



Our Ref: GEN-033  
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Office: Perth  
Date: 8 March 2022

To: Resource Tenure Division  
Department of Mines, Industry Regulation and Safety  
Mineral House, 100 Plain Street  
East Perth WA 6004

C/- [RTD.Consultation@dmirs.wa.gov.au](mailto:RTD.Consultation@dmirs.wa.gov.au)

To whom it may concern,

**RE: Consultation on the *Mining Amendment Bill (No.2) 2021***

Yamatji Marlpa Aboriginal Corporation (YMAC) is the Native Title Representative Body (NTRB) for what are described as the Pilbara and Geraldton regions of Western Australia. The organisation is governed by an Aboriginal Board of Directors, representing several native title groups, each of whom have their own language, culture, traditions, and protocols. YMAC provides a range of services, including native title claim and future act representation, heritage services, community and economic development assistance, and natural resource management support.

Thank you for your letter of 10 January 2022 providing YMAC the opportunity to make submissions in response to the proposed *Mining Amendment Bill (No.2) 2021* (the Bill). We address these below in relation to each topic covered by the amendments.

**Adoption of the Geocentric Datum of Australia 2020 (GDA2020)**

YMAC has no comments to add in relation to the adoption of the GDA2020. The logic described for why this transition should occur seems sensible.

**Lease conversion applications to be made without first marking out the land**

As YMAC understands it, the proposed amendments to s105 are intended to provide the holder of a prospecting, exploration or retention licence the ability to apply for the granting of a mining or general-purpose lease without first marking out the area pertaining to the application if they can provide a statement of the grounds for why it is not possible, as well as supporting evidence for such claims.

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Possible grounds for this exemption from the requirements to mark out the tenement prior to lodging the tenement application include circumstances prohibiting access beyond the control of the licence holder, such as a particular law, court/tribunal order, a natural disaster or emergency, civil disturbance, industrial dispute and so on.

However, we note that these exceptions do not wholly remove the requirement for the marking out of the area, but instead simply delay this process until such time it can be undertaken (or is specified by the mining registrar).

### *Submissions*

1. We submit that s105 should make it clear that where such an application is accepted without first marking out the land in relation to which the lease is sought, the requirement to mark out the area when it *is* possible to do so be a subsequent condition, and that the tenement should not be valid and is to be cancelled if this is not complied with.
2. We also submit that any statements, directions and/or decisions of the mining registrar or warden should be made available to the public and recorded with other information relating to the tenement.

### **Minister's discretion when granting exploration licences**

As YMAC understands it, the proposed amendments provide the Minister discretion to make land “unavailable for exploration” for the purpose of streamlining matters, and that this discretion can be exercised at any time.

Among the reasons why the Minister may do so includes the area being subject to native title. While granting the Minister the ability to make land unavailable for exploration is supported, we have identified several opportunities for how this could be made more effective.

### *Submissions*

1. The proposed changes only apply to the unavailability of land for *exploration*. We submit that a similar discretion be provided in relation to other mining tenements as well. In line with this, we further submit that the following points should also be replicated throughout the Bill for other types of tenements.
2. We note that the Minister can exercise this discretion after an exploration tenement has been applied for. We recommend that there be procedures legislated that enable registered native title bodies corporate, native title claimants, and native title representative bodies or service providers to:
  - a. be notified of exploration tenement applications (e.g., s58(4) could be amended to require such notification specific to these parties); and
  - b. make submissions to the Minister to exercise this discretion to make areas unavailable for exploration (e.g., where such areas comprise important cultural heritage).

3. The above point could be further facilitated by amending the definition of “owner of land” to confirm the term includes native title holders. For example, this has been done in s10A of the *Mineral Resources Act 1989* (Qld).
4. We urge that the Bill (or regulations) provide that native title parties may make submissions to the mining registrar, warden and/or the Minister any time before the Minister makes a final grant of an exploration licence in relation to whether the land should be determined to be unavailable for exploration. This should provide that the mining registrar or warden must forward any submissions received from the native title parties to the Minister when providing any report to the Minister, and that the Minister must consider these submissions directly (or from the mining registrar or warden) before making the grant of the exploration licence.
5. We also submit that the Bill be amended to provide that the Minister may impose native title protection conditions on exploration licences if the Minister decides not to make the land unavailable for exploration. (Compare, for example, s141AA of the *Mineral Resources Act 1989* (Qld).)

If there are any questions or concerns with our submission, please do not hesitate to contact me care of Executive Assistant Dionne Lamb (P: 08 9268 7000; E: [dlamb@ymac.org.au](mailto:dlamb@ymac.org.au)).

Yours sincerely,



Simon Hawkins

**Chief Executive Officer**