



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

# Mining Amendment Bill 2022

## Response to Submissions

### Ability to Prescribe Fees

Version [01]

May 2022

## Introduction

The Department of Mines Industry Regulation and Safety (DMIRS) is proposing to amend the *Mining Act 1978* through the Mining Amendment Bill 2022 (Bill) to improve regulation and regulatory practice in Western Australia.

The proposed amendments seek to streamline administrative processes, safeguard the security of titles and licences, and generate certainty for the resource sector by:

- Modernising the geodetic datum through the adoption of GDA2020.
- Allowing for lease conversion applications to be made without first marking out the land when the land cannot be accessed due to a significant event.
- Providing discretion for the Minister to determine that land is unavailable for exploration when granting exploration licences.
- Consequential amendments to the designated tenement contact (DTC) rules to facilitate electronic communication.
- Allow for an objection against mining tenement applications to be lodged with a prescribed fee.

## Consultation

Amendments related to GDA2020, marking out requirements, DTC, and the making of areas unavailable for exploration, were previously released as part of a separate consultation under the Bill's former title, Mining Amendment Bill (No.1) 2021. Consultation on these amendments was undertaken between 10 January 2022 and 11 March 2022. Feedback received as a result of that consultation are addressed in a separate report published on the [DMIRS closed consultations](#) webpage.

**The following report is in response to consultation undertaken on proposed amendments to allow for the ability to prescribe fees for objection applications.**

Consultation was undertaken between 14 March 2022 and 8 April 2022.

Two submissions were received.

## Key themes

### 1. Power to prescribe fees for making an objection application may deter vexatious objectors

The ability to prescribe fees for objection applications is not intended to limit a party's right to object. DMIRS notes the position of industry bodies that a possible effect would be to reduce the number of vexatious objectors.

### 2. Scale of fees is unknown

The proposed amendments seek only to provide for the ability to prescribe fees for the lodgement of objections against applications for mining tenure.

Should a fee be imposed for objection applications, it would align the commencement of proceedings before the Warden with other courts and tribunals which charge a fee for the commencement of a proceeding.

If a fee is to be imposed, changes to the Mining Regulations 1981 would be required and be subject to consultation prior to being applied.

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### Ability to Prescribe Fees

Ref #	Stakeholder	Comment	DMIRS Response / Action
<b>General Comments</b>			
1	<b>Association of Mining and Exploration Companies (AMEC)</b>	DMIRS' proposal to prescribe a fee for the lodgement of objections against applications for mining tenements, is cautiously supported.	Noted.
2	<b>AMEC</b>	With continued, robust Industry engagement, we consider a fee, could contribute to a decline in the number of vexatious or nuisance plaintiffs.  These changes are similar to recommendations AMEC has made in the past to increase the fee for plaintiffs to the Warden's Court to drive a reduction in the number of vexatious plaintiffs.	Noted.
3	<b>AMEC</b>	AMEC reiterates our support in principle for this proposed power to prescribe fees, for the purpose of reducing vexatious plaintiffs. However, if this is merely for the purpose of cost recovery, AMEC does not support the proposal as it is clearly a core service of Government.	Noted.
4	<b>AMEC</b>	The release of this consultation without the quantum of proposed fees for the lodgement of objection applications makes it extremely difficult to comment on the fee without knowing the scale. Some understanding of the likely fee or fee range is needed now for informed consent to be provided. For example, is it reasonable to expect the same fee prescribed such as the current registration of dealings, i.e. \$139.00?	The proposed amendments seek only to provide for the ability to prescribe fees for the lodgement of objections against applications for mining tenure.  No fee is proposed at this time.  Any introduction of a fee would require an amendment to the Mining Regulations 1981.
5	<b>AMEC</b>	We look forward to the next stages of consultation on the precise quantum of the fee.	Noted.

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6	<b>Chamber of Minerals and Energy of Western Australia (CME)</b>	CME does not necessarily object to the proposal to prescribe a fee for objections. However, the quantum of any such fee and its subsequent application to objections arising from legitimate interest holders will necessarily be the subject of considerable interest from CME and our members.	The proposed amendments seek only to provide for the ability to prescribe fees for the lodgement of objections against applications for mining tenure.  No fee is proposed at this time.  Any introduction of a fee would require an amendment to the Mining Regulations 1981.
7	<b>CME</b>	<p>Many CME members hold large tenement footprints, and as a result receive new overlying tenement applications on an ongoing basis. In many cases, objections are required on the basis of protecting existing rights, activities and infrastructure from potential third party interference. In most cases, objections are lodged to ensure existing activities are not unduly affected, and to safeguard any safety or liability concerns. For example, an application which crosses a haul road, which will require an objection to deal with access and safety considerations.</p> <p>As a result, these tenement holders are subject to the cost implications of managing the resulting legal processes and negotiations (noting the Warden's Court is a no-cost jurisdiction) to protect legitimately held interests across a large number of matters. Anecdotally, it is not unusual for CME members to have well over 100 pending applications and current objections underway at any given time. While many of these applications will never progress to grant, there remains the need to object to protect these interests.</p>	The proposed amendments seek only to provide for the ability to prescribe fees for the lodgement of objections against applications for mining tenure.  No fee is proposed at this time.  Any introduction of a fee would require an amendment to the Mining Regulations 1981.
8	<b>CME</b>	As a result, CME note that there is a need for substantial consideration to be given to the application of any fee to those who hold legitimate interests in the land which is the subject of the application, and recommend consideration of fee exemptions to address this.	Any introduction of a fee would require an amendment to the Mining Regulations 1981 and be subject to consultation prior to being applied.
9	<b>CME</b>	The quantum of any fee will also be critical to ensure that a balance is struck between unduly penalising those who are required to engage in the objection process to protect legitimate interests held, and those who are 'casual' or 'vexatious' objectors or have no direct interest in the land the subject of the application.	The proposed amendments seek only to provide for the ability to prescribe fees for the lodgement of objections against applications for mining tenure.  No fee is proposed at this time.  Any introduction of a fee would require an amendment to the Mining Regulations 1981.
10	<b>CME</b>	CME considers that any reduction in vexatious complaints benefits the sector more broadly, however seconds the comments made in the AMEC submission to this consultation regarding the importance of the Warden's role in addressing this issue. It remains questionable whether a modest fee would act as a sufficient deterrent to such parties.	Noted.
11	<b>CME</b>	In looking to establish a fee, CME consider it relevant to look for alignment with existing fee structures under the Mining Act – for example forfeiture applications or registered dealings.	Noted.

Government of Western Australia

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

8.30am – 4.30pm

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