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Government of **Western Australia**
Department of **Mines and Petroleum**

POLICY GUIDELINES

EXEMPTION FROM THE COMPULSORY SURRENDER PROVISIONS OF SECTION 65 OF THE *MINING ACT 1978* (for *Exploration Licences applied for prior to 10/02/2006*)

DEFERRAL OF THE COMPULSORY SURRENDER PROVISIONS OF SECTION 65 OF THE *MINING ACT 1978* (for *Exploration Licences applied for on or after 10/02/2006*)

The principle of the compulsory surrender-off provisions of section 65 of the *Mining Act 1978* is that the holder of an exploration licence will have conducted exploration on the licence so as to have identify areas of interest and, as a consequence, be able to relinquish the balance of the ground held by the licence at the end of:

- years 3 and 4 for those exploration licences applied for prior to 10 February 2006; and
- the 5th year for exploration licences applied for on or after 10 February 2006.

Exemption from the requirement to surrender ground at the end of years 3 and 4 for pre-10 February 2006 licences and 12 months deferral of the requirement to surrender ground at the end of year 5 for post-10 February 2006 licences is provided for in those cases where the holder, for specified reasons, is unable to conduct or complete planned exploration programs.

The onus is on the holder to provide evidence to support the application based on the criteria in regulation 22A of the *Mining Regulations 1981*.

Requirements of an Application:

- An application must relate to the licence the subject of the exemption/deferral.
- An application must be supported by satisfactory documentation in respect to the reasons for seeking the exemption/deferral.
- Where the licensee cannot supply the necessary documentation, a statutory declaration in lieu of documentation must be lodged with the application.
- Listed below are some examples of matters that can be considered to fall within the criteria specified in regulation 22A.

Note:

- Any licensee seeking exemption from/deferral of the compulsory surrender requirements should note that section 65(1a) provides that the Minister may grant such exemption/deferral either wholly or in part and on such terms and conditions as he thinks fit, therefore, the Minister's support will be sought for granting exemption from/deferral of the compulsory surrender requirements for less than the statutory requirement where circumstances warrant it. The size of the licence in question can also be a factor in this consideration.
- **When an Application is not supported** a 30-day notice will be issued where the reasons given or information supplied has not proved sufficient support for the application, and if no adequate further supporting information is received within this period, the application will be refused.

Prescribed grounds under regulation 22A of the *Mining Regulations 1981* (as provided by Transitional Provision 19 of the *Mining Amendment Act 2004*)

An application for exemption or deferral can be granted where the **Minister is satisfied that a prescribed ground exists.**

Each of the following is a prescribed ground under regulation 22A of the *Mining Regulations 1981* for the purposes of section 65:

22A(b) an exploration program, or the marking out and application for mining lease or general purpose lease in respect to the land the subject of the licence, could not be completed or undertaken -

i) by reasons of difficulties or delays occasioned by law

Acceptable reasons may include:

- Statutory provisions that prevented exploration being undertaken;
- Applications for forfeiture under section 96(1) that can be demonstrated to have prevented work being done or can be shown to have significantly disrupted planned exploration (not by Corporate Decision);
- Supreme Court actions that can be demonstrated to have directly resulted in a program of exploration being disrupted or abandoned (not by corporate decision);
- Any injunction or court order preventing exploration being undertaken.
- State Solicitor's Office opinion is that liquidation or financial difficulties of a company do not fall within the specified criteria of section 65 and therefore an exemption cannot be granted on this ground.

ii) by reasons of difficulties or delays arising from administrative, political, environmental or other requirements of governmental or other authorities, in the State or elsewhere

This includes:

- Any Government policy that restricts access for exploration.
- Strict conditions attached to the grant of the licence (eg dieback);
- Difficulties in obtaining access permits from vested authorities;
- Any Government policy that restricts access for exploration.

(iii) by reasons of difficulties or delays arising from the requirement to conduct Aboriginal heritage surveys on the land.

Reasons being:

- Delays to exploration because of the time taken to carry out a heritage survey or the inability to do so (the licensee however must provide evidence of negotiation and/or refusal to negotiate by the Aboriginal claimants or their nominated representatives);
- Any Government policy concerning the undertaking of Aboriginal Heritage Surveys that restricts access for exploration.

It is an offence to destroy or interfere with sites of significance. The accepted way of assessing whether an area is clear for exploration is to consult with the Native Title claimants and arrange for an Aboriginal Heritage survey to be carried out.

iii) by reasons of difficulties or delays in obtaining requisite consents or approvals for exploration or for the marking out of a mining lease or general purpose lease in relation to any part of the land.

Reasons include:

- No compensation agreements are yet in place, consent to enter has not been granted, or there is restricted entry to private land;
- Requests from Pastoralists not to enter licence areas where mining activities will damage roads after heavy rain, or while pastoral activities are taking place (eg. mustering or lambing);
- Licensee has sought consent to access reserved land and it can be shown that there was an unreasonable delay in obtaining that consent.

iv) by reasons of difficulties or delays in gaining access to the relevant land because of unfavourable climatic conditions

May include:

- Road closures by Local Government and/or Main Roads as a result of rain and inability to access pastoralists' tracks will be favourably considered only where it can be demonstrated that a work program was planned and then delayed or could not be completed because access to the ground was prevented by to the closure of the roads.
- Off road areas were inaccessible or the ground was unstable due to unfavourable climatic conditions (evidence should be provided to support any claim that unfavourable climatic conditions prevented the carrying out of work, such as drilling, gridlines etc, that had been scheduled prior to the onset of these conditions or that, subsequently, it was not possible to carry out any other work on the ground during the remainder of the relevant period).

Normal climate variations (e.g. wet season in the north of the state) would not generally justify an exemption as it is expected that these conditions are taken into account when planning exploration programs.

22A(c) *“work already carried out under the licence justifies further exploration”*

This reason allows for exemption for the purpose of continuing exploration where exploration is at an advanced stage and further work is warranted.

An application for exemption from the provisions of section 65 applied for under this reason is required to be supported by the following information:-

- Details of work carried out during the relevant period, including a table showing the type and extent of exploration activities and associated costs;
- An exploration index map showing drill holes and geochemical sample locations and areas of geophysical surveys, etc in relation to the licence boundary;
- Summary of results and an explanation why areas for relinquishment could not be selected; and
- Details of relinquishment sought for a lesser area (if applicable), accompanied by a map of the area proposed to be surrendered.

In addition, information as to the type and location (including a map) of work planned should be provided.

Work already carried out refers to work done on the affected licence during its term, and does not take into account:

- Work carried out on the same ground under a previous title; or
- Work carried out on other tenements within a project, irrespective of whether the project has been recognised (combined reporting status granted) or not.

This reason cannot be considered if no mineral exploration has been carried out on the licence during its term, even if substantial exploration has been carried out within the project as a whole.