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

Mining Amendment Bill 2022

Response to Submissions

Version [01]

April 2022

Introduction

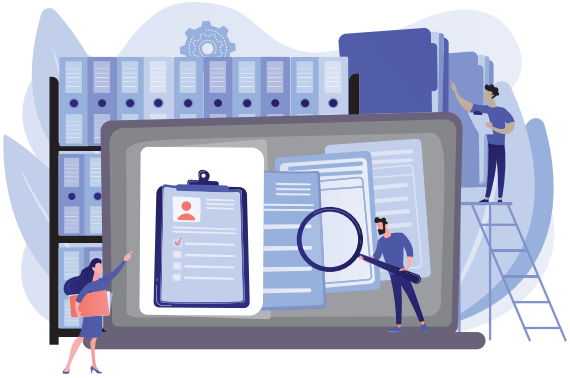
The Department of Mines Industry Regulation and Safety (DMIRS) is proposing to amend the *Mining Act 1978* through the Mining Amendment Bill 2022 (Bill) to improve regulation and regulatory practice in Western Australia.

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 a discretion for the Minister to determine that land is unavailable for exploration when granting exploration licences.
- Consequential amendments to the designated tenement contact rules to facilitate electronic communication.

Adoption of GDA 2020

Modernising reference points as a consequence of the Australian continental drift impacting the geodetic datum



Land unavailable for exploration

Minister's discretion to make areas unavailable for exploration

Marking out

Allowing lease conversion applications without first marking out when the land cannot be accessed due a significant event

Aside from these amendments, the Mining Amendment Bill 2022 will also amend the Mining Act to insert the ability to prescribe fees for lodgement of objections against applications for mining tenure. However, the consultation on those additional amendments was part of a separate consultation process and will be addressed in a separate document.

Consultation

The Mining Amendment Bill 2022 was made available for public consultation under its former title, Mining Amendment Bill (No.2) 2021, between 10 January 2022 and 11 March 2022.

The amendments proposed in the Mining Amendment Bill 2022 were first publicised to industry, government and Native Title parties in May and June 2021 as part of consultation undertaken for the Mining Amendment Bill 2021[1].

During the consultation period (10 January - 11 March 2022), DMIRS held six external consultation sessions, including three one-on-one sessions. These sessions were attended by over 65 representatives from State government, local government, industry, industry representative bodies and Native Title groups.

Details of the consultations sessions are:

- 9 February 2022: one hour face-to-face and Microsoft Teams presentation for Government agencies. Attended by 12 representatives from four agencies.
- 11 and 14 February 2022: two one hour face-to-face and Microsoft Teams presentations for all other stakeholders. Attended by a combined total of 41 representatives from 33 organisations.
- Three one-on-one sessions were held with two industry bodies and one non-industry body.

A total of nine written submissions were received.

Key themes

In general, the submissions supported the proposed amendments for the adoption of GDA2020 and the proposed amendments to the marking out rules. There was significant discussion on the "land unavailable for exploration" amendments. The "land unavailable for exploration" amendments also generated the most feedback in the written submissions.

The key themes that arose from stakeholder feedback are set out in the ten points below. The detailed responses to stakeholder feedback are provided at pages 6-24 of this report.

Adoption of the Geocentric Datum of Australia 2020

1. Feedback supports the adoption of GDA2020

The amendments to the Mining Act to adopt GDA2020 were well received and supported.

Designated Tenement Contact (DTC)

2. It would be beneficial for all tenement holders to have access to DTC email addresses

One submission suggested that DTC email addresses be made public. Email addresses are not publicly available in Mineral Titles Online for privacy reasons. The same is intended to be the case for email addresses of DTCs.

[1] At the relevant time the Mining Amendment Bill 2021 had a different title: Streamlining (Mining Amendment) Bill 2021.

Lease conversion applications to be made without first marking out the land

3. (a) There is risk that parties may use the proposed provisions to delay grant

(b) The applicant must complete the marking out within a specified timeframe

DMIRS considers that the risk is minimal that the proposed provisions could be used to delay grant. This is because the requirement to mark out the land before tenure can be granted still exists. The amendment only removes marking out as a precondition for lodging an application under specific circumstances that are outside of the applicant's control.

Marking out must be completed as soon as practicable after the event or circumstances no longer prevent access to the land, or as directed by the Mining Registrar. If the applicant does not mark out the land, the tenement will not be granted.

4. Can the Mining Registrar's decision be appealed?

The usual rules around administrative decision making apply. An appeal or review of the decision would be subject to existing administrative review processes.

5. What evidence is required to support a request not to mark out the land prior to making an application?

The provisions do not contain a mechanism for a request not to mark out the land. Rather, the applicant needs to lodge an application supported by a statement and evidence to satisfy the Mining Registrar that it is not possible for the land to be accessed for marking out.

The form and content of statement and evidence that may be considered by the Mining Registrar will be published in publicly available guidelines to provide clarity to applicants.

6. Statements, directions or decisions related to the extension of marking out requirements to be published

The application Form 21 is currently publicly available through Mineral Titles Online. The information on Form 21 will disclose if land has been marked out. Accompanying statements, communications and directions of the Mining Registrar are not currently publicly available. It is not intended that this will be changed. The information provided by applicants may contain matters that cannot be made publicly available due to privacy reasons.

Minister's discretion when granting exploration licences

7. Introduction of power to exclude areas from grant of exploration licences should be deferred until determination of the Blue Ribbon case[2]

DMIRS acknowledges industry's position with respect to the proposed amendment to section 57 of the Mining Act. It is therefore proposed that the amendment be deferred until the outcome of the Blue Ribbon case is known. Taking the section 57 amendment out of the Bill will ensure the timely passage of other measures contained in Bill.

DMIRS notes that an outcome to the Blue Ribbon case may not be known for a number of years until all appeal options have been exhausted. In the interim, the postponement of the amendment could impact the grant of some exploration licence applications, including those not affected by the outcome of the Blue Ribbon case, and this was acknowledged by one industry body in its submission. DMIRS will engage with stakeholders to ensure that exploration licence applications unaffected by the Blue Ribbon case are not left in the application stage. The need for an amendment to section 57 will be reconsidered once the outcome of the Blue Ribbon case is known.

[2] The most recent decision in this case was by Warden McPhee in *Blue Ribbon Mines Pty Ltd v Roy Hill Infrastructure Pty Ltd* & others [2022] WAMW 3.

8. The scope of the Minister's discretionary power is too broad and does not set out how it is to be exercised making it vulnerable to misuse by third parties.

The proposed amendment will now be deferred, and reconsidered once the outcome of the Blue Ribbon case is known.

9. Section 19 of the Mining Act already provides a mechanism by which land can be made unavailable for exploration.

The proposed amendment will now be deferred, and reconsidered once the outcome of the Blue Ribbon case is known.

However, DMIRS notes that section 19 relies on areas to be identified as being unavailable for exploration prior to any mining tenement application being made. Section 19 can only be used for areas that are not subject to a mining tenement or mining tenement application. Section 19 is not a suitable mechanism to address the sort of scenario presented by the Blue Ribbon case.

10. Parties must have opportunity to make submissions and access to an appeals process.

The proposed amendment will now be deferred, and reconsidered once the outcome of the Blue Ribbon case is known.

Mining Amendment Bill 2022			
Ref #	**Stakeholder**	**Comment**	**DMIRS Response / Action**
General Comments			
1	**Association of Mining and Exploration Companies (AMEC)**	The intent behind the amendments to the Mining Act sought to be delivered by the Bill, namely the streamlining of administrative processes, safeguarding of security of titles and licences, and generating certainty and security for the resources sector, are broadly supported by AMEC.	Support noted.
2	**Biodiversity Conservation and Attractions, Department of**	The Department of Biodiversity Conservation and Attractions supports the amendments to the Mining Act within the proposed Bill and looks forward to further engagement between our departments where necessary during their implementation.	Support noted.
3	**Cement and Concrete Aggregates Association (CCAA)**	CCAA welcomes efforts by Government to streamline administrative processes, reducing costs for industry and government alike. The proposed Bill does make steps in reducing administrative processes, but CCAA remains concerned around Ministerial discretion in determining land that is unavailable for exploration when granting exploration licences.	Noted.
4	**Chamber of Minerals and Energy of Western Australia (CME)**	CME supports the progress of the balance of amendments as proposed in the Bill and is pleased the Department is progressing legislative fixes to known issues affecting the efficiency of resource tenure administration in WA.	Support noted.
5	**Fortescue Metals Group (FMG)**	Fortescue has reviewed the proposed Bill and, while supportive of some elements, is of the view that some of the proposed amendments will not achieve DMIRS' stated objective and may result in less clarity and additional delay in the exercise of administrative processes under the Mining Act.	Noted.
6	**ER Law**	There are two proposed amendments in the Bill which we have no problems with as we view these amendments as increasing efficiency with these amendments being the update of DMIRS' mapping system to GDA2020 and the ability to defer the requirement for marking out for the purposes of conversion applications where the titleholder cannot access the land.	Support noted.

Mining Amendment Bill 2022			
Ref #	**Stakeholder**	**Comment**	**DMIRS Response / Action**
Adoption of GDA2020			
7	**AMEC**	DMIRS has seized the opportunity of adopting GDA2020 to fix gaps and overlays between the various geodetic datum as coordinates shift, is welcomed by AMEC. Exploration licences and tenements currently using the grid in accordance with GDA94 coordinates, as per the Global Navigation Satellite, are slowly being made inaccurate due to shifts in the tectonic plate. This creates unnecessary uncertainty as to the security of tenure now as the ground is literally shifting beneath the tenure. AMEC appreciated the opportunity to workshop these reforms with the Department and outline the concerns with a wholesale GDA2020 on 9 July 2020. We are pleased to see our recommendations reflected in this Bill, to provide more certainty to exploration licence holders, that the transition to GDA2020 will enable the exploration licence grid to remain constant as per GDA94, however the actual location on the surface of the land will, upon commencement, be described using GDA2020. AMEC supports the amendments as drafted. This is a sensible reform that will reduce the cost of business for Industry in Western Australia and increase the security of the mineral titles system.	Support noted.
8	**Yamatji Marlpa Aboriginal Corporation (YMAC)**	YMAC has no comments to add in relation to the adoption of the GDA2020. The logic described for why this transition should occur seems sensible.	Support noted.
Designated Tenement Contact (DTC)			
9	**AMEC**	AMEC supports the drafting in the Bill to introduce a definition of a DTC as well as the concept of a notification. These amendments reduce the administrative cost and burden for Industry and Government.	Support noted.
10	**FMG**	The Bill proposes that a definition of DTC is to be included, and that a DTC will receive a notice or a notification under the prescribed provision as required. Fortescue supports this amendment and suggests that it would be beneficial for tenement holders to have access to the email address on the Mineral Title Online register. At present, the email cannot be seen.	Email addresses are not published in Mineral Titles Online for privacy reasons.

Mining Amendment Bill 2022			
Ref #	**Stakeholder**	**Comment**	**DMIRS Response / Action**
		Marking out	
11	**AMEC**	We request further consultation, following the passage of the legislation, of the details surrounding the evidentiary and supporting information requirements for the Statement to ensure there are no unintended consequences for security of tenure.	Noted. Guidelines will be prepared to assist in the administration of the proposed provisions.
12	**AMEC**	The introduction of the lease conversion application will defer marking out requirements but will not remove them, with land to be marked out as soon as practicable or as directed by the Mining Registrar. As raised during the DMIRS briefing attended by AMEC on Friday 11 February 2022, there is concern that a Registrar could determine the reasons presented insufficient justification for land not being accessed. Will there be an appeals process, and if so, what is this intended to be? For example, will it be within the remit of the Warden? There have also been methodological questions raised as to what information will be used by the Registrar to reach a determination? Is a statement for deferral application intended to be made publicly available, for transparency and consistency in decision making? If this is the intent, it should be ensured the application does not contain commercially sensitive information.	If a Mining Registrar is not satisfied that the evidence presented by the applicant demonstrates that the land cannot be accessed, the Mining Registrar can specify a day by which the marking out must be done. The usual rules around administrative decision making apply. An appeal or review of the decision would be subject to existing administrative review processes. The form and content of statement and evidence that may be considered by the Mining Registrar will be set out in guidelines. The aim of the guidelines will be to provide clarity to applicants. The application Form 21 is currently publicly available through Mineral Titles Online. The information on Form 21 will disclose if land has been marked out. Accompanying statements, communications and directions of the Mining Registrar are not currently publicly available. It is not intended that this will be changed. The information provided by applicants may contain matters that cannot be made publicly available due to privacy reasons.
13	**AMEC**	Furthermore, Industry has raised that these provisions could be used by some proponents to intentionally delay grant. This could be an unintended consequence that would be anticipated by the introduction of a time limit. This could be managed through the consequential amendments to the mining regulations.	The intent of the amendment is to secure a licence holder's right to convert should a significant event prevent access to the land. Any request to make an application for the grant of a mining lease or general purpose lease without first marking out the land is limited to events listed in the proposed section 105(3). The nature of the listed events means that they are in public knowledge and outside an applicant's control. If a Mining Registrar is not satisfied that the evidence presented by the applicant demonstrates that the land cannot be accessed, the Mining Registrar can specify a day by which the marking out must be done.

Mining Amendment Bill 2022			
Ref #	**Stakeholder**	**Comment**	**DMIRS Response / Action**
14	**FMG**	Fortescue's view is that the above provision may lead to extended timeframes for marking out and increase the uncertainty as to the timing for marking out to be completed. Fortescue suggests that a maximum time frame of up to 6 months is mandated for an extension of time to mark out. The onus should be on the applicant to seek further extensions of time by application to the Mining Registrar setting out the reasons for the continued existence of the circumstances preventing marking out. Failing compliance with this requirement a mining lease or general purpose lease should be subject to a forfeiture application under the Mining Act. To accommodate Fortescue's suggested approach above, section 82(1) of the Mining Act should specifically include a failure to mark out, or a failure to maintain an extension of time to mark out, as a forfeiture event.	Applications for the grant of title without first marking out the land are limited to events listed in the proposed section 105(3). Given the uncertain duration of the listed events, it is not appropriate to mandate time limits in the legislation. The application cannot progress to grant unless marking out is done. Indeed, it would be futile to grant a mining lease or a general purpose lease over land that cannot be accessed. For that reason, there is nothing to forfeit.
15	**YMAC**	We submit that s105 should make it clear that where such an application is accepted without first marking out the land in relation to which the lease is sought, the requirement to mark out the area when it is possible to do so be a subsequent condition, and that the tenement should not be valid and is to be cancelled if this is not complied with.	Conditions are imposed on mining titles on grant. A mining lease or a general purpose lease will not be granted until the ground is marked out. A subsequent condition to mark out the land is not necessary, because the title will not be granted. The issue of invalidity or cancellation of tenement does not arise.
16	**YMAC**	We also submit that any statements, directions and/or decisions of the mining registrar or warden should be made available to the public and recorded with other information relating to the tenement.	The application Form 21 is currently publicly available through Mineral Titles Online. The information on Form 21 will disclose if land has been marked out. Accompanying statements, communications and directions of the Mining Registrar are not currently publicly available. It is not intended that this will be changed. The information provided by applicants may contain matters that cannot be made publicly available due to privacy reasons.

Mining Amendment Bill 2022			
Ref #	**Stakeholder**	**Comment**	**DMIRS Response / Action**
		Land unavailable for exploration	
17	**AMEC**	The proposed amendments are drafted to address the questions regarding Minutes of Programming Direction raised in the case, *Blue Ribbon Mines Pty Ltd v Roy Hill* and Others that has since been referred to the Supreme Court by the Warden. AMEC considers that the Government should wait for the Supreme Court to answer the questions before the law before further consulting on the amendments proposed as Section 57(2)(e)(b). We recognise that calling for a delay in the introduction of these amendments will consequentially mean a delay in the implementation of any new Minutes of Programming Direction on future tenure. However, we consider that the Government must weigh what the Supreme Court's decision is prior to amending the Mining Act. Noting that it is possible that the Supreme Court may be satisfied with the Mining Act, rendering amendments unnecessary.	Noted. The proposed amendment to section 57 of the Mining Act will be removed from the Bill. The proposed amendment will be deferred until the outcome of the Blue Ribbon case is known. Taking the section 57 amendment out of the Bill will ensure the timely passage of other measures contained in Bill. DMIRS will re-examine the need for an amendment to section 57 once the outcome of the Blue Ribbon case is known.
18	**AMEC**	AMEC considers the risks that this provision introduces to facilitate mischief by vexatious third parties is unacceptable. The broad unfettered Ministerial discretion could easily be gamed by third parties to introduce costs and delays to the grant of tenure. Also, many in Industry have noted that the Minister already has Section 19 of the Mining Act to prevent mining on certain land. This amendment should be delayed and included in later legislative amendments. If it were to proceed there are critical process questions as to how this discretion would operate that the brief wording in the legislation do not answer that we can detail on request.	
19	**CCAA**	The current wording within Section 57 (2e)(b) of the Bill is open to wide interpretation. There is no direction on the types or reasons why areas may be listed as unavailable for exploration, the period of time of any exclusion or reversion of an exclusion. To provide greater clarity for the State, exclusions should be implemented when the land is vacant of tenements or when tenements are to expire. Exclusion prior to grant on a tenement-by-tenement basis is likely to mean significant research, time, lodging and liaison effort is completed by a proponent only to find at any time prior to grant that all the effort and time is wasted. There is no certainty of outcome for industry and this proposed clause removes due process and procedural fairness for proponents and industry.	The proposed amendment to section 57 of the Mining Act will be removed from the Bill. The proposed amendment will be deferred until the outcome of the Blue Ribbon case is known. Taking the section 57 amendment out of the Bill will ensure the timely passage of other measures contained in Bill. DMIRS will re-examine the need for an amendment to section 57 once the outcome of the Blue Ribbon case is known.
20	**CCAA**	CCAA recommends that the types of land tenure expected to be covered by this section should be specified and mapped, such as areas of highly significant cultural values or highly significant conservation values. These specified types of land tenure should be subject to additional industry consultation. This greater definition of the clause will help to restrict regulatory creep over time that could cover a broader classification of land tenure not originally envisaged to be exempt from exploration.	The proposed amendment to section 57 of the Mining Act will be removed from the Bill.

Mining Amendment Bill 2022			
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21	**CCAA**	It is stated that Section 57 (2e) (b) gives the Minister the power to determine that land is unavailable for an exploration licence only and does not affect the granting of other types of mining tenements. Whilst Exploration Licences do not have to be physically pegged on the ground unlike other mining tenement types, there are still implications to the majority of vested crown land in which a high proportion of basic raw material (BRM) operations occur on, and which are subject to other legislation. For example, if the Minister determines that the Department of Biodiversity, Conservation and Attractions managed lands are unavailable for exploration, then under the *Conservation and Land Management Act 1984*, to apply for another type of mining tenement would require the consent of the Minister for Environment to enter the land to peg the application. This is an unnecessary increase in red tape and adds increased uncertainty and time to the process and potentially sterilises key, strategic BRM resources. There is a real risk of this occurring, both at the individual application level and blanket rulings for types of crown land, e.g., State Forest, Darling Scarp, Gnangara Mound.	The proposed amendment to section 57 of the Mining Act will be removed from the Bill.
22	**CCAA**	CCAA recommends that the basic raw material resource potential of any land is considered prior to the Minister determining that land is unavailable for exploration.	The proposed amendment to section 57 of the Mining Act will be removed from the Bill.
23	**CME**	CME support the progression of the majority of the amendments proposed in the Bill, however, strongly recommend that the proposed Section 57(2e) is removed from the Bill. The amendment proposed in s57(2e) represents a significant increase in the scope of the Minister's direct decision-making role, without certainty that enactment of this provision will fully resolve existing issues. This presents no benefit to the State nor clarity for proponents, and risks further complicating and extending the process surrounding the grant of tenure in WA.	Noted. The proposed amendment to section 57 of the Mining Act will be removed from the Bill. The proposed amendment will be deferred until the outcome of the Blue Ribbon case is known. Taking the section 57 amendment out of the Bill will ensure the timely passage of other measures contained in Bill. DMIRS will re-examine the need for an amendment to section 57 once the outcome of the Blue Ribbon case is known.
24	**CME**	CME understands, arising from the decision of the Warden in Blue Ribbon, the Mining Warden has referred questions of law to the Supreme Court of Western Australia. At the core of this referral is the question of the Minister's powers to impose conditions on the grant of exploration licences. With this case pending decision by the Supreme Court of Western Australia, it would be premature to impose a broad overlapping provision prior to the resolution of Blue Ribbon. Irrespective of the Supreme Court's determination on the relevant matters of law, waiting for resolution of this case will be instructive as to the legal issues concerned and any resulting constraints to the operation of the *Mining Act 1978* (WA) (the Act), which will likely need to be subsequently resolved by amendment to the Act. (WA) (the Act), which will likely need to be subsequently resolved by amendment to the Act. CME therefore strongly recommend that proposed s57(2e) be removed from the Bill. It is important to further note that resolution of the issues being considered by Blue Ribbon remain a priority for CME members, given the substantial ongoing delays and impacts being felt by the inability to resolve similar matters by agreement between parties. As a result, CME support consideration and consultation on further legislative amendments as required to resolve these issues once conclusively determined.	The proposed amendment to section 57 of the Mining Act will be removed from the Bill.

Mining Amendment Bill 2022			
Ref #	**Stakeholder**	**Comment**	**DMIRS Response / Action**
25	**ER Law**	The amendment which we assess as requiring more attention is the amendment providing the Minister with the discretion to determine that certain land is "unavailable for exploration" prior to the grant of an exploration licence. We understand that such an amendment could assist where there may be a need to address certain issues through determining certain areas of land 'unavailable'. For example, such issues can range from the land overlapping with existing infrastructure and potential areas which may not be appropriate for the expedited procedure. However, there may be unintended consequences of introducing another area with broad Ministerial discretion and to introduce another area may create unwanted regulatory uncertainty. Such an area of broad ministerial discretion already exists in section 111A of the *Mining Act 1978* (WA) and there is, to some degree, understood procedures of how that applies. ER Law urges that there ought to be more clarity with any such amendment about the Ministerial discretion to determine certain land as "unavailable for exploration". In particular, some specifics of when and why that discretion would be exercised (including the procedure with which any person may apply to the Minister to exercise the discretion and the basis upon which the Minister may exercise this unfettered discretion), and the extent of such a determination – area and duration.	Noted. The proposed amendment to section 57 of the Mining Act will be removed from the Bill. The proposed amendment will be deferred until the outcome of the Blue Ribbon case is known. Taking the section 57 amendment out of the Bill will ensure the timely passage of other measures contained in Bill. DMIRS will re-examine the need for an amendment to section 57 once the outcome of the Blue Ribbon case is known.
26	**FMG**	Fortescue is of the view that section 19 of the Mining Act currently allows the Minister to exempt land from mining. The above proposed amendment presents duplication of the general power under section 19 and does not detail the circumstances in which the Minister may avail himself of that power or how the proposed amendment might deliver different outcomes than that available already under section 19 of the Mining Act. As such, the scope and application of the proposed amendment is unclear at this point in time. The exercise of the power to determine land is unavailable for exploration is likely to be prejudicial to applicants for exploration tenure particularly where the Minister exercises such a determination shortly before the grant. By this stage an applicant will usually have expended considerable time and expense to negotiate with objecting parties. Further, the uncertainty of having areas which may potentially be determined by the Minister to be unavailable for exploration pursuant to proposed section 57(2e)(b) will impact the matters set out in s58(1)(b)(ii) and (iii) which are required to be provided by the applicant on lodgement of an exploration licence. Where land is deemed to be unavailable for exploration it is likely that consequential changes will be required to programmes of work, estimates of exploration spend and details of technical and financial resources which were lodged at the time of application. It is unclear whether this circumstance would raise questions of proper compliance with the requirements of section 58(1)(b).	The proposed amendment to section 57 of the Mining Act will be removed from the Bill. The proposed amendment will be deferred until the outcome of the Blue Ribbon case is known. Taking the section 57 amendment out of the Bill will ensure the timely passage of other measures contained in Bill. DMIRS will re-examine the need for an amendment to section 57 once the outcome of the Blue Ribbon case is known.
27	**FMG**	The administrative processes that will undoubtedly accompany the amendment to section 57(2e) are yet to be published and what these may encompass are unclear based on the materials provided by DMIRS to date. It is imperative that any processes and procedures are clearly defined and considered by industry before any legislative amendment is finalised and the consequential impacts are known and understood.	The proposed amendment to section 57 of the Mining Act will be removed from the Bill.
28	**FMG**	If section 57(2e)(b) is enacted, it is unclear by which means the Minister will determine areas that are unavailable for exploration and the timing of such a decision. It is also unclear whether an applicant, objector, or both will be entitled to make submissions in relation to a Minister's determination or to seek review. Without further definition of the processes which are to be applied, Fortescue's view is that the above amendment is likely to delay rather than facilitate applications and create a second stream of administrative process.	The proposed amendment to section 57 of the Mining Act will be removed from the Bill.
29	**FMG**	Fortescue is uncertain as to how any excluded land will be depicted on the DMIRS Tengraph system.	The proposed amendment to section 57 of the Mining Act will be removed from the Bill.

Mining Amendment Bill 2022			
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30	**FMG**	Fortescue is however supportive of legislative amendment that would protect rail built on tenure granted under State Agreement from overlapping exploration grants. The exercise of exploration rights is inconsistent with the safe operation of Fortescue's heavy haulage railways and prejudicial to the value of royalties to the State that are dependent on uninterrupted use. The issue of appropriate protections for major rail infrastructure is currently before the Courts in *Blue Ribbon Pty Ltd v Roy Hill Infrastructure Pty Ltd & Ors* for directions as to whether the Mining Act currently allows for excision of overlapping areas to be ordered by the Warden following an agreement between the applicant and objector to have areas of an exploration licence excised. Fortescue's concern regarding protection of its rail tenure is shared by other rail infrastructure operators under State Agreement including BHP and Roy Hill. These entities are also parties to the Blue Ribbon proceedings.	Noted.
31	**FMG**	Notwithstanding that the *Blue Ribbon* case is yet to be determined, it is Fortescue's view that legislative intervention in the meantime could be used to secure appropriate protections for heavy haulage rail infrastructure. Accordingly, to address this concern Fortescue proposes protective rail conditions (akin to those protections as currently exist for railways operating under the Railway Freight Systems Act 2000) to be imposed as standard conditions on the grant of an exploration licence. Fortescue recommends that specific standard conditions be developed in consultation with State Agreement rail operators.	DMIRS is undertaking a review of standard conditions imposed on grant, and will conduct a public consultation process as part of the review.
32	**FMG**	Fortescue does not support the proposed amendments to section 57(2e) as set out in the current draft of the Bill for the reasons stated above. Fortescue recommends that the proposed amendments to section 57(2e) be removed from the Bill. This will allow further time for industry consultation regarding the adequacy of the existing administrative framework and what changes, if any, are required.	The proposed amendment to section 57 of the Mining Act will be removed from the Bill.
33	**Primary Industries and Regional Development, Department of**	DPIRD has a significant interest in land for pastoral and agricultural purposes where it is of significance to the State. DPIRD invites the Minister to consult with our office if land in use for these purposes is identified in an exploration licence application, and this may be relevant to the exercise of Ministerial discretion to decide such land is 'unavailable for exploration'.	Noted. Section 20 of the Mining Act provides protection to protect agricultural and pastoral interests. The existing provisions and procedures under the Mining Act support that position.
34	**Rio Tinto**	Rio Tinto supports the submission provided by the Chamber of Minerals and Energy on the Bill and considers that is it premature to include an amendment to s.57(2e) prior to the resolution of the *Blue Ribbon Mines Pty Ltd v Roy Hill Infrastructure Pty Ltd and Ors* [2022] WAMW 3 (Blue Ribbon).	Noted. The proposed amendment to section 57 of the Mining Act will be removed from the Bill. The proposed amendment will be deferred until the outcome of the Blue Ribbon case is known. Taking the section 57 amendment out of the Bill will ensure the timely passage of other measures contained in Bill. DMIRS will re-examine the need for an amendment to section 57 once the outcome of the Blue Ribbon case is known.
35	**Rio Tinto**	Rio Tinto is concerned that s.57(2e) is too broad in its application and there is insufficient detail regarding the circumstances in which the Minister's powers can be exercised. The preferred approach is to make the overlapping land unavailable for exploration by order of the Warden following agreement of the applicant and objector prior to the grant of the tenement.	The proposed amendment to section 57 of the Mining Act will be removed from the Bill.

Mining Amendment Bill 2022			
Ref #	**Stakeholder**	**Comment**	**DMIRS Response / Action**
36	**YMAC**	The proposed changes only apply to the unavailability of land for exploration. We submit that a similar discretion be provided in relation to other mining tenements as well. In line with this, we further submit that the following points[3] should also be replicated throughout the Bill for other types of tenements.	The proposed amendment to section 57 of the Mining Act will be removed from the Bill. The proposed amendment will be deferred until the outcome of the Blue Ribbon case is known. Taking the section 57 amendment out of the Bill will ensure the timely passage of other measures contained in Bill. DMIRS will re-examine the need for an amendment to section 57 once the outcome of the Blue Ribbon case is known.
37	**YMAC**	We note that the Minister can exercise this discretion after an exploration tenement has been applied for. We recommend that there be procedures legislated that enable registered native title bodies corporate, native title claimants, and native title representative bodies or service providers to: a. be notified of exploration tenement applications (e.g., s58(4) could be amended to require such notification specific to these parties); and b. make submissions to the Minister to exercise this discretion to make areas unavailable for exploration (e.g., where such areas comprise important cultural heritage).	The proposed amendment to section 57 of the Mining Act will be removed from the Bill.
38	**YMAC**	The above point could be further facilitated by amending the definition of "owner of land" to confirm the term includes native title holders. For example, this has been done in s10A of the *Mineral Resources Act 1989* (Qld).	The proposed amendment to section 57 of the Mining Act will be removed from the Bill
39	**YMAC**	We urge that the Bill (or regulations) provide that native title parties may make submissions to the mining registrar, warden and/or the Minister any time before the Minister makes a final grant of an exploration licence in relation to whether the land should be determined to be unavailable for exploration. This should provide that the mining registrar or warden must forward any submissions received from the native title parties to the Minister when providing any report to the Minister, and that the Minister must consider these submissions directly (or from the mining registrar or warden) before making the grant of the exploration licence.	The proposed amendment to section 57 of the Mining Act will be removed from the Bill.
40	**YMAC**	We also submit that the Bill be amended to provide that the Minister may impose native title protection conditions on exploration licences if the Minister decides not to make the land unavailable for exploration. (Compare, for example, s141AA of the *Mineral Resources Act 1989* (Qld).)	The proposed amendment to section 57 of the Mining Act will be removed from the Bill.

[3] Refer 37, 38, 39,40

Government of Western Australia

Department of Mines, Industry Regulation and Safety

8.30am – 4.30pm

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