

production of talc from the Tenements and, as such, the area of Three Springs and the Tenements should be regarded as a project area.

### **MINING AMENDMENT ACT 2001\***

#### **Introduction**

The *Mining Amendment Act* 2001 (the Amendment Act) amended the *Mining Act* 1978 (the Act) and its supporting Regulations, effective 17 and 18 January 2003 (respectively).

The Amendment Act introduces a number of discrete unrelated amendments to the Act which are straightforward and are 'necessary to enhance the efficiency of mining administration'<sup>1</sup> in Western Australia. The changes have been implemented after consultation with the Mining Industry Liaison Committee to overcome identified problems with the day to day operation of the Act.

#### **Overview**

The key aspects of the amendment package include:

- increases in penalties for breaches of the Act;
- broadening the definition of 'related' under the Act which is of key relevance to the 'cooling off period' restriction on reapplication for mining tenements;
- adjusting the 'exclusion zones' for crown land in relation to improvements on land (residences, farm installations, etc) to align that zone with the 'exclusion zones' applying on private land; and
- provisions to simplify procedures for the small prospector.

The following is an overview of key elements of the amendment package.

#### **Penalties and Enforcement**

The penalties applicable under the Act have been substantially increased.

*Penalties for breach of mining tenements:* The maximum fine a Warden can impose as an alternative to ordering forfeiture for breach of an Exploration or Retention Licence is \$50,000 (previously \$10,000). A Warden can also recommend that the Minister impose a \$50,000 maximum fine (previously \$10,000) in lieu of forfeiture for breach of a Prospecting Licence, Miscellaneous Licence, Exploration Licence or Mining Lease.

In addition, the fines the Minister can impose as an alternative to his or her right to order forfeiture of a mining tenement (or as an alternative to a Warden's recommendation to the Minister that a mining tenement be forfeited) have been increased to a maximum of \$50,000 (previously \$10,000), or a maximum of \$10,000 if the breach relates to expenditure conditions on an Exploration Licence.

*General penalties:* The general penalty which applies if a person commits an offence where no other penalty is prescribed under the Act has been increased from \$5,000 to \$10,000.

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<sup>1</sup> 'General Outline', *Mining Amendment Act* (2001) Explanatory Memorandum.

*Unauthorised mining:* The penalty for carrying on mining which is not authorised under the Act has been increased from \$10,000 to \$100,000 (with a \$10,000 fine for each day the offence continues (previously \$1,000 per day)).

*Hindering mining operations:* The fine for obstructing a holder of a mining tenement without a lawful excuse, when the holder is reasonably executing their rights, carries a penalty of \$10,000 (previously \$5,000).

*Regulations:* Regulations under the Act may validly impose a fine of up to \$10,000, where the previous maximum fine allowed under any regulations was \$5,000.

*Enforcement:* Section 140 of the Act has been amended to provide that an order made by the Warden's Court for the payment of money can be executed against property by a bailiff of the Warden's Court or the relevant local court.

### **Related persons and corporations**

The Act provides that if a Prospecting Licence or Exploration Licence is surrendered, forfeited or expires in accordance with the Act, the person (or corporation) who:

- held that mining tenement; or
- held an interest in that tenement, and

their respective related persons or corporations, cannot apply for a Prospecting Licence or an Exploration Licence over the same area of land for a period of three months (whether that application is made directly or on that person's behalf).

The Amendment Act expands the meaning of the word 'related' for both corporations and individuals and aligns the term, in the case of corporations, with related entity definitions in the Corporations Act.

The revised definitions of persons who will be considered to be related to a person or corporation are as follows – Section 8(4):

For the purposes of the Act, a person will be considered to be related to:

- (a) **an individual**, if the person is -
  - (i) the spouse or de facto spouse<sup>2</sup>;
  - (ii) a parent or remoter linear ancestor;
  - (iii) a son, daughter or remoter issue; or
  - (iv) a brother or sister,  
of the individual; and
- (b) **a body corporate**, if the person is a related entity<sup>3</sup> in relation to the body corporate.

A number of consequential or ancillary amendments have been made to the Act. For example, s 105A(6) has been introduced. It clarifies that, where applications for mining tenements have been received simultaneously, and accordingly the Warden is to hold a ballot, then in exercising

<sup>2</sup> The term 'de facto spouse' is as defined in the Corporations Act to mean a member of the opposite sex (same sex couples do not presently qualify as de factos for the purposes of the Corporations Act) living with a person as a spouse on a genuine domestic basis.

<sup>3</sup> As that term is defined in the Corporations Act. The current Corporations Act definition is cast widely to include promoters, directors and members of a body corporate, and their respective relatives, de facto spouses and the relatives and de factos spouses' respective relatives, certain beneficiaries of trustee corporations and their relatives and de facto spouses, and entities related to that body corporate.

his or her discretion to determine if two or more applications have been lodged by, or on behalf of the same party to affect the ballot, an application will be taken to have been lodged by or on behalf of a party if it is lodged by a person 'related' to that party.

### **Other amendments**

*Standardising buffer zones:* Prior to the Amendment Act, mining cannot occur on Crown Land within a 'buffer zone' being 100 metres from improvements<sup>4</sup> or 400 metres from certain water sources on pastoral land, unless the occupier's written consent is obtained.

The equivalent buffer zone for mining on 'private land' in the vicinity of improvements provide for mining carried on at a depth of at least 30 metres below the buffer zone without a requirement to obtain consents. Section 20 of the Act has been amended to align the Crown Land buffer zone with the 'private land' buffer zone.

*Co-existence issues:* A new provision, s 43, has been inserted into the Act to clarify the position in relation to Prospecting Licences granted over existing mining tenements.<sup>5</sup> Prior to the Amendment Act, Prospecting Licences could be applied for over land, some of which was the subject of an existing mining tenement, but any grant would exclude the land the subject of the existing mining tenement. The amendment is of a technical nature to provide that any Prospecting Licence granted will not include land which is the subject of an existing mining tenement and has been added to clarify that encroachment on an existing title would not be invalid under s 18 of the Act.

Section 57(2)(e) of the Act has been updated to allow an Exploration Licence to be granted area the subject of a Miscellaneous Licence, and is consistent with the fact that Miscellaneous Licences and other mining tenements can co-exist.

*Streamlining applications for exemptions from expenditure conditions:* Sections 102 and 102A of the Act have been amended to clarify that an application for exemption from expenditure conditions may relate to more than one mining tenement so that tenement holders are not required to make multiple applications which provide the same information. Presumably, each mining tenement will continue to be considered separately to determine whether it is appropriate to exempt that tenement from expenditure conditions.

*Streamlining applications for gold prospecting:* Where a Special Prospecting Licence has been granted and the underlying mineral tenement is surrendered, forfeited or expires, the 'Special Prospecting Licence' automatically becomes a normal Prospecting Licence. This was not the case, however, with special prospecting 'applications' before that application has been determined. The applicant would be required to re-apply for a normal Prospecting Licence. Under the amendments, an application for a Special Prospecting Licence is now deemed to be an application for a normal Prospecting Licence in these circumstances.<sup>6</sup>

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<sup>4</sup> Improvements include, among other things, crops, orchards, vineyards, airfields, houses, other substantial buildings and cemeteries (s 20(5)(a)-(e)).

<sup>5</sup> A consequential amendment has been made to s 44 of the Act.

<sup>6</sup> Sections 56A, 70, 85B, however s 56A(12) of the Act qualifies that there is no such conversion when the primary tenement is amalgamated with an Exploration Licence or converted to a Mining Lease or Retention Licence.

*Prospecting – natural persons:* When an application for an Exploration Licence is made under the Act, the application must include a statement of financial resources. Section 58(1aa) removes this requirement when a natural person applies for an Exploration Licence over four blocks or less, and that applicant intends to use their own labour to carry out the intended program of work.

The annual expenditure requirement will still apply to these Exploration Licences. However, to calculate annual expenditure when own labour is used, the Regulations have been amended to provide that the tenement holder's labour can be claimed as expenditure at the rate of remuneration for a similar activity under a contractual arrangement.

*Partial surrender of Exploration Licence:* The Amendment Act allows for the surrender of part of a block. Partial blocks may need to be surrendered in special circumstances including if required to facilitate third party infrastructure and other requirements.<sup>7</sup> The consent of the Minister or authorised officer is required to permit a partial surrender given the underlying policy of surrendering whole blocks continues to apply.

Lodgement of expenditure reports under the Regulations will no longer apply on surrender of a partial tenement.<sup>8</sup>

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<sup>7</sup> As noted in the explanatory memorandum.

<sup>8</sup> Regulations 22, 23E, 32.