

MINING AMENDMENT (PROCEDURES AND VALIDATION) BILL 2018

Introduction and First Reading

Bill introduced, on motion by **Mr W.J. Johnston (Minister for Mines and Petroleum)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR W.J. JOHNSTON (Cannington — Minister for Mines and Petroleum) [12.40 pm]: I move —

That the bill be now read a second time.

The purpose of the Mining Amendment (Procedures and Validation) Bill 2018 is to provide security for holders of mining tenements, now and into the future, following last year's High Court decision in *Forrest & Forrest Pty Ltd v Wilson and Ors*. The McGowan government is taking this legislative action to strengthen our mining legislation and remove the uncertainty generated by the High Court's decision that impacted on the security of our mining tenure system.

Last year, the High Court found that, in order to be valid, a mining lease application must strictly comply with the technical requirements of the Mining Act. In finding this, the High Court overturned earlier decisions of Western Australia's Supreme Court and the Court of Appeal, which allowed a reasonable amount of flexibility with respect to the receipt and processing of mining tenement applications. The implications of the High Court decision are wide-reaching, as a similar level of compliance may now apply to previously granted mining tenements. This potentially exposes tenement holders to a similar legal challenge, despite their applications being lodged and assessed in good faith and in line with the previous practices and understandings of the law at the time they were granted. Providing certainty in tenure is crucial for attracting investment, and is a key principle of the legislative framework governing the mining industry in Western Australia.

The bill seeks to provide certainty by, firstly, validating mining tenements, and secondly, clarifying and streamlining the application and determination provisions of the Mining Act to provide security of tenure for future tenement applicants. The state intends to validate only those mining tenements that could be affected by the High Court decision. In seeking to validate these tenements, there is a risk that this bill could be a future act for the purposes of the commonwealth's Native Title Act, requiring compliance with the future act regime. The state has therefore requested the commonwealth make an amendment to the Native Title Act to allow the state to pass this bill without the risk of it jeopardising existing native title agreements.

The state is seeking only to restore the status quo as understood to have existed prior to the High Court decision, without causing any collateral effects, whether advantageous or disadvantageous, on native title holders or native title rights. The state is not seeking to validate any mining tenement in terms of the Native Title Act that was required to go through the Native Title Act's future act regime but did not for any reason; alter title holders' entitlements to compensation for the grant of mining tenements that may have existed if the grants would have been past acts, intermediate period acts, or future acts had they been valid from the date of grant; or alter the extent of extinguishment of native title that would have arisen if the tenements had been valid from the date of grant. The passage of this bill will be progressed with reference to the timing of the commonwealth's Native Title Act amendments. By introducing this bill, the state is providing the commonwealth, the mining industry and native title holders with certainty on the precise terms of the proposed legislation. We now call on the commonwealth to reciprocate by progressing the required amendment to the Native Title Act.

To provide security of tenure for future tenement applicants, the bill also seeks to clarify and streamline the application lodgement and processing requirements of the Mining Act. This includes amendments to separate the requirement to lodge supporting technical documents at the same time as the making of a mining lease application. Supporting documentation lodged with mining lease and exploration licence applications also will be clarified to ensure greater certainty around the validity of tenement applications at the time of lodgement. In addition, the Mining Act is being modernised with amendments to delete obsolete processes and allow more documents to be lodged online.

In essence, this bill ensures the security of the state's mining tenure system by fixing the past and looking to the future. The assumption of validity will be restored to past grants of title and future grants will benefit from more streamlined and transparent application processes. In light of the High Court decision, this bill is necessary to provide security for holders of mining tenements, now and into the future, ensuring Western Australia maintains its position as one of the world's most attractive destinations for mining investment.

I commend the bill to the house.

Debate adjourned, on motion by **Ms L. Mettam**.