



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

# REVIEW OF THE OPERATION AND EFFECTIVENESS OF THE MINING ACT 1978 AS AMENDED BY THE MINING AMENDMENT ACT 2004 (WA)

Report to Parliament as required by section 163 of the Mining Act 1978

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## LIST OF ABBREVIATIONS

<b>AMPLA</b>	Australian Mining and Petroleum Law Association
<b>APLA</b>	Amalgamated Prospectors and Leaseholders Association
<b>CME</b>	The Chamber of Minerals and Energy Western Australia
<b>DEC</b>	Department of Environment and Conservation
<b>DMP</b>	Department of Mines and Petroleum
<b>DSD</b>	Department of State Development
<b>EPA</b>	Environmental Protection Authority
<b>EP Act</b>	<i>Environmental Protection Act 1986</i>
<b>eMiTs</b>	DMP's electronic mining tenement register system
<b>GSWA</b>	Geological Survey of Western Australia
<b>JORC</b>	Joint Ore Reserves Committee
<b>MILC</b>	Mining Industry Liaison Committee
<b>NTA</b>	<i>Native Title Act 1993 (Commonwealth)</i>
<b>NTRB</b>	Native Title Representative Bodies
<b>SPL</b>	Special Prospecting Licence
<b>the Act</b>	<i>Mining Act 1978</i>
<b>the Amendment Act</b>	<i>Mining Amendment Act 2004</i>

# 1 INTRODUCTION

The *Mining Amendment Act 2004* (the Amendment Act) was passed by Parliament on 26 October 2004 and its operation commenced on 10 February 2006.

Section 163 was added to the *Mining Act 1978* (the Act) by the Amendment Act. This section stipulates that a review of the operation and effectiveness of the Act as amended by the Amendment Act is to occur within 6 months after the 5<sup>th</sup> anniversary of the day the Amendment Act received Royal Assent. That date was 3 November 2004 and the review was completed in April 2010. Section 163 also requires that a report based on the review be tabled in both Houses of Parliament as soon as practicable.

It should be noted that this review, is a review of the operation and effectiveness of the Act **as amended by the Amendment Act** and is not a review of the whole Act.

## Review Methodology

Mining industry representative bodies, as well as the Departments of State Development (DSD) and Environment and Conservation (DEC), native title representative bodies (NTRB's) and wardens were given the opportunity to contribute to the review. A public notice was also placed in the newspapers and affected internal divisions within DMP were also consulted.

The invitation was for a period of 2 months ending 31 October 2009 (the public advertisement was for a longer period). In that time CME sought and was given an extension to 10 December 2009 to lodge a submission and it was duly received on that date. From industry groups, only CME responded to the review, with other comments received as follows:

**DSD** – provided submission.

**DEC** – advised it had no issue with the amendments.

**NTRB's** – no response.

**Wardens** – responded with some minor issues.

**Newspaper public advertisement** – one submission received from a mining company.

Combined comments, including DMP's position on issues raised, were then circulated to industry for further comment. From industry groups only **APLA**, **AMPLA** and **CME** provided further comment.

## **Review Document**

This 'Review' document comprises six sections, this introduction; the objectives of the Amendment Act; an appraisal of the effectiveness of the Amendment Act; a list of recommendations flowing from the review; commentary on the main provisions of the Amendment Act and submissions arising from the review.

There were very few submissions received and only CME responded in detail. The submissions made by CME and others are addressed in section 6 of this review.

Six recommendations have come out of the review of these submissions.

The recommendations, if supported by Mining Industry Liaison Committee (MILC), will require changes to the Act which will improve the operation and effectiveness of the Act.

## **Review Outcome**

As a general comment, the amendments introduced by the Amendment Act have had a positive effect on the operation of the Act.

## **2 OBJECTIVES OF THE MINING AMENDMENT ACT 2004**

The objective of the Amendment Act is to implement important and strategic amendments required to the Act that ensure the Act remains dynamic and able to meet the needs of the mining industry into the future.

The Amendment Act incorporates recommendations from the technical taskforce on native title, the ministerial inquiry into greenfields exploration in Western Australia and the Keating review of the project development approvals system.

The Amendment Act implements a range of changes to the Act and section 5 of this review details the main changes. The objectives of the more salient amendments include:

### **2.1 REVERSION SCHEME**

A major objective of the amendments is to provide for the progressive removal of the backlog in mining lease applications which at the time of commencement of the Amendment Act stood at 7,810. The amendments introduced a process which enables mining lease applicants to revert (Reversion Scheme) back to prospecting or exploration licences over a 12 month period.

### **2.2 NEW THRESHOLD TEST FOR MINING LEASES**

The amendments introduce a “Threshold Test” which limits the number of future applications for mining leases to only those where the applicant has established significant mineralisation or has a mining proposal.

### **2.3 EXTENSION OF TERMS**

The amendments provide for new extension of term provisions for ‘new’ prospecting and exploration licence holders, which allow the holders more time to explore.

### **2.4 SIZE OF EXPLORATION LICENCES**

The amendments provide that outside designated established “mineralised zones” exploration licences (up to 200 blocks) may be applied for.

### **2.5 NEW COMPULSORY PARTIAL SURRENDER REQUIREMENTS**

The amendments introduce new compulsory partial surrender requirements for exploration licences, the holder, at the end of the 5<sup>th</sup> year of the term must reduce the licence area by 40%.

## **2.6 DEFERMENT OF COMPULSORY PARTIAL SURRENDER REQUIREMENT**

For “new” exploration licences the ability to apply for an exemption from the compulsory partial surrender requirement has been removed and replaced with the ability to apply for a one year deferment.

## **2.7 RETENTION STATUS**

The holder of a “new” prospecting or exploration licence can apply for retention status subject to certain criteria, in lieu of applying for a retention licence.

## **2.8 WARDEN’S COURT**

The amendments address the need to separate and clarify the different roles and powers of the Warden as distinct from the Warden’s Court.

## **2.9 DEALINGS**

The amendments enabled important changes to the “dealings” provisions of the Act to be implemented.

### **3 EFFECTIVENESS OF THE MINING AMENDMENT ACT 2004**

The review into the operation and effectiveness of the Act as amended by the Amendment Act attracted very few submissions and only CME responded in detail. A general conclusion could be drawn from this low number of submissions that the amendments to the Act have been a success.

This is reinforced by the fact that only six recommendations have come out of the review. This small number of recommendations reflects the general acceptance by the mining industry of the amendments.

Submissions received from those that responded to the review were limited to suggested amendments (which have been considered as part of this review), rather than to any specific commentary on the effectiveness of the new and changed provisions of the Act arising from the amendments.

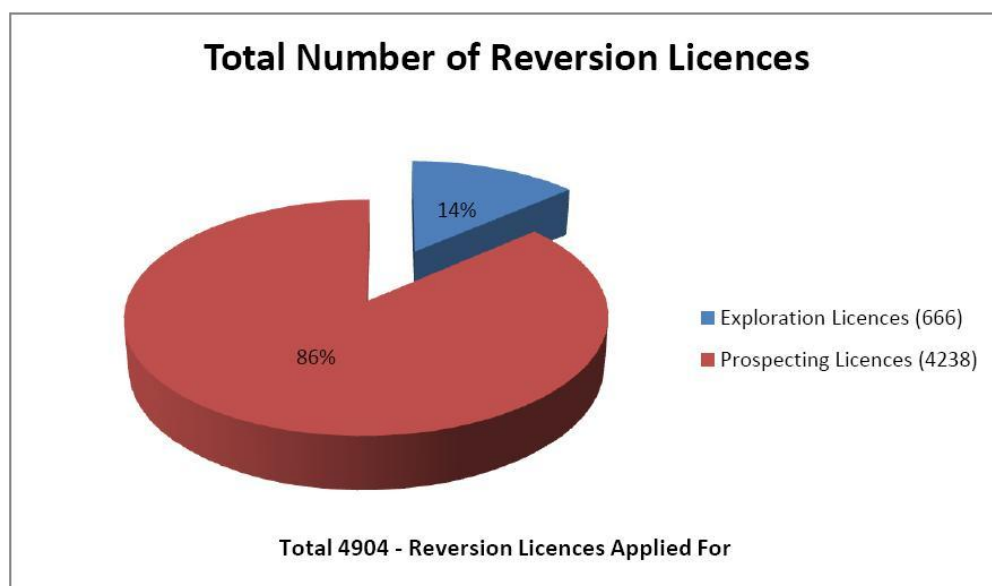
In section 5 of this review there is commentary on the main provisions of the Amendment Act and this commentary does include some detailed references to the effectiveness or otherwise of the amendments.

The review has established that the Amendment Act has had a positive impact on the operation and effectiveness of the Act, highlighted by:

#### **3.1 REVERSION SCHEME**

Allowing applicants for mining leases to revert to prospecting and exploration licence applications has reduced the mining lease backlog while allowing exploration to continue. This has been a highly successful exercise enabling a clear distinction to be established between the different uses envisaged for these titles.

The number of outstanding mining lease applications fell from a high of 7,810 in February 2006 to 1,423 as at April 2010 and a total of 4,904 reversion licence applications were received during the reversion period (666 exploration licences and 4,238 prospecting licences).



### 3.2 NEW THRESHOLD TEST FOR MINING LEASES

The amendment has clarified that a mining lease is only available to those who intend to mine, rather than use it as a vehicle for continued exploration, which has been the case in the past.

The threshold test has reduced the number of mining lease applications from pre-amendment levels of 1,000 annually to 75 annually.

Notice should be taken of **Recommendation 3 - MILC** to consider supporting an amendment to the Act which provides for applicants for 'new' mining leases who have met JORC category – 'inferred resource' to be exempt from the requirement to lodge a mineralisation statement.

### **3.3 EXTENSION OF TERM**

The amendment has allowed holders of ‘new’ prospecting and exploration licences more time to explore and meet the new threshold test for mining leases.

### **3.4 SIZE OF EXPLORATION LICENCES**

Allowing 200 block exploration licence applications outside designated “mineralisation zones” provides administrative efficiencies for the mining industry. A total of 519 applications for 200 block exploration licences have been received to date.

### **3.5 NEW COMPULSORY PARTIAL SURRENDER REQUIREMENTS**

Moving the rationalisation of ground (40%) to the 5<sup>th</sup> year enables exploration licence holders more time to explore the whole of the ground before having to rationalise the ground.

### **3.6 WARDEN’S COURT**

Warden’s Court practice and procedure has been enhanced and is operating effectively. In section 6.3 the Wardens are only seeking technical amendments.

### **3.7 DEALINGS**

Dealing provisions have been amended and are operating effectively, only one submission received but not supported, refer section 6.1.5.2.

## 4 LIST OF RECOMMENDATIONS

Six main recommendations have come out of this review into the operation and effectiveness of the Act as amended by the Amendment Act.

The small number of recommendations reflects the general acceptance by the mining industry of the amendments which have been in operation for some time.

The recommendations, if implemented, will further improve the operation and effectiveness of the Act.

### RECOMMENDATION 1 (Section 6.1.1.2)

Mining Industry Liaison Committee (MILC) to consider supporting the removal from the Act of the deferment provision for 'new' exploration licences, and replacing it with the requirement for 40% compulsory partial surrender at the end of year six.

### RECOMMENDATION 2 (Section 6.1.1.2)

Mining Industry Liaison Committee (MILC) to consider supporting an amendment to the Act which provides for a limited "special circumstances" exemption from compulsory partial surrender for 'new' exploration licences subject to strict and specific criteria.

### RECOMMENDATION 3 (Section 6.1.2.1)

Mining Industry Liaison Committee (MILC) to consider supporting an amendment to the Act to enable holders of 'old' prospecting licences to apply for a further prospecting licence prior to expiry.

### RECOMMENDATION 4 (Section 6.1.4.2)

Mining Industry Liaison Committee (MILC) to consider supporting an amendment to the Act which provides for applicants for 'new' mining leases who have met JORC category – 'inferred resource' to be exempt from the requirement to lodge a mineralisation report.

### RECOMMENDATION 5 (Section 6.2.2.2)

Mining Industry Liaison Committee (MILC) to consider supporting an amendment to the Act to remove the requirement for partial surrender for those exploration licences with retention status approved.

### RECOMMENDATION 6 (Section 6.3)

Mining Industry Liaison Committee (MILC) to consider the comments

received from the Wardens and, where appropriate, implement amendments to the Act and Mining Regulations.

## **5 COMMENT ON MAIN PROVISIONS OF THE AMENDMENT ACT 2004**

### **5.1 PROSPECTING LICENCE**

The term of a prospecting licence applied for and granted after commencement of the Amendment Act now includes an opportunity to extend the initial four year term for another four years.

#### **COMMENT**

The term of existing prospecting licences (pre 10 February 2006) are limited to four years with no extension opportunity. This set four year term was introduced in 1994 replacing the then two year term plus one extension of two years that applied before then.

As a by-product of the change to a 4 + 4 year term, there is perceived disparity with the rights of the holders of the older prospecting licences that had a set four year term therefore provision was made in the Amendment Act to enable these holders to re-apply for the ground as a new prospecting licence before expiry of their older prospecting licence. It is noted, however, that the first of the post February 2006 prospecting licences are only due to reach the end of the initial four year term towards the end of 2010, with an initial 68 due to expire (or apply for term extension) this year.

Since the commencement of the Amendment Act 9,595 prospecting licences have been applied for to 16 April 2010 and it is recognised that processing and assessment of extensions of term for prospecting licences will be an added workload for DMP.

The move to a 4 + 4 year term was largely a response to the removal of the former right to convert to mining lease and replacement with a threshold test before a mining lease may be applied for (refer to mining lease section hereunder). That is, more time to prospect the land is provided with the longer term so that a licence holder will be in a better position to rationalise ground retention in due course. Only those prospecting licences that have a resource ready to mine or have established mineralisation to support a future mining operation will qualify for conversion to mining lease.

### **5.2 SPECIAL PROSPECTING LICENCE**

More than one special prospecting licence (SPL) can be granted within an existing prospecting or exploration licence (referred to as a primary tenement) with the written consent of the holder of the primary tenement. In respect to exploration licences the number is limited to one SPL per 200 hectares on aggregate.

The present limit of 3 SPL's per person has been lifted to ten.

## **COMMENT**

Provisions relating to SPL's have been amended many times since their introduction in 1982 and the above amendments were introduced with this Amendment Act, primarily to allow greater flexibility for the number of SPL's allowed per primary tenement. No issues have been raised with their operation.

### **5.3 EXPLORATION LICENCE**

Several initiatives relating to exploration licences were included in the Amendment Act, primarily as a response to the mineralisation statement, threshold test that now applies to mining lease applications.

#### **5.3.1 Size for Exploration Licence**

Outside designated established 'mineralised zones', exploration licences of up to 200 blocks may be applied for, whereas before the amendment an exploration licence was restricted to 70 blocks.

#### **COMMENT**

Since the introduction of this provision, 519 applications for 200 block exploration licences have been received and this initiative is operating effectively. Initially there had been some confusion in instances where these larger applications encroached onto both the 200 block zones and the existing 70 block areas, however this has been clarified.

#### **5.3.2 Term of Exploration Licence**

Pre 10 February 2006 exploration licences have an initial five year term with provision for a further two extensions for two year periods, followed by further one year periods in 'exceptional circumstances'. The five year term has been retained, however the first extension for post 10 February 2006 licences is now for a period of five years, followed by two year periods, provided prescribed criteria are met.

#### **COMMENT**

As a compromise for allowing longer terms for exploration licences as well as a later (and less area reduction) compulsory partial surrender point, annual rent and expenditure escalation has been included for licences beyond the third year of term. This trade-off between holding land for longer periods but at the cost of escalating rent and expenditure is a factor industry must take into account when assessing whether to continue with retention of ground.

As with prospecting licences, the first of the 'new' exploration licences have yet to reach the end of the initial term, however no issues are envisaged or have been raised to date.

### 5.3.3 Compulsory partial surrender requirements for an Exploration Licence

Compulsory partial surrender of 40% of an exploration licence will be due at the end of the 5<sup>th</sup> year of the term of the licence granted as a result of an application made after commencement.

#### **COMMENT**

Pre 10 February 2006 exploration licences have a compulsory partial surrender requirement of 50% at the end of year three and 50% at the end of year four (total 75%). This was included in the Act when it became operational in 1982 as the main catalyst to ensure ground turnover occurred on a systematic basis and to prevent ground being held unexplored.

In order to assist industry in meeting the new threshold test to qualify for conversion to mining lease, the compulsory surrender requirement was eased from the 3<sup>rd</sup> and 4<sup>th</sup> years to a one-off requirement for 40% reduction at the end of year five. This is also the rationalisation point for extension of term for 'new' exploration licences.

Although no post 10 February 2006 exploration licences have reached the 5<sup>th</sup> year compulsory surrender stage, there is some perceived inequity between the 'old' and the 'new' exploration licences. Primarily this is because, before the Amendment Act became effective, the holder of a licence had a right to convert to mining lease and the ground was able to be retained by applying for mining leases within this surrendered area. With the new mining lease threshold test this is now not possible as significant mineralisation must be demonstrated.

In response to this issue, an amendment has been made to the *Mining Regulations 1981* to make the criteria for exemption from compulsory surrender more favourable for the pre 10 February 2006 exploration licences.

### 5.3.4 Deferment of compulsory partial surrender requirement

The current ability to apply for exemption from compulsory partial surrender is being phased out with the eventual expiry of the pre 10 February 2006 exploration licences. For post 10 February 2006 licences, this has been replaced with an ability to apply for a one year only deferment of the compulsory partial surrender requirement at the end of year five.

#### **COMMENT**

Consideration could be given to removal of the deferment option from the Act, with the compulsory partial surrender point being moved to the end of year six. This has two main benefits:-

- It obviates the need to lodge, assess and process a one year deferment option that industry indicates most holders will take advantage of; and

- The holders of exploration licences have more time to make a better informed decision on how to rationalise their tenement holdings and/or assess conversion to mining lease at a later point than exists at present.

Further consideration will be given to retaining a limited opportunity to apply for exemption from compulsory partial surrender, but only based on the development of strict and specific criteria.

#### 5.4 RETENTION STATUS

The holder of a prospecting or exploration licence can apply for retention status where a resource: has been identified; is not economic at present; is required to sustain future mining operations or due to other difficulties.

##### COMMENT

The ability to convert a mining lease, prospecting licence or exploration licence to a retention licence has been available in the Act since 1994, however it is rarely used. The concept was to cater for those instances where a resource has been identified but is currently uneconomic and therefore a 'holding title' becomes an option.

The introduction of the NTA at about the same time as the advent of the retention licence had an impact on the use of this title and in 15 years only 66 have been applied for. As a retention licence is a 'future act' under the NTA, it requires negotiation with native title holders and claimants before grant can occur. From an industry perspective, it has therefore been preferable to retain the existing lease or licence rather than applying for a retention licence to avoid the added process and cost of negotiating with native title holders or claimants.

As a consequence 'retention status' was developed to enable post 10 February 2006 prospecting and exploration licences to move away from annual expenditure obligations by seeking the Minister's approval for these licences to have 'retention status' without the need for a new title, provided a resource has been identified to at least 'inferred resource' status under the JORC Code. In essence, the same rules that apply to the retention licence apply to retention status, but without the need for a change of title.

Retention status may only be approved over the area of an identified resource plus future infrastructure requirements and not necessarily the whole licence. Some in industry believe the whole area of the licence should be able to be retained under retention status, even though parts of a licence remain to be explored. To date there has only been one application for retention status.

This view of retention status was not supported at the time the Amendment Act was being developed and remains the current position. The principle of retention status remains – it is only intended for those who have completed exploration and established a JORC resource. Approval of retention status is based on that resource area plus additional areas required for future infrastructure and this will not necessarily be the whole licence. To tie up

land by approving retention status for the whole of a licence as a matter of course is not in the best interests of the State.

## 5.5 MINING LEASE

### 5.5.1 New 'threshold test' before a mining lease may be applied for

Prior to 10 February 2006, a mining lease was able to be applied for as of right, the need to demonstrate significant mineralisation was a not a requirement.

The Amendment Act introduced a process whereby mining leases may only be granted where significant mineralisation has been established or, alternatively, a mining operation is ready to proceed.

#### **COMMENT**

This has caused some problem for the holders of fixed four year term prospecting licences; however this initiative has achieved the effect intended. The new threshold test has reduced the number of mining lease applications lodged annually from pre-amendment levels of 1,000 per year to 75 per year. This has meant that only those that seek to actually mine a resource or have established the existence of a significant mineralisation are applying for mining leases.

### 5.5.2 Mineralisation assessment

After the commencement of the Amendment Act, a mining lease application which is accompanied by a 'mineralisation report' will only be granted where significant mineralisation has been established.

#### **COMMENT**

Before commencement of the Amendment Act, the holder of a prospecting or exploration licence had a right to convert the title to mining lease, notwithstanding that significant mineralisation may not have been demonstrated. The subsequent grant of the mining lease would enable continued exploration in circumstances where extension of term of a licence could not be justified or as part of compulsory partial surrender rationalisation.

With commencement of the Amendment Act, a mining lease may only be granted where either a mining proposal is lodged or significant mineralisation has been established. 'Significant mineralisation' is defined in the Act to mean "*a deposit of minerals located in, on or under land that indicates there is a reasonable prospect of minerals being obtained by mining operations*". Guidelines have been published by DMP to assist applicants in preparing a mineralisation report.

The preferred option is that this resource criterion be based on 'inferred resource' level in accordance with recognised JORC

Code, a level similar to the present 'significant mineralisation' test. As a compromise the 'significant mineralisation' test will be retained, however a recommendation is to amend the Mining Act to encourage JORC standards to be met (refer section 6.1.4).

### **5.5.3 Opportunity to 'revert' from mining lease application to licence application**

A key initiative in the Amendment Act was to provide a once-off opportunity to revert existing mining lease applications back to prospecting and exploration licence applications in recognition that most mining lease applications applied for up until that time were to continue exploration and not to start mining.

#### **COMMENT**

The catalyst for the reversion included:-

- Mining lease applicants could take advantage of the longer terms provided for new licence applications; and
- the negotiation of licence applications through the required NTA process is simpler and more efficient than for mining lease applications in circumstances where productive mining is not a consideration at that point.

The 'reversion' has been very successful, with outstanding lease applications falling from a high of 7,810 at commencement of the Amendment Act in February 2006 to 1,423 as at April 2010. A total of 4,904 reversion licence applications were received (666 exploration licences and 4,238 prospecting licences).

Some sectors of industry have indicated that a new opportunity to revert mining lease applications should now be offered, however this is not considered justified (refer section 6.1.4.5).

## **5.6 WARDEN'S COURT**

Part 9 of the Amendment Act contains 40 of the 105 sections in the Amendment Act. This Part became operational on 31 March 2007 and rationalises the different roles of the Warden and the Warden's Court. The Act empowers a Warden with both administrative and judicial powers, however 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.

#### **COMMENT**

Before these amendments, it was not always clear due to inconsistent terminology used throughout the Act, whether a warden was acting in the role of "the Warden" or "the Warden's Court". Also, it was not clear what powers were available to the warden in respect to issues such as the issue of subpoenas and summons for witnesses, whether costs may be awarded to parties to a dispute and in what circumstances.

The revised “rules” have proved to be successful and, apart from minor adjustment now requested by Wardens as part of this review (refer section 6.3), have attracted little comment.

## 5.7 OTHER PROVISIONS OF THE AMENDMENT ACT 2004

### 5.7.1 Release of reports more than five years old

Any information in mineral exploration and other reports lodged by a tenement holder may be publicly released five years after their submission, however the Minister may agree not to release the information where circumstances warrant it. This initiative was introduced to facilitate further exploration opportunities by enhancing the geological knowledge of the tenement area.

#### COMMENT

Some companies make blanket objections to their reports being released without detailing reasons, thereby delaying the release of the information unnecessarily. It has been suggested that the ability for a tenement holder to object to this release should be removed. Discussions are continuing with the mining industry on this issue.

### 5.7.2 Transparency of the ballot system relating to ground released from exploration licences

The Amendment Act enabled regulations to be made to prescribe a release system that advised of land becoming available from areas compulsorily partially surrendered from exploration licences.

#### COMMENT

This enables any person interested in the ground to be included in a ballot conducted by the Warden to establish priority. Previously this release information was not available until the morning of the release and relied on prospective applicants being at the particular Mining Registrar’s office at the time of the release.

The new system is more equitable and is working well, however it has had some side effects:-

- Firstly, the number of applications now vying for released ground has increased dramatically and may number twenty or so at times. This has added to the tenement application backlog.
- Secondly, there have been instances of related companies applying for more than one application over released land for the purposes of increasing chances in a ballot. This is a breach of the provision and creates administrative difficulties in establishing legitimate applications.

Notwithstanding these issues, the transparent nature of the new ground release system is a positive initiative.

## 5.8 REMAINDER OF AMENDMENT ACT 2004

The Amendment Act contains a number of other, generally minor administrative provisions.

### COMMENT

No issue has been raised with these other, generally minor, provisions of the Amendment Act indicating that these provisions are operating effectively.

## **6 SUBMISSIONS ARISING FROM REVIEW OF THE MINING AMENDMENT ACT 2004**

The review is confined to the impact of the Amendment Act and is not a commentary on other issues concerning the Act generally. Submissions not directed at the review will need to be raised through the Mining Industry Liaison Committee (MILC).

### **6.1 INDUSTRY SUBMISSIONS**

#### **6.1.1 Exploration Licence**

##### **6.1.1.1 Inequity between pre and post 2006 exploration licence applications**

With pre 2006 ('old') exploration licence applications 50% compulsory partial surrender is required at the end of years 3 and 4, with an option to convert these areas to mining leases, which cannot now occur unless an applicant for a mining lease has an established mineral resource. For post 2006 ('new') exploration licence applications, there is a once only requirement to relinquish 40% of a licence at the end of year 5.

In effect, new exploration licence applications have the benefit of retaining all ground for the full 5 year term whereas old exploration licences do not. An amendment should therefore be made to broaden the criteria for exemption from compulsory surrender to restore some equity between old and new licences.

#### **RESPONSE TO SUBMISSION**

At MILC 99 (December 2009) it was agreed that the criteria for seeking exemption from compulsory partial surrender would be broadened to include a provision to consider whether work already carried out on a licence justifies further exploration (but would not apply to deferment). The amendment was implemented and the guidelines relating to application for exemption from the compulsory partial surrender requirement have been updated to reflect the evidence required for this criterion.

Also under consideration is allowing the compulsory partial surrender of less than the 50% of the ground held.

##### **6.1.1.2 Right to full exemption from compulsory surrender should be restored to the Act for new licences**

The timelines for completion of exploration programs have been pushed out 'by a factor of 3' due to the requirements for approvals for native vegetation permits, biodiversity and flora surveys often required by DEC, heritage surveys, etc.

An ability to apply for exemption is required to offset current access delays being experienced.

## **RESPONSE TO SUBMISSION**

The requirement of several layers of approval for exploration activities was the prime factor taken into account when the compulsory surrender point was moved out to the end of year 5 instead of years 3 and 4. Progressive ground turnover is a basic tenet of the Act, hence the move away from exemption from the compulsory partial surrender to deferment only.

What will be considered, however, is the removal of the one year deferment option and replacement with the compulsory surrender point at the end of year 6 instead of year 5. This will have 2 main benefits:-

- gives the industry an additional year in which to rationalise its grounding holding; and
- the administration of a system requiring assessment of what is ultimately only a one year deferment of the compulsory surrender obligation is obviated.

Re-instatement of exemption from compulsory partial surrender in its current form is not supported and the existing ability to apply for exemption will continue to be phased out with the progression of old licences through their respective terms. Further consideration will be given to a limited “special circumstances” exemption to apply to new licences.

## **RECOMMENDATION 1**

**Mining Industry Liaison Committee (MILC) to consider supporting the removal from the Act of the deferment provision for ‘new’ exploration licences and replacing it with the requirement for 40% compulsory partial surrender at the end of year six.**

## **RECOMMENDATION 2**

**Mining Industry Liaison Committee (MILC) to consider supporting an amendment to the Act which provides for a limited “special circumstances” exemption from compulsory partial surrender for ‘new’ exploration licences subject to strict and specific criteria.**

**6.1.1.3 Exemption from compulsory partial surrender should be considered on a project basis where combined status has been given under section 115A. Where exemption can be justified, exemption on this basis would maintain the integrity of the project**

## **RESPONSE TO SUBMISSION**

Such a provision for exemption from compulsory partial surrender for projects with combined reporting status would be difficult and impractical to administer. This is because of different anniversary dates of tenements within an approved group and the fact that combined reporting groups are fluid, as evidenced by one third of groups being amended in any one year. It would allow for ground that has not been explored to be retained which goes against the principle of “use it” or “lose it”.

Consideration will be given, however, to any industry proposal to MILC that addresses this problem. The principle requiring exploration of all land held remains.

### **6.1.2 Prospecting Licence**

#### **6.1.2.1 Holders of old prospecting licences with a fixed four year term should have a right to apply for a new prospecting licence before expiry.**

Section 56B of the Amendment Act provided the right for those holders of old prospecting licences to apply for a new prospecting licence, but only where the term of their licence was due to expire within 12 months of the commencement of the Amendment Act.

This provision should be extended to all holders of old prospecting licences as the inability to apply for mining leases can result in expiry of licences before the ground has been fully explored, particularly those the subject of approved projects.

## **RESPONSE TO SUBMISSION**

Section 56B was added to recognise that the new criteria for applying for a mining lease has the potential to adversely affect “old” prospecting licences nearing the end of their term. The holders of these licences had limited time to identify ‘significant’ mineralisation or be in a position to lodge a mining proposal.

This submission is supported.

## **RECOMMENDATION 3**

**Mining Industry Liaison Committee (MILC) to consider supporting an amendment to the Act to enable holders of ‘old’ prospecting licences to apply for a further prospecting licence prior to expiry.**

**6.1.2.2 Consideration should be given to modifying the 'prescribed lands' provisions of the Act as prescribed prospecting licences can't meet the new mining lease threshold test for mineralisation**

- (a) There is a need for a provision to enable a lessee to be able to amalgamate adjoining 'prescribed land' into an existing mining or general purpose lease where there is an existing native title agreement.
- (b) The remaining available 'prescribed land' gap areas resulting from the 2000 AGD84 to GDA94 datum shift amendment need to be deemed to form part of the adjacent block.

**RESPONSE TO SUBMISSION**

- (a) Not supported in this form. What could be considered is a provision to amalgamate a prescribed land prospecting licence with an adjacent exploration licence held by the same party, notwithstanding the blocks affected may not be the same. Currently clause 7 of the Third Schedule only allows amalgamation into the same block number. The amalgamation will be subject to the s.29 NTA 'future act' process, as is presently the case with clause 7 applications.
- (b) Supported, subject to further assessment. The outcome would be that prescribed land not the subject of a prescribed prospecting licence (or application) will be deemed to be incorporated into the adjacent same block number.

**6.1.3 Retention Status**

**6.1.3.1 All land the subject of an exploration (or prospecting) licence should remain with the licence when retention status is approved**

**RESPONSE TO SUBMISSION**

Not supported. If the whole of a licence was retained in circumstances where only a portion qualified for retention status, either of the following unacceptable scenarios would then apply:-

- Part of the licence would be subject to expenditure obligations and therefore subject to forfeiture action and part of the licence would be subject to ongoing assessment on a work program basis and not subject to forfeiture action; or alternatively
- The whole of a licence would receive the benefit of no statutory expenditure required even though it is apparent that part of the licence remains to be fully explored.

It was always intended that the retention status provisions be the same as those that apply to retention licences, including approval being restricted to the identified resource and infrastructure requirements, but without the same NTA implications. Retention status was an option included in the legislation specifically to apply to only those licences where a rationalisation point had been reached by the holder following exploration of the total licence.

#### **6.1.4 Mining Lease**

##### **6.1.4.1 The role of the Geological Survey in assessing mineralisation statements should be rationalised**

The mineral resource status associated with a mining lease application had been prepared by a qualified person in accordance with section 74(7) therefore GSWA should only review and confirm the basis of that person's assessment and compliance with the guidelines.

##### **6.1.4.2 The threshold for the mineralisation test should remain as "significant mineralisation" and not be based on JORC levels**

DMP agreed during discussions in 2005 concerning the proposed new mining lease provisions not to use JORC code definitions to set the threshold of the information required.

#### **RESPONSE TO SUBMISSION**

The Director Geological Survey has difficulty under this new provision in assessing a mineralisation report objectively. This is because the "significant mineralisation" classification does not equate with a resource classification under the JORC Code 1994 (the standard for reporting ore resources and reserves accepted by the Australian Stock Exchange) and there is no industry standard established that would guide a "qualified person" preparing the mineralisation report.

A mining lease supported by a mineralisation statement should only be granted in circumstances where mining is likely to occur and therefore it is considered that mineral deposits should be established to at least the lowest JORC category – "inferred resource". Adopting the 'inferred' category would make the process more certain and transparent. This would obviate the need for GSWA assessment, as suggested. It would also make it consistent with present requirements for retention status and retention licences.

Following discussion with the mining industry, it has been determined that the significant mineralisation threshold will be maintained, however an amendment will be considered

to provide that those applicants who meet JORC standards will not be required to lodge a mineralisation report.

#### **RECOMMENDATION 4**

**Mining Industry Liaison Committee (MILC) to consider supporting an amendment to the Act which provides for applicants for 'new' mining leases who have met JORC category – 'inferred resource' to be exempt from the requirement to lodge a mineralisation statement.**

#### **6.1.4.3 The present requirement to include a statement as to likely commencement of mining operations remains open to abuse through the objection process**

Knowledge of the intended timeframe for mining has the potential to provide objectors scope to delay and obfuscate the process.

#### **RESPONSE TO SUBMISSION**

Requiring an indication of when mining may be planned is an integral part of the application assessment for a mining lease and helps put the intentions for the area into context. It is reasonable that this aspect be publicly known.

Statistics don't support there being an issue with providing a forecast of when mining is likely to occur. From commencement of the amendments 10 February 2006 to 31 December 2009:-

- 293 new mining lease applications have been received;
- of these, 125 were based on a mineralisation report;
- 38 objections to these were lodged.

#### **6.1.4.4 DMP's current Mining Environmental Management Guidelines for Mining Proposals effectively result in the duplication of the provisions for environmental impact assessment under Part IV of the EPA**

#### **RESPONSE TO SUBMISSION**

The mining proposal is not a duplication of EPA assessment and differs substantially from EPA assessment documentation.

The EPA document is generally very generic on technical aspects and more focused on issues such as biodiversity and community concerns.

If a project goes through the EPA process, there will be project specifics that are not yet known or will be required before the EPA assessment is completed.

DMP utilises the mining proposal process to resolve the finer technical mining related details in a mining proposal, an aspect that is regulated under the Mining Act.

**6.1.4.5 There is a need to consider a further opportunity for the applicants for mining leases applied for before 10 February 2006 to be able to revert to exploration or prospecting licences**

It is argued that the once off 12 month opportunity to revert was not adequate to enable proper evaluation of prospective mine development for areas held under lease application.

**RESPONSE TO SUBMISSION**

Not supported. The mining industry had ample time to rationalise existing holdings of mining lease applications at that time – not only was a 12 month period provided for this to occur, but industry was also made aware at least 2 years before the exercise was initiated that the amendment to provide for it was going to be enacted. Lease applicants therefore had a lengthy period in which to rationalise the continued need for existing lease applications, in preparation for the reversion process.

To provide for a new series of reversions 3 years after the end of the last reversion period for lease applications, most of which will be part way through the ‘right to negotiate’ process under the NTA, is not justified, notwithstanding that some of these applicants may now wish to reassess tenure.

It is also noted that, although the primary intention of the reversion initiative was to provide a reversion opportunity for existing old lease applications, 1,000’s of new section 67 lease applications were also lodged leading up to 10 February 2006 to enable new licences to be applied for that would be subject to the new (more generous) licence provisions as well. This same scenario would not be possible for a new round of reversions due to the new lease provisions.

**6.1.5 General**

**6.1.5.1 The cost of an audit of expenditure done pursuant to section 115B should be allowable expenditure for the purpose of Form 5 reporting**

**RESPONSE TO SUBMISSION**

The cost of an audit cannot be construed as exploration expenditure, however it is reasonable that it may at least be included in the current 20% administration component allowable.

**6.1.5.2 Should be able to register agreements so that greater transparency is possible as part of due diligence requirements**

With the new post February 2006 system, an interest in a mining tenement may only be reflected by caveat in the tenement register, not the agreement itself.

**RESPONSE TO SUBMISSION**

This aspect is not part of the review of the Amendment Act, but is not supported in any event. The review of the dealings provisions which resulted in the change to the present system was based on the conclusion that only legal instruments should be registrable, consistent with a Torrens system.

**6.1.5.3 The Act should be amended to dispense with the requirement for a licence instrument**

With the impending move to electronic lodgement, the use and need for a licence document is not justified and at times there may be several versions of a licence document in existence following re-issue via the eMiTs system.

**RESPONSE TO SUBMISSION**

Agreed, but falls outside the scope of this review. The amendment should be pursued through MILC.

**6.2 GOVERNMENT PROPOSALS**

**6.2.1 Mining Lease**

**6.2.1.1 A mining lease should only be granted if mining is likely to occur therefore mineral deposits should be at least in the 'inferred resource' JORC category**

This would be consistent with the threshold for retention status and retention licences. The current 'significant mineralisation' threshold is considered to be too low and subjective, however it will be retained and proponents will be encouraged to achieve JORC standards (refer section 5.5.2).

**6.2.1.2 Provision should be made that the approval for a mining proposal lapses after 5 years where the proposal or components of the proposal have not been commenced**

There are circumstances where a proposal has been approved but not implemented, or parts not implemented. In such instances the proponent will be requested to submit an updated version, to take into account changing environmental standards.

This would be consistent with the ability of the Minister for Environment to impose a 5 year expiry as a default in Ministerial Statements for projects assessed under Part IV of the EPA.

## **6.2.2 Exploration Licence**

### **6.2.2.1 Replace the one year deferment option with the compulsory surrender point at the end of year 6 instead of year 5 (refer 2 above)**

The move away from exemption from compulsory surrender was acknowledged when the deferral option was included in Amendment Act and it was not intended that it be re-introduced.

Exemption from compulsory partial surrender in its present form is being phased out and will cease at the conclusion of the old exploration licence system, however consideration will be given by MILC to developing limited criteria that could apply to licences granted from applications lodged post 10 February 2006 (refer section 6.1.1.2).

### **6.2.2.2 An exploration licence with retention status should not be subject to the compulsory surrender requirement**

Section 65(3) should therefore not apply to an exploration licence:-

- (1) with section 69B 'retention status' approved; or
- (2) where application for retention status has been made prior to the 'end day' and subsequently approved.

When retention status is not approved in (2) above, the holder will be required to lodge the compulsory surrender within a time specified.

## **RECOMMENDATION 5**

**Mining Industry Liaison Committee (MILC) to consider supporting an amendment to the Act to remove the requirement for partial surrender for those exploration licences with retention status approved.**

## **6.2.3 Release of Reports**

### **6.2.3.1 The ability to object to the release of 5 year old reports pursuant to regulation 95(5) should be removed**

Any release is at the discretion of the Minister in any event and tenement holders may approach the Minister at any time about not releasing specific information. Discussions are continuing with the mining industry on this aspect.

### 6.3 COMMENTS BY WARDENS (AND OTHERS) ON WARDEN'S ISSUES

The following technical amendments have been sought and are supported.

#### 6.3.1 Mining Regulations 1981

Division 2 of Part V (preceding regulation 64) refers to "Applications and objections". Regulations relating to objections are now located in new Division 3 or Part VIII (regulation 146).

##### Regulation 123

Regulation 123(1)(a) – delete the words: "a mention" after "hearing date" and insert the word "mention" before "hearing date".

##### Regulation 39

"this Division" should be "this Part" – ie, nothing required to be done under this Division.

The regulation should make it clear that it applies to all issues wardens deal with, as it is arguable that it currently only applies to proceedings and not directions/issues a warden may deal with as part of the application process. This would complement regulation 152(1) and (l) in particular.

##### Regulation 141

The applicant for forfeiture serves the application, but the mining registrar is presently responsible for forwarding a copy to the applicant. The respondent should be required to serve the response on the applicant as well as the statement of particulars as required by regulation 144.

##### Regulation 151

Says service as per this Division – this Division doesn't specify – should refer to regulation 111.

##### Regulation 152

This regulation is limited to interlocutory orders and directions, however it should apply to all Part VIII matters before the warden. It may be sufficient to just change the heading to Division 5 and delete "Interlocutory" (which, under the Interpretation Act, is part of the regulation – the heading to regulation 152 is not part of the regulation).

##### Regulation 158

Seems to give the mining registrar independent powers to vacate a hearing date that has been set by a warden. This should only be able to be done by the warden and only with the other party having been given the opportunity to be heard.

##### Regulation 164

Regulation 164(1) refers to an “exhibit” not received into evidence. It is arguable that a document or thing referred to in a hearing, but not received into evidence, cannot be classed as an exhibit. This may need qualification.

### **6.3.2 Forms**

#### **Form 36A**

Reference to regulation 154 should be 152.

Should have provision for hearing date endorsement (regulation 155 requires attendance on an Interlocutory Application).

#### **Form 42**

Change “solicitor” to “lawyer”.

### **6.3.3 A form for withdrawal of an objection should be considered**

### **6.3.4 Mining Act 1978**

Section 134(5) should be clarified to empower wardens to utilise the Rules of the Supreme Court as it is considered that this would enhance the efficiency of the Warden’s Court.

## **RECOMMENDATION 6**

**Mining Industry Liaison Committee (MILC) to consider the comments received from the Wardens and, where appropriate, implement amendments to the Act and Mining Regulations.**