



An Introduction to Mining Law

Mining is a very important industry for the Western Australian economy, with the most economically significant mining exports in 2010 being iron ore, gold, nickel and alumina (made from bauxite). In terms of area, mining takes up only a small area of the State's land. However, because of the nature of the activity and the processes used, mining can have a dramatic impact on the environment.

This fact sheet outlines the law which regulates mining activities in WA, and highlights opportunities for the community to have a say on future mining proposals and the environmental performance of existing mines. This fact sheet does not address the interaction between mining law and native title.

The Mining Act

The Mining Act 1978 (WA) ("the Mining Act") is the principal statute governing mining in Western Australia. The Mining Act applies to mineral exploration and mining operations. "Mining operations" as defined under the Act include the extraction of ores, removal of overburden, and processes such as crushing, leaching and evaporating which are necessary to extract minerals from the ground.

"Minerals" are defined under the Mining Act to include all naturally occurring substances that are obtainable from the ground by mining. However, the Mining Act does not apply to petroleum products or the quarrying of limestone, gravel, shale, non-mineral sand or clay on private land. These activities are dealt with under other statutes (see [Fact Sheet 38: Petroleum Law](#) and [Fact Sheet 37: Gravel Pits and Quarries](#)).

Generally minerals are owned by the State, regardless of whether the minerals are on private land or Crown (public) land. However, minerals (apart from gold, silver and precious metals) which are on land sold or granted by the Crown before 1 January 1899 may be owned by the private landowner. Most such land is in the south-west of WA.

The Mining Act allows people to apply for rights to explore for and extract minerals. These rights, including prospecting licences, exploration licences, retention licences and mining leases, are known collectively as "mining tenements".

Prospecting Licences

A prospecting licence entitles a person to enter land to prospect for minerals and to undertake activities necessary for that purpose, such as drilling bores, digging trenches and pits, taking samples for testing and taking water. A prospecting licence covers a maximum area of 200 hectares. The duration of a prospecting licence is four years, with the possibility of a further four-year extension in certain circumstances.

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Exploration Licences

An exploration licence, like a prospecting licence, authorises a person to enter land and to undertake exploration activities. Exploration activities may include extraction of a relatively small quantity of material in order to test the quality of the resource. The main difference between a prospecting licence and an exploration licence is that an exploration licence can apply over a very large area (up to 21,700 ha) and is made up of pre-determined graticular blocks. The initial term of a exploration license is five years, however if the Department of Mines and Petroleum ("DMP") is satisfied that grounds exist, it may be extended once for five years, and by further periods of two years.

Retention Licences

A person who holds a prospecting licence or exploration licence can apply to convert that licence to a retention licence, if there is a known mineral deposit on the land but it is not yet feasible to commence mining. This gives the licence holder more time in which to evaluate the resource, develop plans, obtain finance, or wait for better economic conditions. In order to keep a retention licence, the holder may have to comply with an approved work program and may be required to show cause why the holder has not applied for a mining lease.

Mining Lease

In order to commence commercial mining production, a person must have a mining lease. The holder of a mining lease can mine the land, extract minerals and conduct any other operations that are necessary for that purpose. A mining lease may be granted for a term of up to 21 years and is renewable for further 21 year periods.

Mining on Private Land

In theory, all private land in Western Australia is open for mineral exploration and mining. However there are important limitations on granting mining tenements on the surface of private land.

Before a mining tenement can be applied for, it must be 'marked out' by the miner. A would-be miner must obtain the consent of the landowner or occupier, or a permit from the Mining Warden before he or she can enter private land for the purpose of marking out a mining tenement. The permit will usually be subject to a condition requiring the permit holder to pay some compensation for damage to the landholder.

A mining tenement cannot be granted over the following private land without the owner's consent (unless the tenement is restricted to land more than 30m below the surface):

- An allotment of less than 2,000 sqm.
- Land within 100m of a house, farm buildings, garden, nursery, plantation or stockyard.
- Land which is used for agricultural purposes (including grazing).

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A mining tenement granted over one parcel of private land entitles the tenement holder to right-of-way access across other private properties to the nearest practicable entry point on a public road. However a right of way may not be granted through a yard, garden, orchard or cultivated field without the consent of the owner and occupier.

Mining on Crown Land

Crown land is all land which is not privately owned. The vast majority of Western Australian land (93%) is Crown Land.

Crown land includes unallocated crown land, pastoral leasehold land, road reserves, conservation reserves and land owned by government authorities. All of this land is open for mining. However special restrictions apply to mining in Crown land which is in a conservation reserve, marine park or state forest (see below).

Mining in Conservation Reserves and Marine Parks

A mining lease cannot be granted and a mineral tenement cannot be marked out in any of the following areas without the consent of both Houses of parliament:

- a national park;
- a Class A nature reserve; or
- a marine park or marine nature reserve.

In other conservation parks and nature reserves, mining can be carried out with the approval of the Minister for Mines. Before giving such approval, the Minister must consult with the Minister responsible for the reserve.

Notification and Objections to a Mineral Tenement

A copy of the application must be served on persons with an interest in the subject land (the owner, and any leaseholder or mortgagee) and must also be advertised in a statewide newspaper within 14 days of lodgement. DMP is also required to make copies of mining proposals and mining statements available for public inspection and copying (although it may charge a fee, and is only required to do so for applications made after 2004).

Any person can lodge an objection to the grant of a mining tenement. An objection must be lodged in the prescribed form, at the Mining Registrar's Office located in the mineral field in which the application was made. Normally objections must be within 35 days of the application date (note that this may be only 21 days after the application was publicly advertised), however the Warden may extend the time for lodging an objection if there is a good explanation for the delay.

The objection must set out the reasons for objecting to the mineral title application. These grounds may include environmental or public interest grounds. Note, however, that environmental grounds related to the impacts of mining are likely to be given more weight at the mining lease stage rather than the exploration or retention lease stage.

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How Mineral Tenements are Granted

If there is no objection to the grant of a prospecting licence or miscellaneous licence, the Mining Registrar can grant the licence. If there is no objection to an exploration licence or mining lease, the Mining Registrar makes a recommendation to the Minister for Mines, who makes the final decision whether or not to grant the application.

Where an objection is lodged to a mining tenement application, the matter will go before the Mining Warden for hearing.

The hearing before the Mining Warden is quite formal. The objector(s) and the applicant are usually (but do not have to be) represented by lawyers. They can use written evidence and can call witnesses, including expert witnesses. Any witnesses who are called may be cross-examined. The Warden usually gives each party an opportunity to make submissions at the opening and closing of the hearing. At the conclusion of the hearing, the Warden will prepare a recommendation to the Minister.

Normally, each party bears its own costs of hearings before the Warden's Court. However in exceptional cases, the Warden does have power to order one party to pay all or part of another party's costs. This will only occur if the Warden finds that one party has acted in a way that was "frivolous or vexatious", or delayed the proceedings unreasonably, or failed to comply with the Court's directions.

Environmental Assessment of Mining Lease Applications

An application for a mining lease must either be accompanied by a mining proposal or a mineralisation report and a supporting statement.

A mining proposal is submitted to the DMP for the purpose of assessing the environmental impacts of a proposal. The DMP will also consult with other departments regarding the impacts of the proposal. If it does not trigger referral to the Environmental Protection Authority ("EPA") and is approved by the DMP, the mining proposal is used to determine the conditions on the mining lease.

Under current DMP guidelines, a mining proposal must include the following information:

- a description of the site;
- details of consultation undertaken in relation to the proposal;
- technical geological and hydrological details;
- a description of flora and fauna on site;
- mining operation details including transport corridors;
- an environmental impact assessment; and
- mine closure and rehabilitation information.

A statement in support of mineralisation report is a much briefer document, which only needs to describe when mining is likely to commence, the most likely method of mining and the location and area of land required for mining. Where a mining lease is applied for without a mining proposal, the lease will be subject to a condition that mining is not to commence until a mining proposal is submitted.

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If a proposed mining operation under a mining lease application is likely to have a significant effect on the environment, the proposal may also need to be assessed by the EPA under *Part IV of the Environmental Protection Act 1986 (WA)*. This process is explained in detail in [Fact Sheet 5: Environmental Impact Assessment in Western Australia](#). If a proposal is referred for assessment under Part IV, the DMP cannot grant a mining lease until either the EPA has advised that it has decided not to assess the proposal, or the assessment process is completed and the Minister for Environment has decided that the proposal may be implemented.

A Memorandum of Understanding ("MOU") between the DMP and the EPA requires the DMP to refer a mining proposal to the EPA if a mining proposal has been submitted, and the mine is in an environmentally sensitive area. Proposals which must be referred to the EPA under the MOU include the following:

- mining wholly or partly within a DEC-managed conservation reserve, state forest or timber reserve or a threatened ecological community;
- mining wholly or partly within certain environmentally sensitive areas such as a World Heritage Property, Soil Reference Site or Ramsar Wetland;
- mining having an effect on environmentally significant lakes and wetlands, or a water resource area; and
- mining within 2km of the coast or a townsite.

Other mines which do not meet any of the criteria under the MOU may nonetheless require assessment because they are likely to have a significant effect on the environment. The DMP may decide to refer such a proposal to the EPA, or it could be referred by any person.

However, only the applicant can refer a mining lease application to the EPA if the application was accompanied by a mining statement rather than a mining proposal.

If the proposal is assessed by the EPA under Part IV, the Minister for Environment makes the final decision whether to approve the proposal. The Minister's approval will usually be subject to conditions designed to minimise the environmental impact of the proposal. For more information on the Part IV assessment process and conditions, see [Fact Sheet 5: Environmental Impact Assessment in Western Australia](#).

Environmental Conditions and Bonds

All mining tenements contain standard conditions requiring lessees and licencees to fill in all holes on the land and to take steps to minimise damage to trees and property. Other environmental conditions specific to the tenement may be imposed, including conditions requiring environmental reporting and rehabilitation of land on the completion of mining. Rehabilitation conditions may require the applicant to lodge a bond with the Department of Mines, to cover the cost of rehabilitation if the miner becomes insolvent or for some other reason fails to complete rehabilitation of the site after mining is complete.

Mine Closure Plans

As of 1 July 2011, the DMP requires all new mining proposal applications to contain a Mine Closure Plan. Existing mining operations with a mining proposal or notice of intent will also be required to submit a revised Mine Closure Plan to the DMP by 30 June 2014. All mine closure plans are required to be reviewed every

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3 years. Mine Closure Plans must now be prepared in accordance with the *Guidelines for Preparing Mine Closure Plans (June 2011)* which has been jointly prepared by the DMP and EPA, to satisfy the requirements of both agencies. These changes mean that the EPA will no longer assess mine closure as part of its environmental impact assessment process for mining proposals, unless they are concerned that mine closure will present a particularly high environmental risk. For more information on the new mine closure plan process, you can access the Guideline on the DMP website.

Pollution Controls

There are specific regulations controlling pollution from mining operations. It is an offence for a mining company to allow sludge, mine water or another pollutant to become an inconvenience to the public, or to obstruct any public or rural thoroughfare.

Larger scale mines which are prescribed premises under the *Environmental Protection Act 1986 (WA)* must obtain a works approval and/or pollution licence to authorise any discharges into the environment (See [Fact Sheet 27: Pollution and Environmental Harm](#)).

Clearing of Native Vegetation

Approval may be required to clear native vegetation for exploration or mining activities. For more information see [Fact Sheet 7: Clearing Native Vegetation](#).

Contacts and further Information

Department of Mines and Petroleum, Tel: (08) 9222 3333, or visit www.dmp.wa.gov.au

Environmental Protection Authority WA, Tel: (08) 6467 5600, or visit www.epa.wa.gov.au

- Search for mineral tenement applications on line at:
<https://emits.dmp.wa.gov.au/emits/advert/index.xhtml>
- The Guidelines for Mining Proposals in WA are available at
<http://www.dmp.wa.gov.au/documents/ENV-MEB-200%284%29.pdf>
- A copy of the Memorandum of Understanding between DMP and EPA is available at:
<http://www.dmp.wa.gov.au/documents/MOU.PDF>

For copies of legislation, contact the State Law Publisher (Western Australian legislation) on (08) 9426 0000, or visit www.slp.wa.gov.au

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The Environmental Defender's Office WA (Inc)

The Environmental Defender's Office WA (EDO) is a community legal centre specialising in public interest environmental law.

The objects of the EDO include:

- to provide community groups and individuals with legal advice and representation to help protect the environment;
- to promote law reform that improves environmental protection; and
- to provide community education about environmental law.

The EDO is a non-profit, non-government organisation. The EDO receives its principal funding from the Federal and State Attorney-General's Departments.

However, these funds are limited and donations from the public provide a vital source of funds for many of our activities. Donations over \$2 are fully tax deductible. The EDO also welcomes people with a commitment to the environment to join as members.

If you require legal advice on an environmental issue or wish to find out more about the EDO, please contact us at the following address:

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Freecall: 1800 175 542 (for WA callers outside the Perth metropolitan region)

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