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## POLICY GUIDELINES

### EXEMPTION FROM EXPENDITURE CONDITION

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This paper summarises policy guidelines used by the Department in determining an application for exemption (**the application**) from compliance with the expenditure requirements under the *Mining Act 1978* (**the Act**).

#### **Section 102 of the Mining Act 1978**

The intention of the Act is to ensure effective exploration and development and therefore ground should not remain unexplored without compelling reasons.

Section 102 of the Act provides a mechanism for exemption from expenditure commitments for a **given expenditure year** where such compelling reasons exist, for example,

- *force majeure* circumstances;
- for reasons such as inability to conduct/complete exploration or mining due to circumstances beyond the control of the tenement holder (eg. heritage issues, restrictive conditions placed on the tenement etc.);
- to retain mineral deposits for future development and production;
- to allow for some flexibility when planning exploration programs or mining.

#### **Points to note**

The application can only be assessed based on what is stated on the Form 18 under item (g) – reasons for application and must include the subsection under which exemption is being sought and be accompanied by a brief reason in support of that subsection.

The same or similar grounds for exemption may not be supported in subsequent years if it cannot be demonstrated that progress in exploring or developing a tenement has been made.

#### **Reasons for exemption set out under Section 102 of the Mining Act 1978**

- 102(2)
- (a) title to the tenement is in dispute;
  - (b) time is required to evaluate work done on the tenement, plan future exploration or mining or raise capital therefor;
  - (c) time to purchase and erect plant and machinery;
  - (d) ground unworkable;
  - (e) tenement contains a mineral deposit which is uneconomic;
  - (f) tenement contains mineral ore which is required to sustain the future operations of an existing or proposed mining operation;

- (g) mining on the tenement is prevented or restricted by political, environmental or other difficulties;
- (h) aggregate exploration expenditure met for tenements in a project.

102(3) Any other reason not covered in Sections 102(2)(a) to 102(2)(h) of the Act which in the Minister's opinion is sufficient to justify an exemption.

### **102(2)(a) of the Act**

*“that the title to the mining tenement is in dispute”*

There must be evidence of the dispute, eg, when/how did the dispute start, what court action has been/will be taken and/or that the dispute prevented the tenement holder from carrying out exploration or mining on the tenement.

**Note:** Regulation 52 of the *Mining Regulations 1981 (the Regulations)* provides for a pro-rata reduction in expenditure commitment while a tenement is subject to a plaint for forfeiture.

### **102(2)(b) of the Act**

*“that time is required to evaluate work done on the mining tenement, to plan future exploration or mining or raise capital therefor”*

The policy is to allow a reasonable period of time (one year would be generally considered to be a reasonable period) to assess the results of exploration activities that have been completed to date on the tenement before continuing with the next stage of exploration or development and/or to plan future exploration or mining.

An application must include information about the type and extent of work that had been evaluated during the relevant period, including a brief summary of the results of the evaluation.

Details of activities to raise capital should be substantiated (e.g. date of stock exchange listing). In respect of an exploration licence in its first year of term, exemption would generally not be considered under this reason as the licensee would have declared their ability to meet expenditure as a pre-requisite for grant.

### **102(2)(c) of the Act**

*“that time is required to purchase and erect plant and machinery”*

The policy is to allow a reasonable period of time to purchase and erect plant and machinery before commencing a mining operation. Depending on the plant/machinery to be purchased, its availability and the remoteness of any construction, any period up to one year may be considered a reasonable time.

An application must be supported by appropriate evidence, eg, copy of purchase order/invoice from supplier evidencing the placement of an order for the purchase of the plant and machinery for the purpose of conducting work on the tenement.

## **102(2)(d) of the Act**

*“that the ground the subject of the mining tenement is for any sufficient reason unworkable”*

The policy is to support an exemption where it can be demonstrated that the ground was unworkable for a considerable period of time during the period for which exemption has been sought. This would be generally due to adverse weather conditions beyond normal seasonal variations (e.g. flooding and related road closures, extreme heat) but may also include extreme remoteness and related access issues.

An application must be supported by appropriate evidence, eg, evidence relevant to the circumstances that rendered the ground unworkable, or to support any claim that the “unworkable” ground prevented the carrying out of work, such as drilling, gridlines etc, that had been scheduled prior to the ground becoming unworkable or that, subsequently, it was not possible to carry out any other work on the ground during the remainder of the relevant period.

## **102(2)(e) of the Act (see also Section 102(7) of the Act)**

*“that the ground the subject of the mining tenement contains a mineral deposit which is uneconomic but which may reasonably be expected to become economic in the future or that at the relevant time economic or marketing problems are such as not to make the mining operations viable”*

The policy in respect to this sub-section is that a mineral deposit should generally be classified as measured, indicated or inferred under the JORC code (Australasian Code for Reporting of Identified Mineral Resources and Ore Reserves) so a meaningful assessment of the economic status of the deposit can be made.

An application must be supported by the following information:

- commodity, tonnage, grade and resource category (measured, indicated or inferred), if more than one category is quoted, then tonnage and grade should be given for each category separately;
- a plan showing the location and extent of the deposit in relation to the tenement boundary; and
- reference (author, title, date) to the mineral-exploration report containing the details of the resource estimate. If a mineral-exploration report has not been previously submitted, the relevant information should accompany the application for exemption.

For some commodities (eg, industrial minerals, construction materials, semi-precious stones) some of the above information may not be available, however, as much detail as possible should be supplied with the application.

Where exemption applications under Sections 102(2)(e) or (f) of the Act are made for consecutive years pursuant to Section 102(7) of the Act, the applicant should show that the area held is reasonable in respect to size and type of the deposit. The resource should generally be at least in the indicated category, however, depending on commodity and mineralisation style, deposits in the inferred resource classification may be accepted in certain cases.

### **102(2)(f) of the Act (see also Section 102(7) of the Act)**

*“that the ground the subject of the mining tenement contains mineral ore which is required to sustain the future operations of an existing or proposed mining operation”*

This section applies where an economic deposit (mineral ore) exists on the tenement and mining is planned in the future as part of an existing or proposed mining operation.

The information required is much the same as for Section 102(2)(e) of the Act but should also include a statement when mining is likely to occur and where the ore is to be processed. If the mine is not yet operating, then information on the stage of planning/development of the operation should be supplied.

The policy is otherwise the same as that for 102(2)(e) of the Act.

### **102(2)(g) of the Act**

*“that political, environmental or other difficulties in obtaining requisite approvals prevent mining or restrict it in a manner that is, or subject to condition that are, for the time being impracticable”*

The policy is to support exemption applications where it can be demonstrated that there was a lack of access or stringent restrictions on access to a conservation estate, Nature Reserves, State Forests etc.

Other difficulties in obtaining requisite approvals may be cited, private land consents, access to Aboriginal Reserves and access for Heritage Surveys, provided the tenement holder can demonstrate that access had been sought in a timely manner.

An application must be accompanied by documentation substantiating the difficulties that affected the tenement.

### **102(2)(h) of the Act**

*“that -*

- (i) the mining tenement is one of 2 or more mining tenements (“combined reporting tenements”) the subject of arrangements approved under section 115A(4) for the filing of combined mineral exploration reports; and*
- (ii) the aggregate exploration expenditure for the combined reporting tenements would have been such as to satisfy the expenditure requirements for the mining tenement concerned had that aggregate exploration expenditure been apportioned between the combined reporting tenements.”*

For a tenement to be granted a “project exemption”, the tenement must have combined reporting status (as approved under Section 115A(4) of the Act). Such approval must have been given in writing prior to the end of the period for which exemption is being sought. The same applies to all tenements in the group ie, for any tenement to be included in the calculation of aggregate expenditure it must have had combined reporting status approved prior to the anniversary of the tenement for which exemption is being sought **(the subject tenement)**.

The project expenditure commitment and the aggregate expenditure will be calculated on the subject tenement's anniversary date plus 60 days (or, if an extension of time to lodge the Form 5 has been granted, at the expiry of that extended period), thereby ensuring that the reported expenditure for the subject tenement will be included in the calculations.

Aggregate exploration expenditure is calculated by adding the total expenditures reported on the relevant operation reports (Form 5) submitted for all tenements in the group excluding any monies claimed under 'Mining Activities' in those operations reports. Expenditure on tenements that have expired, been forfeited or surrendered during the period will be included in the calculation.

To assist in the determination of an application under this subsection an applicant is encouraged to provide a schedule showing the aggregate expenditure for the project in the relevant period as against the project's expenditure requirement. The information in the schedule should include:

- the combined reporting number (as issued by the Geological Survey Division); and
- a list of the project's tenements stating against each tenement its annual expenditure commitment, its relevant reported Form 5 expenditure (ie, excluding any monies claimed under 'Mining Activities') and the total/aggregate amount expended on the project.

### **102(3) of the Act**

*“Notwithstanding that the reasons given for the application for exemption are not amongst those set out in subsection (2), a certificate of exemption may also be granted for any other reason which may be prescribed or which in the opinion of the Minister is sufficient to justify such exemption”*

It is not sufficient to state only “Section 102(3)” on the application. The applicant must also provide adequate details about “any other reason” for consideration by the Minister (ie, a brief reason to be stated on the application and more detailed information to be provided in the supporting statutory declaration).

Furthermore, this subsection cannot be used if the reason for the exemption is already a prescribed reason as set out in Sections 102(2)(a) to 102(2)(h) of the Act.

### **Section 102(7) of the Act - mining leases exempted for 2 to 5 years**

The policy is that long term exemptions will generally only be considered under Sections 102(2)(e) and (f) of the Act.

The intent of the Act is to give a holder relief from further expenditure commitments when a mineral deposit has been delineated on a mining lease. Before the introduction of retention licences into the Act in 1994, Section 102(7) of the Act was the “retention” mechanism available under the legislation.

The policy, in regard to the length of the period for which an exemption is granted, takes into account the mineral commodity concerned. In respect to gold, which is readily marketable and may be brought into production relatively quickly, exemptions will generally only be granted for up to two years (unless compelling reasons exist to support

the grant for a longer period). Other commodities will be considered on the basis of the deposit's location, infrastructure, market conditions and company circumstances.

### **Lodgement of an application for exemption**

The Act requires that an application be lodged on the prescribed form (Form 18) with the prescribed fee at the office of the relevant Mining Registrar. The application (with all the information correctly completed) must be lodged within 60 days of the anniversary date of the tenement and accompanied by a statutory declaration supporting the application.

If the statutory declaration cannot be lodged with the application, it must be lodged within 28 days of the acceptance of the application by the Mining Registrar. In the event that the statutory declaration cannot be lodged within 28 days, an extension of time must be requested by the applicant, stating reasons why the statutory declaration cannot be lodged in time. This request must be lodged at the Perth Office, prior to the expiry of the 28 days.

The applicant should note that a brief reason for exemption must be stated on the application in addition to (and against) the subsection under which exemption is being sought. The applicant should also ensure that all relevant detail and evidence is included in the statutory declaration in support of the subsection and accompanying reason stated on the application.

The application will be posted on the notice board of the office of the Mining Registrar for a period of 35 days. Should no objection be lodged against the application, it will be forwarded to Perth for determination by the Minister.

In the event that an objection is lodged against an application, the exemption cannot be determined until the Warden has made a recommendation to the Minister, or, the objection has been withdrawn by the objector or dismissed by the Warden and an Order made to this effect is made by the Warden.

### **Assessment and determination of an application for exemption**

The application is assessed by the Department based upon the information provided by the applicant on the application. The supporting evidence provided in the statutory declaration will only be taken into account where it is consistent with the subsection stated on the application. The tenement holder will be advised once the application has been determined.

### **Refusal of applications for exemption - Forfeiture action to commence**

The refusal of an exemption will result in the commencement of forfeiture proceedings by the Department.

In respect to exploration licences and mining leases, the tenement holder will be issued with a Notice of Intention to Forfeit as provided in Regulation 50. The tenement holder may then make a submission for the Minister's consideration.

Anything the applicant considers relevant may be included in the submission. However, of particular interest to the Minister would be details of any work planned (or work already being undertaken) on the tenement in the current period.

Following consideration of the submission, the Minister may take no further action, impose a penalty (fine), or forfeit the tenement pursuant to Sections 96A or 97 of the Act.

If forfeiture is commenced in respect to prospecting licences, the provisions of Regulation 49 will apply. The Warden, as he thinks fit in the circumstances of the case and depending on the mitigating circumstances brought to his attention by the tenement holder, may take no further action, impose a penalty (fine) or forfeit the tenement pursuant to Section 96 of the Act.

**Note:** There is no provision in the Act for the refund of the application fee if an application is withdrawn (minimum expenditure commitment has been subsequently met and an amended Form 5 lodged) or lapsed (upon the death of the tenement).