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MINING ACT 1978

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# MINING AMENDMENT REGULATIONS 2007

Western Australia

# Mining Amendment Regulations 2007

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Mining Act 1978

# Mining Amendment Regulations 2007

Made by the Governor in Executive Council.

**1. Citation**

These regulations are the *Mining Amendment Regulations 2007*.

**2. Commencement**

These regulations come into operation on the day on which Part 9 of the *Mining Amendment Act 2004* comes into operation.

**3. The regulations amended**

The amendments in these regulations are to the *Mining Regulations 1981**.

[** Reprint 6 as at 7 April 2006. For amendments to 6 February 2007 see Gazette 23 June 2006*.]

**4. Regulation 2 amended**

Regulation 2 is amended by inserting in the appropriate alphabetical position —

“

**“lawyer”** means a certificated practitioner within the meaning of the *Legal Practice Act 2003*;

”.

*Mining Amendment Regulations 2007*

**r. 5**

**5. Regulation 5 amended**

(1) Regulation 5 is amended as follows:

(a) by inserting before "Application" the subregulation designation "(1)";

(b) by deleting "Application" and inserting instead —

" Applications ".

(2) At the end of regulation 5 the following subregulations are inserted —

"

(2) For the purposes of section 30(6) the prescribed period is 30 days.

(3) For the purposes of section 30(8) the prescribed offices or positions are —

(a) Director Mineral and Title Services Division;

(b) General Manager Tenure and Native Title Branch of the Mineral and Title Services Division.

".

**6. Regulation 10A amended**

Regulation 10A(2) and (3) are each amended by deleting "warden" and inserting instead —

" warden's court ".

**7. Regulations 48 repealed**

Regulation 48 is repealed.

**8. Regulation 49 amended**

(1) Regulation 49(2) is amended as follows:

(a) at the end of paragraph (a) by inserting —

" and ";

(b) after paragraph (a) by inserting —

“

(aa) where the mining tenement is encumbered by a mortgage, a copy of the notification to be forwarded to the mortgagee by post; and

”.

(2) Regulation 49(3) is repealed and the following subregulations are inserted instead —

“

(3) The holder of the mining tenement may lodge a written submission relating to the application at the office of the mining registrar at any time before the fixed date.

(4) If a submission is lodged under subregulation (3) the warden shall consider it at the hearing of the application.

”.

**9. Regulation 50 amended**

Regulation 50 is amended by deleting the full stop at the end of paragraph (b) and inserting instead —

“

; and

(c) where the mining tenement is encumbered by a mortgage, a copy of the notification to be forwarded to the mortgagee by post.

”.

**10. Regulation 51B repealed**

Regulation 51B is repealed.

*Mining Amendment Regulations 2007*

**r. 11**

**11. Regulation 52 amended**

Regulation 52 is amended as follows:

(a) by deleting "a plaint for forfeiture of a mining tenement" and inserting instead —

" an application under section 96(1) or 98(1) ";

(b) by deleting "the plaint." and inserting instead —

" the application. ".

**12. Regulation 53 replaced**

Regulation 53 is repealed and the following regulation is inserted instead —

"

**53. Reduced expenditure where forfeiture cancelled**

Notwithstanding regulations 15(1), 21(1) and 31(1), where —

(a) a mining tenement is forfeited under or by virtue of section 96, 96A or 97 of the Act; and

(b) the forfeiture is then cancelled under section 97A(8),

a pro rata reduction in the annual amount to be expended in respect of the mining tenement applies for each whole month from the date of forfeiture to the date of cancellation of the forfeiture.

".

**13. Regulations 55 and 56 repealed**

Regulations 55 and 56 are repealed.

**14. Regulation 67 repealed**

Regulation 67 is repealed.

**15. Regulation 109 amended**

Regulation 109(2) is amended as follows:

(a) by deleting "Part II of the Appendix to the *Local Court Rules 1961*" and inserting instead —

" the *Magistrates Court (Fees) Regulations 2005* ";

(b) by inserting after "the Act" —

" except Part IV ".

**16. Regulation 111 amended**

(1) Regulation 111(1) is amended as follows:

(a) at the end of paragraph (b) by inserting —

" or ";

(b) by deleting paragraph (c) and inserting instead —

"

(c) by delivering it, or sending it by prepaid post to the person at the person's last known place of abode or business or, in the case of proceedings under Part VII or VIII, to any address provided under regulation 127B; or

".

(2) Regulation 111(4) is amended by deleting "Local Courts" and inserting instead —

" the Magistrates Court in its civil jurisdiction ".

*Mining Amendment Regulations 2007*

**r. 17**

## 17. Regulation 113A replaced

Regulation 113A is repealed and the following regulations are inserted instead —

“

### 113A. Prescribed persons before whom affidavit may be sworn (s. 160D)

For the purposes of section 160D(f), the offices of —

(a) Director; and

(b) General Manager Tenure and Native Title Branch; and

(c) Manager; and

(d) Coordinator,

of the Mineral and Title Services Division of the Department are prescribed as offices and classes of offices, so that the occupants of those offices are persons before whom affidavits to be used in a warden’s court, or to be used before a warden or a mining registrar, may be sworn.

### 113B. Prescribed official for certified documents (s. 161)

For the purposes of section 161(4)(a)(iii) the prescribed officials are —

(a) Director Mineral and Title Services Division;

(b) General Manager Tenure and Native Title Branch of the Mineral and Title Services Division.

”.

**18. Regulation 118 amended**

Regulation 118(1) is amended as follows:

(a) by inserting at the end of each of paragraphs (a) and (b) —

" or ";

(b) in paragraph (d) by deleting "warden" and inserting instead —

" warden's court ".

**19. Regulation 120A amended**

Regulation 120A(4) is amended as follows:

(a) by deleting "Subject to section 135 of the Act, a" and inserting instead —

" A ";

(b) by deleting "warden's court." and inserting instead —

" warden. ".

**20. Heading to Part VII replaced**

The heading to Part VII is deleted and the following heading is inserted instead —

"

## Part VII — Proceedings in warden's court

".

**21. Regulation 122 amended**

Regulation 122(2) is amended as follows:

(a) by deleting "defendant" and inserting instead —

" respondent ";

(b) by deleting "warden" and inserting instead —

" warden's court ".

*Mining Amendment Regulations 2007*

**r. 22**

## 22. Regulation 123 amended

(1) Regulation 123 is amended as follows:

(a) by inserting before "On" the subregulation designation "(1)";

(b) in paragraph (a) by inserting after "time for" and "hearing date" —

" a mention ";

(c) by inserting at the end of paragraph (a) —

" and ";

(d) in paragraph (b) by inserting after "of the" —

" mention ";

(e) in paragraph (c) by deleting "defendant" and inserting instead —

" respondent ";

(f) by inserting at the end of paragraph (c)(i) —

" or ".

(2) At the end of regulation 123 the following subregulation is inserted —

"

(2) At a mention hearing the court may —

(a) set a date for the hearing of the proceedings; or

(b) adjourn the proceedings to a further mention hearing; or

(c) make any other order,

or may do any combination of those things.

".

## 23. Regulation 124 repealed

Regulation 124 is repealed.

**24. Regulation 125 amended**

(1) Regulation 125 is amended by inserting before subregulation (1) the following subregulation —

“

(1a) In this regulation —

**“summons”** means a summons under regulation 123 or a witness summons under regulation 127.

”.

(2) Regulation 125(2) is amended as follows:

(a) by deleting “giving notice to the” and inserting instead —

“ an application by the ”;

(b) by deleting “extend the” and inserting instead —

“ fix a new ”.

**25. Regulation 126 amended**

Regulation 126 is amended as follows:

(a) by deleting “defendant” and inserting instead —

“ respondent ”;

(b) by deleting “not less than 21 days before the date fixed for the hearing” and inserting instead —

“ within 14 days after the service of the summons, ”;

(c) by inserting before “hearing” —

“ mention ”;

(d) by inserting a comma after “allow”;

(e) by deleting “notice of defence” and inserting instead —

“ response ”;

(f) by deleting “copy of the notice” and inserting instead —

“ copy of the response ”.

*Mining Amendment Regulations 2007*

**r. 26**

**26. Regulation 127 and 127A replaced by regulations 127 to 127G**

Regulations 127 and 127A are repealed and the following regulations are inserted instead —

“

**127. Witness summons**

(1) Each party may procure the attendance of a witness to give evidence or produce documents by means of a witness summons issued by the court in the form No. 37 in the First Schedule and served personally on the witness.

(2) For the purposes of subregulation (1), a witness summons is served personally on a witness if —

(a) it is handed to the witness or, if the witness is a person under a legal disability, to the witness’s parent, guardian or litigation guardian; or

(b) in the case that the witness or the witness’s parent, guardian or litigation guardian, as the case may be, does not accept it, it is put down in his or her presence and he or she is advised of the nature of the summons; or

(c) it is handed to a person who is authorised in writing to receive documents on behalf of the witness; or

(d) it is handed to someone at the witness’s usual or last known place of residence or business who is believed, on reasonable grounds, to have reached 18 years of age.

(3) A witness who attends in answer to a summons shall be entitled to —

(a) an amount that is likely to be sufficient to meet the reasonable expenses of attending the warden's court; or

(b) arrangements to enable the witness to attend the warden's court; or

(c) the means to enable the witness to attend the warden's court.

(4) A witness is not required to attend unless at the time of the service of the summons subregulation (3) has been complied with.

**127A. Meaning of "serve"**

(1) If under this Part a party is required to serve a document —

(a) the party shall serve a copy of the document returned after lodgment bearing the seal of the warden's court; and

(b) unless these regulations provide otherwise or the warden's court otherwise directs, the party shall serve it on each other party within 14 days after the document is lodged.

(2) Subregulation (1)(b) does not apply to a witness summons.

**127B. Residential, business or postal address for service**

A document lodged in relation to proceedings in the warden's court shall contain a residential, business or postal address for service.

### 127C. Documents served by bailiff

(1) If a document is served by a bailiff on behalf of a party to proceedings in the warden's court, the bailiff shall, as soon as practicable after the service but in any event not less than 7 days before the hearing of the plaint, give a certificate in writing of the service to the party.

(2) The certificate is admissible as evidence and, in the absence of proof to the contrary, is proof that the document was served by the bailiff.

### 127D. Documents served by other persons

(1) If a document is served by a party to proceedings in the warden's court, or on behalf of a party by a person other than a bailiff, the party shall lodge at the office of the mining registrar an affidavit of service completed by the person who served the document.

(2) The affidavit of service shall be in the form No. 35 in the First Schedule.

### 127E. Substituted service

(1) If for any reason it is impractical to serve a document in the manner set out in this Part, the warden's court may, on an application in the form No. 36A by the person required to serve that document, order that, instead of using such a manner, such steps be taken as are specified in the order for the purpose of bringing the document to the notice of the person to be served with or given the document.

(2) If the warden's court makes an order under subregulation (1), the court may order that the document is to be taken to have been served or given on the happening of any specified event, or on the expiry of any specified time.

**127F. Content of an affidavit**

(1) Except as provided in subregulation (2), an affidavit lodged in proceedings in the warden's court shall be confined to facts to which the person making the affidavit is able to depose from his or her own knowledge.

(2) An affidavit may contain statements based on information received by the person making the affidavit, and believed by that person to be true, if the affidavit also contains —

(a) the sources of the information; and

(b) the grounds for believing that the information is true.

(3) Any addition, alteration or erasure in an affidavit shall be initialled by the person making the affidavit and the person before whom the affidavit was sworn or affirmed.

**127G. Prescribed form of copy of evidence**

For the purposes of section 137(4), a written transcript is prescribed as the form in which a copy of evidence may be obtained by a person.

".

**27. Regulation 128 amended**

(1) Regulation 128(1) is amended by deleting "costs allowed under the *Local Court Rules 1961*." and inserting instead —

"

legal costs determination in force under the *Legal Practice Act 2003* section 210 that applies to the civil jurisdiction of the Magistrates Court.

";

(2) Regulation 128(2) is repealed.

(3) Regulation 128(3) is amended as follows:

(a) by deleting "allowance under the *Local Court Rules 1961* is" and inserting instead —

" costs to be paid under subregulation (1) are ";

(b) by deleting "at the trial".

**28. Regulation 129 amended**

Regulation 129 is amended by deleting "filed" and inserting instead —

" lodged ".

**29. Regulation 130 to 134 repealed**

Regulation 130 to 134 are repealed.

**30. Part VIII inserted**

After Part VII the following Part is inserted —

"

# Part VIII — Proceedings before warden under Part IV of the Act

## Division 1 — General

**137. Interpretation**

(1) In this Part, unless the contrary intention appears —

**"agent"** means a person acting for a party under regulation 169(2);

**"determination"** means a decision, order or recommendation;

**"hearing"** means —

(a) a mention hearing; or

(b) the hearing of an interlocutory application; or

(c) the substantive hearing of proceedings;

**"lodge"**, in relation to a document, means to lodge the document at the office of the mining registrar;

**"mention hearing"** means a mention hearing under regulation 138(1) or (2)(c);

**"objection"** means an objection under Part IV of the Act;

**"party"** means a party to proceedings;

**"proceedings"** —

(a) when used in Division 2, means proceedings in respect of an application under section 96(1)(b) or 98; and

(b) when used in Division 3, means proceedings relating to an application under Part IV in relation to which an objection has been lodged; and

(c) otherwise means proceedings under this Part.

(2) For the purposes of this Part, proceedings are taken to have commenced when —

(a) an application under section 96(1)(b) or 98; or

(b) an objection,

has been lodged.

**138. Mention hearing**

(1) When proceedings are commenced the mining registrar shall —

(a) fix a date and time for a mention hearing before the warden being not less than 45 days from the date of lodgment, unless all parties to the

proceedings consent to an earlier mention hearing date; and

(b) advise the parties of the mention hearing date; and

(c) in the case of an application for forfeiture — cause copies of the application to be returned to the applicant for service on —

(i) each respondent; and

(ii) any mortgagee of a mining tenement to which the application relates.

(2) At a mention hearing the warden may —

(a) issue directions to the parties; or

(b) set a date for the substantive hearing of the proceedings; or

(c) adjourn the proceedings to another mention hearing.

**139. Default determination**

(1) Except as provided in the Act, if a party does not comply with a requirement of this Division, a summons or an interlocutory order or direction of the warden, the warden may —

(a) order the party to pay the costs occasioned by the noncompliance irrespective of the final determination of the proceedings; or

(b) determine the proceedings without a substantive hearing.

(2) An order under subregulation (1)(a) may direct that costs be paid forthwith.

## Division 2 — Applications under section 96(1)(b) and 98

### 140. Commencing proceedings in respect of an application

(1) An application under section 96(1)(b) or 98 shall be in the form No. 35A in the First Schedule.

(2) Every application shall be —

(a) signed by the applicant or a lawyer or other person authorised by the applicant; and

(b) lodged with the prescribed fees at the office of the mining registrar.

(3) The applicant shall serve copies of the application returned after lodgment under regulation 138(1)(c).

(4) An application shall not be withdrawn or proceedings stayed after the application has been served without the written consent of the respondent or by leave of the warden.

### 141. Response

(1) When the respondent intends to dispute an application lodged under regulation 140, the respondent shall, within 14 days after the service of the application, lodge at the office of the mining registrar a response in the form No. 36 in the First Schedule.

(2) Every response shall be —

(a) signed by the respondent or a lawyer or other person authorised by the respondent; and

(b) lodged with the prescribed fees at the office of the mining registrar.

(3) When a response is lodged the mining registrar shall forward a copy of it to the applicant.

**142. Settlement, admission and discontinuance**

(1) The parties may settle proceedings or consent to any other order or direction by lodging a written memorandum to that effect, signed by each party.

(2) If a party wants to admit a particular fact alleged in —

(a) an application or response; or

(b) particulars under regulation 144; or

(c) an invitation to admit under subregulation (3),

the party shall lodge and serve a written notice of admission.

(3) If a party wants to invite another party to admit a particular alleged fact the party shall lodge and serve a written invitation to admit at least 14 days before the substantive hearing of the proceedings.

(4) If —

(a) a party does not admit a fact when invited to do so; and

(b) the warden subsequently finds the fact to be proven,

the warden may award the costs of proving that fact against the party.

(5) An order under subregulation (4) may direct that costs be paid forthwith.

(6) If an applicant wants to withdraw an application, the applicant shall lodge and serve on each respondent, and any mortgagee of a mining tenement to which the application relates, a written notice of withdrawal before the application has been served.

### 143. Joinder

A warden may, at any time during proceedings, make an order that a person be joined as a party if the warden is satisfied that the person has a sufficient interest in the outcome of the proceedings.

### 144. Particulars

(1) A person lodging and serving an application under regulation 140 or a response under regulation 141 shall lodge and serve a written statement of particulars of the application or response —

(a) at the same time as the person lodges and serves the application or response; or

(b) as directed by the warden at a mention hearing.

(2) The statement of particulars shall contain —

(a) a summary of the facts relevant to the application or response; and

(b) the legal basis of the application or response; and

(c) the basic contentions of the person making the application or response; and

(d) a list of any documents that the applicant or respondent might tender in evidence at the substantive hearing of the proceedings.

(3) The warden at a mention hearing may order that a party shall provide further particulars of an application or response in addition to those provided under subregulation (1).

### 145. Disclosure of documents by applicant

(1) The warden may, at any time during proceedings, order that an applicant shall provide additional information by disclosing documents relevant to the proceedings.

(2) For the purposes of subregulation (1) the *Magistrates Court (Civil Proceedings) Rules 2005* Part 7 applies so that —

(a) a reference to an order under section 16(1)(n) is to be read as a reference to an order under subregulation (1); and

(b) a reference to a party ordered to provide additional information by disclosing documents is a reference to an applicant who is subject to an order under subregulation (1); and

(c) a reference to the Court is to be read as a reference to the warden; and

(d) a reference to a case is to be read as a reference to proceedings under this Division; and

(e) a reference to the trial is to be read as a reference to a substantive hearing of the proceedings.

(3) An order under subregulation (1) cannot be made against a respondent.

## Division 3 — Objections under the Act Part IV

### 146. Making an objection

(1) An objection shall be in the form No. 16 in the First Schedule.

(2) An objection shall be made within —

(a) where the application being objected to is for a mining tenement relating to private land —

(i) 21 days of the day on which the person was served with a copy of notice required to be given under section 33(1); or

(ii) 35 days after the day on which the application is lodged,

whichever period ends later; or

(b) in any other case — 35 days after the day the application being objected to is lodged,

or such further period as the warden considers reasonable.

(3) The objector shall serve a copy of the objection on the applicant as soon as practicable after the objection is made.

**147. Procedure when objection heard together with proceedings under Division 2**

When proceedings for an objection are heard together with proceedings under Division 2 then, even if the proceedings are not joined, regulations 144 and 145 apply so that —

(a) a reference to a response under regulation 141 is to be read as a reference to an objection; and

(b) a reference to a respondent is a reference to the person making the objection; and

(c) a reference to a party includes the person making the objection; and

(d) a reference to proceedings includes the proceedings relating to the objection.

## Division 4 — Service

### 148. Meaning of "serve"

If under this Part a party is required to serve a document —

(a) the party shall serve a copy of the document returned after lodgment; and

(b) unless these regulations provide otherwise or the warden otherwise directs, the party shall serve it on each other party within 14 days after the document is lodged.

### 149. Residential, business or postal address for service

A document lodged in relation to proceedings before the warden shall contain a residential, business or postal address for service.

### 150. Documents served by other persons

(1) If a document is served by a party to proceedings before the warden, or on behalf of a party by another person, the party shall lodge at the office of the mining registrar an affidavit of service completed by the person who served the document.

(2) The affidavit of service shall be in the form No. 35 in the First Schedule.

(3) If the document is served by a bailiff of the warden's court, any written certificate of service of the bailiff lodged by the party —

(a) is to be taken to be an affidavit of service for the purposes of this regulation; and

(b) is admissible as evidence and, in the absence of proof to the contrary, is proof that the document was served by the bailiff.

### 151. Substituted service

(1) If for any reason it is impractical to serve a document in the manner set out in this Division, the warden may, on an application in the form No. 36A in the First Schedule by the person required to serve that document, order that, instead of using such a manner, such steps be taken as are specified in the order for the purpose of bringing the document to the notice of the person to be served with or given the document.

(2) If the warden makes an order under subregulation (1), the warden may order that the document is to be taken to have been served or given on the happening of any specified event, or on the expiry of any specified time.

## Division 5 — Interlocutory orders and directions by the warden

### 152. General powers of the warden in relation to interlocutory orders and directions

(1) In addition to any other power of the warden to make an interlocutory order or give a direction in this Part, a warden may, at any stage of proceedings, do all or any of the following for the purposes of controlling and managing the proceedings —

(a) make an order that proceedings be heard and determined at another place if —

(i) the warden is satisfied that the proceedings could more conveniently or fairly be heard and determined at the other place; or

(ii) the parties consent to the proceedings being heard and determined at the other place;

(b) extend the time for complying with any regulation in this Part or any order made by the warden (even if the time for complying has expired), or shorten it;

(c) adjourn or bring forward a hearing to a specified date;

(d) stay any proceedings, either generally or until a specified date;

(e) consolidate proceedings;

(f) hear 2 or more proceedings on the same occasion;

(g) hold a hearing by audio link or video link (as those terms are defined in the *Evidence Act 1906* section 120);

(h) allow a party to amend its application, objection, response or particulars under regulation 144;

(i) dispense with any interlocutory proceedings;

(j) as to the hearing of any interlocutory application —

(i) direct the parties to confer in order to identify the issues between them and resolve as many as possible before the hearing and to identify the issues to be heard; and

(ii) direct the parties to file and exchange memoranda before the hearing in order to identify the issues to be heard;

(k) expedite the listing of proceedings for a substantive hearing if the warden is of the opinion that a party has frivolously or vexatiously instituted or defended proceedings or that the party's case otherwise has no merit;

(l) do anything else that in the warden's opinion will or may facilitate proceedings being conducted and concluded efficiently, economically and expeditiously.

(2) Without limiting subregulation (1), for the purposes of the substantive hearing of proceedings or the hearing of an interlocutory application a warden may do all or any of the following —

(a) direct the mining registrar to issue a witness summons referred to in regulation 157, whether on behalf of a party or on the warden's own motion;

(b) inspect any document produced at the hearing, and retain it for such reasonable period as is required, and make copies of the document or any of its contents;

(c) require any person to swear or affirm to answer truly any relevant question put to that person by the warden or any person attending the hearing.

(3) A power of the warden to make an interlocutory order or give a direction includes a power to vary or cancel the order or direction.

**153. Applications for interlocutory orders or directions**

(1) A party may make an application for an order or direction of the warden by lodging and serving it in the form No. 36A in the First Schedule.

(2) The application shall be supported by an affidavit that is lodged and served together with the application.

(3) The application must be made at least 7 clear days before the substantive hearing to which the application relates.

## Division 6 — Conduct of hearings

### 154. Conduct of hearings generally

(1) In conducting any hearing the warden —

(a) is to act with as little formality as possible; and

(b) is bound by the rules of natural justice; and

(c) is not bound by the rules of evidence; and

(d) may inform himself or herself of any matter in any manner he or she considers appropriate.

(2) Subject to subregulation (3), a hearing is to be conducted in public.

(3) If the warden is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the warden may direct that the hearing be conducted wholly or partly in private.

(4) If the warden gives a direction under subregulation (3) the warden may give directions as to the persons who may be present at the hearing.

(5) Irrespective of whether the warden gives a direction under subregulation (3), the warden may order that —

(a) any evidence given before the warden; or

(b) the content of any documents produced to the warden,

during any part of the hearing is not to be published except in the manner and to the persons specified by the warden.

**155. Attendance at mention hearings and interlocutory hearings**

(1) A party must attend a mention hearing or the hearing of an interlocutory application —

(a) through a lawyer or agent; or

(b) if the warden so orders — in person.

(2) Despite subregulation (1), a warden may conduct a mention hearing or the hearing of an interlocutory application in the absence of a party, including any lawyer or agent of the party —

(a) on an application under subregulation (3); or

(b) otherwise, if the warden thinks fit.

(3) If it is impracticable, by reason of distance, illness or otherwise, for a party to attend a mention hearing or an interlocutory hearing, either through a lawyer or agent or in person, the party may apply in writing to the warden for the hearing to be conducted in the absence of the party.

(4) An application under subregulation (3) shall be —

(a) lodged at least 7 days before the day of the hearing; and

(b) accompanied by written submissions that are sufficient to enable the hearing to be conducted in the absence of the party.

**156. Attendance at substantive hearings of proceedings**

(1) Unless the warden orders otherwise, a party shall attend the substantive hearing of proceedings in person, regardless of whether the party's lawyer or agent is also present.

(2) If a party is a body corporate, an officer of the body corporate who is authorised to attend on behalf of the

body shall be taken to be the party for the purposes of subregulation (1).

## Division 7 — Evidence

### 157. Summons of witness

(1) Each party that seeks to procure the attendance of a witness to give evidence or produce documents may do so by means of a witness summons issued by the mining registrar in the form No. 37 in the First Schedule and served personally on the witness.

(2) For the purposes of subregulation (1), a witness summons is served personally on a witness if —

(a) it is handed to the witness or, if the witness is a person under a legal disability, to the witness's parent, guardian or litigation guardian; or

(b) in the case that the witness or the witness's parent, guardian or litigation guardian, as the case may be, does not accept it, it is put down in his or her presence and he or she is advised of the nature of the summons; or

(c) it is handed to a person who is authorised in writing to receive documents on behalf of the witness; or

(d) it is handed to someone at the witness's usual or last known place of residence or business who is believed, on reasonable grounds, to have reached 18 years of age.

(3) A witness who attends in answer to a summons shall be entitled to —

(a) an amount that is likely to be sufficient to meet the reasonable expenses of attending before the warden; or

(b) arrangements to enable the witness to attend before the warden; or

(c) the means to enable the witness to attend before the warden.

(4) A witness is not required to attend unless at the time of the service of the summons subregulation (3) has been complied with.

**158. Time for service of summonses**

(1) A witness summons shall be served not less than 30 days before the date fixed for the relevant hearing.

(2) Where a witness summons has not been served within the prescribed time, the party seeking to rely on the witness summons may apply in writing to the mining registrar to fix a new date for the hearing and issue an amended witness summons.

(3) On an application under subregulation (2), the mining registrar may fix a new date for the hearing and issue an amended witness summons.

**159. Content of an affidavit**

(1) Except as provided in subregulation (2), an affidavit lodged in proceedings before the warden shall be confined to facts to which the person making the affidavit is able to depose from his or her own knowledge.

(2) An affidavit may contain statements based on information received by the person making the affidavit, and believed by that person to be true, if the affidavit also contains —

(a) the sources of the information; and

(b) the grounds for believing that the information is true.

(3) Any addition, alteration or erasure in an affidavit shall be initialled by the person making the affidavit and the person before whom the affidavit was sworn or affirmed.

**160. Production of documents before hearing**

(1) Where a witness summons requires a person to produce documents, but does not require the person to give evidence, at a hearing the person may, instead of producing the documents at the hearing, lodge them, together with a list of the documents, with the mining registrar at least 7 days before the first day of the hearing.

(2) When documents are lodged together with a list of the documents under subregulation (1), the mining registrar shall endorse on the list that the mining registrar has received all of the documents specified on the list and return a copy of the endorsed list to the person lodging the documents.

(3) The mining registrar may, in accordance with any directions of the warden, permit a party to inspect documents lodged by another party under subregulation (1).

### 161. Directions for expert witnesses

(1) A party shall not adduce expert evidence at a hearing except in accordance with directions given by the warden.

(2) If the warden directs a party to lodge and serve a statement of an expert witness, the statement shall set out, or be accompanied by a document setting out —

(a) the full name of the expert; and

(b) details of the expert's qualifications to give the evidence; and

(c) to the extent practicable, details of any material on which the expert has relied in reaching his or her opinion.

### 162. Party may adduce affidavit evidence

(1) A party may, if the another party does not object, adduce the evidence of a witness at a hearing by tendering an affidavit of the witness.

(2) A party wishing to adduce affidavit evidence under subregulation (1) shall lodge and serve the affidavit at least 14 days before the first day of the hearing.

(3) The affidavit may be tendered in the absence of the deponent unless an objection is lodged under subregulation (4).

(4) A party served with a copy of the affidavit may, within 7 days after that service, lodge a written objection to the affidavit being tendered in the absence of the deponent.

### 163. Records of evidence

(1) A warden shall ensure that evidence given in proceedings is recorded electronically or by written transcript.

(2) Any party to any proceedings in which the evidence of a witness in which evidence has been recorded in accordance with this regulation is entitled to obtain a copy of that evidence in the form of a written transcript upon payment of the fee set out in the Second Schedule.

(3) Each determination of a warden, and the reasons for the determination, shall be reduced to writing, and signed by the warden, and shall be recorded in a register kept for the purpose.

(4) Any person may obtain a copy of the determination referred to in subregulation (3) upon payment of the fee prescribed in the Second Schedule.

### 164. Return of documents and other exhibits after hearing

(1) If an exhibit tendered at a hearing is retained by the warden without being received into evidence, a person who was lawfully entitled to the possession of the exhibit before it was tendered is not entitled to the return of that exhibit until the publication of the warden's determination.

(2) If an exhibit is received into evidence at a hearing, a person who was lawfully entitled to the possession of the exhibit before it was received is not entitled to the return of that exhibit —

(a) if no appeal against a determination of the warden is made, until 21 days after the day on which the determination is given; or

(b) if an appeal against the determination of the warden is lodged, until the appeal has been dealt with.

(3) The mining registrar shall give written notice to a person of the person's entitlement to the return of an exhibit under subregulation (1) or (2).

(4) The notice shall be given as soon as practicable after the entitlement arises.

(5) If the person does not take possession of the exhibit within 30 days after the person receives the notice, the mining registrar may dispose of the exhibit as the mining registrar thinks fit.

(6) A document produced at a hearing but not tendered as an exhibit shall, in accordance with the directions of the warden, be returned to the party that produced the document.

## Division 8 — Costs

### 165. Costs

(1) Except as ordered under this regulation, regulation 139 or 142, each party is to bear the party's own costs.

(2) In addition to the power to award costs under regulations 139 and 142, a warden hearing and determining proceedings under Division 2, including interlocutory applications related to those proceedings, may make an order for a party's costs to be paid by another party.

(3) One order under subregulation (2) may be made in relation to 2 or more proceedings heard and determined on the same occasion under Division 2 even if those proceedings are not joined.

(4) Subject to subregulation (6) and in addition to the power to award costs under regulation 139, a warden hearing and determining proceedings under Division 3 may make an order for costs against a party if the warden is satisfied that the party —

(a) frivolously or vexatiously commenced or defended the proceedings, or any step in the proceedings; or

(b) otherwise occasioned undue delay in the proceedings.

(5) One order under subregulation (4) may be made in relation to 2 or more proceedings heard and determined on the same occasion under Division 3 even if those proceedings are not joined.

(6) If a warden makes an order for the payment of costs, those costs shall be in accordance with the scale of costs set out in the Fourth Schedule.

(7) The *Magistrates Court (Civil Proceedings) Rules 2005* Part 15 Division 1 apply in relation to proceedings with the necessary modifications and, in particular, references in those rules —

(a) to a case are to be read as references to proceedings under this Division; and

(b) to the court are to be read as references to the warden; and

(c) to the Registrar are to be read as references to the mining registrar; and

(d) to a judgment are to be read as references to a determination of the warden under this Division; and

(e) to an approved form are to be read as references to a written form; and

(f) to court and bailiff fees are to be read as references to fees prescribed in the Second Schedule item 13.

**166. Warden's review of decisions of mining registrar**

(1) A person dissatisfied by an assessment of costs made by a mining registrar may apply to the warden for a review of the assessment.

(2) The application must be made within 21 days after the date of the mining registrar's assessment and be conducted as if it were an interlocutory application under this Part.

(3) On a review the warden may —

(a) affirm the mining registrar's assessment; or

(b) vary the mining registrar's assessment; or

(c) set aside the mining registrar's assessment and substitute his or her own assessment.

**167. Security for costs**

(1) A warden may, on application made by a respondent in proceedings under Division 2, order an applicant in the proceedings to give security for costs.

(2) If an order is made under subregulation (1), monies comprising the security are to be paid to the Director General of Mines who shall hold the money and disburse it in accordance with any order of the warden.

**168. Recovery of costs**

(1) A person to whom costs are to be paid under a determination of the warden under this Part may enforce it by lodging a certificate of the assessment of the costs given by the mining registrar, and an affidavit

stating to what extent it has not been complied with, with a court of competent jurisdiction.

(2) A certificate that is lodged with a court under subregulation (1) shall be taken to be a judgment of that court and may be enforced accordingly.

## Division 9 — Miscellaneous

### 169. Representation

(1) A party is entitled to be represented by a lawyer.

(2) A warden may, if the warden is of the view that exceptional circumstances exist, give leave to a party to be represented by a person other than a lawyer.

(3) If a party is represented by a lawyer or agent, or there is a change in that representation, the party must ensure that the warden and the other parties are notified in writing of that representation or change in representation.

### 170. Warden may act on its own initiative

(1) A warden hearing proceedings may exercise his or her powers on the application of a party or on his or her own initiative unless the Act or these regulations or another written law provides otherwise.

(2) A warden may make an order or give a direction on his or her own initiative with or without —

(a) allowing any of the parties to make submissions; or

(b) hearing the parties.

(3) If a warden decides to allow any party to make submissions before making an order on his or her own initiative, the warden shall notify each party likely to

be affected by the order of how and when the submissions are to be made.

(4) If the warden decides to hear any party before making an order on his or her own initiative, the warden shall notify each party likely to be affected by the order of the time and place of the hearing.

**171. Practice directions**

The Chief Magistrate from time to time may issue, amend or cancel practice directions.

**172. Application of sections 142 and 146**

Sections 142 and 146 apply in relation to proceedings and, for that purpose, references in those sections —

(a) to proceedings in the warden's court are to be taken to include references to proceedings under this Part; and

(b) to the warden's court are to be taken to include references to the warden.

**173. Copy of determination**

(1) When a determination of any proceedings has been made by a warden, a determination in the form No. 38 in the First Schedule may be signed by the warden or mining registrar.

(2) A copy of the determination shall, on payment of the prescribed fee, be delivered to any person applying for it.

**174. Offences**

A person who —

(a) having been served with a summons to attend before the warden, fails without reasonable

excuse to attend in obedience to the summons; or

(b) having been served with a summons to produce before the warden any document, fails without reasonable excuse to comply with the summons; or

(c) misbehaves before the warden, wilfully insults the warden, or wilfully interrupts proceedings before the warden; or

(d) makes, before the warden, a statement that —

(i) the person knows, or ought to know, is false or misleading in a material particular; or

(ii) omits anything without which the statement is, so far as the person knows or ought to know, misleading in a material particular;

or

(e) refuses to comply with a requirement of the warden under regulation 152(2)(c),

commits an offence.

Penalty: a fine of $10 000.

”.

**31. First Schedule amended**

(1) The First Schedule is amended in the list of Forms at the beginning of the Schedule as follows:

(a) in item 15 by inserting after “Forfeiture” —

“ under section 96(1)(a) ”;

(b) by deleting items 36 to 41 and inserting instead —

“

| | |
|---|---|
| 35A. | Application for Forfeiture under section 96(1)(b) or 98. |

36. Response.

37. Summons to Witness.

38. Judgment of a Warden's Court / Determination of a Warden.

".

(2) The First Schedule is amended in Form 15 by inserting after "FORFEITURE" —

" **UNDER SECTION 96(1)(b)** ".

(3) The First Schedule is amended by deleting Form 16 and inserting instead —

"

| | | |
|---|---|---|
| Form 16 | WESTERN AUSTRALIA<br>*Mining Act 1978*<br>(s. 42, 59, 70D, 75, 97A and r. 120A, 146) | |
| | **OBJECTION** No. | |
| | To: The Warden | |
| (a) Mineral Field affected | (a) | Mineral Field…… |
| | The undersigned objects to | |
| (b) Insert particulars of the matter objected to and mining tenement application affected | (b) | |
| | for the following reasons — | |
| (c) Set out grounds for objection | (c) | |
| (d) Particulars of objector: | (d) | |
| (i) Full name | (i) | |
| (ii) Residential or business address | (ii) | |
| (iii) Phone / Fax No | (iii) | |
| (iv) Reference | (iv) | |
| (e) Signature of objector/agent/lawyer | DATED this ..…… day of …… 20…… | |
| | (e) ..... | |

THE TENEMENT APPLICANT AND OBJECTOR WILL BE ADVISED OF THE DATE SET BY THE MINING REGISTRAR FOR THE MENTION HEARING FOR THE APPLICATION (See Note).

***Mining Amendment Regulations 2007***

**r. 31**

OFFICIAL USE Received at ……a.m./p.m. on …… 20……..... .....

Mining Registrar

Note: A "mention hearing" is an initial hearing where the warden may give directions to the parties, set a hearing date and/or adjourn to a further mention hearing. A party who does not wish to attend in person or by lawyer or agent on the nominated mention hearing date must make written application not less than 7 days before the hearing. Costs may be awarded against a party for nonattendance.

".

(4) The First Schedule is amended in Form 23 by deleting "& 134".

(5) The First Schedule Form 33 is amended as follows:

(a) by deleting "(Regs. 48 & 121)" and inserting instead —

" (r. 121) ";

(b) by deleting "defendant" and inserting instead —

" respondent ";

(c) by deleting "Defendant" and inserting instead —

" Respondent ";

(d) by deleting "Subpoena" and inserting instead —

" Summons to Witness ".

(6) The First Schedule Form 34 is amended as follows:

(a) by deleting "Defendant" and inserting instead —

" Respondent ";

(b) by deleting "subpoena" and inserting instead —

" summons ";

(c) by deleting "If you intend to dispute the plaintiff's claim you must file a notice of defence in accordance with regulation 126" and inserting instead —

"

IF YOU INTEND TO DISPUTE THE PLAINTIFF'S CLAIM YOU MUST LODGE A NOTICE OF RESPONSE IN ACCORDANCE WITH REGULATION 126.

".

(7) The First Schedule is amended by deleting Forms 35 to 38 and inserting instead —

"

Form 35

WESTERN AUSTRALIA
*Mining Act 1978*
(r. 127D, 150)

**AFFIDAVIT OF SERVICE**

In the Warden's Court at
Before the Warden at
*(delete whichever is not applicable)*

| | | | |
|---|---|---|---|
| (a) | Select an option or specify other document being served | (a) Plaint / Application / Other | No ..... / ..... |
| (b) | Name and address | **Plaintiff / Applicant**<br>(b) | |
| | | AND | |
| (c) | Name and address of tenement holder (for service) | **Respondent / Objector**<br>(c) | |
| (d) | Full name and address | (d) I, | |

***Mining Amendment Regulations 2007***

**r. 31**

make oath and say that I did on the …… day of …… 20……, duly serve a copy of the application (which is marked "A" and annexed hereto) as follows —

Full name of person on whom service effected:

……

Manner of service:

……

Address where service effected:

……

Sworn before me at

this .....…… day of ..…… 20……

.....

(Experienced lawyer/Warden/Mining Registrar/Justice of the Peace.)

Form 35A

WESTERN AUSTRALIA
*Mining Act 1978*
(r. 140)

**APPLICATION FOR FORFEITURE UNDER SECTION 96(1)(b) OR 98**

No.

Before the Warden at

(a) Name and address of applicant

**Applicant for forfeiture**
(a)

V

(b) Name and address of tenement holder (for service)

**Respondent**
(b)

(c) Mining tenement number

The Applicant claims that the Respondent has failed to comply with the expenditure conditions in relation to
(c)

(d) Relevant year

for the year ending —
(d)
and applies for the mining tenement to be forfeited.

DATED this …… day of …… 20……

(e) Signature of applicant/lawyer/ authorised representative — (e) .....

OFFICIAL USE — Received at .....…. a.m./p.m. on the .....…… day of …… 20 ……

with the prescribed application fee.

…….
Mining Registrar

**SUMMONS TO RESPONDENT:**

YOU ARE HEREBY REQUIRED TO ATTEND A MENTION HEARING (see Note) before the Warden at ……..... at .....……a.m./p.m. on the …….. day of …… 20 .....

to answer the application for forfeiture as outlined above.

If at a mention hearing a date for the hearing and determination of the application for forfeiture is fixed, you may apply for the issue of a witness summons to compel the attendance of any witnesses and/or production of relevant documents.

IF YOU INTEND TO DISPUTE THE APPLICANT'S CLAIM you must file a response in accordance with regulation 141.

STAMP OF MINING REGISTRAR

Dated this …..... day of ……..... 20.....

……..
Mining Registrar

Note: A "mention hearing" is an initial hearing where the warden may give directions to the parties, set a hearing date and/or adjourn to a further mention hearing. A party who does not wish to attend in person or by lawyer or agent on the nominated mention hearing date must make written application not less than 7 days before the hearing. Costs may be awarded against a party for non-attendance.

**ENDORSEMENT**

This is the document marked "A" referred to in the annexed affidavit of
sworn before me at .....
this …… day of …… 20…...

.....

***Mining Amendment Regulations 2007***

**r. 31**

Form 36

WESTERN AUSTRALIA
*Mining Act 1978*
(r. 126, 141)

## RESPONSE

In the Warden's Court at

Before the Warden at

*(delete whichever is not applicable)*

| | | | |
|---|---|---|---|
| (a) | Select an option | (a) Plaint / Application for forfeiture<br>No. ……/…….. | Affecting tenement<br>...../.....…..... |
| (b) | Name and address | **Plaintiff / Applicant for forfeiture**<br>(b) | |
| | | AND | |
| (c) | Name and address of tenement holder | **Respondent**<br>(c) | |
| (d) | Grounds of defence | TAKE NOTICE that I intend to defend the plaint/application in this proceeding on the following grounds —<br>(d) | |
| | | DATED at …… this …… day of ...……20…… | |
| (e) | Signature of applicant/lawyer/ authorised representative | (e) ..... | |
| OFFICIAL USE | | Received at .....a.m./p.m. on .....<br>with fee of $..... | |

.....

Mining Registrar

**ENDORSEMENT**

This is the document marked "A" referred to in the annexed affidavit of
sworn before me at .....
this …… day of …… 20…...

.....

**r. 31**

Form 36A

WESTERN AUSTRALIA
*Mining Act 1978*
(r. 127E, 151, 154)

Tenement No. …….

## INTERLOCUTORY APPLICATION

In the Warden's Court at .....

Before the warden at .....
*(delete whichever is not applicable)*

| | | |
|---|---|---|
| (a) | Insert number of plaint/application /objection | (a)<br>……....<br>……<br>……. |
| | | In the matter of: |
| (b) | Names of parties | (b) |
| | | AND |
| | | (b) |
| (c) | Name of party making the application | (c) I / WE<br>……<br>……<br>……..……..……..…… |
| (d) | State order sought | (d) (see Note 1) |
| (e) | Applicant's details OR lawyer/agent acting on behalf | (e)<br>Residential or business address:<br>……..……<br>……..…….<br>Tel No: ……..……....<br>Fax No: …….<br>Email: ……<br>Reference (if any): …… |
| (f) | Address for service by other party/parties | (f) (see Note 2)<br>Residential or business address:<br>……..……<br>……..…… |
| (g) | Signature of applicant or lawyer/agent | (g)<br>……..…….. Date ……..... |
| | OFFICIAL USE | Received at……..… this ….. day of …… 20 ..<br>With fee of $ ..…… |

**Note 1:** This application is to be supported by affidavit outlining the reasons the order is sought, including the relevant facts.

**Note 2:** This application must be served on the other party/parties and an affidavit as proof of service must be lodged.

***Mining Amendment Regulations 2007***

**r. 31**

**ENDORSEMENT**

This is the document marked "A" referred to in the annexed affidavit of .....
sworn before me at .....
this …… day of …… 20…...

.....

Form 37

WESTERN AUSTRALIA
*Mining Regulations 1981*
(r. 127, 157)

## SUMMONS TO WITNESS

In the Warden's Court at .....

Before the warden at .....

*(delete whichever is not applicable)*

| | | |
|---|---|---|
| (a) | Tenement or tenement application No. | (a) No. ..... / ..... |
| (b) | Name and address *(delete inapplicable)* | **Plaintiff / Applicant / Objector**<br>(b) |
| | | AND |
| (c) | Name and address *(delete inapplicable)* | **Tenement Holder (Respondent) / Tenement Applicant**<br>(c) |
| | | **TO:** |
| (d) | Full name and address of person being summoned | (d) |
| | | YOU are hereby summoned (see Note 1) to attend before the warden/Warden's Court at |
| (e) | Place of hearing | (e) |
| (f) | Time and Date of hearing | at (f) …….a.m./p.m. on the .....……day of……..... 20…….... |

| | | |
|---|---|---|
| (g) | Objector /applicant/ plaintiff/ respondent | to give evidence on behalf of the (g) ……. |
| (h) | State the particular documents required to be produced | (h) and to produce at the hearing …… …… …… …… |
| (i) | Nature of claim as stated in application or objection | (i) …… …… …… |
| (j) | Phone / fax / or other contact for party initiating the summons | (j) …… …… |

(see Note 2)

SEAL OF WARDEN'S COURT / STAMP OF MINING REGISTRAR

Dated at …… this …… day of .....…… 20……

..... Mining Registrar

..... Mineral Field

**Note 1:** A person failing to attend as directed is liable to a fine of $10 000.

**Note 2:** This summons must be served PERSONALLY on the witness (see regulation 127 and 157) and the witness is entitled to an amount sufficient for the purposes of regulation 127(3) or 157(3), as the case requires.

Received $ ..... Conduct money

_____
_____
_____
_____
_____

.....
Signature

**ENDORSEMENT**

This is the document marked "A" referred to in the annexed affidavit of .....
sworn before me at .....
this …… day of …… 20…...

.....

***Mining Amendment Regulations 2007***

**r. 31**

Form 38

WESTERN AUSTRALIA
*Mining Regulations 1981*
(r. 129, 173)

**JUDGMENT OF A WARDEN'S COURT / DETERMINATION OF A WARDEN**

Tenement No. …….

In the Warden's Court at .....

Before the Warden at .....

*(delete whichever is not applicable)*

(a) Specify either the application for forfeiture or plaint number — (a) No. ..... / ….....

(b) Specify full name and address of either forfeiture applicant or plaintiff — (b)

AND

(c) Specify full name and address of tenement holder — (c)

(d) Insert result — (d)

AND the Court / Warden directs —

(e) Set forth the decision in full (or attach) — (e)

DATED at .....

this ..... day of ..... 20 .....

SEAL OF WARDEN'S COURT / STAMP OF MINING REGISTRAR

.....Warden/Mining Registrar

".

(8) The First Schedule is amended by deleting Forms 39 to 41.

## 32. Second Schedule amended

(1) The Second Schedule item 13 is amended by deleting "Warden's Court Fees" and inserting instead —

" Fees relating to proceedings under Parts VII and VIII ".

(2) The Second Schedule item 13 is amended as follows:

(a) in paragraph (i) by inserting after "a plaint" —

" or an application ";

(b) in paragraph (i) by deleting "defendant" and inserting instead —

" respondent ";

(c) in paragraph (i) by deleting "subpoenas" and inserting instead —

" summonses ";

(d) in paragraph (ii) by deleting "Defence, including notice of defence" and inserting instead —

" Response ";

(e) in paragraph (ii) by deleting "subpoenas" and inserting instead —

" summonses ";

(f) by deleting paragraph (v);

(g) in paragraph (vii) by deleting "filed" in both places where it occurs and inserting instead —

" lodged ".

*Mining Amendment Regulations 2007*

**r. 33**

### 33. Fourth Schedule inserted

After the Third Schedule the following Schedule is inserted —

"

## Schedule 4 — Scale of costs for proceedings under Part IV of the Act

[r. 165(6)]

**1. Interpretation**

In this Schedule —

**"C"** stands for counsel;

**"counsel"** means a lawyer, other than a senior counsel, acting as a barrister;

**"junior lawyer"** means a lawyer who has been admitted for less than 5 years in any jurisdiction in Australia;

**"JL"** stands for junior lawyer;

**"PL"** stands for paralegal;

**"SC"** stands for senior counsel;

**"senior counsel"** means a lawyer who has been appointed a Senior Counsel or Queen's Counsel in an Australian jurisdiction and whose appointment is afforded recognition by the Chief Justice of the Supreme Court of Western Australia;

**"senior lawyer"** means a lawyer who has been admitted for 5 years or more in any jurisdiction in Australia;

**"SL"** stands for senior lawyer.

**2. Hourly rates**

The hourly and daily rates set out in the Table to this clause are the maximum hourly and daily rates, inclusive of GST, which shall be used to calculate the dollar amounts in the scale of costs set out in the Table to clause 3.

**Table — Hourly and daily rates**

| Fee Earner | | | Maximum allowable hourly rates |
|---|---|---|---|
| Senior Lawyer | | hourly rate | $297 |
| Junior Lawyer | | hourly rate | $209 |
| Clerk/Paralegal | | hourly rate | $99 |
| **Counsel fees charged as a disbursement to lawyers or charged by in-house Counsel:** | | | |
| Counsel | (C) | hourly rate | $231 |
| | | daily rate | $1 606 |
| Senior Counsel | (SC) | hourly rate | $385 |
| | | daily rate | $2 662 |

**3. Scale of costs**

Unless a lawyer has made a written agreement as to costs with a client under the provisions of the *Legal Practice Act 2003* section 221, the costs of or in relation to a party to proceedings (inclusive of GST and counsel fees but exclusive of other disbursements) —

(a) recoverable from one party by another party; or

(b) payable by a party to that party's own lawyer,

shall not exceed the amounts set out in the Table to this clause.

**Table — Scale of costs**

| Item | | Time | Fee Earner | Maximum Amount $ |
|---|---|---|---|---|
| 1. | Commencing proceedings — | | | |
| | (a) Application or objection, including instructions | | | 297 |
| | For each additional respondent | | | 33 |
| | (b) Particulars (including preparation and lodgment) | 8 hours | SL | 2 376 |

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| Item | | Time | Fee Earner | Maximum Amount $ |
|---|---|---|---|---|
| 2. | Response —<br>(a) Lodging a response<br>(b) Particulars (including preparation and lodgment) | <br><br>8 hours | <br><br>SL | <br>154<br>2 376 |
| 3. | Disclosure —<br>Giving additional disclosure where ordered by the warden | 3 hours | JL | 627 |
| 4. | Inspection —<br>Inspection and giving inspection | per hour | JL | 209 |
| 5. | Interlocutory applications —<br>Proceedings and/or responses to applications (including all documentation and preparation for hearing)<br><br>*Note: In relation to the above, if the proceedings do not commence and settle or adjourn on the day of the hearing then the Assessing Officer shall allow such amount as is reasonable in the circumstances.* | 1 day preparation<br>½ day hearing | C | 2 409 |
| 6. | Applications and attendances before the warden | 1 hour | SL | 297 |
| 7. | Offers of settlement, notices, practice directions, applications, declarations, memoranda, affidavits —<br>(a) Offers of settlement<br>(b) Acceptance of offer of settlement<br>(c) Other notices referred to or required by regulations or practice directions not otherwise specified in this scale<br>(d) Preparation lodging and service of affidavits and statutory declarations not otherwise provided for<br>(e) Drawing and serving of interlocutory orders (where ordered or required) | <br>2 hours<br>2 hours<br><br><br><br>per hour<br><br>2 hours | <br>SL<br>SL<br><br><br><br>SL<br><br>JL | <br>594<br>594<br><br><br>99<br><br>297<br><br>418 |
| 8. | Getting up —<br>Preparation for hearing (includes work reasonably and necessarily undertaken prior to commencement of proceedings) | 50 hours | SL | 14 850 |
| 9. | Hearing —<br>(a) Fee on brief for Counsel i.e. first day of hearing and preparation | 2 days preparation 1st day of trial | C | 4 818 |

| Item | | Time | Fee Earner | Maximum Amount $ |
|---|---|---|---|---|
| | (b) Fee on brief for Senior Counsel i.e. first day of hearing and preparation (where 2 or more Counsel are certified for) | 2 days preparation 1st day of trial | SC | 7 986 |
| | (c) Counsel fee for the second and each successive day of hearing | | C | 1 606 |
| | (d) Counsel fee for Senior Counsel for second and each successive day of hearing (where 2 or more Counsel are certified for) | | SC | 2 662 |
| | (e) Instructing lawyer attending hearing, where certified for | | | |
| | (f) Clerk attending hearing | per hour | JL | 209 |
| | *Note: In relation to paragraphs (a) — (f) if —*<br>*(1) The hearing lasts less than 2 hours; or*<br>*(2) The hearing does not commence and settles or adjourns on the day of the hearing,*<br>*then the Assessing Officer shall allow such amount as is reasonable in the circumstances.* | | | |
| | (g) Attending on reserved determination | per hour | SL | 297 |
| 10. | Mention hearings | per hour | SL | 297 |
| 11. | Determinations —<br>(a) Settling and extracting determination<br>(i) with appointment<br>(ii) without appointment | 1 hour | JL | 209<br>154 |
| | (b) Issue of certified copy of determination | 0.5 hours | PL | 99 |
| 12. | Enforcement<br>Lodgment of an application to enforce a determination pursuant to *Civil Judgments Enforcement Act 2004* | | | 154 |
| 13. | Registration of determinations<br>Registration of determinations including those under *Service and Execution of Process Act 1992 (Cwlth)* | | | 154 |
| 14. | Assessment of costs including drawing bill —<br>(a) Lodgment of bill of costs<br>(b) Drawing bill of costs, copies and service<br>(c) Making an objection to a bill<br>(d) Assessment of costs (including the time spent in preparing for the assessment) | | SL | 33<br>Such amounts as are reasonable in the circumstances |

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| Item | | Time | Fee Earner | Maximum Amount $ |
|---|---|---|---|---|
| 15. | Copying —<br>Photocopies where necessary, including of documents for which allowance is otherwise made in this scale | per page | | 1.00 |
| 16. | Review by warden of a decision of a mining registrar | | | Amount calculated in accordance with item 5 |
| 17. | Accounts and inquiries<br>Attending on taking accounts, inquiries | | SL | Such amounts as are reasonable in the circumstances |
| 18. | Other work —<br>(a) Time reasonably spent by a lawyer on work requiring the skill of a lawyer (of the standing indicated) but not covered by any other item<br>or<br>(b) Time reasonably spent by a lawyer, or by a clerk or paralegal of a lawyer, on work not covered by any other item or by paragraph (a) | per hour | SC<br>SL<br>C<br>JL<br>PL | 385<br>297<br>231<br>209<br>99 |
| 19. | Disbursements —<br>In addition to the fees and charges allowed under this Schedule —<br>(a) As between lawyer and client, a lawyer may charge and be allowed disbursements necessarily or reasonably incurred; and<br>(b) As between party and party, a party may be allowed disbursements necessarily or reasonably incurred. | | | |
| 20. | Allowances for witnesses —<br>The amount of any costs to be paid in respect of work done by a lawyer in conducting any proceedings in a case may include a reasonable allowance for —<br>(a) witnesses called because of their professional, scientific or other special skill or knowledge; and<br>(b) witnesses called other than those covered in paragraph (a). In fixing an allowance for witnesses under paragraph (b) including the applicant and respondent, the Assessing Officer may have regard to the amount of salary, wages or income (if any) actually lost by the witness. | | | |

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By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.