GOVERNMENT OF WESTERN AUSTRALIA

Department of **Mines, Petroleum and Exploration**

Response to Submissions Mining Amendment Bill 2025

Including responses to MAB 2024

17 July 2025

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Introduction

The purpose of the Mining Amendment Bill 2025 (MAB 2025) (formerly known as MAB 2024) is to amend the *Mining Act 1978* (Mining Act). The MAB 2025 primarily addresses procedural implications arising from the High Court decision in *Forrest & Forrest Pty Ltd v Wilson and Ors* [2017] HCA 30 (Forrest decision) while also introducing additional measures to support the efficient administration of the Mining Act. The MAB 2025 will mitigate risk by ensuring the future security of Western Australia's mining tenure system and encourage investment in exploration, and the development of the resources industry in Western Australia.

The MAB 2025 will:

- Simplify how tenure applications are made by removing rigid procedural requirements, providing applicants with flexibility in when and how they provide supporting documents;
- Include a validation mechanism which will ensure that pending applications for mining tenure impacted by procedural issues can be lawfully assessed and determined;
- Streamline and modernise administration functions. Including updating and digitising processes, including how section 19 instruments and forfeiture notices are executed and published. It also removes outdated steps like forwarding maps to the Minister and deletes obsolete.
- Allow power to update or remove outdated conditions attached to tenement grants will ensuring conditions reflect modern standards and changing circumstances. In addition, decision-making for certain enforcement matters will be transferred from the warden to the Minister to create a consistent and transparent approach across all tenure types.
- Will allow exploration applications to be granted for areas less than that sought and align the grant process with other tenure types.

Another aspect of the MAB 2025 is amendment to Part 2 of the *Mining Legislation Amendment Act 2014* which has not yet been proclaimed pending the development of supporting regulations.

Additional clauses, as advised by the Minister for Mines and Petroleum when introducing the former MAB 2024 into Parliament on 27 November 2024, are now included in the MAB 2025 as follows:

- updating the wording used in section 57 of the *Mining Act 1978* (WA) regarding land that is "unavailable" for exploration;
- the requirement for a statement to be lodged for an application for an exploration licence;
- clarification of the procedural elements of expenditure reporting and exemption processes; and
- the transfer of certain administrative decisions regarding enforcement from the jurisdiction of the warden to the Minister, ensuring a consistent decision point across all tenure types.

Additionally, proposed amendments to section 116(2) aimed at strengthening the integrity of the mining register have been removed from the MAB 2025, pending further consideration.

Consultation and Submissions

Most of the proposed amendments contained in the former MAB 2024 were provided for public consultation on several occasions in previous years. Amendments to section 57 of the Mining Act were exposed to public consultation as part of the Mining Amendment Bill 2021 in early 2022. Amendments updating application processes and requirements were subject to consultation as part of the Mining Amendment (Procedures and Validation) Bill 2018 which was introduced into Parliament, but ultimately did not proceed.

The MAB 2024 was made available for public consultation between 16 and 25 October 2024. Five written submissions were received. The Department of Mines, Petroleum and Exploration (the Department) also consulted with industry stakeholders through the Resource Industry Consultative Committee (RICC).

A summary of the submissions and the Department's response are set out in **Appendix A**.

The additional clauses which form part of the new MAB 2025 Bill were made available in a targeted consultation of members of RICC in May 2025.

A summary of submissions and the Department's response are set out in **Appendix B** and **Appendix C**.

Key Themes

1. Section 57 – Excising land from exploration licences applications

The new amendments provide for excising and dropping of blocks from exploration licence applications. Three submissions raised issues regarding the use of the term "unavailable for exploration". The wording "unavailable for exploration" is already used in the Mining Act and the Department retained that wording in MAB 2025, however, given the submissions received the Department has clarified the use of the term from "unavailable" to "not suitable".

Land that is 'not suitable' for exploration is intended to cover circumstances where the inherent characteristics of the land render it inappropriate for exploration, such as the presence of heritage, indigenous and environmental consideration. Land that is "not suitable" for exploration is not a permanent restriction, but rather a lack of suitability or legal unavailability or at the time of grant. In addition, it covers land intentionally excluded by the Minister. This will allow exploration applications to be granted for areas less than that sought and align the grant process with other tenure types such as prospecting licences (section 44) and mining leases (section 73).

2. Section 58 – Supporting statements for exploration licences

The amendment to section 58 of the Mining Act provides for certain information to be provided in a supporting statement while deleting the requirement to provide information about the methodology of exploration. The information is only required for the first year of the exploration licence.

Three submissions stated that they preferred the removal of the requirement for the section 58 supporting statements. Alternatively, if section 58 statements are not removed from the Mining Act, the submissions recommended the inclusion of a requirement in that the section 58 statement is provided within a prescribed time after the lodgement of the application, rather than with the application as is the case currently.

The Department has proceeded with the amendment providing for a section 58 supporting statement as in the consultation exposure draft, accepting the recommendation that the section 58 statement is provided within a prescribed time after the lodgement of the application.

3. Section 96 – Forfeiture of Mining Tenements by Minister

The intention with amendments to section 96 is to align the approach for all tenement types by transferring the decision making authority from the warden to the Minister. The warden will still retain the authority to hear and consider third-party applications under this section. The role of the warden will be limited to making recommendations to the Minister on whether or not the tenement should be forfeited. There were four submissions received – three supported the changes however one submission had concerns regarding the reduction of the warden's decision making powers.

The amendment has been retained to provide a consistent decision-making point across all forms of tenure, noting that the amendment only facilitates a change in the decision maker from the warden to the Minister. While some structural changes were necessary no new or amended powers have been introduced.

4. Sections 102, 102A and 103 – Exemption from expenditure conditions

The amendments to section 102, section 102A and 103 are intended to clarify the procedural elements of expenditure reporting and exemption processes. The policy objectives are threefold.

First, to implement a fully digital, real-time system that removes the need to issue paper certificates of exemption once an exemption is granted. Under this system, exemption applications will be submitted and recorded digitally, streamlining the process both internally and externally.

Second, the amendment removes the requirement for applicants to specify the amount of expenditure to be exempted. In practice, applicants often submit exemption requests in advance of the formal reporting period, relying on predictive estimates of the amount that will ultimately be needed. If these estimates later differ from the actual expenditure reported in the Form 5, applicants may face penalties or forfeiture action.

Third, to clarify that the receipt of reasons in the form of a statutory declaration is a jurisdictional prerequisite for determining an application for exemption from expenditure conditions This requirement ensures that all grounds for exemption are adequately disclosed, reinforcing the legislative intent behind the Act's self-policing framework.Further to the above, as part of the May 2025 consultation, three submissions were received in relation to section 102(2)(h) in which were not supportive and raised issues that require further consideration. Accordingly, the Department has decided to remove the associated amendments from the MAB 2025.

Appendix A – Submissions and Responses

Stakeholder	Comment	Department response
Amalgamated Prospectors and Leaseholders Association **(APLA)**	APLA thanked DEMIRS for the opportunity to participate in this consultation process. APLA executive have reviewed all the current proposed amendments contained in the MAB 2024 and have agreed in principle to the proposed amendments. APLA feels that the wording could have been more clearer to the reader having due regard to how policies must be worded to meet the legal requirements of the state. Thank you for allowing APLA to participate in the consultation process.	Noted. Noted for future references.
Chamber of Minerals and Energy of Western Australia **(CME)**	The CME welcomes the introduction of legislative amendments aimed at mitigating the impact of judicial decisions that have affected tenure validity and ministerial powers related to granting exploration licenses. We note the short timeframe provided to stakeholders to consider draft documentation and provide feedback on the Draft Mining Amendment Bill 2024. Cognisant that related policy and regulations will be developed in response to any legislative amendments to the Mining Act 1978 (WA), CME requests the opportunity to consider future consultation documents over a longer period of time. Notwithstanding the short consultation timeframe, the CME recognises that representatives from the Department of Mines, Industry Regulation and Safety have made considerable efforts to support engagement with the CME and our members. *Exemption Instruments* CME notes that currently the operation of s.19(2) would prevent retrospectivity of an instrument issued under s.19. Given that an Exemption Instrument would take effect on the date and time specified in the Exemption Instrument, as opposed to its publication date, CME seeks to clarify that the date and time specified in an Exemption Instrument cannot be retrospective and provision drafting that supports this.	The Department endeavors to provide sufficient consultation time. However, on this occasion the amount of time was limited due to the parliamentary sitting schedule. A section 19 instrument cannot be applied retrospectively, previously a section 19 instrument commenced on the midnight preceding execution. The changes to section 19 are that the date and time must be specified in the instrument at the time of execution.

Stakeholder	Comment	Department response
	Publication of Exemption Instruments CME seeks to clarify that mining exemptions will now no longer be published in the Government Gazette. CME strongly recommends that Exemption Instruments will be published in prominent, widely accessible locations on the Department's website. Furthermore, the CME believes there should be an ability to sign up for updates on Exemption Instruments. *Excising Land from Exploration Licences* The amendments proposed in relation to section 57 introduce a new avenue to determine that land will be unavailable for exploration, in the event of a determination by the Minister (s.57(2E) (c)). CME member companies have noted these amendments, in the absence of guidance underpinning a ministerial determination, create an additional avenue of potential dispute and contention in relation to granting an exploration licence. CME further notes that the terminology "unavailable for exploration" infers a permanent excision of land available to explore. The provisions should not necessarily permanently excise land open for exploration. *Section 58 Statements* CME member companies have noted that removing the requirement to provide statements pursuant to section 58 of the Mining Act 1978 would reduce the administrative burden for proponents. In this regard, CME recognises that safeguards to ensure competency to hold an exploration licence may be met through expenditure requirements but should be considered as part of any amendment. The CME further notes that the proposed wording for section 58 requires statements accompany an exploration licence application. This should be considered in light of future validation issues, should statements pursuant to section 58 continue to be required. *Extension of prescribed period of time* CME is unclear what the intention of this provision is, noting that CME supports the ability for proponents to seek an extension of prescribed periods of time, where appropriate.	The requirement to publish instruments in the Government Gazette has been removed and replaced by a requirement to publish the instruments on the Department's website. Noted. The comments have been noted. The wording "unavailable for exploration" is already used in the Act and was retained in the MAB 2024 introduced into Parliament on 27 November 2024. However, the Department has now considered the submissions and made changes which are reflected in MAB 2025. The wording has been amended to require that the s 58 statement is lodged in the prescribed time and prescribed manner, rather than at the same time as the application. Noted. The insertion provides for greater clarity and certainty surrounding the circumstances when the Minister can

Stakeholder	Comment	Department response
	Compliance Dates CME notes this proposed amendment appears to contradict section 61(1)(e) of the Interpretation Act 1984. CME's interpretation is that where the last day for doing a thing under the Mining Act (the compliance day) would otherwise be an excluded day as defined by section 61(2) of the Interpretation Act 1984, the compliance day is the first day after that excluded day that is not also an excluded day.	provide an extension of prescribed period of time where appropriate. The amendments provide special rules within the Mining Act regarding timing.
McMahon Mining Title Services Pty Ltd **(MMTS)**	MMTS is supportive of the Bill in general. We commend the State on addressing issues raised by several court decisions, which have plagued the mining industry since 2017. *Section 57(2C) - (2E)* We urge the Department to amend the term "unavailable for exploration" to, for example, "capable of excision" or "area of exclusion from grant". Whilst we understand that the term exists in current section 57, it is in the context of other exploration licence applications over the same blocks, and it is clear in that context that the blocks may be granted to other exploration licences. A Ministerial decision that part of a sub-block is "unavailable for exploration" could be misinterpreted in the future. We are concerned that a one-off decision intended to apply to one exploration licence application will lead to an understanding, potentially by third parties, that the area cannot be explored, instead of that it will not be granted to the particular exploration licence application. The issue for us is not necessarily legal/technical but is about having clarity of legislative intent. Existing sub-sections 57(2f) & 57(2h) clarify that only one granted exploration licence can exist in a block. An amendment to the term "unavailable for exploration" should not affect this rule. *Section 58(1)(b)* MMTS supports the removal of the contemporaneous lodgement requirements for mining leases from section 71. This will provide some insulation from attacks on application validity due to technicalities, rather than genuineness and capacity of applicants. We urge the Department to introduce the same protections for exploration licence applications.	Noted The comments have been noted. The wording "unavailable for exploration" is already used in the Act and was retained in the MAB 2024 introduced into Parliament on 27 November 2024. However, the Department has now considered the submissions and made changes which are reflected in MAB 2025. The wording has been amended to require that a section 58 statement is lodged in the prescribed time and prescribed manner,

Stakeholder	Comment	Department response
	The Department is aware of the many instances of litigation arising from section 58. To prevent the continuing challenges to application validity, we suggest the Department either remove the requirement altogether or, if it is to be retained, that the Department includes amendments that decouple validity at lodgement of the application from the supporting documentation. That is, supporting documentation should be due within, for example, 14 days, with the time capable of extension under s162B. This would not only provide relief from third-party attacks to genuine applicants. It may also reduce the number of matters before the Mining Warden grappling with this issue and simplify a Warden's assessment of compliance with the "initial requirement" for the purposes s105A (assessment of ballot eligibility).	rather than at the same time as the application. The Department is open to discussing further options including removing the requirement when future amendments are considered. Noted.
Association of Mining and Exploration Companies **(AMEC)**	The following comments are provided based on feedback from AMEC members regarding the proposed legislative amendments. *Section 19* This amendment shifts the publishing of exempt land from the Gazette to the website. It is unclear why the use of the Government gazette is viewed as an inefficiency. The drafting of the Amendment could be read as being able to be used to backdate to when an application was not present. Noting that a Section 19 cannot be granted if an application is present. It is understood that this is not the intent, AMEC seeks clarity to ensure this is not a possible use of this provision. *Section 40 (1A)* The use of the "Term" in "Term and condition" is unclear. It appears to be a duplication of a word for the same thing. If the word "Term" is used in the sense of the period of grant or the period extension, then further clarity is needed. Industry recommends the removal of the word Term. This phrasing is repeated throughout the amendment, and we ask that	A section 19 instrument cannot be applied retrospectively, previously a section 19 instrument commenced on the midnight preceding execution. The changes to section 19 are that the date and time must be specified in the instrument at the time of execution. The phrase "terms and conditions" is used in all the sections relating to granting tenements (sections 57, 70B, 71, 86, 91(10)). The Department understands that AMEC's concern is that the word "term" may be misinterpreted as the term of the prospecting licence (ie. the duration of time for which a prospecting licence is granted).

Stakeholder	Comment	Department response
	consequentially where the phrase “Term and Condition” appears it is shortened to simply, “condition”. *Section 57: Excisions* AMEC and its members have concerns about the use of the term “unavailable for exploration”. Whilst we understand it is a concept already used within the Mining Act, concerns remain that in the context of excision of part sub-blocks, it leaves it open to misinterpretation, resulting in de facto sterilisation of certain ground. The use of ‘unavailable for exploration’ will certainly see future arguments over its meaning and effect. In response, AMEC recommends removing ‘unavailable for exploration’ to remove the risk of any ambiguity and replacing it with ‘capable of exclusion from the area of grant’ or some term along these lines. *Sections 57(2D) & 57(2E)* There is a question over whether or not there is the ability for an exploration licence to be granted for fewer whole blocks could be achieved under Sections 57 and 59(6). Clarity is being sought around the Department’s interpretation/view, as should the drafting of 57(2D)(b) be implemented, then the ability to seek lesser whole blocks than applied for would be limited to the scenario expressed by the drafting of 57(2E). An example where whole blocks could potentially be sought to be excluded from grant (outside of the provisions of drafted 57(2E) may be: • a mutual arrangement between Applicant and a Native Title party due to cultural sensitivities • seeking to resolve an objection which relates to an overlap within a non-priority whole block/s which would otherwise impact exploration schedules/initiatives (which may be an overlap with an interest in land that is not a mining tenement (granted or pending). Clarity around this point would be appreciated, as Industry would welcome greater flexibility to accommodate scenarios like the ones above. *Section 58 1B* The information paper provided suggests that the Government would be open to considering the removal of Section 58 (1)(B). AMEC and Industry support the complete removal of this Statement. Compliance with obligations is heavily enforced with forfeiture and monetary	Changes to the wording from “a term or condition” to “terms and conditions” have been made to MAB 2024. The comments have been noted. The wording “unavailable for exploration” is already used in the Act. and has been retained in the MAB 2024 introduced into Parliament on 27 November 2024. However, the Department has now considered the submissions and made changes which are reflected in MAB 2025. The explanatory memorandum contains an explanation and example relating to s 57(2D). The position of the Department is that the amendments provide the Minister with a power to grant fewer blocks. Noted. The Department is open to discussing further options including removing the requirement when future amendments are being considered. The wording has been amended to require that the section 58 statement is lodged in the prescribed time and prescribed manner,

Stakeholder	Comment	Department response
	penalties, therefore the information contained within the s58 statement is arguably redundant. The title holder continues to be monitored annually by the State and Industry. The document creates invalidity issues and the numbers written in it are not used for compliance. Alternatively, to resolve ongoing validity issues created by s58 statements, the contemporaneous lodgement requirement should be removed. AMEC also suggest reducing the type of information to be included. Order of reform preference: 1. Remove the Section 58 statement requirement altogether: if not 2. Retain the Section 58 statement requirement but allow 14 days for lodgement AND limit to only financial resources for the first year of the grant: if not 3. Retain the Section 58 statement requirement but allow 14 days for lodgement AND limit information to the first year of grant only. Members also raised the need for clarity on the validation of applications that are pending and whether the possibility of retrospective provisions for pending applications that may be impacted by the True Fella v Pantoro South Pty Ltd. *Section 116(2) amendments* AMEC supports the drafting of the proposed amendments to Section 116(2). *Section 162 bb* AMEC is unsure of what the intention and purpose of this amendment is seeking to solve or remedy. AMEC would welcome an explanation of the intent and effect of this amendment. *Section 164-166* It is unclear what the purpose of these sections is. AMEC would welcome an explanation of the intent and effect of this amendment.	rather than at the same time as the application. Preference 3 will be considered when the regulations are drafted. Noted. (*See comment in relation to section 165 below.)* The Department has removed the proposed amendment to be considered further. Section 162(2)(bb) provides for regulations to be made to regulate applications for extensions of prescribed periods and times. The explanatory memorandum provides further clarification. Section 164 defines words and phrases in the new Division 2 of Part 9.

Stakeholder	Comment	Department response
		Section 165 provides for pending applications to be determined after the commencement as if the prescribed requirements of the Mining Act or the repealed Act has been complied with. Section 166 clarifies that applications marked as invalid in the register cannot be validated under the new s 165.
	Final Remarks AMEC supports the Mining Amendment Bill 2024's intent to resolve issues of tenure validity with a few recommendations, as discussed above, specifically with Sections 57 and 58. AMEC appreciates the continued consultation undertaken by the Department and the willingness to listen to robust feedback from the industry.	Noted.
Cement Concrete and Aggregates Australia (CCAA)	CCAA understands the proposed legislative changes outlined in the Bill aim to confirm reasonable administrative processes in response to recent court cases. CCAA **supports** the proposed Bill and looks forward to working with the Government to ensure the reforms are appropriately implemented with industry.	Noted.

Appendix B – Submissions and Responses (additional clauses) – D36

Respondent	Comment	Department response
Amalgamated Prospectors and Leaseholders Association **(APLA)**	Section 57 (2C) The wording must be clear as to the intent so that any future challenge either in the Wardens court or Supreme court can be dismissed without any delays. This will allow the land to be explored.	Noted. The policy objective here is to allow for circumstances where the Minister determines prior to grant that the land under application is not suitable or unavailable for the purpose of exploration.
	Section 59 (1A) This will allow for consistency, so all parties know what is required within a determined timeframe	Noted.
	Section 74B (b) Subsection 4(b) should be made clearer as to what is determined as an offset project. If it relates to carbon farming, then a clause should be added to allow the Government to outride the offset and allow a mining lease to be granted, as long as the application is supported by (a) a detailed geological report, (b) a mineralisation report showing actual soil, chip of drill results, (c) a detailed mine development and closure plan	This is addressed in section 8 'Terms used' of the current Mining Act.
	Section 75 The mining registrar should have the authority to recommend to the Minister that the application be approved. This will allow the Minister to approve the application quickly and circumvent any potential delays in the Wardens court	This is addressed in the draft amendments in section 75(1).
	Section 78 To remove any ambiguity, the "prescribed time" should be stated as a guide, say 12-18 months	Noted. Regulations will prescribe the period.
	Section 96 The Minister and his delegated authority currently have the ability to impose penalties for breaches of the Act with regard to exploration licenses. Similar should apply for prospecting, special prospecting and miscellaneous licenses.	This is addressed in the draft amendments to Division 6.

Respondent	Comment	Department response
	Tenement holders should be allowed to make a written submission directly to the Minister, stating the facts as to why the breach has occurred. Upon receipt of the written submission, the Minister could order the tenement holder to provide further evidence, if available, to support the submission before a final decision is made.	This is provided for in the current Act in section 96(1a). There is no intent to remove this.
	Section 102 If an application for exemption is made, the tenement holder should provide actual evidence to support the exemption application before the Minister could approve or reject the application	The current statutory declaration process provides for this. There is no intent to remove this.
Energy and Resources Law Association (ER LAW)	Section 57 (2c) We understand the rationale for the proposed 57(2c) changes but have concerns regarding potential ambiguities around the concept that 'before the application for the exploration licence is granted, the Minister determines that the land, at the time the exploration licence is sought, is not suitable for the purposes of exploration'. How is that to be determined? We acknowledge there are provisions under the Act in s19 (for exempting land – which cannot cover anything under existing application/tenements) and s111A (for terminating applications – for specific public interest grounds), but each have their specific procedure or scope. The lack of criteria or specified scope here gives the Minister broad powers to determine when land is "not suitable" for exploration and that this determination can be made at any time prior to grant of the licence, which may be after a significant amount of time/money has been spent progressing that application through the Warden's Court. This seems inefficient for all concerned. We urged better clarity in this, should DEMIRS propose to proceed with the concept of 'not suitable for the purposes of exploration'. In relation to Section the proposed 57(2I), we see sense in the proposal, but would suggest this alternative wording: If 2 or more applications for exploration licences with respect to 1 or more of the same blocks are made, but have not been determined, an applicant may, with the approval of the Minister, amend their application to remove ~~all of the same~~ the overlapping blocks from their application	The policy objective here is to allow for circumstances where the Minister determines prior to grant that the land under application is not suitable or unavailable for the purpose of exploration

Respondent	Comment	Department response
	Section 59 (1A) We have no concerns with the text of the amendment. We query whether this may be located better in s59 (about objections) rather than s58 (which is about applications).	Noted. Reflected in draft amendments.
	Section 75 Splitting the existing s75 into four new sections (74B, 75, 75A and 75B) does make the process easier to follow from the perspective of a new reader. So that is consistent with DEMIRS stated intent 'to make procedure relating to objections to Mining lease applications clearer'. However, there are many sections of the Mining Act which could be clearer; we were unaware of any significant misunderstandings of this procedure; and this would now mean different wording to the registrar/warden process of objections through s42 (which does not appear to have this proposed re-wording). We consider changes of the extent proposed need careful review to ensure consistency with the Act more broadly (and in the time you have designated for comment, we are unable to undertake that detailed review). One specific comment on the proposed wording - the term 'compliance document' is undefined. That uncertainty may create further areas for dispute and even litigation before the Wardens or courts. That *may* be a balance which DEMIRS has already weighed. Has DEMIRS conducted 'Agency Self-assessment Template' and/or Consultation Regulatory Impact Statement (CRIS) and Decision Regulatory Impact Statement (DRIS) in accordance with requirements of Treasury's *Better Regulation Program*? If so, then that presumably involved DEMIRS assessment of the 'Policy problem to be addressed … Range of potential options that could address the policy problem including key features and how it might operate in practice. … Expected costs and benefits of potential options including implementation costs. … [and] Considerations relevant to implementation and transitional arrangements. Given the *Better Regulation Program* envisages that a CRIS or DRIS will eventually be published, would DEMIRS be able to share that analysis with RICC members? That may enable our better	Noted. Further clarity will be considered through future amendment processes. The department is compliant with the requirements of Treasury's Better Regulation Program.

Respondent	Comment	Department response
	appreciation of the factors which were considered in arriving at these proposed changes, and give a better informed response.,	
	Section 78 We do not have any objection to these proposed amendments.	Noted.
	Section 96 We have serious concerns with the proposed changes to the Warden's jurisdiction in proposed changes s96 to 97A. These appear to reduce the Warden's decision-making powers in forfeiture and restoration matters, shifting these powers to the Minister: • for prospecting and miscellaneous licences, rather than the Warden directly ordering forfeiture upon application (s.96(1)), it is proposed the Warden only recommends forfeiture to the Minister who then makes the declaration (s.96(1) and s.96B(4)); • similarly, rather than the Warden being able to impose penalties instead of ordering forfeiture (s.96(3)), it is proposed only the Minister can impose penalties as alternatives to forfeiture (s.96A(1)); • the Warden is no longer empowered to cancel forfeiture orders and restore mining tenements (s.96(8)), and only the Minister can cancel forfeiture declarations (s.96D(1)) • This is similar for restoration after forfeiture changes – changing the Warden determines applications for restoration in some cases (s.97A(7)(a)) to the Warden only makes recommendations to the Minister, who makes all final decisions (s.97A(7) & s.97A(8)) The rationale of the existing law – giving decision-making powers (rather than just recommendations) to the Wardens regarding prospecting and miscellaneous licences is that these tenements are granted by a Warden (not the Minister). It is non-sensical to shift the Warden's administrative powers, currently bestowed by this section, to the Minister in circumstances where the Warden is to retain (with the Mining Registrars, absent objections to those applications) the power to grant tenure pursuant to sections 40 and 91 (and, in particular, where the Minister does not have that power). That is, the proposed amendments suggest that the	The amendment to the section facilitates a change to the decision-maker and consistency of process.

Respondent	Comment	Department response
	Minister ought have power to take something away which he or she does not have the power to give. The Wardens have an important accountability and efficiency role in WA's mining regulation. The changes, in recent years, of having two full-time Wardens (rather than using Magistrates who have to balance this with their normal case-load) has enabled much greater attention and consistency to the operation of WA's mining law. Recent decisions by the Wardens regarding forfeitures and penalties have enabled greater transparency about how the relevant sections should be understood. The public nature of that enables consistency, rather than being matters being subject to the interpretation or application by individual Registrars of DEMIRS officers (either directly or advising the Minister). Legislative changes to this should not be undertaken quickly and without comprehensive analysis. The broader effect of such proposals would, we suggest, definitely require a CRIS/DRIS under Treasury's *Better Regulation Program* (explained in point [3] above). Unless and until that occurs, we would strongly urge DEMIRS not to progress with these proposed amendments. We also note the table contains two different wordings for a proposed 96Bs – one having sub-sections (1) to (3) and the second features (4) to (6). We assume the proposed wording is 96B(1) to (6). Section 102 We understand the rationale here, and see some sense in the changes, but have concerns re other aspects of the proposed wording here. Given the short time frame provided, we are reluctant to engage with specific wording because there are some more preliminary aspects which require initial clarification. Some concerns are noted below. 1. The language in (1A) does not take into consideration that an applicant for an exemption may bring that application 'prior to the end of the year to which the proposed exemption relates', at which point the applicant will not satisfy the requirement otherwise imposed by this section that the holder 'has not met' the minimum expenditure condition. 2. What benefit does (1B)(b) provide if there is no obligation on the applicant to specify the amount?	Noted.

Respondent	Comment	Department response
	3. As to (2AA), is it intended that a tenement holder may lodge an exemption application which is subject to a finding by a Warden, either in forfeiture proceedings or otherwise, that the holder has not complied with the expenditure condition even where they reported compliance in their Form 5 (i.e. a factual finding is made). The requirement imposed by this proposed amendment takes away the ability for a tenement holder to seek to protect their tenure from forfeiture applicants (where such protection is merited). 4. The proposed amendment does not address the real difficulty that tenement holders face in determining (for the purpose of making a statutory declaration) whether they have or have not met the expenditure conditions. That is, despite honestly believing they have met the expenditure conditions, it may subsequently transpire that they have not (including, for example, through miscalculation and/or as a result of statutory construction as to the meaning of "in connection with exploration" or "in connection with mining", both of which may come to light via the hearing of a forfeiture application). In this situation, a tenement holder would have no protection from forfeiture, despite otherwise meeting the criteria in one or more of ss 102(2)(a) – (h). ***5.*** We also don't follow the comment that "the under-expenditure requirement is intended to apply solely to section 102(2)(h)." That is s102(2)(h) expressly has the effect that a tenement in the group which is over-expended can be granted an exemption as part of the group.	The department is compliant with the requirements of Treasury's Better Regulation Program. The prerequisite for an underspend has been removed.
Association of Mining and Exploration Companies (AMEC)	Section 57(2c) As with Mining Amendment Bill 2024 (MAB24), AMEC supports the intent of Section 57. These are important reforms to address the outcomes of *Blue Ribbon Mines Pty Ltd v Roy Hill Infrastructure Pty Ltd [2022] WASC 362 (Blue Ribbon Decision).* AMEC discussed clause c with the department citing potential concerns with the choice of words, as it is unclear why the legislation needs to provide a judgment on the mineral exploration potential of the land.	The policy objective here is to allow for circumstances where the Minister determines prior to grant that the land under application is not suitable or unavailable for the purpose of exploration

Respondent	Comment	Department response
	The term “at the time the exploration licence is sought” may be read as to refer to the time of application lodgement, which doesn’t allow excision to deal with land issues that arise post-application but pre grant. This is reasonably common and the legislative framework should consider it. Otherwise AMEC’s concern remains the same as with comments regarding MAB2024 – that this amendment will open the door to unintended area sterilisation; As requested, an alternative: “before the application for the exploration licence is granted, the Minister determines that the land, ~~at the time the exploration licence is sought, is not suitable for the purposes of exploration.~~ may be excluded from the grant of the exploration licence.” Please may AMEC seek a meeting to provide clarity as to how this process would work – would holders request the excision from the Minister; if not, how does the Minister use this power?	
	Section 59 (1A) Supported, as it appears to relate to s74B amendments	Noted
	Section 75 (1) As discussed, this amendment was not expected. However, there were no concerns received.	Noted
	Section 78 AMEC notes the phrasing of “prescribed period”, and that our support of this amendment is based on that this amendment will be used to enable a longer period for renewal. AMEC would suggest 5 years!	Noted
	Section 96 AMEC support the concept of moving decision making for Section 96 to the Minister. The current framework has led to a situation where Prospectors have received disproportionate fines should addressed.	Noted

Respondent	Comment	Department response
	This section was difficult to understand, and received feedback from Industry on, it has been strongly suggested that some parts need revision. The feedback has generated a series of questions: (1) Does this create a process of a third party application for forfeiture of a miscellaneous licence? Why? Also why would there then be a 14 day right in priority following forfeiture of non-exclusive tenure? (2) 96B(1) did not make sense – is there a typo? Feedback from Industry was that they could not work it out. (3) 96C(2)(1) states that the applicant for forfeiture 'must' mark out the ground in 14 days – this seems to make the process mandatory rather than simply granting a right in priority. The use of 'must mark out' may cause issues in cases where marking out is not possible. For example, land under water	This is an existing provision. Amendment to the section facilitates a change to the decision-maker only. While subsequent structural changes were necessary, no new powers have been introduced. Addressed in draft amendments.
	The Industry feedback is that the proposed amendments appear to be the government's legislative response to the outcomes of *Regis Resources Limited v the Honourable William Joseph Johnston MLA, Minister for Mines and Petroleum (2023) WASC 293.* The perception in wider Industry is that there has been little commentary from Government historically prior to this court case. *Carnegie Gold Pty Ltd v Maughen* [2018] WASC 366 did not lead to an increase in the use of this section.	Comments noted
	If the concern is that the S102(2)(h) will be "overused" in the future it does not appear to match the data. Statistically, approximately 3% of all exemption applications from 2020-2025 exceeded the expenditure commitment. Of those, many were withdrawn and only 2% remained on foot for DEMIRS to review. Withdrawal seemingly indicating an error in applying rather than a "misuse". Of that 2%, it is unclear what grounds they were argued on. It appears that many of the applications affecting mining leases were under s 102(2)(e) regarding uneconomic mineral deposits. These are typically	The prerequisite for an underspend has been removed.

Respondent	Comment	Department response
	granted up to 5 years in advance before expenditure is known. So this is not the misuse to which DEMIRS is referring. Therefore, actual number of exemption applications that fit within DEMIRS definition of “misuse” is likely to be in the order of 1% - 2%. Industry has noted that *Regis Resources Limited v the Honourable William Joseph Johnston MLA, Minister for Mines and Petroleum (2023) WASC 293* is consistent with *Carnegie Gold Pty Ltd v Maughen [2018] WASC 366*. This held that even where an applicant has recorded expenditure of an amount that meets or exceeds the minimum, an exemption can nevertheless be granted under s 102 of the Mining Act. Since 2018 there has not been a rising trend of making use of this Section. It has been used in specific and narrow circumstances. The high administrative burden to use this process for the proponent create sufficient hurdles to their misuse. Finally, this case was a judicial review on a decision at a point in time due to their unique circumstances, it does not mean that future exemptions *must* be agreed to. As AMEC has stated consistently these amendments may have substantial unintended consequences.	
	Section 102(1C) What is the issue being addressed here? Requiring the statutory declaration to be lodged concurrently with the Form 18 rather than the 28 days currently following lodgement creates additional burden on industry. Tenement holders have 60 days to finalise and organise their accounts following the anniversary date. This is already considered a very short amount of time to finalise accounts, validate the expenditure for whether it is claimable and determine if an exemption is required. As such, the need for an exemption will not be apparent until the end of that process. To also expect the statutory declaration to be lodged at that time increases the burden of tenement management. The amendments will make the exemption application and accompanying statutory declaration due the day before the Form 5 is	The policy intent is to ensure that the statutory declarations forms part of the application and consideration of that application. Amendments have been progressed to allow regulations to prescribe the time and manner for lodging a statutory declaration.

Respondent	Comment	Department response
	due. It will also likely invalidate applications for exemption unaccompanied by a stat dec. The Form 5 is not always a simple document and it is not always obvious to tenement holders if commitment will be met until the compilation is almost complete. Many smaller members engage external consultants and lawyers if they realise they need an extension. The process of compiling a Form 5 unearths allocation errors or 'claimability' issues through the process. This puts significant pressure on holders to compile evidence in support of an exemption application at the very last minute. As DEMIRS can not grant an exemption until after the objection period (currently 35 days), allowing 28 days for the supporting statutory declaration would not delay the process. S 102(1C) creates new validity issues. DEMIRS notes that it will not hold applications as invalid when lodged without the statutory declaration. This is considered cold comfort as it does not prevent the Wardens Court from doing so when the exemption is contested. AMEC would welcome further rationale as to why a statutory declaration is now considered necessary. This S 102(1C) is out of step with other amendments of the Act that are moving away from contemporaneous lodgement requirements that have caused substantial administrative burden and validity risk for both Government and Industry.	
	Section 102(2AA) Current drafting does not appear to apply to s 102(2)(h). It appears to apply to ***all*** grounds for exemption. This is not the intent, but as this is the feedback following a relatively brief overview by Industry, this is a substantial concern. Furthermore, Industry has suggested consideration of exemptions under s 102(2)(e) regarding an uneconomic mineral deposit – these	The prerequisite for an underspend has been removed.

Respondent	Comment	Department response
	exemptions can ordinarily be granted for up to 5 years ahead of time. If the proposed s 102(2AA) requires that the expenditure commitment has not been met or exceeded, it will be impossible to grant an exemption until all expenditure is known into the future. Similarly, this will preclude a tenement holder from apply for an exemption in advance under grounds *other* than s 102(2)(h).	
	Section 102A Why does an amount need to be specified? Industry suggested the whole concept of an exemption 'amount' is eliminated i.e. that when an exemption is granted the holder is exempt from the expenditure condition and that's it. A question that industry raised was, "Will DEMIRS have the power to refuse exemptions after grant in those cases if the tenement holder meets commitment on any of the years for which the exemption has been granted?" – while this does not appear to be the intent, it could be possible in the future, and we seek clarity now.	The intent is to not have to specify an amount. Amendments were requested to remove the requirement to specify an amount in the application for exemption of expenditure. It was not intended to revisit decisions in this manner.

Respondent	Comment	Department response
	Path forward Given the small percentage of exemptions where expenditure exceed requirements, it is unclear why this reform is urgent and needs to be in this Bill. Given the feedback from a very small sample of Industry its inclusion will be controversial. Further consultation and wider Industry participation is needed in amendments to the exemption process. The previous consultation was high level, and spoke to the need to reform, but did not provide the precise drafting as to how Government would address the matter. AMEC ask that the Department remove this Section from the MAB25 and separately consult on it. It could form a basis for a future Amendment Bill, if there is a genuine issue that needs to be addressed.	Noted
Chamber of Minerals and Energy of Western Australia (CME)	Section 57 (2c) CME supports a change in wording to address CME member company concerns that the phrase *"unavailable for exploration"* may infer a permanent excision of land available to explore. Separate to the proposed terminology amendments, CME maintains that the absence of guidance underpinning a ministerial determination made subject to s.57(2C)(c), would create an additional avenue of potential dispute and contention in relation to granting an exploration licence. CME also highlights that the introduction of a ministerial determination without supporting guidance, introduces uncertainty that is inherently subjective, which may discourage proponents seeking to undertake exploration activities in WA.	The policy objective here is to allow for circumstances where the Minister determines prior to grant that the land under application is not suitable or unavailable for the purpose of exploration.

Respondent	Comment	Department response
	CME recommends that provisions to enable a ministerial determination should be supported by guidance.	
	Section 74B CME notes that objection processes should be clear. While no strong concerns have been raised by CME members, engagement has been limited and CME has not been able to consult with all relevant CME member companies.	Noted.
	Section 75 CME notes the substantial redrafting of this section by PCO, which means there is limited opportunity to consider amendments that are considerably different from MAB 2024 provisions. In this regard, CME is concerned that s.75A(2) appears to render the objection period nugatory, should the Warden decide there are reasonable grounds for late objection. CME further highlights that the provisions may place an additional burden on the role of the Registrar.	Noted –Structural changes were made to section 75, no new or amended powers have been introduced.
	Section 78 CME is concerned that subsection 2A is drafted to only apply in relation to a renewal sought under s.78(1)(b)(i), and not subsequent lease renewals under s.78(2A). Therefore, only one mining lease grant (under s.78(1)), followed by two mining lease renewals (1st - s.78(1)(b)(i) and 2nd -s.78(2A)) would be permitted by the Act. Further, current Mining Act subsections, ss.78(3) and ss.78(4) should be maintained, as they are critical provisions that support certainty as part of tenure renewal processes.	Noted – Amendments have been sought to include similar wording to reflect that a mining lease may be renewed for second and subsequent terms not exceeding 21 years.
	Section 96 CME notes the substantive changes being proposed, and the limited consultation and opportunity for industry feedback to support the development of these provisions. On initial review, the proposed changes will likely improve the Warden's capacity. CME member companies have raised the following points:	Noted. This amendment to the section facilitates a change to the decision-maker only.

Respondent	Comment	Department response
	- Miscellaneous licences don't have expenditure conditions. It is unclear why are included. - Concern that there may be a situation where third party can plaint to gain leverage over an infrastructure corridor. - Is there a standard definition of "strike"?	While subsequent structural changes were necessary, no new or amended powers have been introduced. Whilst there is no definition of "strike" in the *Mining Act 1978*, the provision was referenced in the *Mining Act 1904* and designed to protect mining leaseholders from automatic forfeiture of their leases due to non-compliance with labour conditions, in circumstances beyond their control—specifically, during a general strike. A general strike refers to a widespread work stoppage by miners in the district, not limited to a single employer or site.
	Section 102 CME supports legislative amendments that enable digital communication and record keeping. More broadly, CME does not support the proposed amendments to exemption from expenditure conditions, noting that generally CME member companies have welcomed the clarity and flexibility provided by the Regis decision, in supporting responsible tenement management. The proposed amendments are substantive in nature and therefore should be subject to extensive consultation and consideration by industry, to ensure they are both necessary and workable. CME notes that objection processes should be clear. Engagement on these substantive draft provisions has not enabled consultation with all relevant CME member companies. CME and CME member companies are concerned by the risk of unintended consequences as a result of the proposed amendments is a concern.	Noted The prerequisite for an underspend has been removed.

Respondent	Comment	Department response
	It is our strong recommendation that these provisions are not progressed as part of MAB 2025. CME would welcome the opportunity to engage in a more considered consultative process, in relation to development of informed amendments to the exemption of expenditure provisions.	

Appendix C – RICC Submissions and Responses (additional clauses) – D37

Respondent	Comment	Department response
Amalgamated Prospectors and Leaseholders Association **(APLA)**	Section 57 (2C) When granting an exploration license, the land applied for should be made available for exploration.	Noted. The policy objective here is to allow for circumstances where the Minister determines prior to grant that the land under application is not suitable for the purpose of exploration.
	Section 59 (1AA) We disagree that a notice of objection be submitted before the lodgement of the statement under Section 58(1)(b). It is only after the submission of the statement can the objection be justified.	Noted.
	Section 74B(4)(b) There should be no grounds for objection based solely on an offsets project, whereby the applicant has no opportunity to provide any course of remediation.	This provision limits objections based solely on impacts to offsets projects (such as carbon farming) in order to uphold the State's policy of non-exclusive land use and maintain access to Crown land for critical mineral exploration. In doing so, it supports Western Australia's broader decarbonisation objectives and economic priorities by enabling the development of resources essential to the clean energy transition. While objections on this ground are excluded, affected parties retain the right to seek compensation for any adverse impacts.
	Section 75 APLA agrees with these changes	Noted.
	Section 78 APLA agrees with this change to bring clarity to the actual term of renewal	Noted.
	Section 96 APLA agrees that all decisions with regard to tenure of a tenement should be within the authority of the Minister and not the Warden's court	Noted.
	Section 102	Noted.

Respondent	Comment	Department response
	APLA agrees that a digital exemption would be sufficient to cover the grant of the exemption. The statutory declaration, duly sworn, should be sufficient for the exemption to be accepted. Specific details would be required to support the evidence provided in the stat. dec.	

Energy and Resources Law Association (ER LAW)	Section 96 ER Law's preliminary views: • They reduce the Warden's decision-making powers in forfeiture and restoration matters. • The rationale of the existing law in having the decision-making powers (rather than just the power to make recommendations to the Minister) sit with Wardens in respect of prospecting and miscellaneous licences is that these tenements are granted by the Warden (not the Minister). • The Wardens have an important accountability and efficiency role in WA's mining regulation; • Recent decisions by the Wardens regarding forfeitures and penalties have enabled greater transparency and predictability as to how the relevant sections of the *Mining Act 1978* (WA) (**Mining Act**) will be applied, and serve to encourage compliance by tenement holders with the Mining Act and their tenement conditions, both of which are to the advantage of the industry as a whole. • More significantly, these decisions have identified significant concerns about the approach to non-compliance by the Department and Minister, highlighting instances of no action, nominal fines, and a response from various actors to ignore or build the nominal fines in as a business cost. Nothing in the proposed changes indicate any change to those practices, and will instead simply move the decision making away from the current transparency of the Warden to the Department, which would seem to be the opposite of what the Wardens are urging (based on their interpretation of the Mining Act). • Legislative changes such as this require comprehensive analysis and consultation and should not be rushed . The broader effect	The Department's response to ER Law's preliminary views: While we recognise the tradition of Warden-led decision-making, particularly in respect of prospecting and miscellaneous licences, the transfer of final decision-making power to the Minister is a deliberate policy choice that better aligns with principles of executive responsibility and ministerial accountability. The Minister, as a member of the elected government, is accountable to Parliament and the public for the administration of the mining regime, whereas Wardens are judicial officers whose decisions may not reflect broader policy settings. Where the executive proposes legislative reform in response to concerns about interpretation, Parliament has the sovereign power to legislate to clarify its intentions and override prior interpretations. This is a fundamental principle of our constitutional framework. Transferring final decision-making authority to the Minister will promote greater consistency and fairness in enforcement by aligning outcomes with established policy objectives and administrative practice. It ensures decisions are made in support of the overarching statutory purpose to "encourage and promote the prospecting and exploration for, and mining of, mineral deposits in the State."

Respondent	Comment	Department response
	of such proposals would, we suggest, require a Regulatory Impact Statement under Treasury's *Better Regulation Program*.	Ministerial decision-making remains subject to governance frameworks that ensure procedural fairness, transparency, and oversight. The integrity of our processes guarantees transparency and accountability. The department is compliant with the requirements of Treasury's Better Regulation Program.
Association of Mining and Exploration Companies (AMEC)	Section 57(2c) Initial comments regarding the use of terms "unsuitable" and "unavailable" and their potential for permanence/sterilisation stand. It is unclear why the Government needs to specify that the Minister determines the land is not suitable or unavailable etc, and the Minister cannot simply determine. New 57(2J) – Industry has commented that it is difficult to comment without further detail but appreciate Department is trying to set out a proper process to follow. Industry noted that this process needs to allow for grant of an Exploration Lease in 2 or more portions (current s57 only appears to allow this if the excluded area becomes subject of a granted tenement). An example has been supplied by a member, which follows this table.	The Bill wording of the Bill will reflect the intent to: • To remove ambiguity that may imply the land is permanently or technically ineligible for exploration or mining. • To make clear that the exclusion is specific to the current application or Ministerial decision under section 57 and does not affect the future potential for exploration or other tenement applications. To distinguish between land that is legally or practically ineligible (e.g., due to existing tenements) and land that is unsuitable for other reasons.
	Section 59 Objections No comment.	Noted.
	Section 74B. Objection to application for mining lease. No comment	Noted.
	Section 75 Mining lease applications No comment.	Noted.

Respondent	Comment	Department response
	Section 78 Second renewals No comment.	Noted.
	Section 96 No further comment, other than the prior comments already provided.	Noted.
	Section 102 AMEC welcomes the removal of the underspend prerequisite. Further detail is sought on the potential interplay between removing the underspend pre-requirement from 102, with the wording in Section 102A – (1A).	The prerequisite for an underspend has been removed from 102A also.
	S 102(1C) No comment, on the basis that there is reasonable time to prepare and lodge a statutory declaration remain.	Noted.
Chamber of Minerals and Energy of Western Australia (CME)	Section 57 (2c) CME refers to our previous comments relating to ministerial determination being supported by guidance. Further, CME has previously raised concern with the use of the term "unavailable for exploration". Inclusion of the term "unavailable [for the purpose of exploration]" raises identical concerns.	The final wording of the Bill will reflect the intent that the affected land the Minister considers the land unsuitable for the purpose of exploration.
	Section 59 CME notes that objection processes should be clear. CME has not been able to consult with all relevant CME member companies.	Noted.
	Section 74B CME notes that objection processes should be clear. CME has not been able to consult with all relevant CME member companies.	Noted.
	Section 75 Concerns noted in CME's feedback dated 20 May 2025 remain.	Noted – Structural changes were made to section 75, no new or amended powers have been introduced.
	Section 78	Noted.

Respondent	Comment	Department response
	CME believes that the highlighted text addresses our previous concern that original proposed wording would only permit two renewals of a mining lease under the Mining Act.	
	Section 96 Concerns noted in CME's feedback dated 20 May 2025 remain.	Noted. This amendment to the section facilitates a change to the decision-maker. While subsequent structural changes were necessary, no new or amended powers have been introduced.
	Section 102 CME does not support amendments to s.102 or s.102A. CME considers amendments to exemption provisions must involve broader stakeholder consultation. We are not aware that broader engagement on proposed provisions has been undertaken. As such, it is our strong recommendation that these provisions are not progressed as part of MAB 2025.	Noted. The final Bill will reflect the intent to remove the need to issues a physical certificate of exemption, remove the need to estimate the amount of expected under expenditure, and clarify that the required supporting documents form part of a valid application.