Changes to mining legislation in WA

The amending legislation will help clear a large backlog of mining lease applications.

The **Mining Amendment Act 2004**, which was assented to on 3 November 2004, will amend the *Mining Act 1978* (WA) and the *Mining Amendment Act 1996* (WA). Partner Gerard Woods, Senior Associate Robyn Glindemann and Law Graduate Margot King examine the new Act.

**Review recommendations**

The *Mining Amendment Act 2004* (the *Act*) incorporates the recommendations of three recent reviews on the mining industry in WA: the Technical Taskforce on Native Title, the Bowler Inquiry into Greenfields Exploration and the Keating Review of the Project Development and Approvals System. It is hoped that the amendments will assist in clearing the backlog of around 5,250 mining lease applications in the State.

**Changes to tenements**

**Extended term for ELs and PLs**

The *Mining Act* is amended to allow the Minister to extend the term of an exploration licence for a period of five years, followed by further periods of two years. This replaces the existing extension periods of one or two years. Prospecting licences may be extended by a period of four years.

The present requirement to surrender at least 50 per cent of the blocks that are the subject of an exploration licence at the end of each of the third and fourth years of a licence term is changed to a single 40 per cent reduction at the end of the fifth year.

The Act also allows for the establishment by gazetted order of a mining lease application ‘reversion’ scheme. The scheme will allow for the reversion of existing mining lease applications to the new extended term exploration licences or prospecting licences, at the request of the applicant.
Retention status for certain tenements

The Act introduces important amendments to allow holders of prospecting licences and exploration licences to apply for ‘retention status’ where the mining of an identified mineral resource is impracticable because:

- the resource is uneconomic or subject to marketing problems, although is reasonably expected to become economic or marketable in the future;
- the resource is required to sustain the future operations of a current or proposed mining operation; or
- political, environmental or other difficulties exist in obtaining approvals for a project.

Retention status will only apply to prospecting and exploration licences applied for after the commencement of the amendments. The existing ‘retention licence’ system will continue to apply to prospecting licences, exploration licences and mining leases granted or applied for before the commencement of the amendments.

The amendments allow the Minister to extend the term of an exploration licence for a period of five years, followed by further periods of two years.

The Minister must consult with other relevant Ministers before approving an application for retention status and may impose conditions on his approval. Prospecting licences and exploration licences that have retention status will not be subject to annual expenditure requirements but the Minister may require compliance with an approved work programme.

Mining lease information requirements

All new mining lease applications will need to be accompanied by either a mining proposal or a mineralisation report prepared by a qualified person together with a statement prepared according to new section 74(1a). The statement must set out information about the mining operations likely to be carried out on the land to which the application relates, including information on:

- when mining is likely to commence;
- the most likely method of mining; and
- the location, and the area, of land that is likely to be required for the operation of plant, machinery and equipment and for related activities.

The mineralisation report must set out the details of the exploration results of the mineral deposit, including the sample analysis results and the process adopted to determine the extent of the deposit.

If a mining lease application is accompanied by a mineralisation report and statement rather than a mining proposal, the Director, Geological Survey must give to the Minister (with copies to the mining registrar and the warden) a report on whether there is significant mineralisation in the land to which the mining lease application relates. That report must be based on the information in the mineralisation report and any additional information provided by the applicant at the Director’s request.

It is hoped that the amendments will help to clear the backlog of mining lease applications, as well as provide a more practical system of mining tenement administration.

If the report by the Director, Geological Survey states there is no significant mineralisation in, on or under the relevant land, the warden is not required to hear any objections to the mining lease application and the Minister is prohibited from granting the application. Consequently, the Act also removes as a basis for lodging an objection to a mining lease application the ground that there is no significant mineralisation in, on or under the relevant land.

Where an application for a mining lease is accompanied by a mining proposal, the mining proposal will need to contain details about the proposed mining operations and information required by guidelines approved by the Director General of Mines. Those guidelines are not yet available.

Changes to the role of the warden and to the operation of Warden’s Courts

Permits for entry onto private land

Applications to enter private land will be made to the mining registrar rather than to a warden.
Department of Industry and Resources officers with responsibility for issuing permits to enter private land will be referred to as ‘prescribed officials’ rather than wardens.

Clarification of the administrative and judicial roles of the warden

The Act clarifies the administrative and judicial roles of the warden. Matters that are administrative, and consequently will no longer be heard in ‘open court’, include:

- determination of applications for prospecting, exploration and retention licences and mining leases where an objection is lodged;
- appeals against forfeiture of a mining tenement;
- applications for forfeiture of a mining lease or exploration licence because of non-compliance with expenditure conditions;
- applications for exemption from expenditure conditions where an objection is lodged; and
- ballots to determine priority between applicants over tenements.

Changes to the registration and caveat system

The Act amends the registration and caveat provisions of the Mining Amendment Act 1996 (WA), an Act that was passed by Parliament in 1996 to amend the Mining Act but is not yet fully operational. By virtue of the Mining Amendment Act, the only instruments that may be registered are:

- a dealing;
- a discharge of a mortgage of a legal interest in a mining tenement;
- a withdrawal of an application for a mining tenement; and
- a surrender made under certain sections of the Act.

The Act makes clear that a dealing does not pass any legal estate or interest in a mining tenement or in any way charge or encumber a mining tenement until it is registered.

On the commencement of the Act and the Mining Amendment Act, instruments that create equitable interests, such as those created by farm-in agreements or royalty agreements, will only be capable of protection by caveat. The Mining Amendment Act creates different categories of caveat, namely absolute caveats, consent caveats and subject to claim caveats.

Other amendments

Other important amendments introduced by the Act are as follows:

- standard security will be required for all types of tenements, and not just prospecting licences and exploration licences;
- geological samples (including drill core) collected from prospecting licences, retention licences and mining leases will be required to be furnished to the Minister upon request;
- a tenement holder will remain liable for certain matters that remain outstanding or require attention where a tenement is surrendered, forfeited or expires; and
- mining by third parties is allowed with the written authorisation of the tenement holder and expenditure incurred in conducting those activities may be claimed by the tenement holder against the annual expenditure commitment for that tenement.

Operation of the Mining Amendment Act 2004

The Act will come into operation on a day or days fixed by proclamation. The commencement of the Act is dependent on the completion of the redrafting of the Mining Regulations 1981 (WA) to ensure the Regulations are consistent with the Mining Act (as amended). The Chamber of Minerals and Energy reports the timeframe for the completion of this process is likely to be March 2005.1 However, those provisions dealing with warden’s court amendments and the related regulations may not come into effect until later in the year.

A late amendment to the Act made by the Legislative Council means the Minister is required to review and report on the operation and effectiveness of the Act five years after the date on which the Act received the Royal Assent (i.e. by 3 November 2009).

It is hoped that the amendments will help to clear the backlog of mining lease applications, as well as provide a more practical system of mining tenement administration into the future.

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