



# Applying for an exemption from expenditure conditions

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

## Document Hierarchy

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

## Version History

| <b>Version</b> | <b>Date</b>   | <b>Changes</b>    |
|----------------|---------------|-------------------|
| 1.0            | 25 June 2020  | First publication |
| 2.0            | December 2020 | Revised Version   |

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## Purpose

The purpose of this guideline 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

These guidelines relate specifically to the temporary arrangements provided for in the Mining Amendment (COVID-19 Response) Regulations 2020 and how these will be administered by DMIRS during the period in which they are in effect.

## Legislation

### Applications for exemption from expenditure requirements

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 on prospecting and exploration licences.

The Act also recognises that there are particular circumstances in which 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. The 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.

### COVID-19 Response

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.

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. While this could be permissible under section 102(3) of the Act and regulation 54 of the *Mining Regulations 1981* (Mining Regulations), the temporary COVID-19 Response Regulations were introduced to provide certainty of this position and support timeliness of assessments.

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

## 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 a COVID-19 based application for exemption to be lodged with a statement providing evidence of the impact of COVID-19 on the applicant's ability to meet the expenditure requirements (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).

The Mining Regulations were amended as of 1 July 2020 to specifically provide for the lodgement of applications for exemption in regard to COVID-19 reasoning to the holders of prospecting and exploration licences. Regulation 55 was inserted prescribing COVID-19 as a reason for exemption under section 102(3).

## What happens at the end of the temporary period?

Both the existing arrangements and the temporary COVID-19 arrangements will operate in parallel until 30 June 2021. The temporary arrangements are set to cease at close of business on 30 June 2021.

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.

## Guideline for applications citing COVID-19

If you are the holder of a prospecting licence or an exploration licence and you can provide a statement and evidence that your ability to meet your expenditure conditions has been impacted by COVID-19 or the government's legislated response to the pandemic, you can apply for an exemption via the temporary COVID-19 arrangements (section 102(3) and regulation 55), or for multiple reasons including COVID-19 reasons, accompanied by a statement of evidence. A summary of this information is presented in Figure 1.



## **1. Temporary COVID-19 reasons only (regulation 55)**

If the application cites COVID-19 only under regulation 55 it 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);
- lodged (with all the information correctly completed) within 60 days of the anniversary date of the tenement; and
- 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 under a written law 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.

A statutory declaration is not required.

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

## **2. Multiple reasons including COVID-19 (Sections 102(2) and 102(3))**

If multiple reasons including COVID-19 are applied for on the same application then:

- the Form 18 application must be accompanied by a statement and evidence of COVID-19 (regulation 54(4)) impacts
- within 28 days of application, a statutory declaration (as required by regulation 54(3)) must be lodged evidencing the other non COVID-19 reasons applied for.

The application is published with a 35-day objection period.

## **3. Non COVID-19 applications for exemption (Sections 102(2) and 102(3))**

If you wish to apply for an exemption based on multiple grounds, without mention of the impacts of COVID-19, you are required to use the existing process. This is summarised in the figure below and further information is available in the [Guideline: Applications for exemption from expenditure conditions](#).

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