

An aerial photograph of a mining operation, showing a large, dark, irregularly shaped pit or excavation site. The surrounding terrain is light-colored, possibly sandy or silty, with various tracks and roads. A large, white, semi-transparent rectangular overlay covers the left and bottom-left portions of the image. The text is positioned on this white area. There are also some bright green geometric shapes in the corners of the image.

Implications of COVID-19 on the Western Australian Mining Industry

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Note: The content in this publication is current as at 29 May 2020. COVID-19 responses both internally within Australia and internationally are changing daily. It is important to regularly monitor and keep up-to-date with all relevant information and be prepared to respond as the social and economic landscape changes.

As mining operations around the world are impacted by the significant disruptions caused by COVID-19, the Western Australian mining sector, like the rest of Australia, has been facing restrictions and interruptions in its activities. With that said, Western Australia's mining sector has a very important part to play in ensuring the State and the rest of Australia recover from the devastating economic impact of COVID-19. In recognition of this balancing act, the Western Australian Government has implemented initiatives aimed at supporting mining businesses whilst maintaining safety and travel measures.

As COVID-19 restrictions in Western Australia are beginning to ease, there are questions as to what growth policy options will be adopted to support stronger economic recovery as Australia starts to emerge from the pandemic. Over the years, the resources sector (and in particular the Western Australian mining and energy sector) has proved to be the underpinning success behind the Australian economy, generating \$290 billion in export earnings in 2019. Of this, Western Australia accounted for \$152 billion in mining and energy exports over the 2018-19 period. The role of stronger business-led growth, particularly in the mining industry, will be a key driver in leading Australia to economic recovery. A crucial first step in driving the recovery was the Western Australian Government's decision to exempt workers in the mining industry from quarantine rules and intrastate travel restrictions treating them on par with other essential services like police and healthcare workers. With the mining industry maintaining economic growth, the industry has continued to meet its commitments of paying resource taxes and royalties and meeting its annual contributions of circa \$31 billion in funding for doctors, nurses, hospitals, police and other essential services and infrastructure across Australian cities and regions.

In the current economic climate there has been a reduction of M&A activity in the resource

sector as investment decisions are being delayed or proceeding with caution and with greater emphasis being placed on maintaining strong balance sheets to support businesses through this downturn. Along with ensuring business liquidity, mining businesses are considering how to secure capital as investing in maintaining current operations and mineral development remains a fundamental aspect of continued growth on the road to recovery. However, at present this is proving difficult as evidenced by 74% of Australian mineral exploration companies having ceased, or dramatically decreased, their operations due to COVID-19 (based on the Association of Mining and Exploration Companies' survey). To assist Western Australia's road to economic recovery (which is hoped to be in the near future) largely off the back of the mining sector, DMIRS continues to work on projects aimed at improving Western Australia's resource expertise, strategizing to sustain and grow the State's resources sector and developing resource sector policies and regulations. It is also anticipated that leveraging trade with key economic partners will benefit the Western Australian resources industry in growing the State's role in being a major player in the battery space and global producer of iron ore.

The Australian share market has propelled largely with the help of iron ore and gold miners. In particular, gold prices have been on an upsurge for the past 18 months and, different from other commodities, continues to be on the rise. Between 1 January and 8 May 2020, gold prices rose by 12% with Australian gold producers making attractive margins as a result of gold's top spot in the market. Newcrest Mining reportedly achieved an average gold price of \$2,228/ounce at an all-in sustaining cost (AISC) of \$827/ounce, giving a margin of \$742/ounce. These strong prices and margins amount Australia gold producers have allowed them to expand their existing mines while developing new ones. Recent capital raisings are mostly to fund gold projects; both exploration and expansions. At the end of April Newcrest Mining announced a \$1.1 billion capital raising

to further fund its stake in its gold mine in Ecuador. Bellevue Gold Limited announced in late March that it received firm commitments for \$26.5 million in a share placement to fund resource upgrades and further economic studies for the Bellevue gold project in Kalgoorlie, Western Australia.

For the Western Australian mining industry to continue being a global leader and maintain its competitiveness, policies that encourage investment and growth will play a crucial role for the state and the nation more broadly. This was recognised by the Governor of the Reserve Bank of Australia who forewarned about the severity of the upcoming economic downturn and has emphasised the importance of pro-growth, pro-productivity reforms, recovery from COVID-19, highlighting opportunities for both State and Federal Government to pursue future strategies for the development of the Australian resources sector. It is against this backdrop that we look at some of the relevant restrictions, procedures and initiatives that have been put in place for the Western Australian mining sector as well as some considerations for holders of mining tenure trying to navigate through these matters.

Operational Restrictions

Mining operations have been greatly impacted as a result of Government measures responding to COVID-19 in addition to voluntary measures undertaken by many businesses to safeguard employee health and safety. These measures relate to progressing with prospecting, travel and surveying or scoping studies. Mining industry activities in Western Australia have been affected by the cessation of heritage surveys due to concerns surrounding protection of vulnerable populations and support of Aboriginal people. The Western Australian State Government has partnered with the Commonwealth Government to implement Remote Aboriginal Communities Directions. In addition to these directions, from 11:59pm Tuesday, 31 March 2020, Western Australians were not permitted to travel outside their

designated region without an exemption¹. The Remote Aboriginal Communities Directions mean that the only people who can enter remote Aboriginal communities are residents, those providing essential services and supplies, and those entering for family or cultural reasons. From 26 March 2020, stronger restrictions apply to the following areas: Goldfields-Esperance, parts of the Shire of East Pilbara and Kimberley. Under these arrangements, any person outside these three regions can only enter if that person is providing essential services or supplies; or has been quarantined from the general public for the previous 14 days. From 18 May 2020, some regional travel restrictions will be relaxed as Western Australia enters phase 2 of its roadmap to carefully easing COVID-19 restrictions.

Mining activities have also been affected by escalating restrictions on international and domestic travel which have affected the availability and mobility of necessary personnel. In response, the State's major iron ore players have had to organise for key personnel who live interstate to temporarily relocate to Western Australia. Other implications are interruptions to fieldwork including fauna and flora surveys, noting that many of these will already be influenced by seasonal limitations. In some cases where these interruptions have a severe impact on continued operations, operations have been immediately placed in care and maintenance. Notwithstanding these operational difficulties, mining businesses must still ensure that their tenements remain in good standing and that they comply with their statutory and regulatory obligations.

Mining Sector Activity

Late February and the first few weeks of March were focused on mining companies working out what COVID-19 meant for their businesses and how they could effectively operate; where staff needed to be located; how to ensure adequate

¹ From 18 May 2020, some regions have been consolidated allowing for greater travel movement throughout WA. See the Western Australian Department of Premier and Cabinet website on [Regional travel restrictions for WA's regional boundaries](#) for the latest information.

safety measures could be implemented; force majeure; and insurance. Work in these areas has largely been completed; mining companies have moved through this phase and are now focusing on the process and mechanics for returning to full operation.

The border restrictions and associated quarantine requirements that have been imposed in many jurisdictions have significantly impacted on the ability to move expertise and personnel across mine sites and head offices. This has been, and still is, a significant issue. We have seen some mines temporarily put on care and maintenance, and assets deployed at mines where they are most effective. Most ongoing transactions also slowed significantly whilst mining companies directed their efforts, energy and spend on critical operational matters.

As we start to see some relaxing of restrictions, movement of expertise and key personnel remains a critical issue for deal flow and completion of ongoing deals. There are a number of assets that are the subject of both buyer and seller-side interest, though unless the relevant personnel and advisors are local to the relevant jurisdictions, these transactions will continue to be slow to develop and execute. Finance is certainly available from mining investment funds, particularly for in-demand metals and minerals (gold is particularly active), though deals are similarly slow to develop. The appetite and funds are definitely there, which are backed up and ready for increased investment as entities are able to increase deal flow. We are now also starting to see an uptick in interest from China in mining assets in multiple jurisdictions, which is positive for the sector as a whole from a longer term perspective.

The outlook is certainly positive in the medium to long-term (particularly for some metals and minerals), though we expect activity to remain patchy but rising in the short term. Increase in work flow will also likely be region-specific depending on relaxation of border restrictions.

WA Department of Mines, Industry Regulation and Safety

There is no doubt that the impact of COVID-19 on the mining industry, collectively, will affect companies' ability to meet prescribed expenditure and other requirements under the Mining Act 1978 (WA) (**Mining Act**) and Mining Regulations 1981 (WA) (**Mining Regulations**). The Department of Mines, Industry, Regulation and Safety (**DMIRS**) has indicated that it will address the following matters in the near future:

- Tenement expiries and renewals due in the coming 6 to 12 months;
- Management of general compliance due dates in the next 6 to 12 months (for example, Mine Closure Plans which must be submitted every 3 years); and
- Paper correspondence, wet signatures and other non-online processes and alternatives.

As such, tenement holders should monitor DMIRS' response on these matters. Currently, DMIRS is continuing to process applications whilst focussing on transitioning to a large portion of the department working remotely. Tenement holders and applicants should anticipate delays whilst the department endeavours to proceed with usual business in addition to reduced capacity, maintaining stability and support for its critical online systems and planning for critical roles within the department. The Western Australian Government and DMIRS will continue to work with, and consult with industry to identify opportunities that may further assist the mining industry, which has a key role in the growth and development of Western Australia. The major initiatives put in place by DMIRS relate to expenditure/rent relief, mines safety levies and streamlined administrative procedures.

Expenditure Relief

In circumstances where exploration activities have undergone a dramatic slow-down or halt, mining exploration companies may face difficulties in meeting their expenditure

commitments for current and future periods whilst COVID-19 measures are in place or whilst companies are made to revisit their capital expenditure plans. Under the existing provisions of the Mining Act a tenement holder may apply for an exemption, in whole or part, if they are unable to meet their expenditure requirements. Amongst others, reasons for granting an exemption include:

- time is required to evaluate work done, to plan future exploration or mining or raise capital;
- the ground the subject of the mining tenement is unworkable for any sufficient reason; or
- political, environmental or other difficulties in obtaining requisite approvals prevent mining or restrict it in a manner that is impracticable for the time being.

Section 102(3) of the Mining Act also allows an exemption to be granted for any other reason prescribed or in the opinion of the Minister, is sufficient to justify an exemption.

In relation to s 102(3) Mining Act, Mines Minister, Bill Johnston issued a statement of opinion (published in the Government Gazette on 3 April 2020) providing that expenditure relief would be available if a tenement holder was unable to meet the expenditure requirements as a direct result of COVID-19 or restrictions imposed by Governments in response to COVID-19. This decision will be valid until 31 March 2021 unless rescinded earlier. When applying for an exemption, tenement holders must include a statement demonstrating that expenditure commitments have not been met due to the direct effects of COVID-19 or Government restrictions; DMIRS has indicated such statement should be in the form of a statutory declaration.

Whilst awaiting clarification from DMIRS, Minister Johnston's published opinion seems to only apply to exploration expenditure commitments and not to mining expenditure under mining leases. Therefore, it appears that applications for an exemption from mining

expenditure will continue to be determined on the existing case-by-case basis – in circumstances where the Warden finds that there are sufficient reasons to justify granting the exemption or if the Minister is satisfied, whether or not a recommendation is made by the Warden (Mining Act s 102(7)).

Tenement holders should be aware that where an application for exemption from expenditure conditions is lodged, third parties have a right to object. Where an objection is lodged, DMIRS cannot determine the application until the Warden has made a recommendation to the Minister; or the objection has been withdrawn by that party or dismissed by the Warden and an Order effecting the withdrawal or dismissal has been made. It remains to be seen whether opportunistic third parties will lodge objection applications against tenement holders who have lodged expenditure exemption applications that have resulted from issues related to COVID-19.

Rent Relief

Along with applying for relief for expenditure commitments, tenement holders should also be considering applications for extensions of time to pay rents on their mining tenements depending on their financial circumstances. Under existing mechanisms, applications for extensions made by mining and exploration licence holders should detail reasons why the extension should be granted and specify a set date for payment of rent. Although there have not been any changes to the granting of rent relief, in our view, reasons supporting an application would likely be in the same vein as for the above application for expenditure relief, being the direct effects of COVID-19 or Government restrictions in response to COVID-19 on the holder's current ability to pay tenement-associated rents.

Reduction in Mines Safety Levy

At a time when mining and exploration need extra support, industry has welcomed a cost reduction in the reduction of the Mines Safety Levy. On 23 April 2020, Mines Minister, Bill Johnston announced that the Mines Safety Levy

will be reduced by 20%. The current rate of 21 cents per billable hour will be reduced to 17 cents from 1 July 2020. The billable hours used as the basis to calculate the levy charged to mining companies reflect the number of total hours worked at a mine site over the financial year. The Mines Safety Levy funds the health and safety regulatory services for Western Australia's mining industry. Alongside providing financial reprieve, DMIRS has also responded to industry calls to make regulatory compliance easier and more efficient.

Streamlined Administrative Procedures

From feedback received from the industry, DMIRS has introduced new procedures to support the mining sector. On 7 May 2020, Mines Minister Bill Johnston announced that DMIRS will be streamlining administrative procedures to the maximum extent possible during the COVID-19 pandemic. The resulting changes and new or revised guidance will ensure continuity of service for important functions involving industry. These procedures focus on encouraging stakeholders to use DMIRS' online services instead of lodging physical documents. For example, DMIRS will accept electronic signatures on documents on documents which are not required to be witnessed or sworn. Where possible, correspondence and other tenement-related documents will be emailed by DMIRS. Mineral Titles Online has a new functionality allowing various documents to be lodged, including applications to vary conditions and amalgamations (amongst other matters). Streamlining these administrative procedures is a result of the WA Government and industry working together to identify opportunities to better support participants in the mining industry. DMIRS has said that these procedures are expected to continue to be in place after the COVID-19 pandemic as it moves to greater efficiency and modernisation of its processes. For more information on these administrative changes, refer to the DMIRS website.

Warden's Court

In line with the suspension of in-person court hearings across Australian courts and legal bodies, proceedings in all Warden's Courts were suspended until June 2020. With restrictions easing across Australia, all Warden's Court hearings and operations will move to being in-person from 1 June 2020. Warden's Court will be putting in place steps to deal with the existing social distancing and COVID-19 related health/safety requirements as all its operations return to normal. This means new matters and mentions hearings can be heard from 1 June as well as existing hearings relisted after this date. The Warden's Court can still conduct hearings through audio link or video facilities where leave is granted and parties continue to face challenges in attending in-person (for example, where parties are from inter-state or from the Pilbara region).

Native Title Tribunal

All Native Title Tribunal future act hearings, conference lists and mediations will continue to be held by teleconference as all Members and staff work remotely. As a response to COVID-19, the National Native Title Tribunal issued an interim direction applying to all future act inquiries in Western Australia which, in effect, excuse native title parties from compliance with a Tribunal direction. The direction applies to proceedings currently before the Tribunal which commenced on or before 24 March 2020, or commence on or prior to 31 May 2020. See our article on the Implications of COVID-19 on the Australian Mining Industry for more information on the requirements and criteria set out in the direction in addition to challenges faced by the Australian mining industry generally.

After discussions with the Native Title Tribunal, DMIRS has decided to continue to notify and administer resource tenure applications pursuant to the *Native Title Act 1993* (Cth)(NTA), including those DMIRS considers should attract the expedited procedure. This decision has been made with a view to maintain a level of economic activity and employment

across Western Australia, whilst ensuring that a backlog of resource tenure applications does not develop during the COVID-19 pandemic. In recognition of difficulties and restrictions impacting parties, in particular, native title parties, DMIRS proposes to implement an assessment process for each application. The assessment process will involve consultation with the tenure applicant or representative, Native Title Representative Body/Native Title Service Provider and independent native title party representatives to identify applications that can proceed under these current circumstances. To facilitate comprehensive stakeholder consultation, DMIRS has implemented a two-month pause in the administration of NTA future act notification processes effective from 23 April 2020.

COVID-19 Resources Research Fund

With the mining sector engaged in ongoing dialogue with the Western Australian Government on the most appropriate levels of movement restrictions, physical distancing, hygiene protocols and other significant matters, the Western Australian resources sector has also provided funding for Government research into COVID-19. The Chamber of Minerals and Energy of Western Australia (CME) and its members have been collaborating with the WA Government on the DETECT (Defining and Monitoring the Prevalence of SARS CoV2 (COVID-19) in the Community) program. The program involves a COVID-19 population study and testing of targeted cohorts such as students, teachers, health care workers, police and FIFO workers. The Western Australian resources have contributed more than \$500,000 towards the COVID-19 Resources Research Fund to financially support the FIFO DETECT project; which encompass wide-scale asymptomatic testing of FIFO workers. The resources sector being one of Western Australia's largest employers, the opportunity to use screening processes throughout the sector will be an enormous contribution to learning more about the virus. Testing conducted through the study will function as an additional layer within the mining industry's existing measures that protect

the mining workforce and communities in which they operate.

The Future

It is hoped that the restrictions, initiatives and procedures put in place will be adequate; however, DMIRS will continue to investigate a range of other initiatives that may help the mining industry without compromising the integrity of the State's legislative framework. During these uncertain and challenging times, we recommend mining industry participants to stay on top of Government announcements, restrictions and support, as current positions can change rapidly.

For an outline of major recent national developments during COVID-19 in the Australian mining context, see our publication on the Implications of COVID-19 on the Australia Mining Industry, as many of the issues discussed also affect the Western Australian mining sector. For more legal and regulatory insights on responding to the challenges associated with COVID-19, see the [Hogan Lovells COVID-19 Information Hub](#).

Want to know more

If you would like more information or assistance, drop us an email or give us a call:



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