



Mining Amendment Bill 2024

Overview

The Department of Energy, Mines, Industry Regulation and Safety is seeking public comment on the draft *Mining Amendment Bill 2024* (MAB 2024).

The MAB 2024 amends the *Mining Act 1978* (Mining Act) to update certain tenement application requirements and to make other minor changes to improve the efficiency of resource tenure processes.

Amending provisions:

- remove contemporaneity requirements for supporting documents (such as mineralisation reports for mining lease applications) to accompany applications;
- delete obsolete requirements for the Warden to forward to the Minister maps and notes of evidence;
- clarifying requirements for supporting statements for exploration licences and mining leases;
- updating the assessment requirements for mineralisation reports;
- expanding the definition of 'mining tenement document' to facilitate electronic lodgements;
- creating a power to make regulations that prescribe ways of complying with requirements for a fee or other consideration to accompany an application;
- strengthening the security of title and the integrity of the register of mining title through an amendment to s 116(2); and
- validation of pending applications that may not have complied with prescribed requirements.

The update to application processes and requirements will protect the security of tenure for prospective applications in light of the High Court decision *Forrest & Forrest v Wilson* [2017] HCA 30. Since the High Court judgement, several Wardens Court and Supreme Court judgements have expounded on the Forrest principle, heightening the need for these legislative amendments.

A second aspect of the MAB 2024 is amendment to Part 2 of the *Mining Legislation Amendment Act 2014* which has not yet been proclaimed pending the development of supporting regulations.

The other minor changes are:

- procedural changes to the making of s 19 instruments and their duration through the provision of defined timelines to allow a more efficient and flexible administration of the Mining Act;
- amending the definition of resource report at s 74(7);
- bringing the exploration licence applications in line with other types of tenement applications, so that a smaller area than applied for can be granted; and
- bringing the condition-granting powers into line so that the conditions imposed on grant of title can be varied or cancelled just like the conditions imposed for the prevention or reduction of injury to land.

Call for submission on particular amendments

The majority of the proposed amendments have been provided for public consultation on previous occasions. Amendments to s 57 of the Mining Act were exposed to public consultation as part of the *Mining Amendment Bill 2021* in early 2022. Amendments updating application processes and requirements were subject to consultation as part of the *Mining Amendment (Procedures and Validation) Bill 2018* which was introduced into Parliament, but ultimately did not proceed through Parliament.

The department welcomes all comments on the proposed MAB2024, and is particularly interested to receive submissions on certain provisions, which will be of interest to industry.

Section 57 amendments

Section 57 is of particular interest to the industry, as it aims to bring the exploration licence applications in line with other types of tenement applications so that a smaller area than applied for can be granted.

Amendments aiming to do this were originally proposed as part of the *Mining Amendment Bill 2021* in early 2022. They were ultimately removed from the Bill and the Act that was passed by Parliament, following consultation.

Industry submissions at the time were of the view that the Minister already had the power to grant exploration licences smaller in area than applied for, and that the model proposed gave the Minister discretionary powers that were not warranted.

The Supreme Court of Western Australia found in *Blue Ribbon Mines Pty Ltd v Roy Hill Infrastructure Pty Ltd* [2022] WASC 362 that the Minister did not have the power to grant a smaller area than applied for. The need for an amendment to s 57 arises again from this decision.

The proposed amendments this time are different to those put out for consultation in early 2022. They seek not only to provide for excisions from graticular blocks, but also to provide for dropping of entire blocks from an application.

Section 58 amendments

The Warden's decision in *True Fella Pty Ltd v Pantoro South Pty Ltd* [2022] WAMW 19 required the applicant to provide five years' worth of information in the statement lodged with the department under s 58(1)(b).

The proposed amendments to s 58 seek to change this so that only information for the first year needs to be provided. The amendments also remove the requirement to specify the proposed method of exploration.

Submissions are invited on whether these proposed amendments strike the right balance in the wake of the Warden's decision, and to consider whether the better option is removing the requirement to lodge a statement under s 58(1)(b).

Section 116(2) amendments

Section 116(2) contains two parts. The first part seeks to protect the holder of the tenement, while the second part seeks to protect anyone dealing with the holder.

The proposed amendment to s 116(2) addresses the first part. That is, it seeks to confirm the integrity of the register, so that the register is the source of truth on the validity of a tenement, and whether the ground is vacant or not. With the register as the determining factor on whether there is a tenement in existence, the intention is that it will aid the resource industry in:

- raising finance either through capital raising or debt finance through the register being conclusive evidence of the existence of a tenement;
- trading and transferring tenement titles; and
- showing clearly whether land is vacant or not, for prospective applicants for mining tenure.

Consultation

The draft *Mining Amendment Bill 2024* is available for comment until close of business **25 October 2024**.

The Department of Energy, Mines, Industry Regulation and Safety will publish consultation and draft documents on its [Open consultations](#) webpage.

Any comments or feedback can be emailed to RTD.Consultation@demirs.wa.gov.au