



Recent amendments to the Mining Act & Regulations

From 31 March 2007, the Mining Act 1978 (WA) ("Mining Act") and Mining Regulations 1981 (WA) ("Regulations") are substantially amended. The amendments apply to proceedings commenced after that date and not to proceedings already on foot.

Significant amendments include (but are not limited to) the following:

Changes to terminology and to forms

Much of the terminology, especially with regard to administrative proceedings before the warden are changed by the amendments.

For example, an "Applicant" (previously referred to as a "Plaintiff") will lodge an "Application for Forfeiture" (previously referred to as a "Plaint") and the "Respondent" (previously the "Defendant") will lodge a response (previously a "Defence").

Additionally, forms 16, 35, 35A, 36, 36A, 37 and 38 are amended.

Disclosure of documents

Prior to the amendments, the warden did not have the authority to order the disclosure or discovery of documents in administrative matters.

After the amendments and pursuant to Regulation 145, the warden may, at any time during proceedings under Division 2 (dealing with applications under sections 96(1)(b) and 98 of the Mining Act), order that an applicant provide additional information by disclosing documents relevant to the proceedings. Under Regulation 147, where an objection to an application for exemption from expenditure conditions is heard together with an application for forfeiture, the applicant for exemption may also be required to disclose information to an objector.

In making an order for disclosure of documents the warden must act as if making an order under Part 7 of the Magistrates Court (Civil Proceedings) Rules 2005 and is subject to the same limitations.

Summons of witnesses

Prior to the amendments, a witnesses could not be compelled to give evidence in administrative proceedings. In proceedings commenced after 31 March 2007, the warden will have the ability to issue a witness summons to compel the attendance of a witness to give either oral or documentary evidence. This can be done on behalf of a party to the proceedings or on the warden's own motion.

Pursuant to Regulation 157, a party that seeks to procure the attendance of a witness at proceedings may do so by means of a witness summons issued by the mining registrar in Form 37 and served personally on the witness.

Costs

Prior to the amendments the warden did not have the authority to order costs in administrative proceedings except in the situation where an applicant for forfeiture failed to proceed with their application.

Under Regulations 139, 142 and 165 the warden may now award costs in the following circumstances:

1. a party does not comply with a summons, interlocutory order or a direction of the warden;
2. in relation to objections to exemption applications or tenement applications, where a party frivolously or vexatiously commences or defends proceedings or causes undue delay;
3. a party does not admit a fact when invited to do so and the warden subsequently finds the fact to be proven; and
4. in relation to applications for forfeiture, at the warden's discretion.

There is also a power to make an order that an applicant for forfeiture provide security for costs.

The quantum of costs is assessed by the Mining Register in accordance with Schedule 4 to the Regulations.

Distinctions between administrative and judicial roles of the warden

In addition to the above procedural amendments to the Mining Regulations, the amendments to the Mining Act also remove inconsistent terminology from that Act to clarify the distinction between the warden when acting in an administrative rather than judicial capacity. These amendments involve the removal of the phrase "in open court" from provisions in the Mining Act referring to the warden when acting in an administrative capacity.

Conclusion

Only proceedings which are commenced after 31 March 2007 will be affected by the amendments and parties who plan to bring proceedings after 31 March 2007 will need to consider how the new rules may affect their matter.

For further advice on the changes to the Mining Act and Regulations contact the offices of Jackson McDonald.



Stephen Doyle
Partner

Tel: 9426 6763
sdoyle@jacmac.com.au



Neil Gentili
Partner

Tel: 9426 6695
ngentili@jacmac.com.au