

Exemptions for tenement minimum expenditure conditions

25 March 2020

3 min. read

Worthwhile read for: Mining industry practitioners

[resources energy and projects](#) / [resources and energy](#) / [title services](#) / [mining titles](#) / [mining tenement](#) / [western australia](#)

In any period of heightened uncertainty in the mining industry, Western Australia's unique "jealous neighbour" tenement minimum expenditure conditions become increasingly relevant.

To date, the Department of Mines, Industry Regulation and Safety (**DMIRS**) is holding the line that expenditure conditions are required to be met in order to ensure tenements in Western Australia (**WA**) are maintained in good order.

This is equally important for tenement holders to guarantee their security of tenure as well as being particularly relevant for holders who may have contractual obligations under a royalty, joint venture, sale and purchase agreement or other contractual arrangements to maintain tenements in good standing.

Thankfully, there is a process under the *Mining Act 1978* (WA) for the grant a 'certificate of exemption', which, as the name suggests, totally or partially exempts a tenement from its expenditure conditions.

There are various grounds set out in section 102(2) of the *Mining Act* which could be available for explorers or producers facing difficulties in meeting their tenement minimum expenditure conditions, including:

- *102(2)(b): that time is required to evaluate work done on the mining tenement, to plan future exploration or mining or raise capital therefor;*
- *102(2)(e): that the ground contains a mineral deposit which is uneconomic but which may reasonably be expected to become economic in the future or that at the relevant time economic or marketing problems are such as not to make the mining operations viable;*
- *102(2)(g): political, environmental or other difficulties in obtaining requisite approvals prevent mining or restrict it in a manner that is, or subject to conditions that are, for the time being impracticable;*

or the general Ministerial discretion whereby:

- *102(3): the Minister for Mines may grant an exemption for any other reason other than those set out above which, in his opinion, is sufficient to justify exemption.*

In novel situations with no established precedent for an application for exemption, tenement holders may be dealing not only with DMIRS but also with challenges and complaints from third parties.

Care should be taken when compiling your application for exemption to meet the strict timing and form requirements and to provide sufficient supporting materials to give yourself the highest possible chance of being successful.

We remain hopeful that government will take a pragmatic and supportive approach towards the industry.

If you have any questions on your particular scenario or would like to speak to one of our experts in mining law, please contact our [Resources and Energy](#) team.

25 March 2020

[resources energy and projects](#) / [resources and energy](#) / [title services](#) / [mining titles](#) / [mining tenement](#) / [western australia](#)

[Previous article](#) [Next article](#)