To the Chair and Members of the Environment and Public Affairs Committee with regard to Petition No. 054 - Mining Act 1978

> "70] Whilst it is true that both exploration licences and mining leases are subject to standard conditions and environmental conditions (imposed by the Minister), in my view the strong right of conversion necessarily raises the bar in relation to applications for exploration licences. In this respect I agree with the decision of Warden Wilson in Darling Range South Pty Ltd v Ferrell [2012] WAMW 12 at [140] that —detailed scrutiny of applications for exploration licences is even more important where there are competing land uses and private land"

This quote from Warden Hall's determination on 6th May 2016 with regard to an application for costs with respect to: Miscellaneous Licence 08/126 Objection no 427985, BETWEEN: PASTORAL MANAGEMENT PTY LTD (PMPL) (Applicant) AND MINERALOGY PTY LTD (Minerology) (Objector), demonstrates that even the Mining Warden recognises difficulties with the Mining Act.

Warden Hall recognises at para 66] that, "Western Australia, unlike any other Australian state, provides for a virtual automatic conversion of an exploration licence into a mining lease."

More rigorous assessment at the initial application stage for an exploration license would be appropriate. Particularly covering potential environmental degradation, loss of cultural heritage and impacts to landholders and communities, including potential impacts to their businesses.

It is important to understand that under the Mining Act, there is only one opportunity for members of the public to raise an objection to new mining activity. That one opportunity is limited to 35 days following the application for an **exploration licence**, noting that the application is not advertised in any way, and it is up to individuals to monitor the Department of Mines, Industry Regulation and Safety (DMIRS) website for applications.

DMIRS will likely inform you that local governments are notified of mining exploration applications, but this is not enough. It is common practice by local governments to not object to an exploration application, rather wait for the application for a mining lease to indicate any concerns. There is no opportunity for a member of the public to object to an application for a **mining lease**.

Some local governments are being pressured by Councillors, individuals and community groups to notify residents of exploration applications; however, this would be difficult, expensive and limited by the 35-day window.

DMIRS will inform you that landholders are notified of exploration licence applications that are intended to mine to a depth within thirty metres of the surface. Time and again, this requirement is circumvented by applicants by not stating any intention to mine in the top thirty metres, therefore making it unnecessary to inform affected landholders. Of course, once they begin to explore, they could easily find that a valuable commodity might be in the top thirty metres at which time they could apply directly for a mining lease. The mining company would then approach affected landholders, whereas the opportunity for neighbours or community to object has long since passed. Silica sands are in the top thirty metres and we are well aware that this is the commodity being sought on several current exploration applications where no landowners have been notified.

It should also be understood that, "Mining Tenements can be granted over private land without the owner's consent if the tenement is limited to the area more than 30 metres below the surface of the land. Landowners have every reason to be concerned about the grant of sub-surface rights leading to the eventual commencement of mining in their neighbourhood, since sub-surface rights **may later be converted to include surface rights with the consent of one or more landowners**. Access to sub-surface resources may also be gained via neighbouring crown land, such as a road reserve. Section 29(2), s29(3) Mining Act 1978 (WA)" - *"Taking the fight to Miners in WA" p2 - Environmental Defenders Office 2012*

As exploration licences are easily converted to mining leases once minerals are found, as noted above by Warden Hall and as clearly spelled out in the Mining Act, it seems democratically responsible that notice of applications is provided directly to those who may be impacted by the mining tenement including the wider community.

For these reasons we believe that notice should be given to all effected landholders regardless of the stated intention for mining below or above thirty metres, and to the wider community who will also be impacted by mining activity.

The second point of the petition refers to the complex and arduous process of lodging objections. I have helped numerous people through this process as it is not for the faint-hearted. A person must sign up to DMIRS' website, login, and navigate a complex system to enter their details and reasons for the objection. They must then submit the objection through a check out process charging $0. This process causes confusion resulting in some objectors failing to complete the process. I understand a Mining Act Amendment Bill to introduce a fee has been considered. This will add to the burden on concerned objectors.

Lodging an objection does oblige the objector to a court hearing and the potential for costs to be awarded against them. This, in itself, is enough to deter even those who may be severely impacted by a potential mine.

Objections can be lodged either online, or printed and posted. Following lodgement, there are further steps to be taken by the objector. The objection, once stamped as received by the department, must then be printed and formally served on the applicant with an affidavit witnessed by a JP forwarded to DMIRS to confirm service.

The system is designed for lawyers, corporations or other miners to lodge objections rather than to allow individual citizens or community groups to voice their concerns. Acknowledging the huge impact mines can have on communities, natural environments, businesses, and agricultural industries, it would be advantageous in a democracy to have this process more accessible.

In the absence of objections from concerned landholders, there is rarely any impediment to an application for an exploration licence to be approved. Additionally, with the expected passage of **Mining Amendment Bill 2021** in late August or early September 2022, to commence an eligible mining activity (EMA), "an EMA notice will be able to be lodged through an online system, automated screening will occur, and the activity will be authorised immediately, subject to standard conditions." – Hon Matthew Swinbourn, second reading speech Extract from *Hansard* [COUNCIL — Tuesday, 9 August 2022] p3212a-3213a. The detail as to which exploration licence applications will be considered EMAs will be prescribed in regulations.

With regard to the third point of the petition, and understanding that DMIRS will likely inform you that exclusion zones exist for areas such as "A" class reserves or cultural heritage sites, the areas of exclusion does not extend to agricultural land uses, tourist ventures, high conservation value forests, wetlands, or other areas where a mine would seriously impact on the environment and values of the existing land use. The Mining Act also allows for areas of "A" Class Reserves to be explored with approval from the Minister for Environment.

We ask that this committee undertake a full inquiry into the Mining Act 1978 and Mining Regulations 1981, with regard to the processes for notification, lodgement of objections and exclusion zones.