



MINING AMENDMENT BILL 2023

The Department of Mines, Industry Regulation and Safety is seeking public comment on the draft *Mining Amendment Bill 2023* (Bill).

OVERVIEW

Policy background

This Bill seeks to amend the *Mining Act 1978* (Mining Act) following on from the consequential amendments found in the *Land and Public Works Legislation Amendment Bill 2022* (LPWL Bill), which was introduced into parliament on 23 November 2022.

The Bill amendments stem from the proposed amendment to section 92B(2) of the *Land Administration Act 1997* (LAA), found in the LPWL Bill, which states that a diversification lease can be granted for any purpose. A policy objective of diversification leases is to provide non-exclusive broad based land tenure options for Crown land that can coexist with other land uses (multiple land uses), especially with native title and land uses by the resource industry.

A diversification lease will not enable use of the land to the exclusion of all others. It is intended that a diversification lease will coexist with mining and petroleum rights in a similar way to a pastoral lease. Carbon farming (referred to in the Bill as “offsets project” to more closely align with Commonwealth legislation) is regarded as a pastoral activity and can be undertaken on pastoral leases. The LPWL Bill amendments will also allow carbon farming to be carried out on diversification leases, which may significantly impact resource exploration and resource projects, with consequential negative effects on the economy and State budget.

The Government has made its policy intent clear, being that exploration for minerals and petroleum is still able to occur over areas subject to carbon farming. Some policy mitigation measures have been put in place for carbon farming on pastoral leases, that is, the exclusion of existing and pending mining leases and petroleum production licences (and associated infrastructure tenure) from carbon farming areas as part of State’s eligible interest holder consent mechanism. However, without the Bill amendments, carbon farming proponents may seek to exclude resource industry uses of land through objections to grant of tenements and associated resource activities.

Carbon farming, particularly in the rangelands, can require access to very large land areas. Mining tenements can be excised from carbon farms with very little adverse impact. Objections by carbon farming proponents to applications for mining tenements, or restoration applications for mining tenements, can prevent an application from progressing or delay progression for years while they are resolved through applications to the Mining Warden.

Currently, no objection to a mining tenement application is available on the grounds that it would affect pastoral activities. To maintain the status quo, it is important to articulate the position that objections to a mining tenement application will not be available on the grounds that it would affect carbon farming. The Bill amendments do not preclude objections on other grounds.

In line with the policy intent for diversification leases to coexist with other land uses over large areas of Crown land, including mining, and the State Government's commitment to a prosperous and resilient low-carbon future for our State, DMIRS is committed to working with the resources industry and other proponents to explore mutually beneficial, long-term outcomes for the State and the Western Australian community.

Mining Act provisions relating to objections

The Mining Act currently limits objections in circumstances such as:

- Special prospecting licence on prospecting licences – objection rights are limited to the holder of the prospecting licence (section 56A); and
- Special prospecting licence on exploration licences – objection rights are limited to the holder of the exploration licence (section 70)

There is no single provision in the *Mining Act* that deals with objections. Objections are provided for within provisions relating to applications for prospecting licences (section 42), exploration licences (section 59), retention licences (section 70D) and mining leases (section 75). These provisions mirror each other in that they provide for an objection to the Warden.

For general purpose leases (section 90), the same rules as for mining leases apply, that is, there is an ability under section 75 to make an objection.

Similarly, for miscellaneous licences (section 92), the same rules as for prospecting licences apply, that is, there is an ability under section 42 to make an objection.

There is also the ability to object to the restoration of a mining tenement following forfeiture (section 97A). The same limitation of objection grounds is required in this provision, as for the provisions governing objections against grant of tenements.

CONSULTATION

The draft *Mining Amendment Bill 2023* is available for comment until close of business **30 January 2023**.

Any comments or feedback can be emailed to RTD.Consultation@dmirs.wa.gov.au