

Western Australia

## **Mining Amendment Act 2012**

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As at 29 Nov 2012

No. 51 of 2012

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## Mining Amendment Act 2012

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Western Australia

## **Mining Amendment Act 2012**

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**No. 51 of 2012**

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**An Act to amend the *Mining Act 1978* and the *Mining Amendment Act 2004*.**

*[Assented to 29 November 2012]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Mining Amendment Act 2012*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.



## **Part 2 — *Mining Act 1978* amended**

**3. Act amended**

This Part amends the *Mining Act 1978*.

**4. Section 5 amended**

In section 5(2) delete “Schedule,” and insert:

Schedule Division 1,

**5. Section 8 amended**

(1) In section 8(1) insert in alphabetical order:

***Commonwealth land*** means —

- (a) land in respect of which the Commonwealth holds a freehold or leasehold interest; or
- (b) land that is otherwise vested in or held by the Commonwealth or vested in or held by an officer or person on behalf of the Commonwealth;

***miner’s right*** means a miner’s right issued under section 40C;

***processed mineral resource*** means a substance produced from a mineral that is under the surface of land without the mineral being removed from the land;

(2) In section 8(1) in the definition of ***mining operations***:

(a) after “smelted” insert:

combusted

- (b) after “obtaining any mineral” insert:  
  
or processed mineral resource
- (c) after paragraph (c) insert:
  - (da) operations by means of which a processed mineral resource is produced and recovered;  
and
  - (d) in paragraph (d) delete “lawful”.
- (3) In section 8(1) in the definition of *private land* delete “means any land” and insert:  
  
means any land, other than Commonwealth land,

**6. Section 15 amended**

Delete section 15(1) and insert:

- (1) A warden who acts or adjudicates in any matter in which the warden has directly or indirectly any pecuniary interest, is guilty of a crime unless —
  - (a) the warden declares the nature of the interest to each of the parties to the matter; and
  - (b) each of the parties consents to the warden so acting or adjudicating.

Penalty: imprisonment for 2 years or a fine of \$1 000.

**7. Section 18 amended**

Delete section 18(b) and insert:

- (b) where the holder of a miner's right may do the things authorised by section 40D; and

**8. Section 20 amended**

Delete section 20(1), (2) and (3).

Note: The heading to amended section 20 is to read:

**Protection of certain Crown land**

**9. Sections 20A, 20B and 20C deleted**

Delete sections 20A, 20B and 20C.

**10. Section 21 amended**

After section 21(1) insert:

- (2A) In subsection (1) —  
*land* does not include Commonwealth land.

**11. Part III Division 2 heading amended**

In the heading to Part III Division 2 after “**etc.**” insert:

**and Commonwealth land**

**12. Section 23 replaced**

Delete section 23 and insert:

**23. Mining on public reserves etc. and Commonwealth land**

- (1) Subject to this Act, a mining tenement may be applied for in respect of the following land (not being land that is already the subject of a mining tenement) —
  - (a) land, or land of a class, to which section 24, 24A or 25 applies;
  - (b) Commonwealth land.
- (2) The holder of a mining tenement in respect of such land must not carry out mining on or under that land otherwise than in accordance with a relevant consent obtained in relation to that land under section 24, 24A, 25 or 25A.
- (3) A mining tenement held in relation to such land is liable to be forfeited if the holder of the tenement —
  - (a) contravenes this section; or
  - (b) is in breach of any term or condition to which a consent given under section 24, 24A, 25 or 25A is made subject.

**13. Section 25A inserted**

After section 25 insert:

**25A. Mining on Commonwealth land**

- (1) Mining may be carried out on Commonwealth land with the written consent of the Minister who may refuse consent or who may give consent subject to such

terms and conditions as the Minister specifies in the consent.

- (2) Before giving consent under subsection (1), whether conditionally or unconditionally, the Minister must first consult, and obtain the concurrence of, the Minister of the Commonwealth responsible for the control and management of the land.

**14. Section 26 amended**

- (1) In section 26(1) delete “24A and 25” and insert:

24A, 25 and 25A

- (2) In section 26(3) delete “subsection (2)” and insert:

subsection (2)(a)

- (3) After section 26(3) insert:

- (4) In relation to any application for a mining tenement in respect of Commonwealth land, the Commonwealth land may be marked out only with the consent of the Minister and the Minister of the Commonwealth responsible for the control and management of the land, but otherwise the land is to be marked out as a mining tenement in accordance with this Act.

**15. Part IIIA inserted**

After section 39 insert:

**Part IIIA — Miner's rights and related permits**

**40A. Terms used**

In this Part —

*available land*, in relation to a miner's right, means —

- (a) Crown land or conservation land that is not the subject of a mining tenement; or
- (b) Crown land or conservation land that is the subject of an exploration licence if the holder of the miner's right holds a permit under section 40E in respect of the land;

*conservation land* means land that is prescribed under section 40B as conservation land for the purposes of this Part.

**40B. Conservation land**

- (1) The regulations may prescribe land as conservation land for the purposes of this Part if —
  - (a) the land is of the class referred to in section 24(1)(c) and is not land that is classified as a class A reserve; and
  - (b) the care, control and management of the land is placed by order under the *Land Administration Act 1997* Part 4 with the Conservation Commission.
- (2) Regulations made for the purposes of subsection (1) may only be made with the concurrence of the Minister responsible for the administration of the *Conservation and Land Management Act 1984*.

**40C. Issue of miner's right**

- (1) The Minister, the Director General of Mines or a mining registrar may, on the application of a natural person and on being satisfied of the identity of the person, issue a miner's right to the person.
- (2) An application for a miner's right must be accompanied by the prescribed application fee (if any).
- (3) A miner's right —
  - (a) must be in the prescribed form; and
  - (b) is not limited in term; and
  - (c) is not transferable.

**40D. Authorisation under miner's right**

- (1) Subject to this Act the holder of a miner's right is authorised to do all or any of the following things —
  - (a) pass and repass over Crown land or conservation land with such employees and agents, vehicles, machinery and equipment as may be necessary or expedient for the purpose of prospecting and marking out any land which may be made the subject of an application for a mining tenement;
  - (b) prospect for minerals and conduct tests for minerals on available land for the purpose of determining whether to mark out or apply for a mining tenement in respect of any part of the land;
  - (c) extract or remove from available land samples or specimens of rock, ore or minerals with as little damage to the surface of the land as possible, in quantities, in total or on occasions, not exceeding the prescribed limits;

- (d) keep as the holder's property or use for testing or evaluation purposes any samples and specimens of any mineral found by the holder on available land;
  - (e) for the purpose of prospecting and for domestic purposes and subject to the *Rights in Water and Irrigation Act 1914*, or any Act amending or replacing the relevant provisions of that Act —
    - (i) take and use water from any natural spring, lake, pool or watercourse situated in or flowing through available land; and
    - (ii) sink a well or bore on available land and take and use water from the well or bore;
  - (f) for the purpose of prospecting, camp on Crown land or conservation land in such manner and subject to such conditions as may be prescribed;
  - (g) fossick by prescribed means on Crown land or conservation land with the prior written consent of —
    - (i) any occupier of that land; and
    - (ii) if the land is subject to a mining tenement, the holder of the mining tenement.
- (2) Every miner's right is to be regarded as having been issued subject to the conditions that the holder of the miner's right or any other person acting in the exercise or purported exercise of an authorisation conferred or alleged to be conferred by subsection (1) —
- (a) must not, on conservation land, do any of the things referred to in that subsection unless



authorised to do so under the *Conservation and Land Management Act 1984*; and

- (b) must not use explosives or tools, other than tools prescribed for the purposes of this paragraph or hand tools; and
  - (c) must cause to be filled in or otherwise made safe —
    - (i) all holes, pits, trenches and other disturbances on the surface of the land which were made by the person while acting in the exercise or purported exercise of the authorisation and which are likely to endanger the safety of any person or animal; and
    - (ii) such other holes, pits, trenches and other disturbances made, wholly or in part, by the person as the Minister may from time to time direct;
- and
- (d) must take all necessary steps to prevent the following —
    - (i) fire damage to trees or other property;
    - (ii) damage to property or to livestock by the presence of dogs, the discharge of firearms, the use of vehicles or otherwise.

- (3) The holder of a miner's right is liable to pay compensation in accordance with section 123, as may be agreed or as may be determined by the warden's court on the application of the owner or occupier of the land or of the holder of any mining tenement affected, for any loss or damage caused by, and not made good by, the holder or any other person acting in the exercise

or purported exercise of an authorisation conferred or alleged to be conferred by subsection (1).

- (4) A determination made by the warden's court under subsection (3) is, for the purposes of section 147(1), a final determination of the warden's court.

**40E. Permit to prospect on Crown land or conservation land subject of exploration licence**

- (1) The mining registrar or the holder of a prescribed office in the Department may issue a permit to prospect for minerals on Crown land or conservation land that is the subject of an exploration licence to —
- (a) a natural person who is the holder of a miner's right; or
  - (b) 2 or 3 natural persons, each of whom is the holder of a miner's right, as joint holders of the permit.
- (2) A permit cannot be issued under subsection (1) if the applicant for the permit is already the holder of a permit under this section in respect of the exploration licence to which his or her application relates.
- (3) An application for a permit —
- (a) must be made in the prescribed form; and
  - (b) must be lodged in the prescribed manner; and
  - (c) must be accompanied by the prescribed application fee (if any).
- (4) The area of land in respect of which a permit is issued is to be specified in the permit in the prescribed manner.
- (5) A permit is subject to such conditions as are imposed in accordance with the regulations and specified in the permit.

- (6) In addition to any conditions that may be imposed under subsection (5) every permit is to be regarded as having been issued subject to conditions that the holder or each holder (in the case of joint holders) —
- (a) must not use explosives or tools, other than hand tools, on the land the subject of the permit; and
  - (b) must not prospect below the prescribed depth; and
  - (c) must comply with the prescribed limits referred to in section 40D(1)(c); and
  - (d) must not prospect within 100 m of any activities that are being carried out under the authority of an exploration licence; and
  - (e) must not prospect on land that is the subject of a special prospecting licence under section 70.
- (7) A permit is not transferable.

**40F. Power to remove Crown land or conservation land from operation of s. 40E**

- (1) The Minister may, by notice published in the *Gazette*, declare that section 40E does not apply to Crown land or conservation land that is —
- (a) the subject of a specified exploration licence; or
  - (b) in a specified block (within the meaning of Part IV Division 2); or
  - (c) in a specified area of the State.
- (2) The Minister may, by notice published in the *Gazette*, vary or cancel a notice under subsection (1).
- (3) A notice under this section takes effect on the day on which the notice is published in the *Gazette* or such later day as is specified in the notice.

- (4) A notice under this section does not affect the operation of a permit issued under section 40E before the day on which the notice takes effect.

**40G. Limitation on actions in tort**

- (1) In this section —  
*permit* means a permit issued under section 40E;  
*permit land* means land that is the subject of both the permit and the exploration licence concerned.
- (2) The holder of a permit cannot bring an action in tort against the holder of an exploration licence for injury, loss or damage suffered by the holder of the permit as a result of —
- (a) the condition of the permit land; or
  - (b) a thing that the holder of the exploration licence has done on the permit land under the authority of that licence.
- (3) Nothing in subsection (2)(b) prevents the bringing of an action in tort if the thing was done —
- (a) with the deliberate intent of causing injury, loss or damage to the holder of the permit; or
  - (b) with reckless disregard for the presence of the holder of the permit on the permit land.
- (4) In this section a reference to the doing of a thing includes a reference to an omission to do a thing.

**16. Section 46 amended**

After section 46(aa)(i) insert:

- (ii) the holder has paid the prescribed assessment fee in respect of the programme of work; and

**17. Section 56A amended**

In section 56A(1)(a) after “Schedule” insert:

Division 1

**18. Section 56B amended**

Delete section 56B(1) and insert:

(1) In this section —

*relevant licence* means a prospecting licence applied for before 10 February 2006.

**19. Section 63 amended**

After section 63(aa)(i) insert:

(ia) the holder has paid the prescribed assessment fee in respect of the programme of work; and

**20. Section 65 amended**

(1) In section 65(1) delete the definition of *end day* and insert:

*end day*, in relation to an exploration licence, means —

(a) the day (the *anniversary day*) that is 6 years after the day on which the licence was granted;  
or

(b) if, on the anniversary day, an application for retention status under section 69A in respect of the whole or part of the land the subject of the

licence has been made but not determined, the day on which that application is determined;

- (2) In section 65(1) in the definition of *surrender day* delete paragraph (b).
- (3) In section 65(3):
  - (a) delete “Subject to subsection (3a), on” and insert:

On
  - (b) delete “one block shall” and insert:

10 blocks must
- (4) Delete section 65(3a), (3b), (3c), (3d) and (4) and insert:
  - (3A) Subsection (3) does not apply to the holder of an exploration licence for which retention status has been approved under section 69B(1).
  - (4) If the holder of an exploration licence fails to lodge a surrender in accordance with subsection (3), the Minister must, by notice in writing, require the holder to lodge the surrender for registration within a period specified in the notice.
- (5) In section 65(4b) delete “3 discrete” and insert:

6 discrete

**21. Section 70 amended**

In section 70(1)(a) after “Schedule” insert:

Division 1

**22. Section 70H amended**

After section 70H(1)(aa)(i) insert:

- (ia) the holder has paid the prescribed assessment fee in respect of the programme of work; and

**23. Section 74 amended**

(1) In section 74(1):

- (a) in paragraph (ca)(ii) delete “person;” and insert:

person; or

- (b) after paragraph (ca)(ii) insert:

- (iii) a statement in accordance with subsection (1a) and a resource report;

(2) In section 74(1a) after “(1)(ca)(ii)” insert:

and (iii)

- (3) In section 74(7) insert in alphabetical order:

**JORC Code** means the *Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves* prepared by the Joint Ore Reserves Committee of the Australasian Institute of Mining and Metallurgy, the Australian Institute of Geoscientists and the Minerals Council of Australia as in force from time to time;

**resource report** means a report —

- (a) that sets out details of the mineral resources located in, on or under the land to which the application relates; and
  - (b) that complies with the JORC Code; and
  - (c) that has been made to the Australian Securities Exchange Limited.
- (4) In section 74(7) in the definition of **qualified person** delete “experience.” and insert:

experience;

**24. Section 82 amended**

In section 82(1)(ca)(i) after “use” insert:

and has paid the prescribed assessment fee in respect of the programme



**25. Section 82A amended**

After section 82A(2)(a) insert:

- (ba) to pay the prescribed assessment fee in respect of the mining proposal; and

**26. Section 91 amended**

In section 91(6) delete “mining operations.” and insert:

mining.

**27. Section 93 amended**

- (1) Delete section 93(1).
- (2) In section 93(2) delete “The” and insert:

An

Note: The heading to amended section 93 is to read:

**Map to accompany application**

**28. Section 96 amended**

Delete section 96(3)(a) and insert:

- (a) impose on the holder of the mining tenement —
  - (i) in a case where expenditure conditions have not been complied with, a penalty not exceeding \$10 000;
  - (ii) in any other case, a penalty not exceeding \$75 000 if the holder is an

individual or \$150 000 if the holder is a  
body corporate;

or

**29. Section 96A amended**

Delete section 96A(5)(a) and insert:

- (a) impose on the holder of the licence a penalty not exceeding \$75 000 if the holder is an individual or \$150 000 if the holder is a body corporate; or

**30. Section 97 amended**

Delete section 97(5)(a) and insert:

- (a) impose on the lessee a penalty not exceeding \$75 000 if the lessee is an individual or \$150 000 if the lessee is a body corporate; or

**31. Section 104 amended**

In section 104(4) after “any” insert:

Commonwealth land or

**32. Section 105 amended**

In section 105(1) delete “licence or a retention” and insert:

licence, a retention licence or a miscellaneous

**33. Section 112 amended**

In section 112(2):

- (a) in paragraph (b) delete “land.” and insert:

land; or

- (b) after paragraph (b) insert:

- (c) wholly in respect of Commonwealth land is not subject to the reservation referred to in subsection (1); or

- (d) partly in respect of any Commonwealth land and partly in respect of land other than Commonwealth land is not subject to the reservation referred to in subsection (1) in relation to that Commonwealth land.

**34. Section 116 amended**

In section 116(1) delete “shall be entitled” and insert:

is entitled, on payment of the prescribed fee,

**35. Section 154 amended**

In section 154(2):

- (a) delete “\$10 000” and insert:

\$20 000

(b) delete “\$1 000” and insert:

\$2 000

**36. Section 155 amended**

In section 155(1) delete the Penalty and insert:

Penalty:

- (a) for an individual — a fine of \$150 000 and, if the offence is a continuing one, a further fine of \$15 000 for each day or part of a day during which the offence has continued;
- (b) for a body corporate — a fine of \$300 000 and, if the offence is a continuing one, a further fine of \$30 000 for each day or part of a day during which the offence has continued.

**37. Section 156 amended**

In section 156(2) delete “20(2)(c).” and insert:

40D(1)(c).

**38. Section 160 amended**

In section 160(1) delete “20C,” and insert:

40G,

**39. Section 160B replaced**

Delete section 160B and insert:

**160B. Time limit for prosecution action**

A prosecution for an offence against this Act must be commenced within 3 years after the day on which the offence is alleged to have been committed.

**40. Section 162B inserted**

After section 162A insert:

**162B. Extension of prescribed period or time**

- (1) If this Act provides for something to be done within a prescribed period or a prescribed time, the Minister or a warden may, in a particular case, extend the period or the time for doing the thing.
- (2) The power in subsection (1) may be exercised whether or not the prescribed period has ended or the prescribed time has passed.

**41. Section 162 amended**

In section 162(2):

- (a) in paragraph (cb) delete “20A,” and insert:

40E,

- (b) in paragraph (cb)(v) delete “20A(5) or (6)” and insert:

40E(5) or (6)

(c) delete paragraph (gb).

**42. Second Schedule Division 1 heading inserted**

Before the Second Schedule clause 1 insert:

**Division 1 — Provisions relating to transition from  
repealed Act**

**43. Second Schedule Division 2 inserted**

At the end of the Second Schedule insert:

**Division 2 — Provisions relating to *Mining Amendment  
Act 2012***

**16. Miner's rights**

- (1) In this clause —  
*commencement day* means the day on which the *Mining Amendment Act 2012* section 15 comes into operation.
- (2) A miner's right in force under this Act immediately before commencement day is taken to be a miner's right issued under section 40C.

**17. Surrender requirements**

- (1) In this clause —  
*commencement day* means the day on which the *Mining Amendment Act 2012* section 20 comes into operation.
- (2) Section 65, as in force immediately before commencement day, applies in relation to an exploration licence if —
  - (a) the licence was granted on an application made after 10 February 2006; and
  - (b) an application for deferral under subsection (3b) of that section was made in relation to the licence

before commencement day but not determined  
before that day.

**18. Commonwealth land**

(1) In this clause —

*commencement day* means the day the *Mining Amendment Act 2012* section 13 comes into operation;

*existing application* means an application for an exploration licence made but not determined before commencement day;

*transition period* means the period beginning on commencement day and ending 3 months after that day.

(2) During the transition period —

- (a) a person who has made an existing application in respect of Commonwealth land has a right in priority to a person who has not made such an application to mark out or apply for a mining tenement in respect of the land the subject of the existing application; and
- (b) if more than one person has made an existing application in respect of the same Commonwealth land, priority is to be determined according to the date and time of the making of the existing applications.

**19. Time limit for prosecution action**

(1) In this clause —

*commencement day* means the day on which the *Mining Amendment Act 2012* section 39 comes into operation.

(2) Despite section 160B, a prosecution for an offence that is alleged to have been committed before commencement day must be commenced within one year after the day on which the offence is alleged to have been committed.

**Part 3 — Mining Amendment Act 2004 amended**

**44. Act amended**

This Part amends the *Mining Amendment Act 2004*.

**45. Section 19 amended**

- (1) In section 19(3) delete “may,” and insert:

must,

- (2) Delete section 19(6) and insert:

- (6) For the purposes of the application of section 65(1a) of the old provisions as modified by subsection (5) each of the following is a ground for exemption —

- (a) by reason of difficulties or delays —

- (i) occasioned by law; or
- (ii) arising from administrative, political, environmental or other requirements of governmental or other authorities, in the State or elsewhere; or
- (iii) arising from a requirement to conduct an Aboriginal heritage survey on the land to which the application for exemption relates (the *relevant land*); or
- (iv) in obtaining requisite consents or approvals for exploration or for the marking out of a mining lease or general purpose lease in relation to any part of the relevant land; or



- (v) in gaining access to the relevant land because of unfavourable climatic conditions,

the exploration programme, or the marking out and application appropriate to a mining lease or general purpose lease in relation to the relevant land, could not be undertaken or completed or is restricted in a manner that is, or subject to conditions that are, for the time being impracticable;

- (b) work already carried out under the licence justifies further exploration.

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