



## POSITION PAPER 11

### CONVERSION APPLICATIONS – RIGHT OF PRIORITY – SURRENDER/ FORFEITURE OF UNDERLYING LICENCE

#### ISSUE

Who has priority for marking out and applying for a surrendered/forfeited licence over which there is a lease conversion application?

#### BACKGROUND

Prospecting Licences and Exploration Licences may be forfeited for breach of condition, on application by either the Department or any other person (sections 96, 96A and 98 of the *Mining Act 1978*).

Prospecting Licences and Exploration Licences have the right to convert to a Mining Lease or General Purpose Lease under sections 49 and 67. This conversion right relies on the underlying mining tenement remaining in force.

Sections 96(3a) and 100 provide that an applicant for forfeiture has 14 days right in priority to mark out and apply for the subject land if it forfeited or if it is surrendered whilst the subject of an application for forfeiture.

#### POSITION

A Mining Lease application is no longer a 'conversion application' if the underlying Prospecting Licence or Exploration Licence is subsequently forfeited for breach of condition (including expenditure condition). It becomes a Mining Lease application subject to the rules of priority provided in section 100.

Where the underlying tenement is either forfeited or surrendered whilst the subject of a third party application for forfeiture, the provisions of section 100 prevail. This means that the applicant for forfeiture has a right in priority over any other person to mark out and apply for the land.

Where an underlying tenement has been forfeited, whether or not the third party applicant for forfeiture exercises their rights to mark out and apply for the land, the pre-existing Mining Lease application will be put to the Minister for refusal on public interest



grounds as it is not in the public interest to progress an application where the applicant has previously failed to comply with mining tenement conditions.

## **REFERENCES**

Sections 49, 67, 96, 96A, 98 and 100 of the *Mining Act 1978*