

THE MINING ACT 1978

In Western Australia, mineral exploration and extraction is regulated under the *Mining Act 1978* (the Act). According to the Act, minerals below the surface of all land (except for minerals to owner land) are owned by the Crown, and the Crown has the power to grant the rights to explore and mine those minerals. Before any exploration for minerals can begin, an explorer will require a mineral tenement. Accessing these minerals under the ground often also requires access to the surface of the land, which is not always held by the Crown. Land in Western Australia is either Crown land or freehold (private) land.

CROWN LAND

Crown land is held by the Crown, and the Crown has the rights to grant access or control over the land through leases, permits, or licences. If a mineral tenement is granted on Crown land, the explorer is required to notify the land's leaseholder of the mineral tenement when it is granted or transferred.

FREEHOLD (PRIVATE) LAND

Freehold (private) land is land that is held in freehold title by someone other than the Crown. This person is the landholder, and freehold land gives them the unrestricted ownership of the land including the rights to sell, lease, licence or mortgage it. Although freehold landholders have the rights to the land and the use of the land, the Crown still owns the rights to the minerals located on or under the land, except in the case of minerals to owner land.

Therefore, an explorer wishing to gain access to mine and explore freehold land will need to negotiate with the landholder to access the land and apply to the State Government for rights to the minerals on the land.

RIGHT TO ENTER

In order to enter freehold land to search for minerals, an explorer needs permission either from the landholder or a permit to enter, which is granted by the Mining Warden. Only once an explorer has gained permission to enter the land, can they begin to explore for minerals or mark out a tenement. Permission to enter does not give an explorer the right to mine or disturb the surface of the land.

MINERAL TENEMENT

A mineral tenement is a licence, permit or lease that gives someone rights to explore for or extract minerals from an area of land. These minerals are owned by the Crown, and so the Crown has the power to grant these rights, not the landholder. Mineral tenements are granted by the Mining Registrar. When a mineral tenement is granted on freehold land, the explorer can carry out mining and exploration activities on the land. The type of activities an explorer can undertake depends on the type of tenement granted (See Types of Mineral Tenements). The types of mineral tenements include:

- Prospecting Licence
- Exploration Licence
- Retention Licence
- Mining Lease
- General Purpose Lease
- Miscellaneous Lease

Before the explorer can commence any operations, they must reach a land access agreement with the landholder.



An explorer and landholder negotiating land access

ACCESSING FREEHOLD LAND

The rights of a landholder relate to the use of the land. As part of a land access agreement, the landholder is entitled to compensation from the explorer in exchange for any disturbance caused by the exploration or mining activities.

Compensation should cover deprivation of the surface of the land, as well as damage to the land caused by any exploration or mining activities. An explorer is not required to pay for entry to land, nor is compensation payable in respect of the value of the mineral that is, or is supposed to be, on or under the land.

The explorer cannot commence any mining on the surface of the land, or to a depth of 30m, until compensation has been made, or an agreement on the time, mode and amount of compensation has been reached. If an agreement on compensation cannot be made, the amount of compensation will be determined by the Warden's Court.

Any objections to a mineral tenement application are heard by the Warden, who will decide to either allow or disallow the objection. Objections must be made within certain time constraints.

Landholders may not veto exploration, unless the land meets the below specifications:

- a. *which is in bona fide and regular use as a yard, stockyard, garden, orchard, vineyard, plant nursery or plantation or is land under cultivation; or*
- b. *which is the site of a cemetery or burial ground; or*
- c. *which is the site of a dam, bore, well or spring; or*
- d. *on which there is erected a substantial improvement; or*
- e. *which is situated within 100m of any private land referred to in paragraph (a), (b), (c) or (d); or*
- f. *which is a separate parcel of land and has an area of 2 000m² or less.*¹

MINERALS TO OWNER LAND

Minerals to owner land applies to freehold land granted before 1 January 1899. Landholders of minerals to owner land own the rights to the minerals on and under the surface of the land, as well as the rights to the land itself. The Department of Mining, Industry Regulation and Safety (DMIRS) describes minerals to owner land as:

*"freehold land where the mineral rights are owned by the landowner and not the Crown, [the exception being gold, silver and precious metals (the Royal metals) which are owned by the Crown]."*²

The Royal metals, that is gold, silver and precious metals (see The Royal Metals for the full list), on minerals to owner land are the only minerals that are still owned by the Crown. Therefore, a mineral tenement will only give an explorer the right to explore for or mine Royal metals. All other minerals on this land are owned by the landholder, so if an explorer wishes to explore for or mine minerals other than the Royal metals they must negotiate for these rights directly with the landholder.

If freehold land was granted after 1 January 1899, minerals to owner land does not apply and all minerals are owned by the Crown.

NEGOTIATING A LAND ACCESS AGREEMENT

When an explorer is looking to apply for a mineral tenement to conduct mining or exploration activities on freehold land, it is important to carry out due diligence.

Explorers should identify the owner of the land and the owner of the minerals early on. This includes identifying if the land is minerals to owner land. Early engagement and continued communication are important in both the initial negotiations and the ongoing relationship between landholder and explorer.

¹Mining Act 1978 - Section 29 (2)

²Department of Mines, Industry Regulation and Safety - Private Land Provisions Policy



A geologist undertaking a field survey

Explorers must remember they are temporary visitors on private land, just as landholders should appreciate the rights and needs of an explorer.

It is important that the explorer clearly explains the impacts that any activities will have on the land, or any disruptions to the landholder's day to day operations. This includes issues such as noise, odour, access and maintenance of roads, and any impacts of infrastructure.

Explorers should always listen carefully to the landholder and ask them to explain any concerns or misunderstandings they have about the proposed exploration activity. This can be the best opportunity for them to understand and address any issues from the landholder's perspective.

Legal advice may be sought to assist in the negotiation process and a mediation and arbitration process is available if agreement cannot be reached. Reasonable costs of the landholder in participating in negotiating the access arrangement are payable by the explorer.

RIGHTS AND RESPONSIBILITIES OF EXPLORERS

Explorers have important rights and responsibilities in the exploration process including:

- Explore for minerals
- Undertake the proposed program of exploration detailed in the exploration licence
- Ensure that access arrangements are negotiated with the landholder before exploration can commence
- Advise the landholder of changes to the onsite management or any proposed activity in the exploration program
- Minimise damage to the landholder's property and promptly rehabilitate the land after exploration activities are completed
- Respect landholders and liaise with them with fairness and in good faith.

RIGHTS AND RESPONSIBILITIES OF LANDHOLDERS

Landholders have important rights and responsibilities in the exploration process including:

- Negotiate an agreement for access before exploration commences in good faith
- Advise the exploration licence holder of a change in land ownership or management
- Work with the explorers and liaise with fairness and in good faith.



A geologist collecting soil samples

Images courtesy of Zenith Minerals and AMEC members

DEFINITIONS

Terms used as defined by the Mining Act 1978.

CROWN LAND

Crown land means all land except –

- a) land that has been reserved for or dedicated to any public purpose other than –
 - i. land reserved for mining or commons;
 - ii. land reserved and designated for public utility for any purpose under the *Land Administration Act 1997*;
- b) land that has been lawfully granted or contracted to be granted in fee simple by or on behalf of the Crown;
- c) land that is subject to any lease granted by or on behalf of the Crown other than –
 - i. a pastoral lease within the meaning of the *Land Administration Act 1997*, or a lease otherwise granted for grazing purposes only; or
 - ii. a lease for timber purposes; or
 - iii. a lease of Crown land for the use and benefit of the Aboriginal inhabitants;
- d) land that is a townsite within the meaning of the *Land Administration Act 1997*;

MINERALS

Minerals means naturally occurring substances obtained or obtainable from any land by mining operations carried out on or under the surface of the land, but does not include –

- a) soil; or
- b) a substance the recovery of which is governed by the *Petroleum and Geothermal Energy Resources Act 1967* or the *Petroleum (Submerged Lands) Act 1982*, or
- ba) without limiting paragraph (b), geothermal energy resources as defined in the *Petroleum and Geothermal Energy Resources Act 1967* section 5(1); or
- c) a meteorite as defined in the *Museum Act 1969*, or
- d) any of the following substances if it occurs on private land –
 - i. limestone, rock or gravel; or
 - ii. shale, other than oil shale; or
 - iii. sand, other than mineral sand, silica sand or garnet sand; or
 - iv. clay, other than kaolin, bentonite, attapulgite or montmorillonite;

MINING TENEMENT

Mining tenement means a prospecting licence, exploration licence, retention licence, mining lease, general purpose lease or a miscellaneous licence granted or acquired under this Act or by virtue of the repealed Act; and includes the specified piece of land in respect of which the mining tenement is so granted or acquired;

OWNER

Owner in relation to any land means —

- a) the registered proprietor thereof or in relation to land not being land under the *Transfer of Land Act 1893* the owner in fee simple or the person entitled to the equity of redemption thereof; or
- b) the lessee or licensee from the Crown in respect thereof; or
- c) the person who for the time being, has the lawful control and management thereof whether on trust or otherwise; or
- d) the person who is entitled to receive the rent thereof;

PRIVATE LAND

Private land means any land, other than Commonwealth land, that has been or may hereafter be alienated from the Crown for any estate of freehold, or is or may hereafter be the subject of any conditional purchase agreement, or of any lease or concession with or without a right of acquiring the fee simple thereof (not being a pastoral lease within the meaning of the Land Administration Act 1997 or a lease or concession otherwise granted by or on behalf of the Crown for grazing purposes only or for timber purposes or a lease of Crown land for the use and benefit of the Aboriginal inhabitants) but —

- a) in relation to mining for minerals other than gold, silver and precious metals, for the purposes of Division 3 of Part III, does not include land alienated before 1 January 1899, except as provided in that Division; and
- b) other than in so far as the primary tenement may be treated as private land in relation to mining for gold pursuant to a special prospecting licence or mining lease under section 56A, 70 or 85B, does not include land that is the subject of a mining tenement; and
- c) no land that has been reserved for or dedicated to any public purpose shall be taken to be private land by reason only that any lease or concession is granted in relation thereto for any purpose;

THE WARDEN or THE MINING REGISTRAR

The Warden or the Mining Registrar means the Warden or the Mining Registrar of the mineral field or district thereof in which the subject matter in relation to which the term is used arose or is;

WARDEN'S COURT

The Warden's court means the Warden's court constituted under this Act or deemed so to be for the mineral field or district thereof in which the subject matter in relation to which the term is used arose or is.

TYPES OF MINERAL TENEMENTS

1. PROSPECTING LICENCE

A prospecting licence allows the tenement holder to prospect for minerals and extract or disturb up to 500 tonnes of material from the ground. Activities may include drilling bores, digging trenches, or taking testing samples. The maximum area that a prospecting licence can cover is 200 hectares. Prospecting licences are held for a four-year term, with provision to extend for another four years. There is no limit to the number of prospecting licences a person may hold.

2. SPECIAL PROSPECTING LICENCE FOR GOLD

A special prospecting licence for gold may be applied for within an existing prospecting or exploration licence, or mining lease. The purpose of this type of tenement is to enable tenement holders to access gold deposits without interfering with the existing primary tenement.

3. EXPLORATION LICENCE

An exploration licence allows the tenement holder to, within licence conditions, extract or disturb up to 1000 tonnes of material from the ground. Larger tonnages may only be extracted with the Ministers approval. Exploration activities include low impact activities such as soil sampling and rock chip sampling, and higher impact activities such as drilling. The minimum size of an exploration licence is one block, and the maximum is 70 blocks in areas designated as mineralised areas, and 200 blocks in areas not designated as mineralised areas.

4. RETENTION LICENCE

A retention licence is essentially a 'holding' title for an identified mineral resource that is not yet able to be further explored or mined. A prospecting or exploration licence can be converted to a retention licence to give the tenement holder more time before mining commences. There is no maximum area for a retention licence.

5. MINING LEASE

A mining lease is required for a tenement holder to commence commercial mining production. A mining lease application must be accompanied by a range of other supporting documents that provide more information about the intended operations and resource. The holder of a mining lease can extract, mine and sell the minerals on the land. Mining leases are granted for a term of up to 21 years and is renewable for further terms.

TYPES OF MINERAL TENEMENTS

6. GENERAL PURPOSE LEASE

A general purpose lease is for purposes such as operating machinery, or depositing or treating tailings.

7. MISCELLANEOUS LEASE

A miscellaneous licence is for purposes as prescribed in Regulation 42B, for example roads, tunnels, powerlines and pipelines.

THE ROYAL METALS

According to the Act, the Royal Metals includes gold, silver, and other precious metals. The Department of Mines, Industry Regulation and Safety (DMIRS) Mines and Mineral Deposits (MINEDEX) includes the below 11 commodities in the precious metals commodity group:

- Gold
- Gold equivalent
- Iridium
- Osmium
- Palladium
- Platinum
- Platinum group elements
- Platinum group elements + gold
- Rhodium
- Ruthenium
- Silver