



Department of **Energy, Mines,
Industry Regulation and Safety**

Procedure

Applying for a second renewal of a
mining lease made in accordance
with the *Mining Act 1978*

July 2024

Contents

1. Purpose.....	3
2. Scope.....	3
3. Background.....	3
4. Application for renewal	4
5. Processing of application for renewal	4

1. Purpose

This document provides guidance to mining lease holders about how to apply for a second renewal of term on an existing mining lease which has been granted under the *Mining Act 1978* (the Mining Act) and the Mining Regulations 1981 (the Regulations).

Disclaimer: The information provided in this document serves as general guidance and does not constitute legal advice. It is recommended mining lease holders seek independent legal advice for their specific circumstances.

2. Scope

This procedure applies to mining leases granted in accordance with section 71 of the Mining Act. Other relevant legislation includes:

- Regulation 29 of the Regulations – Application for renewal.
- Section 24IC of the *Native Title Act 1993* (Cth) (NTA).
- Section 26D of the NTA - Excluded mining acts: earlier valid acts.
- Section 29 of the NTA - Notification of parties affected.
- Section 31 of the NTA - Normal negotiation procedure.

3. Background

Mining leases are granted under section 71 of the Mining Act for an initial term of 21 years. These leases come with a built-in right to a first renewal, but any subsequent renewals are at the discretion of the Minister.

Mining leases currently approaching their second renewal of term have therefore received 42 years of tenure;

- an initial 21-year term pursuant to s78(1)(a); and
- a first right of renewal of term for a further 21 years pursuant to s78(1)(b).

Although the first renewal of mining leases were granted after the introduction of the NTA, if they were future acts for the purposes of the NTA, they are considered 'permissible lease etc renewals' under section 24IC of the NTA and therefore valid against native title. The right to negotiate (RTN) did not apply to these mining leases on first renewal as the creation of the right to mine on grant was made before 23 December 1996.¹

Any second renewals of mining leases are not considered exempt from the RTN process. They do not fall within any of the exemptions in s26D of the NTA.

Applications will be notified in accordance with section 29 of the NTA. If the relevant native title parties have not consented to the second renewal of the mining lease, the lessee must engage in the RTN, as outlined in section 31 of the NTA.

If the RTN applies, the lease holder, any native title parties and the State must negotiate in good faith, with the aim of reaching agreement to the grant of the second renewal, including the terms under which mining activities can proceed. This process aims to protect the rights and interests of native title parties, fostering a dialogue between miners and traditional landowners.

¹ s26D(1)(b)(i) of Native Title Act.

Mining lease holders are encouraged to proactively engage with native title parties to secure the necessary consent well ahead of the renewal deadlines. In addition, under the Mining Act, the term of the mining lease continues until a renewal application is determined by the Minister, which gives parties an opportunity to have these important conversations.²

4. Application for renewal

An application for renewal of a mining lease under section 78 of the Mining Act shall be:

- made in the form of a Form 9 – Application for extension of term/renewal of a mining tenement; and
- lodged at any time during the final year of the term of that lease.

To assist in achieving a timely and positive outcome a second application for renewal, lodged pursuant to s78(1)(b), should be supported by evidence that all relevant native title parties have consented to the second renewal of the tenure. If this evidence is not provided, the application will be subject to the right to negotiate procedure.

5. Processing of application for renewal

After the application for renewal is lodged:

- If any further information is needed to make a determination you will be contacted.
- If the application is compliant with the Mining Act and the application is affected by native title it will proceed through the RTN process (unless evidence of native title party consent has been provided). You will receive notice of this referral. In summary, this involves notification under s 29 of the NTA with a notification period of 4 months, and a requirement that the parties negotiate in good faith for a minimum of 6 months with a view to reaching agreement with each of the native title parties to the grant of the second renewal.
- Once agreement has been reached with each of the native title parties, the application for second renewal will proceed to determination by the Minister.
- If the parties have negotiated in good faith for six months, and are unable to reach agreement, any party may apply to the National Native Title Tribunal (Tribunal) for a determination. The Tribunal may determine that the grant of the second renewal may be done, may be done subject to conditions, or must not be done.

Further information on the RTN process can be found on the department's [website](#)

² Section 78(3) Mining Act.

Government of Western Australia

**Department of Energy, Mines, Industry Regulation
and Safety**

8.30am – 4.30pm

Mineral House, 100 Plain Street
East Perth, Western Australia 6004

Tel: +61 8 9222 3333

Fax: +61 8 9222 3862

Online

Website: www.demirs.wa.gov.au

Email: REC.Consultation@dmirs.wa.gov.au

Mailing address

Locked Bag 100
East Perth WA 6892

**This publication is available on
request in other formats.**

National Relay Service: 13 36 77

Translating and Interpreting Service (TIS) 13 14 50