

Mining (Community Protection) Amendment Bill 2015

EXPLANATORY MEMORANDUM

*(introduced by Hon Robin
Chapple MLC)*

Overview of the Bill

The purpose of this Bill is to amend the *Mining Act 1978*. The Bill seeks to address community concerns about the capacity of the *Mining Act 1978* to override local or regional planning schemes. The Bill addresses these concerns by:

1. Expanding the discretion of the Minister for Mines to exempt any land from mining; and
2. Making any application for the grant of a mining tenement subject to planning instruments.

Preliminary**Clause 1**

Sets out the name of the Act.

Clause 2

Provides that the Act is to come into operation on a day fixed by proclamation.

Clause 3

Provides that this Act will amend the *Mining Act 1978*

Part 2 – Amendments to the *Mining Act 1978***Clause 4 - amendment of Section 19**

Section 19 of the *Mining Act 1978* provides the Minister for Mines with powers to exempt land from mining. This clause amends these discretionary powers. Currently only public land that is neither subject to a mining tenement nor subject to an application for a mining tenement can be exempt.

Removing this limitation expands the power of the Minister to allow her or him to exempt any land from mining, whether it is in private ownership or it is public land.

The exercising of this discretion is not subject to conditions, but the processes for exempting a particular area of land are subject to further requirements set out in the remaining sub-clauses of Section 19.

The inclusion of private land in the powers that the Minister has to exempt land from mining, seeks to address the issue of mining companies purchasing private property to facilitate access to a tenement. This amendment gives the Minister the discretion to exclude any land from mining.

Clause 5 - Amendment of Section 120

This amendment will give primacy to planning instruments established under the *Planning and Development Act 2005*. Currently the *Mining Act 1978* provides that such planning instruments have to be considered but, importantly, it also says that the provisions of any such scheme shall not operate to prohibit or affect the granting of a mining tenement or the carrying out of any mining operations authorised by the *Mining Act 1978*. This amendment gives a community power to reject mining proposals in their local Government area through their local planning scheme.

By deleting Section 120 and inserting new provisions tenements will only be able to be granted if they are consistent with provisions in any planning scheme in force under the *Planning and Development Act 2005*.

Subsection (2) also means that provisions in draft planning schemes have to be taken into account from the time of advertisement of the scheme for public inspection.

From the point at which a draft planning scheme has been advertised the local government authority and the Western Australian Planning Commission have the power to object to any application to the Minister for Planning if the proposal is contrary to the draft local planning scheme. In such a case the agreement of the Minister for Planning is necessary before any tenement application can be granted.

Further, where a draft planning scheme exists neither the Minister for Mines, the Warden nor the Mining Registrar can approve a mining application without the agreement of the Minister for Planning.