



14 August 2020

The Hon Bill Johnston MLA
Minister for Mines and Petroleum; Energy & Industrial Relations
9th Floor, Dumas House, 2 Havelock Street
WEST PERTH WA 6005

Dear Minister,

Increase fees for applications for forfeiture

The Association of Mining and Exploration Companies (AMEC) is a national industry body representing over 300 member companies across Australia. The mining and exploration industry make a critical contribution to the Australian economy, employing over 255,000 people. In 2017/18, these companies collectively paid over \$31 billion in royalties and taxation, invested \$36.1 billion in new capital and generated more than \$250 billion in mineral exports.

AMEC is advocating for reforms to prevent the high incidence of vexatious plaintiffs. We recommend:

- Increasing the fees for applications of forfeiture under Section 96 (1)(b) or 98 of the *Mining Act 1978*, (r.140) from \$55 to \$2000 per application;
- Tightening the requirements for Form 5 – operations report, expenditure on mining tenement;
- Requirement for a plaintiff to demonstrate they are competent and capable of taking on the lease in the event a significant breach is deemed, before a plaintiff will be considered.

Following our advocacy efforts for Warden's Court reforms in 2014, the number of vexatious applications for forfeiture has continued to increase and impede mining and mineral exploration activity. In 2014, following participation in the Mining Industry Liaison Committee (MILC) Subcommittee into the review of the Mining Warden, the then Department of Mining and Petroleum (DMP) acknowledged that vexatious plaintiffs were an issue, but did not enact reforms. It was understood at the time, the Department's view was that tenement holders and their lawyers should utilise the existing rules to more actively apply for appropriate order to counter perceived shortcomings with forfeiture applications.

While the aim of the Act and Warden's Court process is to encourage self-regulation and compliance within the mining industry, Industry is concerned that now the majority of forfeiture applications are not a legitimate use of the system. A review of Section 35a applications lodged from June 2018 to June 2020 demonstrates the high instance of nuisance forfeiture applications due to the low cost and lack of deterrence to which plaintiffs can lodge applications to disrupt mining activity. Over the two-year period, the two top applicants lodged 102 and 80 forfeiture applications respectively.

There are limited protections for tenement holders, and the costs to industry and the Government far outweigh the benefits of this self-regulated system which is being misused by nuisance plaintiffs.



The growing instance of serial plainers misusing the Warden's Court to require mineral explorers to issue "go away payments", is a practice referred to as "greenmailing". While the Government should not be expected to intervene in commercial matters between parties, it has an obligation to ensure its regulatory systems don't encourage abuse. The South Australian Mining Regulation reforms include changes to the Warden's Court, with measures to pre-empt the misuse of plaining. WA too can disincentivise this practice and the unfair burden of costs on junior mineral explorers wishing to avoid months of litigation by settling outside of the Warden's Court, by removing the relative ease at which frivolous complaints can be undertaken.

Increasing the application fee, tightening the requirements of Form 5, and requiring plainers to prove they have a genuine interest in the land in contention, are all measures which ensure the best interests of the industry are maintained, and the Warden's Court is not misused. The South Australian Mining Regulation reforms have introduced a draft requirement for plainers to demonstrate they have the capability and competence to take on the plained lease in the event a significant breach has been identified, as a way of deterring frivolous complaints, which are a known issue in WA.

AMEC continues to work to promote an environment that fosters minerals exploration and mining in Western Australia, however the current low cost of \$55 per application for forfeiture does not discourage profiteering by greenmailers, who lack a genuine interest in projects. Tightening the wording on Form 5 would increase the certainty and transparency of exploration expenditure. Industry would welcome an opportunity to review the Form with the Department to find improvements.

The suggested changes are administrative, with no cost, but would prevent the misuse of the Warden's court, and support legitimate mining and mineral exploration activity.

I look forward to your consideration of our request.

Yours sincerely



Warren Pearce
Chief Executive Officer