

WESTERN AUSTRALIA

MINING AMENDMENT ACT 1996

No. 54 of 1996

AN ACT to amend the *Mining Act 1978*.

[Assented to 11 November 1996.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Mining Amendment Act 1996*.

Commencement

2. This Act comes into operation on such day as is, or days as are respectively, fixed by proclamation.

Principal Act

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

[* *Reprinted as at 1 August 1988.*
For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 141 and Acts Nos. 52 and 73 of 1995.]

Section 8 amended

4. Section 8 (1) of the principal Act is amended by inserting in the appropriate alphabetical positions the following definitions —

“

“**dealing**” means a transfer or mortgage of a legal interest in a mining tenement;

“**register**” means the register kept under section 103F;

“**registration**” means registration under section 103C;

”.

Section 24 amended

5. (1) Section 24 (1) (d) of the principal Act is deleted and the following paragraphs are substituted —

“

(d) land within the South West Mineral Field that is a State forest or a timber reserve within the meaning of the *Conservation and Land Management Act 1984*;

(da) land, not being land to which paragraph (d) refers, that is a State forest or a timber reserve within the meaning of the *Conservation and Land Management Act 1984*;

”.

(2) Section 24 (7) (a) of the principal Act is amended by inserting after “subsection (1)” the following —

“ (da), ”.

Section 26A amended

6. Section 26A (2) of the principal Act is amended by deleting “kept in accordance with the regulations”.

Section 56A amended

7. (1) After section 56A (1) of the principal Act the following subsection is inserted —

“

(1a) A special prospecting licence may only be applied for by, granted to or held by a natural person.

”.

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(2) Section 56A (4) of the principal Act is amended by deleting the passage from and including “on whether or not the prospecting” to the end of the subsection and substituting the following —

“
in respect of the prospecting carried on by the holder of the primary tenement on the land to which the application relates.
”.

(3) After section 56A (4) of the principal Act the following subsection is inserted —

“
(4a) A report prepared by the Director, Geological Survey for the purposes of subsection (4) is to be based solely on information contained in reports filed by or on behalf of the holder of the primary tenement under section 51 or 115A.
”.

(4) Section 56A (5) of the principal Act is amended by inserting after “the special prospecting licence concerned” the following —

“
on the ground that prospecting for gold on the land to which that application relates would result in undue detriment to the prospecting being carried on by the holder of the primary tenement
”.

(5) Section 56A (6) (e) of the principal Act is deleted and the following paragraph is substituted —

“
(e) does not authorize mining to be carried out in any portion of the land that is —

(i) below a depth specified in the terms and conditions of the special prospecting

licence, and any depth so specified shall be less than 50 metres below the lowest part of the natural surface of the land the subject of the special prospecting licence; or

- (ii) if a depth is not so specified, 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.

”.

(6) Section 56A (7) of the principal Act is amended by deleting “beneficial interest in more than one such special prospecting licence or mining lease or legal or equitable interest therein.” and substituting the following —

“

beneficial, legal or equitable interest in —

- (c) more than 3 such special prospecting licences; or
- (d) more than one such mining lease.

”.

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

- (a) by deleting “When the holder of a special prospecting licence makes” and substituting the following —

“

The holder of a special prospecting licence granted for a period of 4 years may make

”;

and

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- (b) by inserting before “the Minister” in the first place where it occurs the following —

“ and on an application being made ”.

- (8) Section 56A (11) of the principal Act is repealed and the following subsection is substituted —

“

(11) Where a special prospecting licence is converted into a prospecting licence, the prospecting licence remains in force, subject to this Act, for the remainder of the period for which the special prospecting licence was granted.

”.

Section 64 amended

- 8.** (1) Section 64 (1) of the principal Act is amended —

- (a) by deleting “an exploration licence” in the second place where it occurs and substituting the following —

“ the exploration licence ”; and

- (b) in paragraphs (a) and (b) by inserting after “dealing” in each case the following —

“

or other transaction in or affecting the interest

”.

- (2) Section 64 (2) of the principal Act is amended by inserting after “dealing” in both places where it occurs the following —

“ or other transaction ”.

Section 65 amended

9. Section 65 (1c) of the principal Act is amended —

- (a) by deleting paragraph (a); and
- (b) in paragraph (b) by deleting “at the principal office of the Department at Perth” and substituting the following —
“ for registration ”.

Section 70 amended

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

“
(1a) A special prospecting licence may only be applied for by, granted to or held by a natural person.”.

(2) Section 70 (4) of the principal Act is amended by deleting the passage from and including “as to whether the prospecting” to the end of the subsection and substituting the following —

“
in respect of the exploration carried on by the holder of the primary tenement on the land to which the application relates.”.

(3) After section 70 (4) of the principal Act the following subsection is inserted —

“
(4a) A report prepared by the Director, Geological Survey for the purposes of subsection (4) is to be based

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solely on information contained in reports filed by or on behalf of the holder of the primary tenement under section 68 (3) or 115A.

”.

(4) Section 70 (5) of the principal Act is amended by inserting after “the special prospecting licence” the following —

“

on the ground that prospecting for gold on the land to which the application relates would result in undue detriment to the exploration being carried on by the holder of the primary tenement

”.

(5) Section 70 (6) (e) of the principal Act is deleted and the following paragraph is substituted —

“

(e) does not authorize mining to be carried out in any portion of the land that is —

(i) below a depth specified in the terms and conditions of the special prospecting licence, and any depth so specified shall be less than 50 metres below the lowest part of the natural surface of the land the subject of the special prospecting licence; or

(ii) if a depth is not so specified, 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.

”.

(6) Section 70 (7) of the principal Act is amended by deleting “beneficial interest in more than one such special prospecting licence or mining lease or legal or equitable interest therein.” and substituting the following —

“

beneficial, legal or equitable interest in —

(c) more than 3 such special prospecting licences; or

(d) more than one such mining lease.

”.

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

(a) by deleting “When the holder of a special prospecting licence granted under this section makes” and substituting the following —

“

The holder of a special prospecting licence granted for a period of 4 years may make

”;

and

(b) by inserting after “subject of the special prospecting licence,” the following —

“ and on an application being made ”.

(8) Section 70 (11) of the principal Act is repealed and the following subsection is substituted —

“

(11) Where a special prospecting licence is converted into a prospecting licence, the prospecting licence remains in force, subject to this Act, for the remainder of the period for which the special prospecting licence was granted.

”.

s. 11**Section 70H amended**

11. Section 70H (1) (e) of the principal Act is amended by deleting “assign, underlet or part with possession of” and substituting the following —

“ transfer or mortgage a legal interest in ”.

Section 82 amended

12. Section 82 (1) (d) of the principal Act is amended by deleting “assign, underlet or part with possession of” and substituting the following —

“ transfer or mortgage a legal interest in ”.

Section 85B amended

13. (1) After section 85B (1) of the principal Act the following subsection is inserted —

“
(1a) A special prospecting licence may only be applied for by, granted to or held by a natural person.”.

(2) Section 85B (3) (e) of the principal Act is deleted and the following paragraph is substituted —

“
(e) does not authorize mining to be carried out in any portion of the land that is —
(i) below a depth specified in the terms and conditions of the special prospecting licence, and any depth so specified shall be less than 50 metres below the lowest part of the natural surface of the land the subject of the special prospecting licence; or

- (ii) if a depth is not so specified, 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.

”.

(3) Section 85B (5) of the principal Act is amended by deleting “beneficial interest in more than one such special prospecting licence or mining lease or legal or equitable interest therein.” and substituting the following —

“

beneficial, legal or equitable interest in —

- (c) more than 3 such special prospecting licences; or
- (d) more than one such mining lease.

”.

(4) Section 85B (7) of the principal Act is amended —

- (a) by deleting “When the holder of a special prospecting licence makes” and substituting the following —

“

The holder of a special prospecting licence granted for a period of 4 years may make

”;

and

- (b) by inserting before “the Minister” in the first place where it occurs the following —

“ and on an application being made ”.

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(5) Section 85B (11) of the principal Act is repealed and the following subsection is substituted —

“

(11) Where a special prospecting licence is converted into a prospecting licence, the prospecting licence remains in force, subject to this Act, for the remainder of the period for which the special prospecting licence was granted.

”.

Section 95 amended

14. Section 95 (1) of the principal Act is repealed and the following subsection is substituted —

“

(1) Subject to this Act, the holder of a mining tenement may surrender the tenement in whole or in part by lodging a surrender for registration.

”.

Division 8 of Part IV repealed and Part IVA inserted

15. Division 8 of Part IV of the principal Act is repealed and the following Part is inserted —

“

**PART IVA — REGISTRATION OF
INSTRUMENTS AND REGISTER**

Definition

103A. In this Part —

“**authorized officer**” means an officer of the Department authorized under section 103B.

Authorized officers

103B. (1) The Minister may in writing authorize officers of the Department for the purposes of this Part and section 122B.

(2) An authorization under subsection (1) may be given to a specified officer or to officers of a specified class, or may be given to the holder or holders for the time being of a specified office or class of office.

Registration

103C. (1) This section applies to the following instruments —

- (a) a dealing;
- (b) a discharge of a mortgage of a legal interest in a mining tenement;
- (c) a withdrawal of an application for a mining tenement; and
- (d) a surrender under section 26A, 65 or 95.

(2) An instrument to which this section applies is to be —

- (a) lodged for registration in the prescribed manner and prescribed form; and
- (b) accompanied by the fee (if any) prescribed in respect of the instrument.

(3) Only an instrument to which this section applies may be registered.

(4) The registration of an instrument is to be effected by an authorized officer.

(5) Subject to section 122D (1), an authorized officer is, unless section 103D applies or the regulations otherwise provide, to enter in the register the time and date of the lodgement of an instrument as the time and date of registration.

(6) Neither the Minister nor an authorized officer is concerned with the effect any instrument lodged under this section may have at law other than for the purposes of this Act.

(7) The acceptance of an instrument for registration does not give to it any priority (other than in so far as registration may be taken to be constructive notice), force, effect or validity that it would not have had if this section had not been enacted.

(8) A dealing does not pass any estate or interest in a mining tenement or in any way charge or encumber a mining tenement until it is registered in accordance with this section.

Provisional lodgement

103D. (1) If an authorized officer is of the opinion that an instrument lodged for registration contains an error or defect, the authorized officer is —

- (a) if satisfied that the error or defect can be corrected, to accept the instrument for provisional lodgement; or
- (b) in any other case, to reject the instrument and endorse the register accordingly.

(2) The regulations may provide for the effect to be given to an instrument accepted for provisional lodgement.

Unregistered dealing void

103E. A dealing that is not registered under section 103C is, in relation to any property affected or to be affected by it, void as against any person claiming *bona fide* and for valuable consideration under a subsequent dealing that is duly registered.

Register

103F. (1) The Director General of Mines is to cause a register to be compiled and maintained.

(2) The register is to contain such particulars, relating to mining tenements and applications for mining tenements, as are prescribed.

(3) The register may be compiled and maintained in such form as the Director General of Mines determines.

(4) A person may, on payment of the prescribed fee, obtain at the Department at Perth or at the office of the mining registrar —

- (a) a copy of an entry in the register relating to any mining tenement or application for a mining tenement; and
- (b) subject to such requirements, if any, as are prescribed, a copy of a dealing or other instrument recorded in the register.

s. 16**Amendment of register**

103G. (1) A person may apply in the prescribed manner and prescribed form for the amendment of particulars in the register relating to a mining tenement, or an application for a mining tenement, in which that person has an interest.

(2) If, on an application under subsection (1), an authorized officer is satisfied that there is reasonable cause for the amendment, the authorized officer may amend the particulars accordingly.

(3) An authorized officer may amend, add to and correct the register in such manner as is necessary to make the register an accurate record of the particulars it contains.

Regulations relating to register

103H. The regulations may —

- (a) prescribe the form a copy is to take for the purposes of section 103F (4) (a) or (b); and
- (b) make provision for any other matter relating to the register.

”.

Section 116 amended

16. Section 116 of the principal Act is amended —

- (a) in subsection (2) by deleting “applicant, or”; and

- (b) by inserting after subsection (2) the following subsection —

“

- (3) In subsection (2) —

“**registered**”, in relation to a holder or previous holder of a mining tenement, means that the name of the holder or previous holder is or was entered in the register as the holder of the mining tenement.

”.

Section 119A repealed and a section substituted

17. Section 119A of the principal Act is repealed and the following section is substituted —

“

Mining tenement may be mortgaged

119A. (1) A mining tenement or share in a mining tenement may be mortgaged as security for the repayment of money advanced or agreed to be advanced or for the discharge of any liability.

(2) If there are 2 or more mortgages affecting the same legal interest in a mining tenement, the mortgages take priority according to the time and date of their registration.

- (3) A mortgage —

- (a) has effect only as security for the repayment of the money intended to be secured by the mortgage and not as an assignment of the mining tenement; and

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(b) may cover all buildings, improvements, machinery and appliances in or upon the land comprised in the mining tenement.

(4) The regulations may provide that a mortgage is deemed to contain prescribed provisions unless the mortgage contains express provision to the contrary.

”.

Part VI repealed and a Part substituted

18. Part VI of the principal Act is repealed and the following Part is substituted —

“

PART VI — CAVEATS

Definitions

121. In this Part, unless the contrary intention appears —

“**absolute caveat**” means a caveat referred to in section 122A (1) (a);

“**caveat**” means an absolute caveat, a consent caveat or a subject to claim caveat;

“**consent caveat**” means a caveat referred to in section 122A (2);

“**subject to claim caveat**” means a caveat referred to in section 122A (1) (b).

Certain surrenders not affected by this Part

122. (1) A reference in this Part (other than this section) to a surrender does not include a surrender under section 26A or 65.

(2) Where —

- (a) a surrender under section 26A or 65 is registered under section 103C; and
- (b) the surrender affects a mining tenement or an interest in a mining tenement that is the subject of a caveat,

notification of the registration of the surrender is to be sent by or on behalf of the Minister in the prescribed manner to the person who lodged that caveat.

Lodgement of caveats

122A. (1) A person claiming an interest in a mining tenement may lodge at the Department at Perth or at the office of the mining registrar —

- (a) a caveat against the mining tenement forbidding the registration of a dealing or surrender affecting the mining tenement or interest; or
- (b) a caveat against the mining tenement forbidding the registration of —
 - (i) a dealing affecting the mining tenement or interest unless the dealing expressly states that it is to be subject to the interest claimed by the caveator; or
 - (ii) a surrender affecting the mining tenement or interest.

(2) If —

- (a) the holder of a mining tenement has entered into an agreement with a person relating to the sale of his interest in the mining tenement; and
- (b) the agreement so provides,

either party to the agreement may lodge at the Department at Perth or at the office of the mining registrar a caveat against the mining tenement forbidding the registration of a dealing or surrender affecting the mining tenement or interest together with a copy of the agreement.

(3) A caveat lodged under this section is to —

- (a) be in the prescribed form;
- (b) be accompanied by the prescribed fee;
- (c) state the full name and address of the caveator;
- (d) be signed by the caveator or an agent of the caveator; and
- (e) give an address within the State for the service of notices and proceedings in relation to the caveat.

(4) If a caveat is lodged under this section —

- (a) a memorial or copy of the caveat is to be entered in the register; and
- (b) except in the case of a consent caveat lodged by the holder of a mining tenement, a notice stating that the caveat has been

lodged is to be sent by certified mail to the holder of the mining tenement affected by the caveat.

(5) Subject to section 122B, a caveat lodged under this section has effect from the time of lodgement.

(6) Successive caveats shall not be lodged by, or on behalf of, the same person in respect of the same subject matter except by leave of a warden.

Provisional lodgement

122B. (1) If an authorized officer (as defined in section 103A) is of the opinion that a caveat lodged under section 122A contains an error or defect, the officer is —

- (a) if satisfied that the error or defect can be corrected, to accept the caveat for provisional lodgement; or
- (b) in any other case, to reject the caveat and endorse the register accordingly.

(2) The regulations may provide for the effect to be given to a caveat accepted for provisional lodgement.

Caveats deemed to be lodged against later tenements

122C. (1) If a caveat has been lodged against —

- (a) a mining tenement and the holder of that tenement is granted a mining lease or

general purpose lease (“**the later tenement**”) under section 49, 67 or 70L in respect of the land or a part of the land the subject of the tenement;

- (b) a mining tenement and the holder of that tenement is granted a retention licence (“**the later tenement**”) under section 70B in respect of the land or a part of the land the subject of the tenement; or
- (c) a special prospecting licence granted under section 56A, 70 or 85B and the holder of that licence is granted a mining lease for gold (“**the later tenement**”) under section 56A (8), 70 (8) or 85B (7) in respect of the land or a part of the land the subject of the licence,

the caveat is to be taken to have been also lodged against the later tenement and a memorial to that effect is to be entered in the register.

(2) A caveat to which subsection (1) applies has effect, in relation to a later tenement, from the day on which the later tenement is granted.

Effect of caveat

122D. (1) A dealing or surrender affecting the subject matter of a caveat shall not to be registered under section 103C while the caveat remains in force, except upon the order of a warden.

(2) Subsection (1) does not apply to a dealing if —

- (a) the caveat concerned is a subject to claim caveat; and

- (b) the dealing is expressed to be subject to the interest claimed by the caveator.

Duration of caveat

122E. (1) An absolute caveat or a subject to claim caveat ceases to have effect upon —

- (a) the order of a warden for the removal of the caveat;
- (b) the withdrawal of the caveat by the caveator or an agent of the caveator; or
- (c) the expiry of a period of 14 days after notification that —
 - (i) in the case of an absolute caveat, application has been made for the registration of a dealing or surrender affecting the subject matter of the caveat; or
 - (ii) in the case of a subject to claim caveat, application has been made for the registration of a dealing or surrender affecting the subject matter of the caveat that is not expressed to be subject to the interest claimed by the caveator,

has been sent by or on behalf of the Minister by certified mail to the caveator at the address for service given in the caveat, unless within that period a warden otherwise orders.

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(2) A consent caveat ceases to have effect upon —

- (a) the order of a warden for the removal of the caveat;
- (b) the withdrawal of the caveat by consent of the parties to the agreement; or
- (c) the expiry of the period of time, if any, specified in the agreement.

(3) If a caveat ceases to have effect under this section a memorial to that effect is to be entered in the register.

(4) In subsection (2) —

“**agreement**” means the agreement referred to in section 122A (2).

”.

Section 143 amended

19. Section 143 of the principal Act is amended —

(a) by deleting “the warden” and substituting the following —

“ the party to whom the injunction is granted ”;

and

(b) by deleting “kept in accordance with the regulations”.

Section 145 amended

20. Section 145 of the principal Act is amended by deleting “in accordance with the regulations” and substituting the following —

“ under this Act ”.

Section 161 amended

21. Section 161 (3) of the principal Act is repealed and the following subsection is substituted —

“

(3) In any proceedings a document purporting to be certified by a person authorized for that purpose by the Director General of Mines as a correct copy of an extract from a register kept under this Act is, without proof of that person’s signature, evidence of the matter contained in the document.

”.

Section 162 amended

22. Section 162 (2) of the principal Act is amended —

(a) in paragraph (l) —

(i) by deleting “the registration of mining tenements and documents affecting them, the keeping by prescribed persons of a register of mining tenements and”; and

(ii) by inserting after “kept by” the following —

“ a warden, ”;

- (b) by inserting after paragraph (q) the following paragraph —

“
 (qa) prescribe the mode of dealing with a mining tenement upon the death of the holder of the mining tenement or in other prescribed circumstances and provide for any related matter;
”;

- (c) in paragraph (u) —

- (i) by deleting “regulating” and substituting the following —

“ regulate ”; and

- (ii) by deleting “imposing” and substituting the following —

“ impose ”;

- (d) in paragraph (v) by deleting “providing” in both places where it occurs and substituting in each place the following —

“ provide ”;

- (e) in paragraph (w) by deleting “providing” and substituting the following —

“ provide ”;

- (f) in paragraph (x) by deleting “authorizing and regulating” and substituting the following —

“ authorize and regulate ”; and

- (g) in paragraph (y) by deleting “prescribing and regulating” and substituting the following —

“ prescribe and regulate ”.

Minor amendments

- 23.** (1) Section 56A (12) (b) of the principal Act is amended by deleting “the lease” and substituting the following —

“ the licence or lease ”.

- (2) Section 70 (12) (b) of the principal Act is amended by deleting “the lease” and substituting the following —

“ the licence or lease ”.

- (3) Section 85B (12) (b) of the principal Act is amended by deleting “the lease” and substituting the following —

“ the licence or lease ”.

- (4) Section 90 of the principal Act is amended by deleting “81,”.

- (5) Sections 96 and 123 of the principal Act are amended by deleting the subsection designation “(2A)” and substituting in each case the following subsection designation —

“ (2a) ”.

- (6) Section 111 of the principal Act is amended by inserting after “prospecting licence, exploration licence” the following —

“ , retention licence ”.