



Applying for an exemption from expenditure conditions

- Guidelines for applications made under the temporary COVID-19 Response Regulations

Document

Legislation	<i>Mining Act 1978</i>
Statutory Documents	Mining Regulations 1981 Mining Amendment (COVID-19 Response) Regulations 2020
Policy	
Guidelines	Applications for exemption from expenditure conditions: Guidelines for applications made under the temporary COVID-19 Response Regulations (this document) Applications for exemption from expenditure conditions (existing guidance)
Procedures	

Version History

Version	Date	Changes
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Purpose

The purpose of these guidelines is to assist prospecting and exploration tenement holders to understand and use the Mining Amendment (COVID-19 Response) Regulations 2020 to apply for an exemption to expenditure conditions.

Objectives

The Department of Mines, Industry Regulation and Safety (DMIRS) is responsible for regulating mineral exploration and development activities in Western Australia (WA) under the *Mining Act 1978* (Mining Act).

The objective of these guidelines is to clearly identify how the temporary Mining Amendments will work and to outline the information to be included in an application for exemption from expenditure conditions. This will ensure that applications received are of a high quality and provide sufficient detail on relevant factors, and that requests for additional information from the proponent are minimised.

Scope

The COVID-19 pandemic escalated significantly from 11 March 2020 and on 18 March 2020, Western Australia declared a State of Emergency under section 58 of the *Emergency Management Act 2005*. In response to the pandemic, various levels of government introduced measures to restrict the further spread of COVID-19. The State Government understands that these measures impact the resources sector and planned exploration activity across the State.

Mineral exploration is fundamental to the ongoing success of Western Australia's resources sector. The various provisions of the *Mining Act 1978* (the Act) ensure effective exploration and development. One of the mechanisms through which exploration and development is encouraged is through compliance with expenditure conditions.

The Act also recognises that in some circumstances compliance with these conditions is not always possible. Section 102 of the Act provides a mechanism for a tenement holder to apply for exemption from expenditure commitments for a given expenditure year, and the reasons for which an exemption may be considered. Existing Guideline: [Applications for exemption from expenditure conditions](#) guides tenement holders in making an application for exemption from expenditure conditions and how these applications may be considered by DMIRS under delegation from the Minister for Mines and Petroleum.

In response to the COVID-19 situation, the State Government acknowledged that prospecting and exploration licence holders could apply for an exemption from expenditure conditions on the grounds of the impacts of COVID-19. Under normal circumstances, this could be achieved under section 102(3) of the Act and regulation 54 of the Mining Regulations 1981 (Mining Regulations). However to support this position, and improve approval timelines through improved processes, the temporary COVID-19 Response Regulations were introduced.

These guidelines relate specifically to the temporary arrangements and how these will be administered by DMIRS during the period in which they are in effect.

DMIRS has committed to reviewing the effectiveness of the temporary amendments, with input from industry, prior to their expiry in June 2021.

1. What has changed?

Although the relevant legislation already allowed for exemptions to expenditure conditions to be granted for specified reasons, the introduction of the COVID-19 Response Regulations makes the State Government’s position regarding the impacts of COVID-19 very clear.

The COVID-19 Response Regulations:

- Prescribe the impact of the COVID-19 pandemic and government’s response to the pandemic as grounds for which an application for exemption may be applied for (regulation 55 of the Mining Regulations).
- Require an application to be **accompanied** by a statement supporting the application and providing evidence of the impact of COVID-19 (regulation 54 (4) of the Mining Regulations).
- Reduce the **objection period** in which a third party may make an objection to a COVID-19 based application for exemption from 35 to **14 days**, while still allowing for public scrutiny (regulation 146 (2)(aa) of the Mining Regulations).
- Allow for the **notice** of an application for exemption to be published **online** via the department’s website, rather than the physical posting of a notice at the Mining Registrar’s office (regulation 54 (1B) of the Mining Regulations).

Both the existing arrangements and the temporary COVID-19 arrangements will operate in parallel from the date the temporary arrangements are brought into effect until 30 June 2021.

2. What does this mean for me?

If you are the holder of a prospecting licence or an exploration licence and you can demonstrate your ability to meet your expenditure conditions has been impacted by COVID-19 or government’s response to the pandemic, you may apply for an exemption.

You have the option of applying for an exemption from expenditure conditions under the existing process (section 102(3) and regulation 54) or under the temporary COVID-19 arrangements (section 102(3) and regulation 55).

The main difference between the two pathways is the timeframe allowed for third party objections and that your regulation 55 application must be submitted with a statement of support, rather than having 28 days to lodge a statutory declaration. The differences are highlighted below.

Figure 1 - Standard process for applications for exemption from expenditure conditions for non COVID-19 related reasons

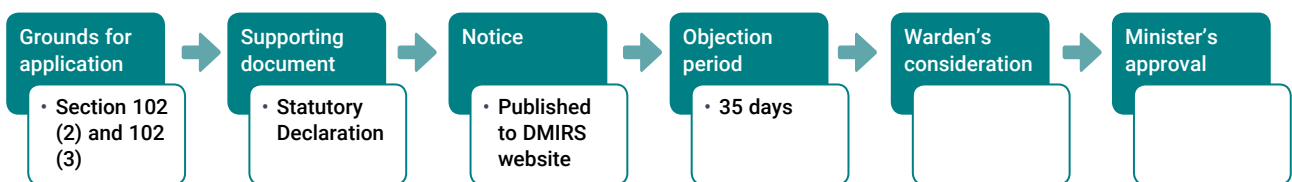
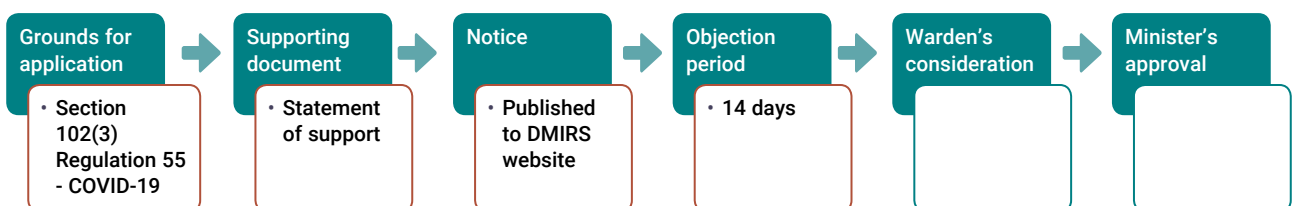


Figure 2 - Temporary process for applications for exemption from expenditure conditions for COVID-19 related reasons



If you wish to apply for an exemption based on multiple grounds, not just the impacts of COVID-19, you are required to use the existing process.

If for some reason your regulation 55 application is refused, this does not preclude you from making a subsequent application under the existing regulation 54 process.

3. Lodging an application under regulation 55

An application made under regulation 55:

- must be lodged on the prescribed form (Form 18) with the prescribed fee, preferably electronically via Mineral Titles Online (you will need to select section 102(3), regulation 55 from the available reasons);
- must be lodged (with all the information correctly completed) within 60 days of the anniversary date of the tenement; and
- must be accompanied by a statement or evidence supporting the application. Your application needs to clearly demonstrate how your ability to meet your expenditure conditions has been affected as a direct result of the effects of COVID-19 and/or the restrictions imposed by governments in response to the COVID-19 pandemic.

A copy of your Form 18 will be published on the Department's [website](#) as notice of the application. From the date of publication, a third party will have 14 days in which to lodge an objection against your application. Should no objection be lodged against the application, it will be determined by the Minister.

If an objection is lodged against your application, the exemption cannot be determined until the Warden has made a recommendation to the Minister, or the objection has been withdrawn by the objector, or dismissed by the Warden and an Order made to this effect by the Warden.

4. What happens at the end of the temporary period?

The temporary arrangements are set to cease at the end of 30 June 2021, with the existing regulation 54 provisions remaining the only pathway from 1 July 2021 onwards.

A review of the temporary arrangements is planned for early 2021 to assess their effectiveness and the benefits or otherwise of retaining some of the temporary changes. Industry will be consulted as part of this process and information relating to the review will be made available closer to the time.

Government of Western Australia

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8.30am – 4.30pm

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