



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

GUIDELINES

Applications for exemption from expenditure conditions

Pursuant to: section 102 of the *Mining Act 1978*

Version 2.0

2020

Document Hierarchy

Legislation	<i>Mining Act 1978</i> Mining Regulations 1981
Policy	
Guidelines	This Document
Procedures	

Version History

Version	Date	Changes
1.0	2010	Initial Publication
2.0	2020	Updated to reflect machinery of government changes

Purpose

This document guides tenement holders in making an application for exemption from expenditure conditions (the application) and how these applications may be considered by the Department of Mines, Industry Regulation and Safety (DMIRS) under delegation from the Minister for Mines and Petroleum.

Introduction

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 conditions¹.

The Act also recognises that in some circumstances 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.

1. Reasons for exemption

Sections 102(2) and 102(3) of the Act identify reasons for which an exemption from expenditure conditions may be considered. These reasons are outlined below.

1.1 The title to the tenement is in dispute - s102(2)(a)

An exemption may be granted where the title to the mining tenement is in dispute. In order for an exemption to be granted there must be evidence of the dispute, for example: When/how did the dispute start? What court action has been/will be taken? Has the dispute prevented the tenement holder from carrying out exploration or mining on the tenement?

Regulation 52 of the Mining Regulations 1981 (the Regulations) provides for a pro-rata reduction in expenditure commitment while a tenement is subject to a third-party application for forfeiture (Form 35A).

1.2 Time is required to evaluate work done on the tenement, plan future exploration or mining or raise capital - s102(2)(b)

An exemption may be granted where time is required to evaluate work done on the tenement, to plan future exploration or mining, or raise capital. This section allows a reasonable period of time for the tenement holder to assess the results of exploration activities that have been completed on the tenement before continuing with the next stage of exploration or development and/or to plan future exploration or mining. DMIRS generally considers one year to be reasonable.

An application must include information about the type and extent of work evaluated during the relevant period, including a brief summary of the results of the evaluation.

Details of activities to raise capital should be substantiated (e.g. date of stock exchange listing). In respect of an exploration licence in its first year of term, exemption would

¹ Refer to sections 51, 68, 70H, 82 and 115H of the Act.

generally not be considered under this reason as the tenement holder would have declared he or she was able to meet expenditure as a pre-requisite for grant.

1.3 Time is required to purchase and erect plant and machinery - s102(2)(c)

An exemption may be granted where a reasonable period of time is required to purchase and erect plant and machinery before commencing a mining operation. Depending on the purchase types, its availability and the remoteness of any construction, a period of up to one year may be considered reasonable by DMIRS.

An application must be supported by appropriate evidence, e.g. a copy of a purchase order/invoice from a supplier evidencing the placement of an order for the purchase of the plant and machinery for the purpose of conducting work on the tenement.

1.4 The ground is unworkable - s102(2)(d)

An exemption may be granted where it can be demonstrated that the ground was unworkable for a considerable length of time during the period for which exemption has been sought. This would be generally due to adverse weather conditions beyond normal seasonal variations (e.g. flooding and related road closures, extreme heat in excess of the norm) but could also include extreme remoteness and related access issues.

An application must be supported by appropriate evidence, e.g. evidence relevant to the circumstances that rendered the ground unworkable, or to support any claim that the “unworkable” ground prevented the carrying out of planned work, such as drilling, gridlines etc, that had been scheduled prior to the ground becoming unworkable or that, subsequently, it was not possible to carry out any other work on the ground during the remainder of the relevant period.

1.5 The tenement contains a mineral deposit which is uneconomic - s102(2)(e) and s102(7)

An exemption may be granted where the tenement contains a mineral deposit which is uneconomic. In order for the economic status of the deposit to be assessed, a mineral deposit should generally be classified as measured, indicated or inferred under the JORC code (Australasian Code for Reporting of Identified Mineral Resources and Ore Reserves).

An application must be supported by the following information:

- commodity, tonnage, grade and resource category (measured, indicated or inferred). If more than one category is quoted, then tonnage and grade should be given for each category separately;
- a plan showing the location and extent of the deposit in relation to the tenement boundary; and
- reference (author, title, date) to the mineral-exploration report containing the details of the resource estimate. If a mineral exploration report has not been previously submitted, the relevant information should accompany the application for exemption.

For some commodities (e.g. industrial minerals, construction materials, semi-precious stones) some of the above information may not be available. However, as much detail as possible should be supplied with the application.

1.6 The tenement contains mineral ore which is required to sustain the future operations of an existing or proposed mining operation s102(2)(f) and s102(7)

An exemption may be granted where an economic deposit (mineral ore) exists on the tenement and mining is planned in the future as part of an existing or proposed mining operation.

The information required is much the same as that required to support applications under section 102(2)(e) but should also include a statement on when mining is likely to occur and where the ore is to be processed. If the mine is not yet operating, then information on the stage of planning/development of the operation should be supplied.

Where an exemption application under sections 102(2)(e) or (f) is made for consecutive years pursuant to section 102(7), the applicant should show that the area held is reasonable in respect to size and type of the deposit. The resource should generally be at least in the indicated category. However, depending on commodity and mineralisation style, deposits in the inferred resource classification may be accepted in certain cases.

1.7 Mining on the tenement is prevented or restricted by political, environmental or other difficulties - s102(2)(g)

An exemption may be granted where it can be demonstrated that there was a lack of access or stringent restrictions on access to a conservation estate, Nature Reserves, State Forests, etc.

Other difficulties in obtaining requisite approvals may be cited, such as private land consents, access to Aboriginal Reserves and access for Heritage Surveys, provided the tenement holder can demonstrate that access had been sought in a timely manner.

An application must be accompanied by documentation substantiating the difficulties that affected the tenement during the relevant period.

1.8 Aggregate exploration expenditure - s102(2)(h)

For a tenement to be granted a “project exemption”, the tenement must have combined reporting status (as approved under section 115A(4) of the Act). Such approval must have been given in writing prior to the end of the period for which exemption is being sought. The same applies to all tenements in the group, i.e. for any tenement to be included in the calculation of aggregate expenditure, it must have had combined reporting status approved prior to the anniversary of the tenement for which exemption is being sought (the subject tenement).

The project expenditure commitment and the aggregate expenditure will be calculated on the subject tenement’s anniversary date plus 60 days (or, if an extension of time to lodge the Form 5 on the subject tenement has been granted, at the expiry of that extended period), thereby ensuring that the reported expenditure for the subject tenement will be included in the calculations.

Aggregate exploration expenditure is calculated by adding the total expenditures detailed on the relevant operation reports (Form 5) submitted for all tenements in the group, excluding any monies claimed under “Mining Activities” in those operations reports. Expenditure and

commitments on tenements that have expired, been forfeited or surrendered during the period will be included in the calculation.

To assist in the determination of an application under this subsection, an applicant is encouraged to provide a schedule showing the aggregate expenditure for the combined reporting group in the relevant period compared with the group's expenditure requirement. The information in the schedule should include:

- the combined reporting number (as issued by the Geological Survey); and
- a list of the group's tenements recording against each tenement its annual expenditure commitment, its relevant reported Form 5 expenditure (i.e. excluding any monies claimed under "Mining Activities") and the total/aggregate amount expended on the group.

1.9 Any other reason which in the Minister's opinion is sufficient to justify an exemption - 102(3) of the Act

In order to apply for this exemption under section 102(3) of the Act, the application must include adequate details about "any other reason" for consideration by the Minister (i.e. a brief reason to be stated on the application and more detailed information to be provided in the supporting statutory declaration).

Furthermore, this subsection cannot be used if the reason for the exemption is already a prescribed reason as set out in section 102(2) of the Act.

2. Mining leases

For mining leases, long term exemptions will generally only be considered under sections 102(2)(e) and (f) of the Act. The intent of the Act is to give a holder relief from further expenditure commitments when a mineral deposit has been delineated on a mining lease.

The period for which an exemption is granted takes into account the mineral commodity concerned. In respect to gold, which is readily marketable and may be brought into production relatively quickly, exemptions will generally only be granted for up to two years (unless compelling reasons exist to support the grant for a longer period). Other commodities will be considered on the basis of the deposit's location, infrastructure, market conditions and company circumstances.

3. Lodging an application for exemption

The Act requires that an application be lodged on the prescribed form (Form 18) with the prescribed fee at the office of any Mining Registrar, or electronically via Mineral Titles Online. The application (with all the information correctly completed) must be lodged within 60 days of the anniversary date of the tenement.

A statutory declaration supporting the application must be lodged within 28 days after the lodgment of the application. In the event that the statutory declaration cannot be lodged within 28 days, an extension of time must be requested by the applicant, stating reasons why the statutory declaration could not be lodged in time and the date to which the extension is sought.

A reason for exemption must be stated on the application against the subsection(s) under which exemption is being sought. The applicant should ensure that all relevant detail and evidence is included in the statutory declaration in support of the subsection(s) and accompanying reason stated on the application.

The application will be posted on the notice board of the office of the Mining Registrar for a period of 35 days. Should no objection be lodged against the application, it will be determined by the Minister.

In the event that an objection is lodged against an 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.

4. Assessing and determining an application for exemption

The application is assessed by DMIRS based upon the information provided in the application. The supporting evidence provided in the statutory declaration will only be taken into account in cases in which it is consistent with the subsection stated on the application. The tenement holder will be advised once the application has been determined.

5. Refusal of applications for exemption - Forfeiture action to commence

The refusal of an exemption will result in the commencement of forfeiture proceedings by DMIRS. DMIRS will not commence forfeiture action on a mining tenement in cases in which a third-party application for forfeiture has been lodged and is awaiting determination.

In respect to exploration licenses and mining leases, the tenement holder will be issued with a Notice of Intention to Forfeit as provided in Regulation 50. The tenement holder may then make a submission for the Minister's consideration.

Anything the applicant considers relevant may be included in the submission. However, of particular interest to the Minister would be details of any work planned (or work already being undertaken) on the tenement in the current period.

Following consideration of the submission, the Minister may take no further action, impose a penalty, or forfeit the tenement pursuant to sections 96A or 97 of the Act.

If forfeiture is commenced in respect to prospecting licenses, the provisions of Regulation 49 will apply. Depending on the circumstances of the case and any mitigating circumstances brought to the Warden's attention by the tenement holder, the Warden may take no further action, impose a penalty (fine) or forfeit the tenement pursuant to section 96 of the Act.

Note: There is no provision in the Act for the refund of the application fee if an application is withdrawn (minimum expenditure commitment has been subsequently met and an amended Form 5 lodged or a new application for exemption has been lodged) or lapsed (upon the death of the tenement).