

WESTERN AUSTRALIA

# MINING (VALIDATION AND AMENDMENT) ACT

No. 1 of 1986

AN ACT to ratify, and confirm the validity of, the renewal of certain mining leases; to amend the *Mining Act 1978*; and for related purposes.

[Assented to 26 June 1986.]

**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

### Short title

1. This Act may be cited as the *Mining (Validation and Amendment) Act 1986*.

### Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

## PART II—VALIDATION

**Ratification of the grant by way of renewal  
of certain mining leases**

3. (1) In relation to the leases identified in the Schedule to this Part, it is hereby declared—

(a) that each such lease—

- (i) was granted under the *Mining Act 1904*, which conferred a right to renew such a lease at the expiration of the term subject to the Acts and regulations relating to such leases in force at the time of the renewal; and
- (ii) was deemed, by the operation of clause 2 of the transitional provisions in the Second Schedule to the *Mining Act 1978*, to be a mining lease granted under that Act subject to the terms and conditions on which the lease was formerly granted under the *Mining Act 1904* (save that an application for renewal of a mining lease was, by the regulations then in force, required to be made during the final year of the term);

(b) that having regard to—

- (i) the status of the lessee as an applicant, being the former holder of the mining tenement sought to be renewed;
- (ii) the fact that had such an application been made at the time required by the regulations it would have had priority over any other application relating to the land affected;
- (iii) regulation 104 of the *Mining Regulations 1981* which conferred on the Minister a discretionary power to extend the time in which those regulations (as in force at the relevant time) required an act to be done by the applicant for, or holder of, a mining tenement; and
- (iv) doubts which had arisen as to the applicability of the law in force from time to time to the respective leases and the requirements for the making of applications for their renewal,

the renewal of the term of each such lease by the Minister shall be deemed to have been lawful; and

(c) that the acts of the Minister in—

- (i) extending the time within which the lessee named in the first column of the Schedule to this Part might apply for renewal of the lease (or of the deemed mining lease derived from that lease) identified in relation to that lessee in the second and third columns of that Schedule; and
- (ii) granting to that lessee under the *Mining Act 1978* a renewal of the term of that mining lease for a further term of 21 years following the expiry of the final year of the original term,

shall be taken to have been validly performed and deemed always to have been lawful,

and the renewal of the term of each lease is hereby ratified.

(2) Where in relation to any of the leases identified in the Schedule to this Part—

- (a) a document setting out the provisions of the relevant lease was not issued by the Minister, or executed by the lessee, the Governor and the lessee being deemed pursuant to the *Mining Act 1904* to have entered into the covenants and to be subject to the conditions prescribed in accordance with section 80 of that Act; or
- (b) an instrument setting out the terms and conditions applicable to such lease was not issued by the Minister, or executed by the lessee, in respect of a lease deemed to have been granted under the transitional provisions of the *Mining Act 1978*,

then in any such case the land to which such lease related shall nevertheless be taken to be, and always to have been, land which was the subject of an instrument of lease executed under and subject to the *Mining Act 1904*, duly granted and issued to the lessee, and as such to be and to have been the land which was the subject of a mining lease deemed to have been granted under the transitional provisions of the *Mining Act 1978*, and that lease shall be taken to have been capable of being renewed.

(3) In relation to the lease granted under the *Mining Act 1904*, the mining lease deemed to have been granted consequent upon the transitional provisions of the *Mining Act 1978*, and the lease the term by way of renewal of which was ratified by subsection (1) (which together shall be taken to constitute a lease for a continuous term of years), as regards land to which this section applies—

- (a) the lessee shall be deemed during the term of that lease always to have had exclusive possession of the land to which the lease related or relates for the purposes of mining and the right to and property in any minerals mined, worked or found on or in that land; and

- (b) no action, claim, demand, appeal, review or other proceeding by a person other than the lessee lies, or shall be commenced or heard, before a warden or any court or tribunal—
- (i) in pursuance of any application or purported application by any person for a mining tenement other than that lease;
  - (ii) as to the purported right of any person other than the lessee to any mining tenement in that land or the property in any mineral mined, worked or found on or in that land; or
  - (iii) in respect of such a lease, or any matter relating to the grant of such a lease,

and all applications for a mining tenement relating to any such land made subsequent to the expiry of the term of such a lease but prior to the coming into operation of this Act by a person other than the lessee shall be, and be deemed always to have been, devoid of any effect for the purposes of the *Mining Act 1978*.

(4) For the purposes of this section a reference to “the lessee” includes a reference to any person deriving title through a person who is or was the holder of the lease in question.

#### SCHEDULE TO PART II

##### Section 3.

<i>Lessee</i>	<i>1904 Act Lease</i>	<i>Gold Field</i>
Pancontinental Goldmining Areas Pty. Ltd.	Gold Mining Lease 2329W Paddington	Broad Arrow
Charles Barton Cecil Jones	Gold Mining Lease 1342Y Bulong	East Coolgardie
Robert James Donovan deceased	Gold Mining Lease 5798Z Comet Vale	North Coolgardie
Western Collieries Ltd.	Coal Mining Lease 533 Collie	<i>Mineral Field</i> Collie River

PART III—AMENDMENTS TO THE *MINING ACT 1978*.**Principal Act**

4. In this Part, the *Mining Act 1978*\* is referred to as the principal Act.

[\*Reprinted as approved for reprint 11 December 1981 and amended by Acts Nos. 10 and 122 of 1982, 52 of 1983, and 100 of 1985 and orders published in the Gazette on 18 December 1981 p. 5274 16 July 1982 p. 2829.]

**Section 78 amended**

5. Section 78 of the principal Act is amended in subsection (1) by inserting after “that lease” the following—

“ or if section 111A (1) (a) applies ”.

**Section 105A amended**

6. Section 105A of the principal Act is amended in subsection (1) by deleting “If 2 or more applications are made” and substituting the following—

“ Subject to section 111A, where more than one application is received ”.

**Section 111A amended**

7. Section 111A of the principal Act is amended by repealing subsection (1) and substituting the subsection following—

“ (1) Where an application is made for a mining tenement but in respect of the whole or any part of the land to which the application relates—

- (a) a person who in relation to that land was formerly the lessee of a mining lease the term of which has expired, or is a person deriving title through such a former lessee, subsequently applies (in the manner prescribed for the purposes of section 78 notwithstanding that the application was not made during the final year of the term of that lease) for the renewal of that mining lease with effect

from the expiry of the preceding term and the Minister, being satisfied that the requirements of that expired mining lease and of this Act in relation to that lease had been substantially observed (other than as to the timing of an application for renewal) and that the applicant has continued to observe those requirements as if the term of the lease had not expired, determines that the subsequent application for renewal of the expired lease should be approved and grants that renewal; or

(b) the Minister is satisfied on reasonable grounds in the public interest that—

(i) the land should not be disturbed; or

(ii) the application in question should not be granted,

the Minister may, by notice served on the warden to whom the first-mentioned application for a mining tenement has been made, refuse that application, whether or not the application has been heard by the warden. ”.

---