an application for a mining lease made by the holder of—

(a) a prospecting licence under section 49; or

(b) an exploration licence under section 67,

the Minister shall, subject to this Act, grant to that holder one or more mining leases or one or more general purpose leases or both—

(c) in respect of any part or parts of the land the subject of the prospecting licence or exploration licence, as the case requires; and

(d) on such terms and conditions as he considers reasonable.

(6) Subsection (5) of this section does not apply to an application for a mining lease if all or part of the land to which that application relates falls within one or more of the classes of land referred to in section 24 (1). ” .

Section 77
repealed.

22. Section 77 of the principal Act is repealed.

Section 91
amended.

23. Section 91 of the principal Act is amended—

(a) in subsection (1) by—

(i) deleting “a licence of any class of the following classes of licence”;

(ii) inserting, after paragraph (d), the following paragraphs—

“ (da) a power line licence;

(db) a conveyor system licence; ” ;

(iii) inserting, after the semi-colon at the end of paragraph (g), the following—

“ or ” ; and

(iv) deleting paragraph (h) and substituting the following—

“ (h) a licence for any prescribed purpose,

or any combination of the licences referred to in paragraphs (a), (b), (c), (d), (da), (db), (e), (f), (g) and (h) of this subsection. ” ;

and

(b) by inserting, after subsection (1), the following subsection—

“ (1a) A person may be granted more than one licence under this section. ” .

24. Section 92 of the principal Act is amended Section 92 amended. by deleting—

(a) “The provisions of section 41” and substituting the following—

“ Sections 41 and 42, ” ; and

(b) “a licence granted” and substituting the following—

“ an application for the grant of a licence ” .

Section 102A
inserted.

25. The principal Act is amended by inserting, after section 102, the following section—

Exemption
from
expenditure
conditions
in respect
of certain
holders of
exploration
licences.

“ 102A. (1) Notwithstanding anything in section 102, the Minister may, on the application in writing of the holder of an exploration licence who has been authorized by the Minister under section 111 to explore for iron on the land the subject of the exploration licence, grant that holder exemption totally or partially from the prescribed expenditure conditions relating to the exploration licence in an amount not exceeding the amount required to be expended in any one year.

(2) The refusal by the Minister of an application referred to in subsection (1) of this section does not prevent the holder of the exploration licence concerned from making an application referred to in section 102(1) in respect of that exploration licence. ” .

Section 106
amended.

26. Section 106 of the principal Act is amended in paragraph (a) by deleting “104.” and substituting the following—

“ 104; ” .

Section 118
amended.

27. Section 118 of the principal Act is amended by deleting “within seven days” and substituting the following—

“ within 14 days ” .

Section 156
amended.

28. Section 156 of the principal Act is amended by deleting “(1)”.

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29. Section 161 of the principal Act is amended in subsection (1)(c) by deleting “sections 23, 24, 25, or 26 apply,” and substituting the following—

Section 161
amended.

“ section 23, 24, 25 or 26 applies, ” .

30. The Second Schedule to the principal Act is amended—

Second
Schedule
amended.

(a) in clause 1 by inserting after subclause (5) the following subclause—

“ (6) Section 105A of this Act does not apply and never has applied to an application for a mining tenement under this Act in respect of any land—

(a) which continues or continued to be temporarily reserved from occupation by virtue of subclause (1) of this clause;

and

(b) in respect of which no authority to occupy or right of occupancy is or was in force,

at the time when that application is or was made. ” ;

(b) in clause 3 by inserting in subclause (3) after “continues in force” the following—

“ , subject to the repealed Act and as though that Act had not been repealed, ” ;

- (c) in clause 6 by inserting in subclause (4) after "continues in force" the following—

" , subject to the repealed Act and as though that Act had not been repealed, " ;

- (d) in clause 7 by repealing subclause (2) and substituting the following subclause—

" (2) An application for the renewal under subclause (1) of this clause of a licence to treat tailings shall be made to the Minister and the Minister may—

(a) subject to paragraph (b) of this subclause, exercise in relation to that application the powers conferred on the Governor by the repealed Act in relation to applications for the renewal of licences to treat tailings; and

(b) in the case of such an application—

(i) which is made after the expiry of the licence to treat tailings to which that application relates; and

(ii) in respect of which the Minister considers that there are special circumstances justifying renewal,

renew the licence to treat tailings to which that application relates with effect from the expiry of that licence. " ;

and

(e) in clause 8—

- (i) by inserting after “as if the repealed Act had not been repealed” in subclause (1) the following—

“ and the applicant may in respect of that application exercise all the powers, and shall in respect of that application perform all the duties, conferred or imposed on him by the repealed Act ” ;

(ii) in subclause (3) by—

(A) deleting “and” at the end of paragraph (a);

(B) deleting the full stop at the end of paragraph (b) and substituting the following—

“ ; and ” ; and

(C) inserting after paragraph (b) the following paragraph—

“ (c) the date of that grant shall be deemed to be the date on which the relevant certificate of registration is issued. ” ;

and

(iii) by inserting in subclause (4) after “continues in force” the following—

“ , subject to the repealed Act and as though that Act had not been repealed, ” .

PART III—TOWN PLANNING AND DEVELOPMENT
ACT 1928-1981.

Principal
Act and
citation.

31. (1) In this Part the Town Planning and Development Act 1928-1981 is referred to as the principal Act.

Reprinted as
approved 22
May 1980 and
amended by
Acts Nos.
107 of 1978,
72 of 1980 and
79 of 1981.

(2) The principal Act as amended by this Act may be cited as the Town Planning and Development Act 1928-1982.

Section 20
amended.

32. Section 20 of the principal Act is amended by repealing paragraph (c) of subsection (1) and substituting the following paragraph—

“ (c) This subsection does not apply and never has applied to the grant of, or to the transfer of or other dealing with or in, a mining tenement within the meaning of the Mining Act 1904 or the Mining Act 1978 or a portion of such a mining tenement or any shares therein. ”
