

- for the standardisation of the provision of security by tenement applicants;
- that holders of prospecting licences, exploration licences, retention licences and mining leases must provide geological samples obtained in the course of operations when requested by the Minister; and
- for the increase of the availability of special prospecting licences on primary tenements subject to the consent of the primary tenement holder.

Significant details remain to be provided in guidelines and regulations, particularly as to the nature of a mining proposal and the powers of the Warden on hearing applications. Moreover it is suggested there needs to be clearer specification of the manner of review of a mining proposal by the Warden and Minister.

But it is clear that many of these amendments are overdue, particularly as to the right to a mining lease and the clarification of the role of the Warden and Warden's Court. The amendments have the support of the Chamber of Minerals and Energy. But their passage through the Parliament is by no means assured given the limited time remaining before an election is due.

SURRENDER OF PROSPECTING LICENCE AND PROVISIONAL LODGMENT*

Fleetdale Pty Ltd v Michael Francis Madigan ([2003] WAMW 20, Meekatharra Warden's Court, Warden Wilson SM, 19 December 2003)

Objections to Application for Prospecting Licence – Surrender of Prospecting Licences without instruments of licence – Application for duplicate instrument of licence – Provisional lodgment – Section 103A(3), Mining Act 1978

Prospecting Licences 51/2234 and 51/2235 (Former Tenements) were held by Western Resources & Exploration Pty Ltd (WRE). WRE had lost the original instruments of licence for the Former Tenements. At 3.25pm on 7 February 2002, WRE lodged a Form 12, Surrender of the Former Tenements at the office of the mining registrar with applications for copy documents in lieu of the lost original licence documents.

At 5.30pm on 7 February 2002, Fleetdale Pty Ltd (Applicant) marked out two prospecting licences (applications for which were lodged on 8 February 2002) (Applications). The Applications covered the identical area of the Former Tenements.

Mr Madigan (Objector) objected to the Applications on two grounds:

- that there was not a valid surrender of the Former Tenements under the *Mining Act 1978* (Act) or the *Mining Regulations 1981* (Regulations) and, therefore, no ground was available at the time the Applications were marked out; and
- that a relationship existed between WRE and the Applicant in contravention of s 45 of the Act.

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The only evidence presented by the Objector in respect to the second ground of objection was that WRE and the Applicant had the same address. The Warden found this evidence insufficient and held that there was no contravention of s 45 of the Act. The majority of the Warden's reasons for decision were directed to the first ground of objection.

Section 95 of the Act permits the holder of a mining tenement to surrender that tenement in the prescribed manner. Regulation 43 of the Regulations states that a surrender must be lodged "with the instrument of lease or licence (if issued)". In the event that an instrument of lease or licence is lost, destroyed or obliterated, reg 105 provides for a person to lodge an application for a copy of the instrument to be issued (Form 29).

If a licence document for a tenement intended to be surrendered has been misplaced, it has been a long standing and common industry practice to lodge the surrender form together with an application for copy document in place of the lost instrument of lease or licence. The Department of Industry and Resources (DoIR) has neither processed the application for copy document nor issued a replacement instrument of licence.

The Objector submitted that in the circumstances WRE had not complied with the strict requirements of s 95 and reg 43 in that it had not lodged the surrender form with the licence document. Accordingly, at the time of the Applications being marked out, it was contended that the Former Tenements remained live and there was no ground available for the marking out of the Applications.

The Warden found that the language of the Act was mandatory and that it was essential that a surrender be lodged with the licence document if a licence document had been issued, regardless of whether that original licence document had been lost or otherwise was unavailable.

The Warden did not, however, refuse the Applications due to there being no ground available. Instead, the Warden stated that the DoIR were entitled to accept the surrender pursuant to s 103A of the Act as a document received for provisional lodgment. Section 103A(3) permits an authorised officer to accept a "document" that is "erroneous or defective". The Warden considered that it enabled an officer to accept a document that is correctly drafted, but had been lodged without a mandatory accompanying document. The Warden stated that the DoIR is then obliged to issue the copy instrument of licence and, once the register shows that the copy instrument has been issued, the surrender may be registered as at the time and date of its provisional lodgment pursuant to reg 107A(3). The Warden adjourned the Applications to permit the Mining Registrar, if he so chose, to issue the copy licence and amend the register in the manner described.

The Warden's strict application of the provisions of the Act was to ensure that the register kept by the DoIR accurately records all dealings with a mining tenement, including a record of the provisional lodgment of a surrender and the issue of a copy document. The Warden was concerned that the register should alert the public dealing with mining tenements that the original instrument of licence may be in the hands of a person not authorised to possess it. This decision may also extend the operation of the provisional lodgment provisions of the Act beyond what has formerly been accepted by the DoIR.