



AMENDMENTS TO MINING ACT 1978

Mining Amendment Act (39 of) 2004

OUTLINE OF PRIMARY CHANGES

The Amendment Act was passed by Parliament on 26 October 2004 and, apart from the warden's court amendments, was proclaimed to operate from **10 February 2006** (herein after referred to as "commencement"). The amendments affecting the warden's court process became effective on 31 March 2007. The following is intended as an outline only of the primary changes to the *Mining Act 1978*.

Prospecting licence

Term (s.45)

A prospecting licence (applied for post commencement) has a term of 4 years with provision to extend for one further period of 4 years. If a prospecting licence has retention status (explained later in this document), there will be an ability to further extend the term.

NB: existing granted prospecting licences and applications made before commencement will be restricted to the current 4 year fixed term. However, in recognition of the new threshold test for mining lease applications, the holder of a prospecting licence which is due to expire within 12 months of the commencement will be able to apply for a new prospecting licence over the same land (new s.56B).

Special prospecting licence (SPL)

More than one SPL may be granted within an existing prospecting licence, but the written consent of the holder of the licence must first be obtained for each subsequent SPL application (s.56A).

More than 1 SPL per 200 hectares on aggregate of an exploration licence is allowed, but the written consent of the holder of the licence must first be obtained for each subsequent SPL application (s.70).

The previous limit of 3 SPL's per person has been lifted to 10.

Exploration licence

Size (s.57)

An exploration licence up to a maximum of 200 blocks is allowed in areas outside of known mineralised zones. These zones have been published in the Government Gazette and are depicted on the Department's Tengraph digital mapping system.

Term (s.61)

An exploration licence has a term of 5 years, with an ability to extend for a further period of 5 years, followed by 2 year periods. This is subject to criteria prescribed in the Regulations (similar to existing criteria).

NB: existing granted exploration licences and applications made before commencement will be restricted to the current extension provisions.

NB: the criteria for extension of term (for PL & EL), exemption from the compulsory surrender requirement and deferment are substantially the same.

Compulsory partial surrender (s.65)

Compulsory surrender of 40% of a licence is due at the end of the 5th year of term – this only applies to an exploration licence granted as a result of an application made after commencement.

NB: the requirement to surrender 50% of a licence at the end of the 3rd and 4th years of term remains for existing licences and a grant arising from an application lodged before commencement.

Exemption from compulsory partial surrender

From commencement there is no ability to apply for exemption from compulsory partial surrender in respect to new licences. This provision has been replaced with an ability to apply for deferment of the requirement for a once-only period of twelve months.

NB: the change from exemption to deferment only affects licences granted as a result of an application made after commencement.

Deemed surrender

For all exploration licences after commencement (old and new), the present “deemed” surrender of a licence for failure to lodge a compulsory partial surrender has been replaced with a provision rendering the licence liable for forfeiture. In other words, the licence may be retained, but it is likely the holder will be fined and required to subsequently lodge the required partial surrender or forfeiture of the licence could result.

Retention status

New sections 53 to 53B and 69A to 69E have been added to the Act to allow the holder of a prospecting or exploration licence to apply for “retention status” where a resource has been identified, but is not economic at present, is required to sustain future mining operations or other difficulties exist. This essentially mirrors current retention licence provisions, but a new title will not be required.

Only land where the resource has been identified as well as land required for infrastructure may be the subject of conversion of a licence to retention status, and the balance of the licence will expire. The licence will retain its identity as a prospecting or exploration licence, but the annual expenditure commitment will be replaced with a work program-based condition.

This amendment obviates the need to convert the licence to a retention licence.

NB: the provision only applies to prospecting or exploration licences granted as a result of an application made after commencement.

NB: the ability to convert to a retention licence remains available to mining leases and existing granted prospecting and exploration licences and any licence application made before commencement.

Mining lease

After commencement a mining lease application may only be applied for when accompanied by either a mining proposal to commence productive mining operations or a “mineralisation report” prepared by a qualified person plus a separate statement setting out information about proposed mining operations (s.74). A mining lease accompanied by a “mineralisation report” will only be approved where the Director Geological Survey considers that there is a reasonable prospect that the mineralisation identified will result in a mining operation.

NB: an application for a mining lease made before commencement will not be affected by the new threshold test.

General purpose lease

An application for a general purpose lease must be accompanied by either a mining proposal or a statement setting out the intentions for the land the subject of the application.

Securities

A \$5,000 security in the Form N^o 32 now applies to every mining tenement applied for after commencement.

Warden and Warden’s Court

Part 9 of the Amendment Act rationalises the different roles of the warden and the warden’s court. The Act empowers a warden with both administrative and judicial powers however, before amendment, the Act was unclear as to when and in what circumstances a warden acts judicially as opposed to acting in an administrative capacity, and as distinct from the role of the warden’s court.

This Part amends the Act to distinguish between the roles of the warden and warden’s court and a new provision provides for the warden’s separate powers and functions to be prescribed in the regulations.

Ongoing liability

New section 114B provides for the ongoing liability for tenement holders in respect to obligations that remain outstanding or require attention where a tenement is forfeited, surrendered or expires.

Project expenditure exemption

Section 102(2)(h) deals with exemption from annual expenditure requirements in respect to tenements deemed to be within a project. The provision is now clarified by providing that project expenditure exemption and calculation of “aggregate expenditure” may only relate to exploration expenditure.

Notification of ground to be released following compulsory partial surrender of an exploration licence

Section 65(5) & (6) provide a mechanism for release of land surrendered from an exploration licence. The scheme has been modified to providing 14 days' notice of all impending releases, ie, the date of release will be shown in Tengraph. During this period applications for a prospecting licence or mining lease may be marked out and, at 8.30am on the nominated day of release, such applications may be lodged with the Mining Registrar and will be entered into the ballot along with any competing exploration licence applications.

Audit of Form 5

New section 115B allows the Minister to request an audited statement from a tenement holder to verify expenditure claimed in annual operations reports.

Opportunity to “revert” from mining lease application to licence application

New section 120AA provides that an order of the Governor may be Gazetted creating a scheme to allow applicants for mining leases applied for before commencement “revert” back to application for exploration or prospecting licence, depending on each particular situation. This opportunity was in place for 12 months after commencement.

Each licence applied for under this “reversion” scheme is subject to the same provisions of the Act as other licence applications, with the following main exceptions:-

- Where a reversion prospecting licence application is identical to the lease application, there will be no need to mark out the land;
- Where a group of reversion prospecting licences is identical to existing prospecting licences being kept in force by a lease application (or applications), there will be no need to mark out the land;
- The only person who may object to a reversion application that is within or identical to the boundary of an existing lease application or applications is a person who already has an objection lodged against that lease application or applications;
- A reversion application identical to or within a lease application or applications will not need to be advertised under the Act, but existing notification requirements will apply; and
- Additional ground may be included with a reversion application (provided its available), but normal marking out, etc will apply.

If a lease application is keeping an existing licence in force, that position will be maintained, that is, the reversion licence application will keep the underlying licence in force until that application is determined. Should there be no licence underlying the lease application (same holder), any priority to the ground that a lease application has will also be maintained for the purposes of processing the new reversion licence application.

NB:- 58% of the 7,900 mining lease applications on foot at commencement opted for the reversion process, and the rest are now proceeding through the “right to negotiate” process required by the Commonwealth Native Title Act 1993.

Review of the effect of the Amendment Act

New section 163 provides for a review of the effect of the amendments being introduced 5 years after Royal Assent on 3 November 2004.

Escalating rent & expenditure provisions for exploration licences

From the next anniversary year following commencement rent and expenditure escalation will apply to those licence beyond year 3 of term:-

rental rates as at 1 July 2009		new expenditure rates *	
Years 1-3	\$118.58 per block	Years 1-3	\$1000 per block
4 & 5	\$184.58 per block	4 & 5	\$1500 per block
6 & 7	\$250.47 per block	6 & 7	\$2000 per block
8 onwards	\$474.32 per block	8 onwards	\$3000 per block

* Minimums will apply

Registration (“dealings”) provisions changed

Mining Amendment Act 54 of 1996 was passed by Parliament in December 1996, however the majority of provisions as outlined hereunder only became operational from 10 February 2006.

The main provisions of Mining Amendment Act 1996 are:-

- An agreement will no longer be able to be registered against a mining title. The instruments that may be registered are:
 - (a) a dealing (defined to mean a transfer or a mortgage);
 - (b) a discharge of a mortgage;
 - (c) a withdrawal of a mining tenement application; and
 - (d) a surrender.
- an equitable and contractual interest will not be registered against mining tenements but may be protected by lodgement of a caveat;
- the administration of the tenement register has been updated with all provisions relating to the tenement register now being consolidated in this Part, rather than in the Regulations;
- a new type of caveat has been introduced, referred to as a “subject to claim” caveat, where a dealing may be endorsed to acknowledge the prior claim of an existing caveator;
- provision has been made that where a caveat is recorded against a mining tenement, which is subsequently converted to a lease or retention licence, the caveat is deemed to also apply to the later tenement and the tenement register for that tenement will be endorsed accordingly. The caveat will apply to that later tenement from its date of grant.